

# **Centering Animality in Law and Liberation: *The Zoopolitics of Reclaiming the Animal in Personhood***

## **Introduction**

Although there is widespread agreement that the property status of nonhuman animals is indefensible, the debate about how to remedy their situation is ongoing. This paper explores three possibilities for approaching the issue of legal status: (1) extending the existing concept of personhood beyond the human to other animals; (2) developing an alternative legal subjectivity for nonhuman animals that is neither property nor personhood; (3) redefining personhood in animal terms while retaining the rights-bearing significance of personhood and decentering the human from animal subjectivity in law. I offer a critique of the first two strategies, and defend the third on both conceptual and political grounds, as most responsive to the requirements of a genuinely liberatory politics. I call this the centering animality approach, and apply it to the legal context through my proposal of animal personhood.

## **Animals as Property in Law**

Nonhuman animals are universally treated as property and with few exceptions, legally classified as such. The property status of nonhuman animals has been extensively criticized for a number of reasons but primarily because it is a denial of selfhood and rights. The commodified and objectified social status that nonhuman animals occupy as legal non-subjects effectively renders them and their experiences invisible before the law. This erasure, paired with the absence of the basic right to not be the property of another, means that nonhuman animals are not seen as being

worthy of legal protection from exploitation or violence — they are not seen at all.<sup>1</sup> The non-subjectivity of animals as property results in their subjugation to the realm of thinghood wherein their needs are neglected, they are physically, emotionally and psychologically abused and killed. I call this process of denying selfhood deanimalization: treating another sentient being as though they are an inanimate object thereby disregarding their animality.<sup>2</sup>

Anthropocentric legal orders mirror the moral hierarchy between human persons and their nonhuman animal property. The law solidifies the social construction of the species divide between animals by articulating the human relationship to other animals through the language of servitude and ownership. The person/thing dualism of the law is such that humans are positioned as rights-bearing subjects whereas nonhuman animals are categorized as legal objects, dispossessed of their own bodies and lives by human property owners. In the eyes of the law, nonhuman animals “are held to be devoid of intrinsic value and instead are assigned a market value based on their alienability.”<sup>3</sup> Animal property is type of a resource that can be exploited and destroyed by human persons. The property conceptualization “legitimizes” the treatment of nonhuman animals as a caste group that solely exists to serve the human race. The legal property/personhood designations affirm an anthropocentric culture of animal instrumentality and human supremacy. As Sue Donaldson and Will Kymlicka put it, “[e]very aspect of their lives is governed and regulated by a human political order that ignores their interests. They are tyrannized, in short.”<sup>4</sup>

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<sup>1</sup> Maneesha Deckha, *Animals as Legal Beings: Contesting Anthropocentric Legal Orders* (University of Toronto Press, 2021), 34.

<sup>2</sup> The assumption here is that the vast majority of animals are sentient beings and that it is best to assume that an animal is sentient in cases where sentience has yet to be determined.

<sup>3</sup> Deckha, *Animals as Legal Beings*, 40.

<sup>4</sup> Sue Donaldson and Will Kymlicka, “Animals and the Frontiers of Citizenship,” *Oxford Journal of Legal Studies* 34, no.2 (2014): 204.

Like many other legal systems around the world, the Canadian Criminal Code adopts an instrumentalist view of nonhuman animals as means to human ends. This is apparent in how anti-cruelty laws are implemented. Crimes that are committed against nonhuman animals are property rights violations and not animal rights violations.<sup>5</sup> Anti-cruelty legislation can therefore be understood as the regulation of property usage.<sup>6</sup> Legal scholar Maneesha Deckha explains that the infliction of pain, suffering, injury or death on nonhuman animals

must first be characterized as unnecessary before it is considered cruel. The primary rationale for this position is that the exercise of property rights, which includes the decision of owners to kill their animals, is not to be interfered with by anti-cruelty law. And because institutional and otherwise instrumental use of animals is socially accepted it is overwhelmingly only those acts deemed culturally aberrant by dominant cultural standards that are prosecuted under anti-cruelty statutes.<sup>7</sup>

In other words, the legal assessment of what constitutes “cruelty” is premised on a skewed balancing of interests. And although sentient beings undeniably share the exact same basic interest in not suffering and continued existence, the principle of equal consideration<sup>8</sup> does not apply to legal non-subjects. It is because nonhuman animals are the property of people that their interests can be overridden by that of their owners. The legal protection of nonhuman animals is conditional upon whether human interests align with that of their property. Ani Satz describes this as “legal gerrymandering for human interest” or “interest-convergence.”<sup>9</sup> Whenever the interests of animal property conflict or diverge from the interests of human persons, nonhumans

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<sup>5</sup> Deckha, *Animals as Legal Beings*, 41.

<sup>6</sup> Gary Francione, *Animals, Property, and the Law* (Temple University Press, 1995), 29.

<sup>7</sup> Deckha, *Animals as Legal Beings*, 55.

