Animal Personhood: A Postanthropocentric Multispecies Legal Subjectivity

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Abstract

This thesis looks at the human relationship to other animals in the eyes of the law. Many contemporary legal systems categorize nonhuman animals as property, which means that they can be objectified and commodified. The property status has been widely criticized for its inability to provide the most vulnerable among us with protection from human violence and exploitation. Animal law scholars have thoroughly documented the failures of welfarist reform, and call for the recognition of nonhuman animals as legal subjects and rightsholders via legal personhood as a requirement of justice. In this thesis, I turn to Maneesha Deckha’s postcolonial feminist critique of personhood as an exclusionary and anthropocentric legal subjectivity that settler colonial legal systems have inherited. In response, I argue that we should redefine personhood in animal terms for the sake of those who are marginalized and oppressed. I propose “animal personhood” as a human and nonhuman legal subjectivity that is grounded in equality as well as the embodied and relational dimensions of our vulnerability as sentient beings. Animal personhood is meant to legally affirm the moral and political rights of animal persons.
For animal persons, human and nonhuman.

May all be blessed with love and liberated from suffering.
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Introduction

From a moral perspective, it seems rather intuitive and uncontroversial that humans should not intentionally cause harm, enslave or abuse other people as this would undermine their dignity. Yet, when it comes to animals that are not human, we automatically assume that we are entitled to have unlimited access to their bodies and lives, and use them however we please, because we are human and they are not “one of us”. We make a sharp division between human and nonhuman animals on the basis of biological difference to justify the exclusion of other animals from the moral and political community of equals.

The fallacy of human supremacy and exceptionalism is seen as a natural fact, and hence the mistreatment of “subhuman” animals is normalized. Our everyday practices implicitly force “most animals to undergo extreme levels of physical, emotional and psychological pain, suffering and trauma without public outcry, lamentation or even notice” and this egregious injustice is somehow still legally permitted whenever the actions are done for any socially legitimated human benefit.¹ In the hierarchical ordering of sentient beings, humans hold a long-standing position of power over other animals, which has gone unchecked to such a disastrous extent that the amount of nonhuman suffering and destruction has now reached unfathomable proportions like never before. There are many explanations as to why humans believe other animals have no moral status, but none of them are true. Nevertheless, nonhuman animals are legally categorized as property in Canada (and abroad), which means that their situation allows us to endlessly exploit their vulnerability.

Despite the past and present reality of interspecies dynamics, we can imagine and work towards a future of alternate possibilities wherein human-nonhuman animal relationships are

¹ Maneesha Deckha, Animals as Legal Beings: Creating a Postanthropocentric Legal Subjectivity, (Forthcoming), 426.
overall peaceful and just. Indeed, there are several reasons to be hopeful that a revolutionary paradigm shift is on the horizon. Both the burgeoning field of critical animal studies and the expansion of consciousness on the ethics of animal-related issues perhaps suggest that we are entering into a new age of animal justice. The transformation of our current practices and institutions will require radically different ways of thinking about nonhuman animals, our relationships to them, and the constitution of political communities in general.

In this thesis, I explore the legal representation of animal subjectivity within the lively property/personhood debate. Updating the law is fundamental to bringing about concrete change because, as Will Kymlicka states, “Law is central to the oppression of animals—it is the legal system which authorizes humans to harm and exploit animals—and legal reform is therefore essential to the ending of their oppression.” My aim is two-fold: to bridge the gap between critical animal theory and animal law, and to put forth a new direction in which we could move beyond the language of ownership and progress forward with legal reform through my proposal of animal personhood.

Outline

This thesis is organized in the following manner. In the first part, I examine what it means for nonhuman animals to be property. I draw on the writings of animal law scholars Maneesha Deckha and Gary Francione to demonstrate the indefensibility of the property status and inadequacy of welfarist reform for animals. I then discuss the most common proposal of extending legal personhood to nonhuman animals. I conclude this part by bringing in Deckha’s postcolonial and feminist critique of personhood as an exclusionary and anthropocentric legal

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subjectivity that she argues is not ideal for humans or other animals due to the law’s inheritance of hierarchical valuations of persons.

In the second part, I provide an exegesis of a third legal category that Deckha introduces, i.e. beingness, which is a difference-respecting subjectivity that is specifically intended for nonhumans. I explicate the constitutive elements of beingness that Deckha articulates, namely: relationality, embodiment, and vulnerability. I then critically analyze and ultimately reject beingness as an alternative to personhood for three main reasons: (1) the moral distinction between persons and things gets erased; (2) the human-nonhuman animal divide is left unchallenged; (3) the prevalent understanding of personhood that is problematic for marginalized humans remains unaddressed.

In the third part, I propose relieving personhood of its conceptual baggage by redefining it to include all sentient beings/selves. I offer and develop the legal subjectivity of “animal personhood”, which is grounded in equal moral status/rights and incorporates Deckha’s concepts of relationality, vulnerability and embodiment. And lastly, I consider the political agency and rights of animal persons by reference to the work of Will Kymlicka and Sue Donaldson on animal citizenship.

Part 1: The Property/Personhood Debate
1.1 Animal Property

The property status that nonhuman animals currently occupy mirrors the distinction that we make between moral persons (who have rights and interests) and the things we own. The commonly held belief that animals are innately inferior to humans undergirds our treatment of them as if they were nothing more than inanimate objects to commodify as opposed to sentient beings with needs and interests. Property renders animals and their experiences invisible as nonpersons in the law, which means that anti-cruelty statutes are unable to provide them with the protection that they require.

In Chapter 1 (of her unpublished manuscript) No Escape: Anti-Cruelty Laws’ Property Foundations, Deckha examines the pernicious effects of the legal non-subjectivity of animals. And I refer to her critique of property, rather than others, because it is rooted in the specific context of Canadian criminal law. The Criminal Code does prohibit animal “cruelty”, however, this gesture to promote animal welfare is undermined by the property status of animals. The instrumentalist view of animals—as means to human ends—is adopted by the Criminal Code, which translates into the way in which “unnecessary suffering” is legally interpreted. The term “cruelty” is directly informed by the property conceptualization of animals in the Code. This means that crimes that are committed against animals are considered violations of the property owner’s rights rather than the animal’s rights. The exercise of property rights is only constrained by anti-cruelty law when the actions are characterized as inflicting “unnecessary suffering”. In the legal assessment of what constitutes “cruelty”, the interests of animals are ignored and overridden by humans because they are regarded as tradable whenever the sacrifice is beneficial.

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3 Deckha, Animals as Legal Beings, 85.
to us.⁴ Deckha explains that since the “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”.⁵ The principle of equal consideration has no meaningful application for animal property even though sentient beings share the same interests in not suffering and continued existence.

Francione’s well-known theory of legal welfarism reveals the extent to which the law’s understanding of cruelty towards animals is defined and constrained by anthropocentrism. Francione argues that we exhibit a type of “moral schizophrenia” when it comes to the way in which we think about animals in that the concern we express for their wellbeing contradicts the normalized practices of human (ab)use permitted by the law.⁶ The claim that we care for the humane treatment of animals is meaningless when our actions do not actually reflect the moral principles we profess to support.⁷ The prohibition against the “unnecessary suffering” of animals is contingent upon whether the harm is profitable, beneficial to society and not entirely gratuitous, i.e. the regulation of “cruelty” in this sense refers to ensuring the prevention of irrational property usage.

Exploitation and violence are completely consistent with anti-cruelty statutes because they are premised on the assumption that animals can be used as resources for our food, clothing, entertainment and experimentation so long as we comply with industry or customary norms.⁸ However, Francione notes that “the vast majority of the suffering and death that we impose on nonhumans can be justified only by our pleasure, amusement, or convenience and cannot, by any

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⁵ Deckha, Animals as Legal Beings, 85.
⁶ Francione, Animals as Persons, 28.
⁷ Francione, Animals as Persons, 28.
⁸ Francione, Animals as Persons, 8.
stretch, be characterized plausibly as ‘necessary’.

Most human uses of animals do not involve a genuine conflict of interests wherein no other options available. Francione insists that we must refrain from creating and perpetuating such human-animal “conflicts” if we are to take animals and their interests seriously. We are obliged not to discriminate against nonhuman animals on the basis of species for this is an invalid line of reasoning that does not excuse oppressive behaviour.

The shortcomings of the welfarist approach are illuminated by the countless forms of cruelty that are not legally labeled as such. Consequently, animal exploitation and harm is facilitated and explicitly exempted from scrutiny rather than being condemned per se. The widespread notion that, as Deckha puts it, “humans are persons and animals are their property” is embedded within the welfarist position, and goes hand in hand with our tolerance of the systemic violence against other animals.

Francione affirms that anti-cruelty laws are primarily driven by self-interest in that they allow producers to exploit animals in a more economically efficient manner and make consumers feel better about their participation in the oppression of animals.

The latter, Francione argues, has the adverse effect of encouraging greater consumption of animal-based products, thereby increasing the overall amount of pain and suffering.

Deckha thoroughly documents the failure of welfarist reform efforts in challenging the anthropocentric framework through which the law operates. She shows that numerous attempts have been made to modernize anti-cruelty legislation without much success or substantive changes due to the skewed balancing of interests wherein “human superiority and animal instrumentality are naturalized”.

The hierarchical arrangement of human and nonhuman animal interests, within the person/thing dualism of the law, is predetermined from the outset by their

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10 Deckha, *Animals as Legal Beings*, 64, 111.
11 Francione, *Animals as Persons*, 16.
12 Deckha, *Animals as Legal Beings*, 86.
property status. This means that human interests almost always prevail while animals get, as Jeremy Bentham puts it, “degraded to the class of things”\textsuperscript{13} that are only assigned extrinsic or conditional value based on their alienability.\textsuperscript{14} The scope of anti-cruelty statutes remains restricted by the non-contestation of property-related exploitation and violence in the first place.

