

Maneesha Deckha

Animals as Legal Beings: Contesting Anthropocentric Legal Orders. Toronto: University of Toronto Press, 2021. 335 pp.

How can we transform our settler-colonial, anthropocentric legal system to better account for the systemic violence against animals in Canada? This is the question with which Maneesha Deckha grapples in her book *Animals as Legal Beings: Contesting Anthropocentric Legal Orders*. Her solution is to circumvent law's "binary outlook," whereby all entities and beings fall into categories of property or personhood (p. 8). Instead, Deckha suggests a new legal subjectivity of "beingness," which would provide legal recognition "that caters to the ontologies of breathing, embodied creatures" (p. 121).

Deckha positions her argument as a continuation of the "animal turn" that arose in academia in the mid-1990s but identifies a schism between its doctrinal and liberal oriented scholarship and critical animal theory (p. 7). She seeks to harmonize this through intersectionality, drawing on the established feminist animal care tradition as well as feminist theory more generally, postcolonial theory, and critical animal studies.

The first part of the book focuses on the two dominant discourses in animal law: the welfarist and the abolitionist. The welfarist discourse calls for change through the existing animals-as-property paradigm. Through a review of the Canadian anti-cruelty case law, Deckha demonstrates that "property status consigns animals to a legal abyss that anti-cruelty statutes have not been able to ameliorate" (p. 76). While the *Criminal Code's* four anti-cruelty provisions are generally understood to offer protection against harm and focus on advancing the best interests of animals, they are, in fact, skewed in the interests of the property owner. As an illustration, the test of "unnecessary suffering," established in the leading case, *R. v. Ménard*,¹ "naturalized human superiority and animal instrumentality" (p. 55), thereby expunging any meaning of cruelty outside of anthropocentric justification. The law treats animals' interests as secondary to those of the property owner and intervenes in situations of social deviance, "making animal suffering actionable only in an extremely narrow set of circumstances" (p. 75).

The abolitionist discourse seeks to remedy the propertization of animals through the allocation of personhood. Deckha, however, problematizes this approach, showing it to be an "inherently exclusionary category" (p. 95). Personhood applies to human beings and was extended to corporations and ships during the nineteenth century and, more recently, to rivers.² Personhood's origins,

¹ *R v Ménard*, (1978), 4 CR (3d) 333, 43 CCC (2d) 458 (Qc CA).

² See, e.g., *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017* (NZ), 2017/7; see also Sean Nixon, "A Quebec River Now Has Legal Personhood—What that Means for Granting Nature Rights," *Ecojustice* (5 March 2021), <https://ecojustice.ca/quebec-river-legal-personhood-rights-of-nature/>.

however, are found in “white, able-bodied, cisgender heterosexual men of property” (p. 88), who encouraged sameness rather than difference. Thus, the starting point of allocating personhood to animals is an elitist, failed model. “Honorary human status” would highlight difference between those animals that merit it, such as great apes, but it would also emphasize the “putative inferiority of the excluded animals” (p. 89). While it is a potentially preferable legal alternative to property for animals, it is also a flawed paradigm.

In the second part of the book, Deckha advances her novel solution: a new legal subjectivity of beingness, which bears neither the imprint of exploitative property nor the anthropocentrism of personhood. “Beingness would undercut the traditional account of who counts in law” (p. 121) through its main constitutive elements of embodiment, relationality, and vulnerability. Beingness draws on feminist theory, seeing embodied difference as central to subjectivity and crucial to social change. This means that animals would be synonymous with their bodies, and not stigmatized on the basis of cognitive or physical difference.

Beingness also turns to relationality,³ which dislodges the individualism ingrained in understandings of modern legal subjectivity, allowing for law to reflect on how animals actually live. Taken together, embodiment and relationality reveal the vulnerability⁴ of animals to harm and violence. Deckha’s conception of beingness would promote awareness and compel legal responses to suffering.

A new legal subjectivity, however, is not without its challenges. Deckha admits that her alternative to the traditional legal conceptualizations of animals “confronts the difficult and sparsely theorized issue of ‘line-drawing’ among animals as well as between animals and other non-humans” (p. 143). For example, would plants count as being? Or would invertebrates count as being? Despite questions like these that contemplate where the line of being is drawn, along with the possibility of creating “second-best subjectivity” (p. 159), beingness offers a corrective to the toxic, anthropomorphic bend of legal liberalism and legal humanism. Deckha’s book may also provide insight for other areas in which personhood is a key issue, such as the environment⁵ or robotic technology,⁶ in both of which, arguably, more could be achieved by rethinking the starting point of the Anthropocene. Deckha’s book inspires us to think differently.

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³ Jennifer Nedelsky, *Law’s Relations: A Relational Theory of Self, Autonomy, and Law* (London: Oxford University Press, 2013).

⁴ Martha Fineman, “The Vulnerable Subject: Anchoring Equality in the Human Condition,” *Yale Journal of Law & Feminism* Vol. 20, No. 1 (2008).

⁵ Christopher D. Stone, *Should Trees Have Standing? Law, Morality, and the Environment* (Cary, NC: Oxford University Press, 2010).

⁶ Kate Darling, *The New Breed: What our History with Animals Reveals about our Future with Robots* (New York: Henry Holt & Co, 2021).