<sup>8</sup> See generally Peter Singer, *Animal Liberation* 2<sup>nd</sup> ed. (New York: New York Review of Books, 1990).

<sup>9</sup> Ani Satz, “Animals as Vulnerable Subjects: Beyond Interest-Convergence, Hierarchy, and Property,” *Animal Law* 16, no. 1 (2009): 6.

are stripped of any/all legal protections.<sup>10</sup> Anti-cruelty statutes do not adequately protect nonhuman animals precisely because they are a product of interest-convergence. Existing “animal protection laws” are in fact animal (ab)use laws.

Further, the “test of necessity” is constrained by anthropocentrism in that a practice is considered cruel iff the violent or exploitative act is not instrumental to bringing about a socially legitimate human end (i.e., anything that does not deviate from cultural norms). It is thus not a matter of whether an action is in and of itself actually cruel or necessary. Rather, anti-cruelty laws exist to prevent “irrational” property usage.<sup>11</sup> The legal concept of cruelty concerns the human use of animal property in ways that does not facilitate exploitation.<sup>12</sup> This is what abolitionist Gary Francione identifies as legal welfarism: the notion that nonhuman animals can be used by their property owners for whatever they please so long as the cruelty is not entirely gratuitous. Most uses of animal property “can be justified *only* by our pleasure, amusement, or convenience and cannot, by any stretch, be characterized plausibly as ‘necessary.’”<sup>13</sup>

The purpose of animal welfare laws is merely to reduce the amount of pain and suffering that nonhuman animals endure in the process of being (ab)used by humans. It would be unnecessary (as in pointless) for property owners to cause more pain and suffering than what is causally needed to fulfil their ends. This is the narrow sense in which the legal concept of “cruelty” is understood as “unnecessary suffering.” Again, humans are legally permitted to use nonhuman animals in any culturally dominant and economically profitable way, regardless of how much suffering is involved.<sup>14</sup> Any animal cruelty that exceeds the law’s limited

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<sup>10</sup> Satz, “Animals as Vulnerable Subjects,” 66, 69, 70.

<sup>11</sup> See generally Darian M. Ibrahim’s work on violence in anti-cruelty legislation.

<sup>12</sup> Gary Francione, *Animals as Persons: Essay on the Abolition of Animal Exploitation* (Columbia University Press, 2008), 63.

<sup>13</sup> Francione, *Animals as Persons*, 134.

<sup>14</sup> Deckha, *Animals as Legal Beings*, 41.

understanding of “unnecessary suffering” is legally non-existent and meaningless. Consequently, “[p]roperty places animals into a legal abyss that even anti-cruelty statutes cannot ameliorate” because the law operates within an anthropocentric framework that is predicated on the ideology of instrumentalism.<sup>15</sup> Anti-cruelty statutes do not grant nonhuman animals effective legal protections, since they are completely consistent with exploitation and violence, and they also do not contest the property status of nonhuman animals. The scope of legal protection that nonhuman animals receive under anti-cruelty law is minimal at best.

The non-contestation of the moral arbitrariness of customs that subscribe to the assertion of human supremacy reveals the utter lack of ethical consideration for nonhuman animals themselves, as is exemplified in the legal assessments of what constitutes cruelty (outside the moral understanding of necessity). If anti-cruelty laws truly prohibited animal cruelty, then nonhuman suffering would not be construed as necessary nor would they discriminate on the basis of species membership to determine what animal uses are cruel and permissible.

The legal classification of nonhuman animals as property is unethical because relations of ownership and servitude between sentient beings are incompatible with justice—irrespective of whether consent is claimed to be given. There is a broad consensus that the property status of nonhuman animals is unjustifiable by any measure of critical theory, social justice mandate, or even environmental/sustainability commitments.<sup>16</sup> The negligible protections that nonhuman animals are currently afforded under anti-cruelty statutes cannot overthrow anthropocentric parameters or legal orders because they are entrenched in the logic of interest-convergence. Nonhuman animals would first have to be declassified as property before we can even think about respecting and relating to them as our moral equals. The inauguration of a legal system

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<sup>15</sup> Deckha, *Animals as Legal Beings*, 76.

<sup>16</sup> Deckha, *Animals as Legal Beings*, 178.

that prevents the objectification of sentient beings (deanimalization), requires a departure from their property status.

### **An Alternative to Animal Property**

The extension of legal personhood to nonhuman animals is by far the most common proposal to date. The strategy involves moving nonhuman animals from the category of “property” to “personhood” as a way of legally affirming their moral value and rights. Philosophers and legal experts have shown that there is no real conceptual barrier to the inclusion of other animals in an expanded version of the human rights doctrine. Paola Cavalieri, for example, argues that “human rights are not *human*” but rather a particular subset of *moral* rights that serve to protect individuals from being sacrificed for the greater good of others.<sup>17</sup>

There are strong moral and practical reasons as to why Cavalieri and like-minded scholars endorse legal personhood for nonhuman animals. Selfhood generates distinctive moral claims that need to be legally protected by cohabitation rules to ensure the safety and wellbeing of animals. Species membership is morally irrelevant when it comes to determining whether sentient beings are in need of legal protection. Personhood is the category that is presently used in constitutional law to designate rights-bearing subjects, and therefore can (and should) be extended to other animals. Indeed, this is what consistency demands on the basis of the shared vulnerability that sentient embodiment entails. But the property status of nonhuman animals is one of the main impediments to the recognition of their moral rights as persons.