Moreover, Deckha points out that there is an ongoing resistance to legal reforms from industry stakeholders who persistently pose a formidable obstacle to efforts that could potentially destabilize the property classification of animals.\textsuperscript{15} They are understandably in disagreement with the introduction of new bills that threaten their businesses, which rely on the commodification of animals. That is why they lobby against progressive reforms and thus have a strong enough influence in Parliament to repeatedly shut them down. Deckha notes that the few amendments that have managed to get passed became diluted versions of the originals and were still rooted in the anthropocentric perspective on the “legitimacy” of nearly all human uses of animal property (e.g., farming, research, hunting, etc.). As such, welfarist reforms are ineffective because they simply aim to regulate the instrumentalization of animals. For this reason, Deckha concludes that “Property places animals into a legal abyss that even anti-cruelty statutes cannot ameliorate”\textsuperscript{16} and it “is an indefensible status for animals by any measure of critical theory, social justice mandate, or even environmental or sustainability commitments”.\textsuperscript{17} In my view, the recognition of the moral rights/personhood of animals necessarily implies a departure from their property status.

\textsuperscript{13} Quoted in Francione, Animals as Persons, 5.
\textsuperscript{14} Deckha, Animals as Legal Beings, 61.
\textsuperscript{15} Deckha, Animals as Legal Beings, 105.
\textsuperscript{16} Deckha, Animals as Legal Beings, 111-112.
\textsuperscript{17} Deckha, Animals as Legal Beings, 426.
1.2 Animals as Moral and Legal Persons:

If property is not amenable to (meaningful) law reform for nonhuman animals, what then is the alternative? The extension of legal personhood to animals is the most common proposal among animal advocates because it affirms the basic moral right not to be the property of another. Animals do not exist to serve humans, they have their own lives to lead and purposes to fulfill. As Alice Walker once wrote, “The animals of the world exist for their own reasons. They were not made for humans any more than black people were made for white or women for men”. The possession of sentience clearly indicates that animals are not things but living beings with morally significant interests that require legal protection from the state. To be sentient means that one has subjective and perceptual awareness through which one consciously experiences the pains and pleasures of embodied existence. Sentient animals have a psychophysical identity over time that enables them to survive, realize their desires, and know their personal preferences. The concept of personhood is and always has been essential to the recognition of beings with moral status and morally significant interests.

Given the diversity in species and the uniqueness of individuals, there are bound to be (superficial) differences between humans and other animals. However, the lack of some (supposedly) “human” characteristic does not warrant the mistreatment of animals. Sentient beings share the capacity to suffer and, in the words of William M. Kunstler, “Pain is pain, irrespective of the race, sex, or species of the victim”. This means that we, humans and nonhumans, care about the quality and quantity of our lives. Unlike everything else on earth, sentient beings have a personal interest in not being exploited or harmed. As moral and legal

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19 Francione, Animals as Persons, 216.
20 Quoted in Francione, Animals as Persons, 3.
persons, animals would become right-bearers whose interests cannot be compromised for consequentialist reasons. That being said, property prevents animals from entering into legal relations with humans as persons. And even though we already acknowledge that animals are not mere things, they are legally indistinguishable from the rest of the non-sentient world. Property can be used in ways that are rightly thought of as inappropriate uses of people.\textsuperscript{21} The status of being owned by another entails an unequal power relation that is oriented around the interests and desires of the property owner.

Francione writes that the institutions of animal ownership and human slavery are structurally identical in that neither animal nor slave welfare laws could protect the interests of propertized bodies.\textsuperscript{22} He elaborates,

\begin{quote}
Slaves were regarded as chattel property. Laws that provided for the “humane” treatment of slaves did not make slaves persons because… the principle of equal consideration could not apply to slaves. We tried, through slave welfare laws, to have a three-tiered system: things, or inanimate property; persons, who were free; and in the middle… “quasi-persons” or “things plus” (the slaves). That system could not work. We eventually recognized that if slaves were going to have morally significant interests, they could not be slaves any more, for the moral universe is limited to only two kinds of beings: persons and things.\textsuperscript{23}
\end{quote}

For both human and nonhuman animals, welfare laws do not effectively limit the uses that their property owners wish to make of them. In a servile relationship, one gets subordinated to an “objectified and commodified social status”, which is ethically impermissible.\textsuperscript{24} Deckha affirms that the consensus among critical theorists is that owning another person as property is in itself

\begin{flushright}
\textsuperscript{21} Francione, \textit{Animals as Persons}, 105.  
\textsuperscript{22} Francione, \textit{Animals as Persons}, 46.  
\textsuperscript{23} Francione, \textit{Animals as Persons}, 62.  
\textsuperscript{24} Deckha, \textit{Animals as Legal Beings}, 170.
\end{flushright}
incompatible with justice and should be prohibited regardless of how “humanely” they are treated or whether the slave gives their consent.²⁵

Along the same vein, Francione advocates for granting animals membership into the moral community of persons whose interests are to be respected by human others. He argues that the principle of equal consideration, i.e. the “moral rule that we treat similar cases similarly”, should apply across the species border because all sentient animals have an interest in not suffering.²⁶ Sentience is a non-arbitrary criterion for the attribution of equal inherent value to animals.²⁷ Like Francione, I think that legal personhood should be explicitly connected with the moral rights animals ought to have. Anything less than full personhood inevitably runs the risk that animals will be used instrumentally for the general welfare of humans.

1.3 The Origins of Personhood

The Western legal concept of personhood that is employed in the common law is usually thought to have originated from ancient Roman theatre.²⁸ David Delaney briefly summarizes the development of the concept as follows:

The word “person” traces back at least to the Latin persona: a mask, especially as worn by an actor, or a character or social role. The concept evolved into the Roman idea of a bearer of legal rights – so that, notably slaves did not qualify as persons – before broadening into the Stoic and Christian idea of a bearer of moral value; perhaps this transition involved broadening the relevant conception of law from human legal systems to “natural” law. The modern concept, as exemplified in John Locke’s writings (Locke 1694: Bk 2, ch. 27),

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²⁵ Deckha, Animals as Legal Beings, 169.
²⁶ Francione, Animals as Persons, 64.
²⁷ Francione, Animals as Persons, 214.
²⁸ Deckha, Animals as Legal Beings, 171.
understands persons as beings with certain complex forms of consciousness. Legal personhood is a purely artificial category that initially referred to human subjectivity but was later expanded to include corporations and ships in the 19th century. This illustrates that the law’s definition of personhood can be abstracted to function and account for the “interests” of immaterial corporate entities who fall outside our classical understanding of biological persons. Deckha writes that animal lawyers take this insight as their stance on how the law should define persons, i.e. the legal concept should operate independently of the human subject. This is what Ngaire Naffine describes as the Legalist position.

Contra the idea that the contents of personhood should be determined solely by the law, some believe the law should be informed by humanist disciplines and theories in the construction and identification of persons. Deckha turns to Naffine, who splits these “Metaphysical Realists” into three main groups: Rationalists, Religionists and Naturalists. According to Rationalists, legal personhood should align with “the predominant vision of the person in Western moral philosophy – the rational, autonomous, moral agent of adult age”. These capacities are irrelevant to Religionists who believe that all humans are sacred and count as moral persons in virtue of their humanity. Naturalists resort to Darwin’s theory of evolution to stress that it is our biological composition as embodied and sentient beings that matters to the demarcation of legal persons.

Deckha characterizes Francione’s abolitionist argument for the personhood of animals as a combination of the technical formalist Legalist and sentient-based Naturalist approaches. Both

30 Deckha, Animals as Legal Beings, 172.
31 Deckha, Animals as Legal Beings, 172.
32 Deckha, Animals as Legal Beings, 172.
33 Deckha, Animals as Legal Beings, 173.
of these models of personhood have the potential to overcome the law’s species divide.

However, Deckha remarks that the various conceptualizations of legal persons continue to be filtered through anthropocentric worldviews, especially in settler colonial legal systems such as Canada, the UK, the United States, Australia and New Zealand.\(^\text{34}\) Naffine confirms that “There is profound legal resistance to the idea that law is for (nonhuman) animals and that animals should be rightsholders and therefore legal persons”.\(^\text{35}\) This denial is paradoxical because social institutions have already accepted Darwin’s findings, which assert that there are no fundamental differences among animals, but maintain the separation of nonhuman species from humans through the property and personhood designations.\(^\text{36}\)

### 1.4 Resistance to the Extension of Personhood to Nonhuman Animals

The unwillingness to revisit the puzzling disconnect between science and the law reveals that our anthropocentric definitions of personhood are self-serving in purpose and design. Deckha cites animal law scholars who observe that “the nature and the operation of law’s human preferences and discriminations are quite difficult to grasp, and even more difficult to explain, expound and defend”.\(^\text{37}\) The retention of the species divide through the exclusion of animals from personhood can be understood “as a product of systemic cultural bias reflected in everything from the moral and ethical philosophical presuppositions to the common sense on which jurists explicitly and implicitly rely”.\(^\text{38}\) These factors do indeed suggest that the realization of legal personhood for animals cannot occur immediately because this would require

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\(^{34}\) Deckha, *Animals as Legal Beings*, 175.


\(^{38}\) Deckha, *Animals as Legal Beings*, 176.
a radical transformation of the way in which we think about the human-animal relationship.

Nonetheless, Francione responds that this does not mean that personhood for animals is unrealistic or utopian. On the contrary, he thinks that animal rights theory provides us with concrete normative guidelines for getting rid of the property status and abolishing exploitative relations with animals. Both can be accomplished through incremental changes on the individual and societal level. For Francione, this entails the adoption of a vegan diet and lifestyle (i.e., putting abolitionism into practice out of moral consistency via the denunciation of animal commodification to decrease the demand for animal-based products and industries) as well as educating the public about the need to bring about the end to animal exploitation.39

David DeGrazia is sympathetic to the abolitionist objectives but criticizes and rejects personhood for animals. His issue with personhood is that the concept is “vague” in that it is indeterminate and “not analyzable into necessary and sufficient conditions”.40 Personhood is traditionally associated with a cluster of concepts and capacities (e.g., autonomy, rationality, self-awareness, etc.); and according to DeGrazia, it is arbitrary to single out any one of these traits.41 He thinks that calling animals persons “just seems incorrect” because it is “exceedingly odd and hints that something is amiss”.42 DeGrazia believes nonhuman animals are “borderline persons” in that they are not nonpersons, i.e. things, but he argues that we should “drop the concept of persons, expect where who counts as a person is not in question” due to its importance for human rights campaigns.43 That is to say, personhood should be reserved exclusively for human beings because, unlike other animals, their moral personhood is not up for

39 Francione, Animals as Persons, 112.
42 DeGrazia, “Great Apes, Dolphins,” 309.
43 DeGrazia, “Great Apes, Dolphins,” 315.
debate. And since DeGrazia classifies nonhuman animals as “existing between persons/nonpersons”, in terms of their moral status, he favours the use of intermediate categories for them.