### **Personhood as a Force of Humanization**

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<sup>17</sup> Paola Cavalieri, *The Animal Question: Why Non-Human Animals Deserve Human Rights* (Oxford University Press Online, November 2001), 139.

The extension of personhood is a non-property and non-welfarist legal option for reclassifying nonhuman animals. From a rights-based perspective, it is better to extend personhood beyond the human to include other animals in comparison to the welfarist approach to legal reform, which simply seeks to (slightly) improve their condition as property by strengthening protections. But that aside, the assumption that the extension of personhood to nonhuman animals is the best legal strategy available to us has recently been disputed. Deckha, for example, is skeptical about whether personhood can significantly change the lives of nonhuman animals, given its conceptual entanglement with anthropocentric valuations of beings/bodies. In a nutshell, the concern is that the extension of personhood to nonhuman animals is yet another attempt to humanize a previously excluded group.

Throughout history, personhood has been employed by colonizers to demarcate who is not a full and equal person or member of society. Contemporary human rights contestations have gradually led to the expansion of personhood through greater inclusivity. But the marginalization of those who do not fit the mould of the paradigmatic human continues because extending personhood is not a subversion of existing tenets. Conversely, the conventional liberal method of inclusion via extension reifies its exclusionary and anthropocentric parameters. As it stands, personhood is a nonanimal concept of humanity that defines the human in contradistinction to the animal as the non/sub-human. What distinguishes persons from animals is that they cannot be treated like property. “In law, it is this animalized underpinning of property that constitutes property’s real and imagined polar opposite: personhood, which itself is rendered indissociable from humanity for living beings.”<sup>18</sup>

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<sup>18</sup> Deckha, *Animals as Legal Beings*, 93.

The humanizing force that personhood exerts makes it a precarious status for the marginalized. The conceptual overlap between humanity and personhood is such that one has to be seen as human to even qualify for personhood *and* one has to be legally recognized as a person to be humanized. Legal protection from being treated “like an animal” hinges on the conferral of personhood through humanization. Rights violations are therefore interpreted as a loss of humanity. But, as Matthew Calarco points out, the law’s construction of the human person “was always intended selectively to bring within its orbit only those beings who fit a relatively narrow set of criteria for inclusion in the circle of humanity proper.”<sup>19</sup> Meaning that some humans are not human because they are socially construed as animals.<sup>20</sup>

The species division of animals in law splits the moral universe into persons/things, and it is the personhood of humans and the thingness of animals that the zoological hierarchy is composed of. As the metric of worthiness, one’s value is determined by one’s position on the human/animal scale. The closer one is to animality, the further removed one is from humanity, and vice versa. To borrow from Cary Wolfe, modern societies are organized by humans in the following hierarchical order: humanized humans, animalized humans, humanized animals, and animalized animals.<sup>21</sup> Since legal personhood operates as “a mechanism that ‘naturalises’ and/or renders ‘neutral’ the law’s meditation of hierarchy and dominance”, we must be wary that inter/intra-species hierarchies could very well be “re-enacted by uncritical references to the terms presupposing the *anthropos*” (human being/man).<sup>22</sup>

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<sup>19</sup> Matthew Calarco, “Identity, Difference, Indistinction,” *Michigan State University Press* 11, no. 2 (2011): 46.

<sup>20</sup> Syl Ko and Aph Ko, *Aphro-ism: Essays on Pop Culture, Feminism, and Black Veganism* (New York: Lantern Books, 2017), 71.

<sup>21</sup> Cary Wolfe, *Animal Rites: American Culture, the Discourse of Species and Posthumanist Theory* (University of Chicago Press, 2003), 97.

<sup>22</sup> Anna Gear, “Deconstructing *Anthropos*: A Critical Legal Reflection on ‘Anthropocentric’ Law and Anthropocene Humanity,” *Law Critique* 26, (2015): 242.



Extending personhood is an assimilationist project that reinscribes humanism by asking marginalized groups to renounce their animality in exchange for membership into the moral and political human community. For Deckha, personhood is “irrevocably tainted as a viable option to respect animals, and all their alterity, as legal subjects because persons are made through proving one’s humanity and unmade when that humanity is called into serious question.”<sup>23</sup> Let’s unpack this statement. The root of the problem is that “the exclusionary historical imprint inclines the concept in the present to *systemically* disfavor those who do not match the Western, able-bodied, propertied, human male identity through which personhood was consolidated.”<sup>24</sup> In other words, animals that are human-like or human-enough will be privileged over those who are not. The consequence of granting personhood on the basis of similarity is that the otherness/non-humanness of those who are different will be used as justification to ostracize them. Indeed, this is already the case with dehumanized/marginalized humans who are subjected to substandard treatment despite their personhood. On these grounds, Deckha doubts that nonhuman animals will ever be humanized enough to be granted adequate legal protection as persons.

### **Against Nonhuman Legal Subjectivities**

Deckha exposes the dangers that personhood poses for (dehumanized and nonhuman) animals as a humanizing force, and in response, argues for a nonhuman legal subjectivity that she calls “beingness”. This section offers a critique of the choice to introduce a third legal category for nonhuman beings, instead of reconstructing personhood as an animal subjectivity. I situate Deckha’s proposal by turning to Matthew Calarco’s work on identifying the dominant approaches to animal studies.

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<sup>23</sup> Deckha, *Animal as Legal Beings*, 92.

<sup>24</sup> Deckha, *Animal as Legal Beings*, 89.

Deckha rightly takes issue with the anthropocentric approach to moral theory wherein humanity is positioned as the standard by which moral standing is conferred. On this view, egalitarian ethicists start with an account of human nature that supposedly explains why being human makes one entitled to rights and justice.<sup>25</sup> Nonhuman animals then achieve moral standing on the condition that they are “seen as possessing or approximating some aspect of this essence of humanity.”<sup>26</sup> To avoid this conversion of otherness to sameness, Deckha proposes a nonhuman subjectivity that is “articulated in and through the human/animal distinction.”<sup>27</sup> But the focus on the alterity of nonhuman animals is inadvertently anthropocentric because the human is centered as the subject who the nonhuman is different from. And like Calarco, I also think that “[w]hile it is unquestionably correct to critique the traditional human/animal distinction for reducing difference, it is not altogether clear that the best way to displace distinction is through refining, multiplying, and complicating it.”<sup>28</sup> I reject both of these approaches as they entail an anthropocentric measure of either sameness or difference.

In the context of the legal debate around animal status, the extension of personhood subscribes to the assimilationist/sameness logic of the first approach that Calarco describes. I share Deckha’s concern with animal campaigns that are “based on sameness” because of their “humanizing impulse”, which “merely shifts the zones of inclusion and exclusion rather than eliminating exclusion altogether.”<sup>29</sup> That said, I contend that there is nothing wrong with equality or personhood, as a rights-bearing status, per se. All that is being targeted is the anthropocentric, and concomitantly, exclusionary *approach* to animal personhood/rights. However, the

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<sup>25</sup> Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford University Press, 2011), 33.

<sup>26</sup> Donaldson and Kymlicka, *Zoopolis*, 33.

<sup>27</sup> Matthew Calarco, *Thinking Through Animals: Identity, Difference, Indistinction* (California: Stanford University Press, 2015), 50.

<sup>28</sup> Calarco, *Thinking Through Animals*, 51.

<sup>29</sup> Deckha, *Animals as Legal Beings*, 143.

difference-based approach is equally, if not more, problematic as it culminates in the proposition to create a nonhuman legal subjectivity for animals, such as Deckha's beingness.

The negative outcomes of selecting the strategy to reclassify nonhuman animals under a new legal category over an animal-centered approach to radically reconfiguring personhood, are unavoidable regardless of how politically informed/progressive the proposal may seem to be. This is illustrated, for instance, by Deckha's beingness model of legal subjectivity, which aims to prompt a revaluation of nonhuman animals. In contrast to the principle constitutive features of personhood, beingness attends to "embodiment (and the revaluation of the body and emotion this entails), relationality (and the social embeddedness and attention to power relations but also interdependence this entails), and vulnerability (and the materiality and attention to pain and suffering this entails)."<sup>30</sup> On this account, the marginalized bodies of nonhuman animals require discursive and material rehabilitation according to critical theory. Deckha also invokes the feminist argument for a relational understanding of nonhuman beings in law and posits vulnerability as a foundational legal concept.

These elements of beingness veer away from a capacity-based assessment and assignment of moral worth. This reorientation would indeed change how we think about what it means for a being to matter in law. But Deckha's beingness is a *biocentric* "legal subjectivity that caters to the ontologies of breathing, embodied" nonhumans, and so I argue that it needs to be rejected for not being animalcentric.<sup>31</sup>

The main objections that I raise to any nonhuman legal subjectivity for animals, stem from the fact that this would undermine one of the key purposes of justice, which is to protect the

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<sup>30</sup> Deckha, *Animals as Legal Beings*, 122.

<sup>31</sup> Deckha, *Animals as Legal Beings*, 122.

vulnerable.<sup>32</sup> First, a nonhuman status would maintain the species division of animals in law. Let's consider the relational politics of a hypothetical situation wherein humans remain persons and other animals are reclassified under some other nonhuman legal subjectivity. This would inevitably replicate the person/thing dynamic in which nonhuman animals are bound to occupy a second-class status that not only deanimalizes them but dehumanized humans as well. The fragmentation of animal subjectivity in law does not challenge the personhood of humans and thingness of nonhumans, thereby leaving the zoological hierarchy intact.