Paola Cavalieri counters DeGrazia’s stance against personhood of nonhuman animals. In *The Animal Question: Why Nonhuman Animals Deserve Human Rights*, Cavalieri argues that the human rights doctrine can be expanded to include other intentional animals. She explains, “human rights are not human” in that they are moral rights, and so species membership is morally irrelevant to the question of whether one is in need of basic legal protection. The function of rights is to delineate the holders of full moral status and form a protective “barrier around the individual” to prevent/prohibit the harm of “taking life, depriving of freedom, and violating bodily integrity”. In the thin sense of morality, human rights to noninterference are largely negative rights that are meant to ensure that the interests in freedom and welfare are safeguarded regardless of one’s psychological differences. That being said, the extension of human rights to other animals is consistent with our moral commitments.

Cavalieri answers to DeGrazia’s vagueness thesis by stating that his concerns can be resolved by specifying a minimum criterion by which personhood is ascribed, i.e. subjectivity. She is critical of the intuitive sense in which he employs the concept as symbolizing the human being. Cavalieri reminds us that the Latin term “person” was initially used as a metaphor for: a mask worn by an actor in classical drama, and consequently the character the actor performed, fulfilled a relatively clear function—it indicated, that is, the role one is called to play in life. Both the idea of a role and the reference to a task to be accomplished seem to

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point at an interpretation of the concept of person in terms of a *subject of relations.* 46

The idea of human rights is primarily motivated by the need for legally enforced rules of conduct that allow for nonviolent cohabitation and protect the moral claims of individuals. For Cavalieri, human rights theory logically applies to sentient animals because of their consciousness/subjectivity, which she describes as the ability “to have experiences and *to care* about these experiences. It means to have at least the interest in avoiding pain and experiencing pleasure”. 47 However, Cavalieri correctly notes that the property status is the greatest impediment to realization of animal rights. Therefore, society needs to be reorganized so as to recognize animals as rights-bearing subjects, which the category of personhood has the legal power to do.

1.5 Critique of Personhood

Deckha’s critique of legal personhood is inspired by “feminist animal care theory, postcolonial feminist theory, critical animal studies, response ethics, and intersectionality”. 48 Her contribution to the property/personhood debate is original because, apart from just being interested in the inauguration of a legal system that does not oppress animals, Deckha is primarily concerned with exposing the humanist affinities that accompany the Western concept of personhood and the flawed assumptions upon which it rests. Deckha agrees with Cavalieri and Francione on the point that moral/legal personhood can extend to nonhuman animals. And likewise, she argues that the declassification of animals as property is necessary because “As we have seen, the negligible protections under anti-cruelty statues do not yield anything remotely

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46 Cavalieri, *The Animal Question*, 120.
approximating legal subjectivity”.

However, Deckha pauses to critically examine how the concept of personhood operates in the human case and then explores what this would mean for nonhuman animals.

Although the legal status of personhood is preferred over property, Deckha is skeptical about whether it is an ideal replacement. Her analysis of the difference-based issues with personhood opens with a quote from Colleen Glenney Boggs:

Instead of asking how, whether, and when animals should be included in existing models of subjectivity, I argue that they already underline the core of that subjectivity— that definitions of self-consciousness, rational agency, the capacity to use language are foundationally underwritten by an understanding of “the human” as emerging in relation to “the animal” and that we need to go the other direction and envision viable forms of alterity that are neither appropriative nor oppressive.

This passage sets the tone for Deckha’s critical review of personhood’s contemporary invocations in settler colonial legal systems and the particular historical trajectory from which this understanding of legal subjects has emerged. Personhood is entrenched in hierarchies of worth that dictate which lives are to be prioritized in the law. In comparison to the Naturalist, Religionist and Legalist perspectives that are found in jurisprudence, Deckha asserts that legal personhood is predominantly saturated with Rationalist ideology.

Naffine elucidates that it is the social contract theory—stemming from the political philosophy of Locke and Kant as well as Descartes’ mind/body dualism— which undergirds the

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Rationalist narrative that privileges independence, autonomy and intelligence.\textsuperscript{53} Deckha deduces that it is clear “that personhood was reserved for an elite sector of humanity: white, able-bodied, heterosexual men of property. It is a concept that accentuated stratifications of class, sexual orientation, gender, race, ability and age at the time these stories of creation were formulated and advanced”.\textsuperscript{54} The law’s person centered this small cohort of human beings and the remainder “were devalued as feminized, close to nature, and of the body”.\textsuperscript{55} The resulting type of society that is imagined by the social contract theory is exalted as the “marker of modernity, freedom and progress” and contrasted with the “uncivilized” non-Western races and cultures that are Othered and stigmatized.\textsuperscript{56}

Deckha refers to Sheryl Hamilton’s discussion of the various entities (or what she terms liminal beings) that disrupt the classical sense of boundaries that personhood creates. In \textit{Impersonations: Troubling the Person in Law and Culture}, Hamilton’s argument confirms that “(q)uestions of the person, the treatment of liminal beings, always exceed law’s capacity to render them sensible”.\textsuperscript{57} The incompleteness of personhood is evidenced by the uneasy attempts to include those who cannot meet the standards that are set out by the concept’s entanglement with its original gendered, classed, and raced parameters. The anthropocentric cultural narratives that inform the law make it hard for these newer candidates to become persons.\textsuperscript{58} That is why Hamilton recommends \textit{personae} as a “richer notion” that speaks more directly to how these beings come into contact with personhood.\textsuperscript{59}

\textsuperscript{53} Deckha, \textit{Animals as Legal Beings}, 180.
\textsuperscript{54} Deckha, \textit{Animals as Legal Beings}, 180.
\textsuperscript{55} Deckha, \textit{Animals as Legal Beings}, 181.
\textsuperscript{56} Deckha, \textit{Animals as Legal Beings}, 181.
\textsuperscript{57} Sheryl Hamilton, \textit{Impersonation: Troubling the Person in Law and Culture} (Toronto: University of Toronto Press, 2009), 9. Quoted in Deckha, \textit{Animals as Legal Beings}, 183.
\textsuperscript{58} Deckha, \textit{Animals as Legal Beings}, 183.
\textsuperscript{59} Hamilton, \textit{Impersonation}, 12. Quoted in Deckha, \textit{Animals as Legal Beings}, 183.
Deckha then brings in Colin Dayan’s work to expose the fragility of personhood in its limited and conditional protections for humans. In *The Law is a White Dog: How Legal Rituals Make and Unmake Persons*, Dayan discusses the law’s role in the decision about whether one is a person or thing. The notion of personhood depends “on the concept of animality and the figure of the sub-human” in delineating its contours, “assigning it so some, denying it to others, and also withdrawing it”. Dayan’s work focuses on the concept of civil death, where personhood is lost while one is legally alive. Her examples of this phenomenon derive from American slavery as well as the remnants of slave law in the United States today with the situation of prisoners and detainees. The law constructs these “negative” and “disfigured” counterparts to persons, which is evidenced by the weight that these cultural narratives have in determining legality/illegality, especially that of dehumanization in penal politics:

Before the state can punish, it must appear to know what is being judged. The rules of law and leeway within them enact and enable a philosophy of personhood and create the legal subject. They also recognize forms of punishment that are activated for people of a certain “nature” or “character” – those labeled unfit, barbaric, subhuman, or “the worst of the worst”. Dehumanization is a common strategy that is deployed to justify depriving people of their human rights and subjecting them to violent treatment that we would not tolerate in regular circumstances. Deckha adds that “It is through dehumanization that personhood is lost; discursively and materially, humanization becomes a prerequisite for personhood. One has to be

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seen as human to be a person”. It has been used and weaponized by the state in various biopolitical projects throughout history.

Deckha examines the flipside of this correlation between property/personhood and animality/humanity, which is taken up by Samera Esmeir. The legal status of personhood is intertwined with the human identity to such an extent that the “Contemporary liberal assertions equate illegal oppression and practices of expulsion from the juridical order with exclusion from humanity… they also establish an equation between the protection of the law and the constitution of humanity, effectively granting the former a magical power to endow the latter”.

Put differently, our understanding of what it means to be a human is so closely related to the conferral and respect of legal personhood that a violation of rights is seen as the dehumanization of that individual rather than depersonification. This “juridical humanity” relies upon and is animated by the legal status of personhood.

Furthermore, Esmeir’s postcolonial critique of the law educes the way in which personhood perpetuates the colonial legacy whereby the non-Western world awaits humanization. In Deckha’s words, “colonial law makes humans through the assignment of personhood. One has to be a person to be a human”. The humanizing force of personhood can also be observed in human rights discourses. The recognition of personhood and rights humanizes the subject, which proceeds with the attribution of (masculinist and Western) traits that are assumed to constitute the human. To reiterate, Deckha lists: “rationality and the

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63 Deckha, Animals as Legal Beings, 185.  
64 Deckha, Animals as Legal Beings, 185.  
66 Deckha, Animals as Legal Beings, 185.  
68 Deckha, Animals as Legal Beings, 186.  
69 Deckha, Animals as Legal Beings, 186.  
70 Deckha, Animals as Legal Beings, 187.
capacity and desire for independence and non-relational autonomy”. Depersonification entails that the subject is dehumanized, which is accompanied by the ascription of features that are perceived to belong to the subhuman/nonhuman realm of “animality, the subordination of the mind to the body, and the rejection of Western values”. Deckha claims that the underlying logic of personhood and rights cannot overcome the strength of the human-nonhuman dichotomy in its inclusion/exclusion. Deckha joins a rising chorus of feminist, postcolonial and queer scholars who believe that this is “symptomatic of the very nature of the predominant liberal democratic system and of the liberal notion of human rights”. In short, the residue of the traditional humanist conception about what it means to be human pervades the legal subjectivity of personhood.

Deckha’s critique also draws on Ciméa Barbato Bevilaqua’s analysis of how personhood reinforces the legal subject/object binary. The paradigmatic human identity that defines personhood relies upon the Otherness of things, which denotes the nonhuman. The attempts to personify a certain species results in the intensification of the thingness of other animals. And no amount of humanization can remove the fact of species difference, traces will always be expressed (to whatever degree) in the very being of their manifestation. For Bevilaqua, this is even true of the animals that are “doubly humanized” in their biological similarity to humans and physical proximity to humans. Yet their nonhuman difference persists through our efforts to cover it over with personhood.