Second, to make matters worse, if different kinds of nonhumans were to be grouped together, then this would erase the moral distinction between sentient beings and things. It is morally arbitrary to segregate nonhuman animals from humans and lump them into the same legal category as nonsentient things. This is virtually no different than how they are currently classified as property alongside nonanimal/inanimate objects. In addition to further ingraining the subhumanness of animality, introducing a nonhuman subjectivity dismisses the moral significance of sentience. What sets sentient beings apart from nonanimals is that life is experienced subjectively. In this way, the relational and embodied vulnerability of a self is incomparable to that of a nonsentient thing.

As qualitatively different kinds of beings, animals have a qualitatively different moral standing from nonanimals. That is not to say that animals are superior to nonanimals, nor does it imply that humans have no moral obligation to protect and respect nonsentient parts of nature. But it is inaccurate to characterize these moral duties as being in the interest of nonsentient things because it is impossible for something that is not a self to have personal interests or a subjective experience. Nonsentient things are not personally harmed, disrespected, or subjected

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<sup>32</sup> Donaldson and Kymlicka, *Zoopolis*, 33.

to injustice when they are treated like objects. On the other hand, the treatment of sentient beings as things/property is harmful, disrespectful, and unjust because objectification is a denial of selfhood. Sentience is a morally relevant way of distinguishing animals from things in the law as it “generates distinctive vulnerabilities, and hence distinctive needs for the protection of inviolable rights.”<sup>33</sup> A nonhuman subjectivity is unacceptable for nonhuman animals for the same reason that it is unacceptable for humans: it blurs the moral distinction between selves and things, thereby heightening the vulnerability of sentient beings.

Third, taking up the question of animal status without the inclusion of humans is a failure to address the negative impact that the anthropocentrism of personhood and the inherently exploitative concept of property has on both dehumanized humans and other animals. It does not make much sense to deal with the legal status of human/nonhuman animals in isolation from one another because they are not disconnected or separable issues, and to do so is to suggest otherwise. The incompleteness of an approach that focuses solely on the nonhuman animal is evidenced by its inability to account for deanimalized humans.

In light of the above, we can see that the moral task of line-drawing is an unavoidable and necessary component of the legal debate about animal status. Nonhuman subjectivities involve the morally arbitrary segregation of animals and even if they did not, it is still morally objectionable to blur the distinction between animals and nonsentient things in law. Neglecting any human/nonhuman animal group is incompatible with contesting, let alone transforming, anthropocentric legal orders and liberatory politics in general. The next section explores an all-inclusive, animal-centered framework that embraces sentience as a morally relevant

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<sup>33</sup> Donaldson and Kymlicka, *Zoopolis*, 36.

criterion/baseline for legally distinguishing rights-bearing subjects and political agents from the rest.

### **Animal Personhood**

There is a lot at stake in choosing how to move forward with renewing the law's relation to animality. Answering the question of what legal status animals should occupy is a matter of liberatory politics in that the quality of our response can be measured by its proximity to the prospect of liberation. As we have seen, existing approaches to the property/personhood debate reflect a particular way of thinking about animals: through the human/nonhuman binary. The issue with maintaining the morally arbitrary species division among animals is that it prevents us from understanding and addressing the zoological roots of oppression, which in turn limits the efficacy of our liberation theories and movements. This is especially true of animal law wherein the emancipatory potential of legal reform is stunted by the exclusive focus on nonhumans, as if their standing is separable/disconnected from that of humans.

In strategic response to the zoological hierarchies of worth that rely on the animal as *the* core signifier of inferiority (i.e., the subhuman) to justify the subjugation of nonhumans and those who are not, and have never been seen, or accepted as fully human, I suggest reclaiming the narrative of animality so that it can no longer be weaponized against sentient beings.<sup>34</sup> This section demonstrates why an animal-centered theoretical framework is required for the transition into a radically different relational paradigm that ushers in a new era of peace and justice on earth. I argue that centering animality is not only empowering for nonhuman animals and animalized humans, but also revolutionary because of what it can mean for rethinking the human/animal dichotomy.

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<sup>34</sup> See generally Aph Ko, *Racism as Zoological Witchcraft: A Guide to Getting Out* (New York: Lantern Books, 2019).

Given that our terms of coexistence are legally encoded, the focus of this section is on concretely applying my proposal to center animality in liberatory politics to the context of law. Specifically, I examine the issue of legal status and how this informs our interactions and relationships with human/nonhuman animal others. By centering animality, I am referring to the experience of being-animal and not that of being animalized in the sense of being relegated to the subhuman plane of existence. While the denial of one's animality is certainly an instance of animalization and thus relevant, the experience of being-animal exceeds this understanding of animality as simply an experience of animalization. In this way, being animalized can be more accurately described as deanimalization, that is, the experience of being denied animality. We have become accustomed to thinking about animalization as a form of de/sub-humanization. However, contrarily to how we usually talk about dehumanization, I contend that being denied humanity is essentially a denial of animality and elaborate on the significance of reframing it as such.