In light of these concerns, the mere extension of personhood to animals does not appear

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71 Deckha, Animals as Legal Beings, 186.
72 Deckha, Animals as Legal Beings, 186.
74 Deckha, Animals as Legal Beings, 189.
to be a promising route.\textsuperscript{75} Deckha elaborates that the “irrevocably tainted” essence of personhood implies that animals (and importantly, their differences) would not be respected “as legal subjects because persons are made through proving one’s humanity and unmade when that humanity is called into serious question”.\textsuperscript{76} The solution to attending to the non-subjectivity of animals is not simply a matter of moving animals from the category of property to personhood, since the “very category of property is defined through animality”.\textsuperscript{77} Deckha cites Delaney’s description of this correspondence between property and animality:

A being, a baboon, a dolphin, a pit bull, is doubly objectified, doubly reduced by prevailing discourses of power. First, it is reduced to “animality” and all that that means and doesn’t mean. Second, it is reduced to property and all that that entails. It is positioned within forms of meaning, and so positioned within circuits of power vis-à-vis the legal subject and vis-à-vis the state as the guarantor of the rights of ownership. Its figurations as animals, as nature, as body, on the one hand, and as property on the other hand, are mutually reinforcing and neither can be severed from the other. Because it is “an animal” it can be treated like property; because it is property it can be treated like an animal.\textsuperscript{78}

The law’s endorsement of the human/nonhuman divide is ingrained in the association of personhood with humanity and property with animality. Each legal status is articulated through that which it is not, deepening the separation we imagine and construct to uplift the human above and beyond other “lower” animals. It is this renunciation of animality that is foundational to the law’s actualization of the human subjectivity.

In addition to the exclusionary history of legal personhood and the consequences of this

\textsuperscript{75} Deckha, \textit{Animals as Legal Beings}, 187.
\textsuperscript{76} Deckha, \textit{Animals as Legal Beings}, 187.
\textsuperscript{77} Deckha, \textit{Animals as Legal Beings}, 187.
\textsuperscript{78} Delaney, \textit{Law and Nature}, 223. Quoted in Deckha, \textit{Animals as Legal Beings}, 187.
in the present, Deckha argues that the concept reinscribes humanism and anthropocentrism. She illustrates this with the Great Ape Project, which was founded in 1993 by philosophers Peter Singer and Paolo Cavalieri in order to create an international movement with the purpose of achieving the rights to life, freedom and safety for nonhuman Great Apes (chimpanzees, gorillas, orangutans) through the collective effort of specialists from a variety of animal-related fields (e.g., biology, ethics, psychology, etc.). They reached the consensus that because nonhuman Great Apes are so similar to humans in all the relevant senses, i.e. in their “cognition, emotional expression, social organization, and sentience”, they deserve basic rights and should be included into the “community of equals”. To date, the Great Ape Declaration has successfully been signed by more than 20 countries.

Nevertheless, the conversation that the Great Ape Project started has sparked controversy, which has led to a lot of confusion about how we should go about advancing legal action for animals. This debate has been recently reignited by the high-profile litigation that is being pushed for in the United States by The Nonhuman Rights Project, which is fighting for the legal personhood of nonhuman animals “beginning with some of the most cognitively complex animals on earth, including chimpanzees, elephants, dolphins, and whales”. Both of these initiatives are seeking to achieve legal personhood and rights for these animals, and so they are well supported by animal law scholars and lawyers.

However, these projects have received a bunch of criticism from two angles: (1) some believed that legal personhood should not extend to other animals because they are

81 Deckha, *Animals as Legal Beings*, 163.
82 Deckha, *Animals as Legal Beings*, 164.
“fundamentally different” than us; (2) others took issue with the personhood strategy itself.\textsuperscript{84} That is to say, promoting personhood in virtue of our similarities may result in the animalization of marginalized humans who do not identify with the traditional vision of persons.\textsuperscript{85} Moreover, it is anthropocentric and exclusionary to grant personhood to the certain animals on the basis of possessing the capacities that “(paradigmatic) humans have been valued for”.\textsuperscript{86} By approaching the measure of moral status in this way, many animals will not be perceived as being “human enough” and will therefore be excluded from consideration because of their apparent dissimilarity.\textsuperscript{87}

Deckha contends that this dilemma is unavoidable regardless of whether personhood litigation is revised to encompass all species because this category cannot adequately accommodate alterity.\textsuperscript{88} She explains, “the exclusionary historical imprint of personhood inclines the concept in the present to systemically disfavor those who do not match with the Western, able-bodied, propertied, human male identity through which personhood was consolidated”.\textsuperscript{89} Deckha argues that the personhood and rights campaigns “convert ‘otherness’ into ‘sameness’”, thereby suppressing animal differences and stigmatizing those who are excluded.\textsuperscript{90} To summarize:

Even if… we are working with present-day substantive understandings of equality that are intended to be inclusive, fitting in beings that the law has traditionally disavowed as legal subjects into the coveted category of personhood will be difficult. It can be an awkward fit into a category that has a definite culturally constructed originating and exclusionary

\textsuperscript{84} Deckha, \textit{Animals as Legal Beings}, 164.
\textsuperscript{85} Deckha, \textit{Animals as Legal Beings}, 164.
\textsuperscript{86} Deckha, \textit{Animals as Legal Beings}, 179.
\textsuperscript{87} Deckha, \textit{Animals as Legal Beings}, 179.
\textsuperscript{88} Deckha, \textit{Animals as Legal Beings}, 179.
\textsuperscript{89} Deckha, \textit{Animals as Legal Beings}, 182.
\textsuperscript{90} Deckha, \textit{Animals as Legal Beings}, 182.
Marginalized bodies do not fit the mold that personhood demands. The concept degrades embodiment, which has the adverse effect of “making it nearly impossible” to extend personhood to those who are not white, male, property-owners or European, let alone nonhuman.\\footnote{Deckha, Animals as Legal Beings, 182.}

Deckha argues that the hierarchical organization of animal life is amplified by personhood campaigns wherein the species that are thought to resemble humans the most are bestowed with “honorary human status”.\\footnote{Deckha, Animals as Legal Beings, 182.} This coincides with what Cary Wolfe terms “humanized animals” in his categorization of the species hierarchies in societies, which are ranked as follows: “humanized humans, animalized humans, humanized animals, and, at the bottom, animalized animals”.\\footnote{Deckha, Animals as Legal Beings, 188.} The moral and cultural superiority of humans over other animals is unquestionable. However, personhood initiatives that strive to protect and legally benefit humanized animals relegate animalized animals to thinghood, and this category represents the majority of animals today. The individuals placed in this group are more likely to be thought of as objects rather than animals, that is to say, they are, in my opinion, “deanimalized”. In response, Deckha asks, “How can animals be legally represented through a legal category that has traditionally repelled them and constituted itself against them? Further, how can animals then move easily into a new legal category that is virtually synonymous with humanity (and problematically relies on racialized geopolitical identity to shore itself)?”.\\footnote{Deckha, Animals as Legal Beings, 188.}

Deckha’s critique unveils the significant limitations of personhood as a legal category for
humans and other animals. In summary, the sameness logic that is utilized in traditional liberal approaches centers the human and the faculties of the mind as the benchmark of (moral and legal) persons. The concept of personhood rests on flawed assumptions about what it means to be a human and this imprint of the hierarchical stratifications and the exclusionary origins makes it an unattractive subjectivity for nonhumans. Additionally, the conceptual overlap of persons and humans is indissociable and tough to get rid of. The humanizing force of personhood heightens the adversity that animalized animals (or deanimalized animals). Outside of Western liberal legalism, Deckha mentions that there are various indigenous legal traditions that are carved out from non-anthropocentric and non-binary worldviews. These cultures have an alternative interpretation of personhood as a relational concept, which is more in tune with interspecies connectivity. With this in mind, Deckha writes:

What if personhood as it operates in settler colonial Canadian law could be relieved of its current content and supplanted with these new associations to denote something altogether different than the rational, culturally unencumbered, socially dislocated, wealth-maximizing human actor and without being defined in a binary fashion against the category of property? Non-Western understandings of personhood challenge our cultural and legal inheritance of the colonial/imperial concepts that are invested in the illusion of human exceptionalism, which dominates our legal system and evaluation of persons/nonpersons. Nonetheless, Deckha suspects that the anthropocentric attitudes jurists and legal actors hold will not be changed by any postcolonial intervention and/or revision of personhood. Deckha writes that “If we are going to supplant the Western liberal legal understanding of personhood in settler colonial jurisprudence

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with a completely different understanding of personhood, why not aim for a new term altogether rather than retaining personhood?". The legal pathway forward for animals (and the amelioration of interspecies relations) should prioritize the critical theoretical perspectives discussed thus far, which essentially advocate for a non-propertied and non-welfarist animal subjectivity. Deckha insists that we must begin with the difference-respecting ethic in our search after the proper replacement of the property status.

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Part 2: Beingness

Since property is inherently exploitative and personhood has anthropocentric shortcomings, Deckha proposes “beingness” as a new legal subjectivity for nonhuman animals. The principal constitutive elements of the being status are meant to oblige Canadian law to recognize and respond to animals through an embodied, vulnerable and relational frame. Beingness departs from the traditional account of the proper legal subject and “caters to the ontologies of breathing, embodied nonhuman creatures”.

In comparison to the personhood model that devalues the very social and material features that beingness is grounded in, this alternate mode of conceptualizing animals (and other nonhumans) redefines who counts in law and deserves legal protection from exploitation and harm. Deckha weaves together the branches of feminist philosophy, social theory and legal analysis in her argument for a new animal subjectivity that is purportedly more respectful of nonhumans than personhood. In the following three subsections, I detail the main features of beingness that Deckha develops: (a) embodiment, (b) relationality and (c) vulnerability, which I will then argue need to be incorporated into a reconstruction of personhood.

2.1 Embodiment

The body and the ethics that arise from embodied difference have now become a central topic in feminist theory whereas previously, the area of concentration was on gendered difference. Queer, disability, postcolonial, and race scholars have recognized the ethical

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100 Deckha, Animals as Legal Beings, 228.
101 Deckha, Animals as Legal Beings, 228.
importance of embodiment, especially when it comes to subjectivity and social justice. However, their views are largely filtered through a humanist lens. As Deckha comments, “The critical impetus to respect, protect and even celebrate non-normative bodies has not transcended the traditional anthropocentric mindset in culture or ethics”. Overall, human embodiment is still at the center of our ethics, which simultaneously implicates the refusal to acknowledge our physical composition as animal bodies and expressions of nature.