The animal-centric approach that I put forth is not limited to a discussion about centralizing the experiences of deanimalization because, as mentioned, animality is not reducible to the denial of animality. It would be unproductive to center de-animalization as there is more to the experience of being animal than that. In other words, animality simultaneously includes and exceeds deanimalization. That being said, although I am not advocating for an approach that centers the experience of being denied one's animality, deanimalization plays a vital role in my argument for centering animality in law, liberation and beyond. This is because I take oppression to be a zoological phenomenon. That is to say, the animal is the only type of being that is capable of experiencing oppression for one must be sentient in order to be able to subjectively experience reality. Therefore, at the most basic level, animals need legal protection from the violence and

exploitation that humans subject one another and nonhumans to. For this reason, I have chosen to retain the rights-bearing association with personhood that the law currently upholds. Apart from this, I propose completely redefining personhood in animal terms to supplant its exclusionary and anthropocentric conceptual content.

Before I dive into the details of my proposal of animal personhood, I briefly return to Calarco to contextualize my position. The final approach that Calarco identifies is an emergent discourse in animal studies that he labels “indistinction”. Theorists in this stream of thought seek to radically displace “human beings from the center of ethical reflection.”<sup>35</sup> What this means for egalitarian ethics is that ethically relevant similarities between animals are not approached through a unidirectional comparison of the nonhuman to the human. The continuities among animals are explored more fluidly, and room is deliberately carved out for giving ethical consideration to animals that are not like humans, without an emphasis on anthropological difference(s). Indistinction theorists do not resort to human-centered ethical frameworks that are then extended to other animals.

As opposed to starting from the vantage point of humanity, indistinction departs from animality in the search for what constitutes an ethical relation. Calarco believes that the indistinction approach can partly be captured in reference to Giorgio Agamben’s writing on biopolitics. Building off of Michel Foucault’s concept of the “biopolitical”, Agamben asserts that Western politics is founded on the effort to sever animal life from what is known as the sphere of human politics.<sup>36</sup> This performative process of “anthropogenesis” crystallizes human propriety into social reality. The politics that emerge out of the human/animal distinction negatively affects nonhumans and those who are deemed not insufficiently human. As Calarco notes, this leads

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<sup>35</sup>Calarco, *Thinking through Animals*, 53.

<sup>36</sup> Calarco, *Thinking through Animals*, 53.



pro-animal theorists in the indistinctionist vein to contemplate what inter/intra-species relations might look like when politics evolves beyond the human/animal distinction.

Another key figure that Calarco discusses in his exposition of indistinction is Gilles Deleuze, for whom the idea of “becoming-animal” is a method of entering into relation with alternative, nondominant ontologies. It is in the “refusal to enact the ideals and subjectivity that dominant culture associates with being a full human subject” that “resisting and transforming the unjust and intolerable order to which all other (that is to say, other-than-human) modes of existence are relegated” can be accomplished through “inhabiting zones of indistinction where traditional binary distinctions between human beings and animals break down.”<sup>37</sup> Decentering the human subjectivity allows us to find ourselves in intimate relation and identification with our shared animality. Deleuze writes that “we become animal so that the animal also becomes something else.”<sup>38</sup>

We have yet to discover the ways in which we are like animals in the reclamation of our own animality. But humans are just one of the countless species that this endeavour calls upon. Other animals are also to be invited as political agents of change in reclaiming their animality, which has been denied to them by humans through their deanimalizing treatment as property. The seeds of the indistinction approach have been planted and are now beginning to blossom into beautiful visions for post-anthropocentric futurities. But new worlds are not going to be born out of the same old pattern of expanding the circle of moral consideration to the marginalized and excluded, for this is to assume that the human is the center of the universe which everything else revolves around. Innovation is needed to form moral and political communities outside the anthropocentric criteria of inclusion. The remainder of this paper will focus on how we can

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<sup>37</sup> Calarco, *Thinking through Animals*, 57-58.

<sup>38</sup> Gilles Deleuze and Félix Guattari, *What is Philosophy?* (New York, Columbia University Press, 1994), 109.

create the conceptual and material conditions for pro-animal alliances between social justice movements through animal centered models of solidarity. To this end, I integrate the writings of Claire Jean Kim and Aph Ko to demonstrate the salience of centering and reclaiming animality in law and liberation from a critical race and decolonial perspective.

In *Racism as Zoological Witchcraft*, Ko examines the limitations of how contemporary liberatory movements operate. Because current approaches to social justice struggles are the by-product of a toxic, oppressive and colonized cultural understanding, there is a tendency to frame the various forms of oppression as discrete and separable issues. Ko disfavors the categorical way of thinking about the faces of oppression as intersecting for this reaffirms the social categories that derive from an oppressive system and structure of coloniality. Instead, she suggests that we “undo these ‘intersections’ and dissect the actual categories themselves to re-shape and re-mold them.”<sup>39</sup> Along the lines of undisciplining how oppression and liberation are filtered, Ko opts for a multidimensional framework through which the deep relationship between different kinds of oppression is understood as them being intrinsically composed of one another. Regardless of whether or not Ko’s depiction and critique of intersectionality is accurate, her argument for multidimensionality as a theoretical and practical approach to liberation stands.