The mind-over-matter ideology which stresses that we should mentally transcend our material selves and that continues to permeate Western law is visible in the inhospitable treatment of non-normative bodies. The negative connotations that are affiliated with embodiment alienate the body from the realm of law, culture and civilization. The divide and conquer logic that is echoed in the domination of the human-over-animal, white-over-black, straight-over-gay, and so forth, goes to show that discrimination is far from disembodied in that it is actualized as a practice that is supported by arbitrary difference-based rationalizations. This process of conquest whereby women, land, animals, and racialized peoples have been construed as property is ongoing, “For it is the associations of non-normative bodies with the body in the first instance that generates the stigmatized status of these very bodies”. Those who are recognized as subjects are seen (as existing) beyond their bodies. Conversely, marginalized peoples tend to get reduced to an identification with their bodies.

The prominence of the body in the law acts as a signifier of inferiority. This is especially the case for those who deviate from the normative (dis)embodied subject that “the law pretends

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has no body and is universal”, i.e. the white, able-bodied, heterosexual male. Consequently, the exclusion of non-normative human and nonhuman bodies culminates in the animalization of certain groups, since animals are invariably defined by their bodies. Deckha quotes Laura Henson, who writes:

Because humanness is made a political, conceptual category rather than a biological fact, certain humans can be defined as no longer fully human or deserving of “human rights”. Today, with the widespread animalization of many, what is seen to constitute “the human” is becoming increasingly amorphous, difficult to locate, and abstract. As those banned or marked as outside the political realm are silence (sic), the (biologized) animal comes to mark the refugee, the “illegal” migrant, the prisoner, and the slum dweller. The recovery of the body from its subordinate placement is essential to the inclusion of non-normative beings into law. And the implementation of a legal subjectivity that is responsive to animals requires a reorientation of our attention in order to elevate the bodily experience and downplay mental capacities.

The Western exaltation of reason and the mind has the detrimental effect of defining preferred legal subjects. The amount of significance that the law gives to the rational capacities, when it comes to the valuation of who matters according to a specific way of being human, is a problematic metric. This narrow conceptualization of humans does not represent those who are unable to exercise reason to a certain level. Moreover, the emphasis on rationality overshadows other important aspects of human life that are not adequately captured in this depiction. The emotions, for example, have traditionally been neglected and contrasted with reason. However,

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this preconceived split between reason and emotion is being disrupted. Jennifer Nedelsky invokes the research conducted by neuroscientist Antonio Damasio, which uncovers how these two faculties are interconnected in that: “human reasoning abilities depend on emotional responses; that is to say, we reason through emotion not against it”.¹⁰⁹ Thus the revaluation of the body and emotion is crucial to the concept of embodiment that Deckha advocates for.

The concerns that feminist, postcolonial and disability theorists voice about the negative outcome that the exalted status of reason has for humans, in terms of discerning our identity and worth, apply to animals to a greater extent in virtue of their subordination on the assumption that they are either mindless or not intelligent enough. The absence of reason should not determine how one is valued and treated in the law. Deckha’s beingness deliberately redirects the law towards a higher valuation of the body. And it is clear “why critical theorists across the board demand the discursive and material rehabilitation of the body and non-normative bodies in particular”.¹¹⁰ By bringing embodiment to the forefront of legal subjectivity, the human and thinking person are decentered so that we may come to see and appreciate bodies in a new light.

The body is already always immersed in cultural discourses that colour our perception of ourselves, others and our relationships as physical beings. Deckha is mindful that, as Isabel Karpin and Roxanne Mykitiuk explain, “(e)mbodiment is a construct of shared understandings, made real by scientific/biomedical, cultural, and legal accounts, among others”.¹¹¹ However, that is not to say that Deckha dismisses the insights of feminist materialist theory into the transcorporeality of the body; namely, the dynamic network of life that we, as forms of matter,

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¹¹⁰ Deckha, *Animals as Legal Beings*, 228.
are enmeshed in rather than cut off from. The interdependence of embodiment awakens our awareness to the world beyond the self towards the needs of other bodies, which prompts us to respond to their call, and it is through these encounters that we learn who we are.\textsuperscript{112} This realization increases our sensitivity to the connection humans have with other animals through the medium of the body and the power relations this involves.

The concept of embodiment that Deckha affirms here invites us to revisit the meaning we give to nonhuman bodies and our interactions with them. The legal recognition of animals as embodied beings “endorses a transcorporeal and culturally mediated understanding of the subject” that undercuts the “representations of the body as ahistoric, universal, or passive” as well as the denial “that the body can be agentic within its particular transcorporeal context”.\textsuperscript{113} Animal oppression is normalized on the false premise that we are morally and legally licensed to harm and exploit nonhumans because their bodies are somehow defective/deficient. If, instead, the law adopts an understanding of animals and their bodies as being enough as they are (in form and capacity), then the way in which animals are approached drastically changes in a way that could actually benefit them. This coalesces with the acknowledgement of “human bodies as transcorporeal entities in conversation and co-constitution with animal bodies”, which displaces the anthropocentric, hyper-rational and disembodied image of legal subjects.\textsuperscript{114} What this means for animals is that the law would be better equipped to attend to the vulnerability that we expose their bodies to in a remedial fashion and the human responsibility that comes with belonging to interspecies communities.\textsuperscript{115}

\textsuperscript{112} Deckha, \textit{Animals as Legal Beings}, 234.
\textsuperscript{113} Deckha, \textit{Animals as Legal Beings}, 234.
\textsuperscript{114} Deckha, \textit{Animals as Legal Beings}, 235.
\textsuperscript{115} Deckha, \textit{Animals as Legal Beings}, 235.
2.2 Relationality

The next component of beingness is relationality, which focuses on the quality of the relationships we engage in with others, both in the private and public spheres of our lives.¹¹⁶ Deckha builds on Nedelsky’s theory of relationality to counter the individualism “inherent in the modernist legal subject” and to highlight the advantages that spring from the replacement of this dominant vision with a relational one.¹¹⁷ In Law’s Relations, Nedelsky targets the individualistic rendering of the human self and the joint interpretation of autonomy as implying independence, which is reflected in our social institutions and impoverish our subsequent notion of rights.¹¹⁸ These conceptualizations are based on “elitist, exclusionary, universal, abstract and empirically fantastical parameters” that overshadow the magnitude of the interconnectedness between embodied beings.¹¹⁹ The “web of relations” in which we all co-exist shape our realities.¹²⁰ Therefore, our ability to flourish is heavily influenced by the delicate balance of power that sways according to the relationships we are situated in at the personal and systemic level. Nedelsky foregrounds our relational and affective natures to enrich law and politics, so that jurists, legislators and policymakers are made cognizant of how their decisions alter the distribution of power.¹²¹

The integration of relationality coincides with the fruition of a more inclusive and just society, and resonates with the legal and political commitment to the ideals of equality and dignity.¹²² Our dependence on one another fluctuates throughout the course of our lives. There

¹¹⁶ Deckha, Animals as Legal Beings, 235.
¹¹⁷ Deckha, Animals as Legal Beings, 235.
¹¹⁸ Deckha, Animals as Legal Beings, 235.
¹¹⁹ Deckha, Animals as Legal Beings, 238.
¹²¹ Deckha, Animals as Legal Beings, 235-236.
¹²² Deckha, Animals as Legal Beings, 236.
are many stages when this reliance on other humans occurs, whether it is due to our age (as children and elders), in times of illness and/or in the case of disability. Nedelsky’s concept of relationality, however, surpasses the basic recognition of these temporary phases and conditional circumstances. She claims that as relational beings, we are in a “constant state of dependence and interdependence” for the duration of our entire existence. This means that “all of our core capacities” are contingent upon the matrix of relations we find ourselves in. For Nedelsky, the multidimensional self that is composed of relationality, creative interaction, affect and embodiment “serves law better than the traditional ‘rational agent’ does”. The combination of these elements is more representative of who humans are than the latter conception that the law currently embraces.

The installation of relationality in the law that Nedelsky urges for is intimately linked to embodiment. The inner landscape of the body, from which the experience of the self emerges, leads us to conceive of our bodies as contained substances that house individualized consequences. Yet this is but a partial description of the body that omits its external participation in the social and public arena. Judith Butler impresses this sentiment when she writes:

The body implies mortality, vulnerability, agency: the skin and the flesh expose us to the gaze of others, but also to touch, and to violence, and bodies put us at risk of becoming the agency and instrument of all these as well. Although we struggle for rights over our own bodies, the very bodies for which we struggle are not quite ever only our own. The body has its invariably public dimension. Constituted as a social phenomenon in the public sphere, my body is and is not mine. Given over from the start to the world of others, it

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123 Nedelsky, Law’s Relations, 27. Quoted in Deckha, Animals as Legal Beings, 236.
124 Nedelsky, Law’s Relations, 28. Quoted in Deckha, Animals as Legal Beings, 236.
125 Deckha, Animals as Legal Beings, 236.
bears their imprint, is formed within the crucible of social life.\textsuperscript{126}

Nedelsky and Butler are similarly wary of the conviction that autonomy over the body is tangible/possible when the broader structural relations that bodies are located in point to our collective interdependence.\textsuperscript{127}

Dependent bodies and their caregivers have historically been regarded as insignificant.\textsuperscript{128} Nedelsky postulates that this devaluation of our embodied relationality explains why social institutions have generally failed to frame justice around the bodily needs.\textsuperscript{129} In conjunction with a relational outlook on autonomy and rights, occasioned by the repositioning of the body in the law, Nedelsky propounds that autonomy should be recast through the language of creative interaction, which encapsulates “both the astonishing human capacity for genuine creation and the complex ways in which that capacity is always interacting with forces beyond its control”.\textsuperscript{130} Contra the idealized version of autonomy as connoting independence and self-determination, the capacity for creative interaction is meant to illuminate the relational, embodied, and affective nature of human beings.\textsuperscript{131}

Nedelsky’s theory of relational autonomy is a compelling feminist intervention into the individualistic thinking that underlies liberal legalism. As Deckha notes, the framework of relationality has the potential to “impugn asymmetries of power” by bringing our attention to “relationships and the power that inheres in them”.\textsuperscript{132} In order to inaugurate a legal system in which this egalitarian goal can be attained, our broader social relations need to be restructured

\textsuperscript{127} Deckha, \textit{Animals as Legal Beings}, 238.
\textsuperscript{128} Deckha, \textit{Animals as Legal Beings}, 238.
\textsuperscript{129} Deckha, \textit{Animals as Legal Beings}, 238.
\textsuperscript{130} Nedelsky, \textit{Law’s Relations}, 171. Quoted in Deckha, \textit{Animals as Legal Beings}, 238.
\textsuperscript{131} Nedelsky, \textit{Law’s Relations}, 19,22,33-34, 194-199. Quoted in Deckha, \textit{Animals as Legal Beings}, 235.
\textsuperscript{132} Deckha, \textit{Animals as Legal Beings}, 239.
with the values we would like to realize. The actualization of dignity in relationships can generate non-oppressive and non-exploitative outcomes.