Much of what Ko is trying to get across resonates with Kim’s defense of a multi-optic vision for an ethics/politics of mutual avowal. A one-dimensional (Ko) or single-optic (Kim) perspective

tends to lead in the course of political struggle to a posture of mutual disavowal, where each group elevates its own suffering and justice claims over the suffering and justice claims of the other group, either partly or wholly invalidating the latter as a matter of political and moral

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<sup>39</sup> Aph Ko, *Racism as Zoological Witchcraft*, 21.

concern. Disavowal, an act of dis-association and rejection, can range from failing to recognize that one is causing harm to the other group to refusing to acknowledge that the other group suffers or has valid justice claims to actively and knowingly reproducing patterns of social injury to the other group.<sup>40</sup>

There is a very real sense in which this nasty attitude of mutual disavowal has overtaken liberatory politics. The tension between the animal rights and the racial liberation movements is a perfect example of this, especially because of the supposed “givenness” of prioritizing humans in liberation.

Speciesism and racism appear to have nothing in common when they are looked at through a single-optic lens. From a multidimensional view, however, we can see that blackness and animalness

form poles in a closed loop of meaning. Blackness is a species construct (meaning ‘in proximity to the animal’) and animalness is a racial construct (meaning ‘in proximity to the black’) and the two are dynamically interconstituted all the way down... [T]he anti-Black social order that props up the ‘human’ is also a zoological order, or what we might call a zoologo-racial order.<sup>41</sup>

Liberation should therefore not be approached like a competition among more or less deserving opponents who fight against one another, for this counterproductively confirms the validity of the very hierarchies of worth that we want to get rid of. The target should be the source of oppression, and never the oppressed or their advocates. But this cannot be done without an

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<sup>40</sup> Claire Jean Kim, *Dangerous Crossings: Race, Species, and Nature* (California: Cambridge University Press, 2015), 181.

<sup>41</sup> Claire Jean Kim, “Murder and Mattering in Harambe’s House,” *Politics and Animals* 3, (2017): 10.

understanding of what oppression is. To believe that liberation movements conflict is to confuse what liberation entails.

Ko's analysis of white supremacy stresses the need for consistency in the commitment to anti-subordination as a political principle. If white supremacy is a "living, insidious, expansive, colonial force" seeking to possess, consume, and destroy the animal, namely, nonwhites and nonhumans, then dispelling this practice of zoological witchcraft requires that we attend to the narrative of animality and the situation of the nonhuman animal.<sup>42</sup> In the context of law and liberation,

[t]he effort to gain full humanity by distancing from nonhuman animals, like the effort to achieve moral considerability for animals through racially fraught, racism-denying analogies, is a misbegotten project: it has not succeeded and cannot succeed because race cannot be unsutured from species and dismantled while species categories motor on in force. Rather, these two taxonomies, intimately bound with one another, must be disassembled together in our effort to meaningfully and radically rethinking the category of the human.<sup>43</sup>

The lack of solidarity in liberation theory and advocacy can be attributed to a gross misunderstanding of how synergistically oppressions relate. The taxonomies of race and species, for instance, are "[h]istorically conjoined in... producing the human and the subhuman, not-human, less than human – with all the entailments of moral considerability, physical vulnerability, and grievability that follow."<sup>44</sup> It is not as though liberation is about making a choice between the interests and needs of group X or that of group Y. The ultimate fates of

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<sup>42</sup> Ko, *Racism as Zoological Witchcraft*, 42-43, 101.

<sup>43</sup> Kim, *Dangerous Crossings*, 286-287.

<sup>44</sup> Kim, *Dangerous Crossings*, 286.

human/nonhuman animal groups are inextricably intertwined; no one is truly liberated until everyone is liberated.<sup>45</sup>

The oppressive strategy of stepping on the animal in the attempt to elevate one's position on the zoological hierarchy ought to be abandoned. In its place, pro-animal critical race theorists have persuasively argued for joining forces with the animal by holding fast to animality as animal agents themselves and thus epistemological contributors to animal advocacy. This is a politically effective strategy because reclaiming the narrative of animality takes the power away from it being weaponized against those deemed animal, whilst simultaneously deconstructing the human/animal binary underlying zoological hierarchies. I argue that dehumanization is best understood as a form of deanimalization, and so centering animality directly combats dehumanization. The reclamation of animality also fits in with the adoption of a multi-optic vision, which move us in the direction of an ethics/politics of mutual avowal that

puts pressure on intergroup boundaries, plays with the productive possibilities of boundary crossing, and shakes up group identities by emphasizing the intimate connections among domination's multiple forms... it is a critical methodology... engaging politically without brackets, without the fantasy of innocence, with full cognizance of one's potential impact on and relation to other subordinated groups.<sup>46</sup>

This “active process of affirming and relating to” other liberation struggles encourages a path of solidarity towards collective action for mutual justice.<sup>47</sup> That is not to say that the experiences of oppression are comparable or that they should be compared — every experience of deanimalization is unique. Each cause is independently significant and should not be

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<sup>45</sup> Kim, *Dangerous Crossings*, 283.