Nedelsky mentions that even though *Law’s Relations* concentrates on the multidimensional human self, other animals that have the capacity for creative interaction should be included in the relational legal revision of autonomy and personhood.¹³³ Deckha channels Nedelsky’s theory of relationality to argue that a relational reformation of subjectivity in law is beneficial for human and nonhuman animals alike.

Conceptualizing animals as relational beings is empirically substantiated by the research of animal studies scholars. In *Wild Justice: The Moral Lives of Animals*, leading biologist Marc Bekoff and philosopher/bioethicist Jessica Pierce examine the wide range of moral behaviors that animals display and how deeply their lives are governed by these patterns.¹³⁴ Their findings show that:

Animals not only have a sense of justice, but also a sense of empathy, forgiveness, trust, reciprocity, and much more... animals have rich inner worlds—they have a nuanced repertoire of emotions, a high degree of intelligence (they’re really smart and adaptable), and demonstrate behavioral flexibility as they negotiate complex and changing social relationships. They’re also incredibly adept social actors: they form intricate networks of relationships and live by rules of conduct that maintain social balance, or what we call social homeostasis.¹³⁵

The cognitive, emotional, and moral capacities that Bekoff and Pierce uncover about animals dispel the myth that humans are exceptional in this regard and contest the misconception that

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animals are mindless machines operating instinctually. Furthermore, the relationality of social animals contests the preconception that their interactions are, for the most part, driven by competition. Rather, it is the cooperation among animals and their interdependence that allows them “to foster relationships and societies in which morality blossoms”. Play activities are a notable example of how animals learn to abide by the manners and codes of morality.

In a number of works, Bekoff explores play as a site where animals enact principles of justice. Animals acquire a relational understanding of what is and what is not permissible through the cooperation, fairness, and trust that is involved in social play behaviour. The gestures that are found in the context of aggressive, predatory, or reproductive encounters are also performed in play, but they are differentiated by the meaning that is communicated and the expectations that are set in place. The agreement to play is negotiated between willing partners from moment-to-moment “to fine-tune on-going play sequences to maintain a play mood and to prevent play from escalating into real aggression”. Oftentimes, animals will refuse to play with cheaters because they do not play fairly and breach the delicate boundaries of trust. The joy of playing together is only possible in the perception of safety, i.e. in the freedom from the fear of serious danger. Bekoff observes that animals deliberately reduce asymmetries while playing (e.g., by engaging in role-reversing and self-handicapping), which indicates that equality that is needed for play to occur. The relationality of animals, as exemplified in the activity of play, is the social fabric of communities in which individuals are materialized and sustained.

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The information that science has recently started to unveil about the sociality of animals is being picked up and processed by feminist philosophers that are interested in anchoring peaceful and just human-animal relationships. Deckha turns to Cynthia Willet, who seeks to develop an interspecies ethics that is oriented around sociality and relationality as opposed to the individuated human subject. By reference to the research of cognitive ethologists on animals, Willet devises a multilayered ethical formulation that is rooted in “the rich networks in which biosocial selves are formed” through “worldly engagement and shared agency”.\footnote{Cynthia Willett, \textit{Interspecies Ethics} (New York: Columbia University Press, 2014). Quoted in Deckha, \textit{Animals as Legal Beings}, 241.} In response to the groups that traditional moral theories have denied subjectivity to under rationalist theorizations, Willet presents the idea of “subjectless sociality” to bring forth the relationality through which social species manifest their subjectivity.\footnote{Willet, \textit{Interspecies Ethics}, 90. Quoted in Deckha, \textit{Animals as Legal Beings}, 241.} The concept of “subjectless sociality” is meant to spotlight those who have not yet consciously identified themselves with their self-awareness (e.g., human infants and other animals), but nevertheless commune with their caregivers.

For Willet, the knowledge of the self surfaces via the “intersubjective attunement” that derives from one’s social relations.\footnote{Willet, \textit{Interspecies Ethics}, 137. Quoted in Deckha, \textit{Animals as Legal Beings}, 242.} By attuning ourselves to others “through multimodal social signaling”, we (human and nonhuman animals) learn the ethical codes that enable us to live in harmony with our kin and the members of our biosocial networks.\footnote{Willet, \textit{Interspecies Ethics}, 139. Quoted in Deckha, \textit{Animals as Legal Beings}, 242.} It is thus through our relationality that we come to be who we are as subjects. As a result, there is a profound sense of unity that we feel with those who make up the very core of our being. Given the “(c)ommon desires for social status and group membership, social emotions such as shame and forgiveness,
and social codes and expectations (that) compose the concrete basis for modes of belonging...”, animals should never be separated from those whom they feel at home with (i.e., their biosocial networks).\footnote{Willet, \textit{Interspecies Ethics}, 259. Quoted in Deckha, \textit{Animals as Legal Beings}, 242.} The sociality of humans and other animals grounds the relational model of interspecies ethics that Willet advances.

Lori Gruen is another feminist philosopher who attributes immense ethical importance to the relationality of animals. In her book \textit{Entangled Empathy}, she envisages a robust relational ontology wherein “our agency is co-constituted by our social and material entanglements”.\footnote{Lori Gruen, “Expressing Entangled Empathy: A Reply,” \textit{Hypatia} 32, no. 2 (Spring 2017): 458.} Gruen argues that the relationships we are in entangled in with other humans and animals are not something from which we could unravel or disconnect ourselves from, even relationships that are not typically recognized nor understood as relationships at all.\footnote{Gruen, “Expressing Entangled Empathy,” 452.}

Gruen lays out this inseparability from the relations that are part of us in her theorization of (human and nonhuman) animal dignity, which she expresses in the following way:

Rather than focusing on the worth of individual rational agents making autonomous choices, a relational conception of dignity brings into focus both the being who is dignified and the individual or community who value the dignified in the right ways...In saying that dignity is a relational concept I’m not saying that it is subject to the whims of the perceiver or that dignity is merely a subjective or social projection about the worth of another. Rather, I’m trying to capture both the contextual nature of the notion and the broader normative implications of the recognition of dignity or the failure to recognize dignity on the valuer, the community of valuers, as well as the individual whose dignity should be respected. The relational concept of dignity is not necessarily incompatible with the view
that there may be some essence or kernel of dignity that inheres in an individual..., but the focus of the relational conception is on apt perception and valuation rather than property identification.\textsuperscript{150}

Gruen ties dignity to equality by making this connection between the valuer and the recognition of equal worth. A relational perspective brings us closer to understanding (human and nonhuman) animals in particular situations of “social, political, and species-based power”.\textsuperscript{151} To this end, the promotion of (nonhuman) animal dignity demands that we actively improve our relationships with them so that they may be recognized and respected as our equals.\textsuperscript{152}

The relational conception of the self that Gruen puts forward implicitly signifies the responsiveness and responsibility that the human relationship to other animals entails. It is through the cultivation of a caring moral perception that we become attentive to their wellbeing, which is directly affected by their social lives and the power relations they inhabit. Regardless of whether animals are social or not, they are accurately characterized as relational beings that live in interdependent ecosystems. As Deckha adeptly explains,

\begin{quote}
Relationality is not simply about sociality, but also attends to the social hierarchies that structure our relations to each other… At the most basic level, the dominant legal discourse surrounding property narrates property as a right, not a thing, that exists between at least two people. As Nedelsky emphasizes, rights structure relationships. As property, animals are caught or constantly at risk of being ensnared in extremely exploitative and paternalistic relationships where they are always already subject to the dominion of legal\end{quote}

\textsuperscript{151} Gruen, “Expressing Entangled Empathy,” 461.
\textsuperscript{152} Gruen, “The Ethics of Captivity,” 14.
persons, human or corporate.\textsuperscript{153}

Deckha concludes that as relational legal beings, the subjectivity and meaningful social bonds humans deprive animals of would stand the chance to get noticed and properly addressed. If the law espouses an anti-anthropocentric relational conceptualization of animals, then this moves us in the direction of initiating a legal system that defends all marginalized groups and condemns the oppressive relationships humans force animals into.

2.3 Vulnerability

The third and final element of the beingness model is vulnerability. It is through our embodiment and relationality that we, animals, are susceptible to harm and violence. Sentient (human and nonhuman) animals are especially vulnerable in virtue of having the capacity to suffer. Deckha combines the writings of Martha Fineman and Judith Butler on the vulnerability that the human body engenders with Ani Satz’s vision of animals as equally vulnerable subjects. This holistic understanding of vulnerability that Deckha canvasses brings both the bodily needs of animals and the material effects of power on their bodies into the purview of the law.\textsuperscript{154}

In the pursuit of substantive equality, Fineman introduces the concept of vulnerability into the domain of law as a new ontological foundation. Apart from its negative associations with “victimhood, deprivation, dependency, or pathology”, Fineman claims that the term describes “a universal, inevitable, enduring aspect of the human condition that must be at the heart of our concept of social and state responsibility”.\textsuperscript{155} Vulnerability is an undeniable feature of embodiment because of “the ever-constant possibility of dependency” and the “harm, injury, and

\textsuperscript{153} Deckha, \textit{Animals as Legal Beings}, 244.
\textsuperscript{154} Deckha, \textit{Animals as Legal Beings}, 254.
misfortune” that are out of our control to predict/prevent.\footnote{Fineman, “The Vulnerable Subject,” 9.} Fineman’s formulation of the vulnerable subject thus complicates and subverts the myth of the autonomous and independent liberal subject.\footnote{Fineman, “The Vulnerable Subject,” 2.} The traditional equal protection doctrine in the United States focuses on fighting against identity-related discrimination, whereas Fineman’s vulnerability analysis concentrates on the privileges and disadvantages underlying institutional arrangements that produce disparities in social and economic wellbeing.\footnote{Fineman, “The Vulnerable Subject,” 3, 16.}

Satz applies both the equal protection doctrine and Fineman’s vulnerability thesis to animals, and blends in Martha Nussbaum and Amartya Sen’s capability theory. The resulting “Equal Protection of Animals” model is a mechanism for guarding (human and nonhuman) animals from suffering.\footnote{Ani B. Satz, “Animals as Vulnerable Subjects: Beyond Interest-Convergence, Hierarchy, and Property,” Animal Law 16, no. 1 (2009): 65.} The fragile materiality that we have in common with other sentient animals renders their bodies vulnerable, especially since they are legally classified as objects of property and domesticated animals depend on human care for their survival.\footnote{Satz, “Animals as Vulnerable Subjects,” 65.} In addition to the equal protection of animals based on the vulnerabilities that arise from sentience, Satz argues that nonhuman animals are equally entitled to maximize the basic capabilities that constitute wellbeing, namely, “food, hydration, shelter, bodily integrity (including avoiding pain), companionship, and the ability to exercise and to engage in natural behaviors of movement”.\footnote{Satz, “Animals as Vulnerable Subjects,” 65.} Deckha affirms Satz’s adaptation of Fineman’s theory of vulnerability to include nonhuman animals as well as the non-hierarchical assessment of animal needs and interests through a capabilities approach.

Deckha supplements Satz’s work on animals as vulnerable subjects with Butler’s
understanding of relational vulnerability and precarity. Like Fineman, Butler asserts the shared reality of our vulnerable bodies when she asks, “From where might a principle emerge by which we vow to protect others from the kinds of violence we have suffered, if not from an apprehension of a common human vulnerability?” Alongside our “corporeal vulnerability”, Butler considers a further relational dimension of recognition. She elaborates:

A vulnerability must be perceived and recognized in order to come into play in an ethical encounter, and there is no guarantee that this will happen. Not only is there always the possibility that a vulnerability will not be recognized and that it will be constituted as the “unrecognizable,” but when a vulnerability is recognized, that recognition has the power to change the meaning and structure of the vulnerability itself. In this sense, if vulnerability is one precondition for humanization, and humanization takes place differently through variable norms of recognition, then it follows that vulnerability is fundamentally dependent on existing norms of recognition if it is to be attributed to any human subject.

To be deemed vulnerable is, partly, to be recognized and judged as such by another. In this relational bind, the performance of the recognition is the preliminary ethical response to the vulnerable other. For Butler, the political reception of vulnerability correlates to the intersecting concepts of precarity and precariousness. The social condition of precarity is politically induced through the differential allocation of attention and responsiveness that is designated to certain vulnerable populations. The precariousness of life in general is intensified through this uneven public

162 Deckha, Animals as Legal Beings, 248.
163 Butler, Precarious Life, 30.
164 Butler, Precarious Life, 42.
165 Butler, Precarious Life, 43.
166 Butler, Precarious Life, 43.
distribution of precarity and selective allocation of grievability. In the absence of recognition, the face of the other disappears and their cries are silenced, so much “so that there never was a human, there never was a life, and no murder has, therefore, ever taken place”. The radical effacement of nonhuman suffering and slaughter in the law means that animal property is at our disposal to (ab)use for any socially accepted end because they are not recognized as vulnerable beings to whom we have an ethical responsibility to in our relational exchanges.

Animal vulnerability extends beyond the human and is triggered by the biological and relational conditions of their embodiment. Butler chimes in on the topic of an interspecies politics of precarity:

It is always possible to say that the affective register where precarity dwells is something like dehumanization. And yet, we know that such a word relies on a human/animal distinction that cannot and should not be sustained. Indeed, if we call for humanization and struggle against “bestialization” then we affirm that the bestial is separate from and subordinate to the human, something that clearly breaks our broader commitments to rethinking the networks of life...But the critical task is to find a way to oppose that inequality without embracing anthropocentrism.

The human and nonhuman animal body resides in sociopolitical conditions of vulnerability and precarity. This means that those who go unrecognized are not seen as individuals that are entitled to legal protection from violence and degradation. On Chloë Taylor’s reading of *Precarious Life*, “Butler’s account of an ethics of interdependence, embodiment, vulnerability, and mourning is a

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compelling incentive for thinking about the lives not only of humans, but of animals more generally, and that there is nothing about Butler’s ethics that would justify an exclusion of non-human animals”\(^\text{169}\). The suffering that humans intentionally cause other animals is a denial of their vulnerability and our responsibility to them. This injustice will last forevermore unless we decide to no longer tolerate it and finally give recognition to the relational vulnerability and precarity of animal embodiment.

Deckha implements the legal recognition of vulnerability into the subjectivity of beingness so that the suffering that is brought about by human violence against animals can be noticed and hopefully alleviated. But, as Elisabeth Spelman cautions, we have to be mindful of how we frame our attention to suffering.\(^\text{170}\) The way in which we perceive and respond to those who are vulnerable is impacted by the representation of their suffering. Although sentient animals have the capacity to suffer, they are not defined by it. That is to say, animals should not be reduced to their suffering for they are so much more than objects of oppression.

Further, being vulnerable does not mean that one is relegated to the status of a perpetual victim or moral patient. Not only does this imply that they are incapable of being otherwise, but it also obscures animal agency. Kelly Oliver suggests that witnessing vulnerability is a more respectful and empowering alternative to merely giving recognition. The witness stands by to the complexity of another’s subjective experience and expression, which leaves room for the incomprehensibility of the situation from an outsider’s perspective. Rather than relying on someone else’s decision to validate the vulnerability through their recognition of it, witnessing is a responsive position that attends to the other as they are without trying to overlook the


differences between them that evade being fully grasped. Deckha incorporates this relational approach of witnessing into the legal recognition of vulnerability.

2.4 A Critique of Beingness

To reiterate, Deckha argues against the extension of personhood to nonhuman animals and instead develops a third category of beingness, which is a legal subjectivity wherein their embodiment, relationality and vulnerability are to be valued and attended to. However, this results in a non-equality path for nonhumans (regardless of whether or not the beings are sentient), which discriminates between humans and other animals. Deckha takes this to be an strength of her position, but in this section I will argue otherwise.

Legal beingness is a “difference-respecting” subjectivity that is meant to be responsive to the Otherness of nonhumans. Deckha substitutes equality for nonhuman beings with vulnerability in the legal assessment of their needs and interests “due to the knee-jerk averse reaction most in society will have to a legal system that explicitly states that animals are equal to humans”. But if Deckha’s project is truly meant to institute a postanthropocentric legal system wherein exploitative and violent interspecies relations are abolished, then (nonhuman) animal justice will require a global paradigm shift in cultures that will provoke (and have to withstand) massive resistance either way. Therefore, rejecting nonhuman animal equality simply because of the novelty it poses is an unsatisfactory objection.

In an article entitled Vulnerability, Equality, and Animals, Deckha expands on her argument against legal reform for nonhuman animals through the equality doctrine, which is closely related to her dismissal of personhood. The main issue that Deckha has with personhood

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171 Deckha, *Animals as Legal Beings*, 284, 323.
and equality-based campaigns for nonhuman animals is that these approaches are anthropocentric because they resort to the logic of sameness, thereby repressing difference. In other words, her chief criticism is that these initiatives seek to extend moral and legal standing to animals that are similar to humans in ethically relevant ways, which excludes those who are not like us. For these reasons, Deckha abandons the concept of equality and instead pursues a legal model that is founded on the relational and embodied vulnerability of nonhuman animals. In my own view, however, it is the human-centered approach to an interspecies ethics and politics that is the problem here, not equality nor personhood per se. Membership in the moral community of equal persons does not necessitate a unidirectional comparison of animals to humans.

Matthew Calarco’s typology of the three main theoretical trends in critical animal studies reveals that other avenues are available. In short, Deckha is concerned with what Calarco calls the identity approach, which draws on the commonalities that are found in the human-animal identity to operationalize a more egalitarian ethics that “treats like cases alike” (as a requirement of formal justice).173 Rather than focusing on “similarity, continuity, or identity”, Deckha’s beingness subjectivity for nonhumans champions the difference-based approach that is “articulated in and through the human/animal distinction”.174 Calarco rightly remarks that, “While 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”.175 Lastly, as a departure from anthropological difference, Calarco outlines a deeply relational identification with animal subjectivity.

The (speciest) human/nonhuman division of animals is superseded in what Calarco

173 Francione, Animals as Persons, 44.
174 Calarco, Thinking Through Animals, 28, 50.
175 Calarco, Thinking Through Animals, 51.
labels as the indistinction approach. The ethos of this perspective is partly inspired by Gilles Deleuze and Félix Guattari’s usage of the concept, which revolves around the idea of *becoming-animal* “so that the animal also becomes something else”.\(^{176}\) This process, as Calarco describes it, involves “inhabiting zones of indistinction where traditional binary distinctions between human beings and animals break down” to dislodge “the privilege of ‘the human’ as a subject position, which in turn is ultimately aimed at resisting and transforming the unjust and intolerable established order”.\(^{177}\) The human/nonhuman indiscernibility rests in the vulnerability that sentient beings experience. That is to say, the animal body hosts a self that is personally interested in enjoying life on earth and not suffering.

The only point of divergence between identity and indistinction theories is the *direction* in which the connection between species is made.\(^{178}\) It is anthropocentric to start with the assumption that being human is the standard by which moral standing is conferred and then trying to figure out what it is about “being human” that entitles rights and justice.\(^{179}\) From this approach, only the animals that are like humans qualify for moral standing. By contrast, indistinction theorists decenter the human identity and with this reorientation, we find that we are like (other) animals. What this means is that sentient beings care about what happens to them. In response, we have a moral obligation to protect vulnerable individuals as a matter of justice and logical consistency.\(^{180}\)

I will argue that Deckha’s beingness suffers from three major setbacks. First, animals will be indistinguishable from other nonhuman entities. Second, the human-nonhuman animal


\(^{177}\) Calarco, *Thinking Through Animals*, 57-58.

\(^{178}\) Calarco, *Thinking Through Animals*, 49.


division will be perpetuated. Third, the concept of personhood will not be reworked for humans.