<sup>46</sup> Kim, *Dangerous Crossings*, 199.

<sup>47</sup> Kim, *Dangerous Crossings*, 198.

instrumentalized to transfer legitimacy or social importance to the other.<sup>48</sup> The reclamation of animality will mean something different to different people, either way the narrative of animality would be rewritten.

As stated, centering animality is not about centering a single form of deanimalization. Sometimes oppression occurs through animalization, but this is not always the case. However, oppression is invariably a denial of one's animality/selfhood. And so centering animality encompasses the full range of human/nonhuman animal experiences, including the various instances of deanimalization. For this reason, it is an all-inclusive approach that is capable of accounting for the multidimensionality of oppression and liberation. In turn, I suggest that centering animality can supersede the endless debates over which structural axis should be centralized (e.g., race, gender, species, culture, etc.). This is because whatever axis of difference is construed as central, winds up being too limited-in-scope in that its specificity aims to centralize a noncentral aspect of the animal experience or oppression, whether it be on a personal or societal level of politics. Rather than stretching out a narrow axis or pair of axes in the attempt to centralize it, perhaps it is more politically efficacious to center animality as this would not exclude any axis of difference or animal experience.

Liberatory politics needs to be inclusive and representative of those involved. And since the experience of oppression only has meaning as a zoological phenomenon, I propose taking an animalcentric approach to liberatory politics as a reclamation methodology. What this means in response to the question about the legal status of animals is that our solution to this issue should be reflective of liberatory zoopolitics. As we have seen, the legal categories of personhood and property mutually reinforce the human/animal dichotomy in law, and this directly affects how we

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<sup>48</sup> Kim, *Dangerous Crossings*, 285.

interact and relate to one another. Overcoming the zoological hierarchy will require a drastic shift in the relational paradigm toward animal equality. It is very unlikely that nonhuman animals will ever be treated as equals unless they are legally recognized as such. The assertion of dominance over animal others in law guarantees abusive relations. No animal should be regarded or treated as property, period.

In order to prevent deanimalization, animals need to be legally protected by inviolable rights. Like Donaldson and Kymlicka, I reject “any attempt to distinguish personhood from selfhood as the basis for inviolable rights” because this is “conceptually unsustainable, morally unmotivated, and radically destabilizing of the very idea of universal human rights.”<sup>49</sup> I also agree with them that “the language of personhood is too deeply woven into our everyday discourses and legal systems to simply be expunged. For many legal and political purposes, advancing an animal rights agenda will require using the pre-existing language of persons and extending it to animals.”<sup>50</sup> However, instead of taking the extensionist approach to personhood, I suggest completely redefining personhood in animal terms. Put differently, animal personhood would retain the rights-bearing significance of personhood while decentering the human from animal subjectivity. The purpose of this is to transcend the zoological hierarchy that the law creates through the human/nonhuman division of animals by challenging the assumption that one has to be a human to be a person and that personhood is reserved for humans.<sup>51</sup>

Animal personhood counters the tendency to define humanity in contrast to animality, as a species apart from the rest of the animal kingdom. The species division lumps all other animals into a homogenous group whose defining feature is that they are not human, or subhuman.

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<sup>49</sup> Donaldson and Kymlicka, *Zoopolis*, 31.

<sup>50</sup> Donaldson and Kymlicka, *Zoopolis*, 30.

<sup>51</sup> Deckha, *Animal as Legal Beings*, 91.

Conversely, animal personhood asks us to rethink the human as animal and animals as persons. In this way, the human/nonhuman dichotomy is displaced by a multiplicity of animal persons: cow persons, raccoon persons, human persons, whale persons, dog persons, chicken persons, etc. The differences among individuals and groups will not be used to discriminate against them but rather will be respected and attended to. This reconstructive project of reimagining the animal outside of the human/nonhuman binary collapses the moral distinction between animal persons. Humans will not be more or less valuable than other animal persons in the law. This firm stance on inherent value is necessary for the transition beyond the zoological hierarchies of worth that negatively affect humans and nonhumans.

Animal personhood is a recognition of selfhood and rights, that is conceptually determined by those it encompasses in the reclamation of their animality. The open-ended nature of animal personhood as a legal subjectivity, positions sentient beings as self-defining agents. Centering animality in law ensures that no one is left behind or neglected from consideration. It takes the situation of the nonhuman animal as property, as an opportunity to reform anthropocentric, and otherwise problematic, legal systems so that they can be transformed from being enablers of the tyrannical regime to facilitators of an animal-friendly democracy.



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