Deckha’s claim that beingness counts as the sort of indistinction initiative that Calarco identifies needs to be unpacked because it is incongruent. With the hope of avoiding the charge of line-drawing among animals, Deckha groups all nonhumans under one legal status. By doing so, beingness implicitly erases the moral distinction between nonhuman animals and other living things, i.e. sentient beings and non-sentient existents. Although Deckha admits that the bodily capacity for sentience is a suitable and ethically-relevant criterion of which beings count, her concept of nonhuman embodiment does not necessarily hinge on this “stark and exclusionary” condition.\footnote{Deckha, \textit{Animals as Legal Beings}, 233.} Deckha understands the rationale for the prominence of sentience in animal rights theory, yet she does “not believe it matches up completely with the features of embodiment, vulnerability and relationality” because “it is possible to be vulnerable through one’s body without being sentient. There are living beings who can die (a form of vulnerability)” such as “plants”.\footnote{Deckha, \textit{Animals as Legal Beings}, 295.} On closer inspection of this statement, Deckha uses the language of sentience to characterize that which is not sentient, thereby confusing what it means to be and not to be sentient. It is a contradiction to portray a living thing as having a subjective existence when it is by definition not sentient, i.e. not the kind of being that has individual consciousness.

Surely a rock or plant can be damaged (like any other material object), but it is not a vulnerable \textit{self} nor subject to injustice because neither thing possesses selfhood.\footnote{Donaldson and Kymlicka, \textit{Zoopolis}, 36.} There is no presence of an “I” inside a thing. When a cow has her throat slit, \textit{she} consciously \textit{feels} the harm that is done to \textit{her} body. The vulnerability and moral standing of the cow is qualitatively different than that of something that is merely alive.\footnote{Donaldson and Kymlicka, \textit{Zoopolis}, 35.} As Sue Donaldson and Will Kymlicka put
There are many good reasons to respect and protect nature… But it is wrong to characterize these reasons as protecting the interests of orchids or other non-sentient entities. Only a being with subjective experience can have interests, or be owed the direct duties of justice that protect those interests… Justice is owed to subjects who experience the world, not to things… lacking subjectivity, they are not rightfully the objects of fairness, nor are they agents of intersubjectivity… We do not deny that humans have moral duties to plants and inanimate nature. Nor do we claim that humans and animals are higher in some cosmic hierarchy than trees or mountains. Rather, we claim that they are different—sentience generates distinctive vulnerabilities, and hence distinctive needs for the protection of inviolable rights. If non-sentient entities shared this interest… then we would be guilty of subordinating them. But they do not have this interest, and therefore there is no disrespect in declining to treat orchids and rock faces as persons. 185

Things do not have equivalent moral standing to persons because there is no self who suffers or exists at all. It is inaccurate to pretend that things have interests in the same way that persons do. This would imply that we ought to give both animals and things the same moral consideration, but human/nonhuman animals have a qualitatively different moral standing in that they are persons/selves. The relational and embodied vulnerability of sentient beings is not in any meaningful sense comparable to that of things.

Animal subjectivity gets fragmented and loses its moral significance in a legal status that is designed specifically for nonhumans. Deckha’s beingness blurs the line between vulnerable selves and living things, which is dangerous for animals because they are already considered

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185 Donaldson and Kymlicka, Zoopolis, 36.
objects of property. Even if, hypothetically speaking, animals are afforded legal subjectivity as nonhuman beings, there is too much at stake for them when they are placed in a legal category in which they are indistinguishable from things. And although beingness is not meant to be “an intermediate category like the ‘quasi-personhood’ or ‘things plus’ kind that Francione properly impugns in discussing slave welfare laws in connection with animal welfare laws”, it is difficult to see how it is not. It is important to mention that Deckha does concede that it is permissible “to privilege the needs of sentient animals over other types of legal beings” within the category of beingness.  But what about human-animal conflicts of interest? Unless the law officially recognizes animals as full persons of equal value, it seems rather unlikely that they will ever be treated as such.

The second disadvantage of legal beingness is that it maintains the human/nonhuman animal dichotomy and so the implicit moral hierarchy is left intact. It is morally arbitrary to have a separate legal subjectivity for nonhumans which redraws the dividing line that unjustifiably segregates animal species. As legal beings, animals will inevitably occupy a second-class status, and hence it is almost guaranteed that they will continue to be subordinated to the interests and desires of human persons. Deckha anticipates this criticism when she writes that “beingness will circulate in law as a second-best category” and that this “is a very legitimate concern and very likely to materialize given the anthropocentric moorings of both Western laws and cultures… Doubtless, the possibility, even probability, remains that beingness will reside in personhood’s shadow for a very long time”.

Therefore, I do not think that healthy/just interspecies relationships are possible through beingness, they may even be inadvertently delayed by settling for such a proposition.

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186 Deckha, Animals as Legal Beings, 309.
187 Deckha, Animals as Legal Beings, 322.
The third drawback of Deckha’s proposal is that beingness does not redress the issues that were raised about personhood as a legal category for humans. Recall that her own analysis of personhood showed that the legal status caters to a narrow subset of (neurotypical, adult, male, propertied, able-bodied) human beings, and neglects the embodied, relational and vulnerable needs of most people, which in turn culminates in the dehumanization of many marginalized groups. That being said, it seems that keeping personhood for humans and assigning beingness to nonhuman animals would not benefit either group. Deckha briefly touches on the question of whether beingness could potentially include humans in passing,

Some may query why the application of beingness only centers on animals and other non-humans. Aren’t the critiques that I have lodged against personhood equally applicable to all marginalized human subjects and, for that matter, non-marginalized? Indeed, I would quickly allow that beingness could be a category for all. My purpose here though is to center the legal needs of animals so I leave the possible application of beingness to other nonhumans and humans for others to chart. 188

We cannot seriously entertain the idea of “beingness for everyone” because the implications are morally repugnant. If personhood were to be replaced by beingness, then there would be no meaningful distinction between human persons and mere things, and this would heighten the vulnerability of marginalized groups. On the other hand, the exclusion of humans from legal beingness perpetuates the risk of dehumanization, especially for vulnerable populations. This is because the subhuman status of nonhuman animals as legal beings would leave room for the possibility that marginalized humans would also be treated as less-than because oppressions interrelated. As intersectional ecofeminist scholars have pointed out, there are various ways in

188 Deckha, Animals as Legal Beings, 321.
which “sexism, heteronormativity, racism, colonialism, and ableism are informed by and support speciesism”.  

The strength of the argument that Deckha presents in Animals as Legal Beings: Creating a Postanthropocentric Legal Subjectivity, rests in her critique of the Western liberal understanding of personhood in settler colonial jurisprudence. Existing scholarship on legal reform for animals has been caught in the paralyzing property/personhood debate, which has firmly established that justice requires the recognition of animals as legal persons. Much of the discussion has concentrated on the extension of personhood to animals through egalitarian intervention, while overlooking the anthropocentric and exclusionary constraints that Deckha highlights. In response to the current view on what it means to be a person that the law has inherited, Deckha’s concepts of embodiment, relationality, and vulnerability supplant the model of the “rational, culturally unencumbered, socially dislocated, wealth-maximizing human actor”. These features of beingness provide a completely new understanding that reorients the law in a more inclusive way.

However, for the reasons outlined above, the introduction of a third legal category, such as beingness, is not ideal for the pursuit of animal justice. Additionally, as Donaldson and Kymlicka note, “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”. At the same time, the extensionist approach will not destabilize the law’s investment in the conceptual content of personhood, which has defined humanity in opposition to animality.

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189 Gruen, Ecofeminism, 1.
190 Deckha, Animals as Legal Beings, 191.
191 Donaldson and Kymlicka, Zoopolis, 30.
Deckha explains that this will only “replicate the conventional liberal dynamic of trying to be more inclusive of who counts by extension rather than subversion of existing tenets”. It is therefore necessary to identify this reoccurring historical pattern of merely extending personhood because the concept has yet to be relieved of its past associations and hierarchical valuations. The concept of personhood needs to be reworked for the sake of all marginalized and oppressed animals, human or not, in order to signify something entirely different so that it is representative of diversity.

The problem of recognizing moral status and legal subjectivity by extension has been identified, and so we are now given the opportunity to rethink the meaning of personhood in a way that is in alignment with social justice and critical animal theorizations. Deckha’s formulation of relational and corporeal vulnerability is essential to this project, but requires the integration of sentience to explicitly demarcate the distinct moral significance of intersubjective relations. In doing so, I adopt Kymlicka and Donaldson’s treatment of “personhood as a synonym for selfhood” and their rejection of “any attempt to distinguish personhood from selfhood as the basis for inviolable rights” because “Such efforts are conceptually unsustainable, morally unmotivated, and radically destabilizing of the very idea of universal human rights”. That being said, the reformation of personhood involves the recognition of sentient animals as relationally and psychophysically vulnerable selves that are (at the very least) owed inviolable rights to protect them from being treated as means to human ends.

192 Deckha, Animals as Legal Beings, 293.
Part 3: Animal Personhood

3.1 A Postanthropocentric Multispecies Legal Subjectivity

We have reached a time in history where injustice against animals is no longer something we could be indifferent to. The expression of human supremacy over other animals is an indefensible moral catastrophe that should not be tolerated anymore. Just because we can oppress them does not mean that we should. This does not imply that animals are voiceless or passive, but that they are vulnerable as sentient beings and need protection in the same way that humans do. In attending to unequal power relationships, we have a responsibility not to take advantage of the vulnerability of animal others. If we recognize that it is wrong to dehumanize individuals by treating them like animals, why would we think that it is acceptable to treat animals “like animals”?\(^{194}\) In both instances, selfhood is denied in the objectification of persons. Humans, therefore, have a moral obligation to treat animals as people because it is their most basic right to not be treated like property. As such, a revolution of our legal system is integral to the transformation of interspecies relationships and how they are governed.

In rethinking who counts as a full and equal person of intrinsic moral value and why, I propose the legal subjectivity of “animal personhood” with the intention of embodying the collapse of the species division. Animal personhood is meant to challenge the assumption that one has to be a human to be a person and that only humans can be considered persons, while simultaneously affirming the animality of humans. This postanthropocentric status decenters the human from animal subjectivity. The unsubstantiated belief in the human/nonhuman divide creates the false sense of a binary wherein “humans define themselves through contrast… as a

\(^{194}\) Spiegel, The Dreaded Comparison, 19.
species apart from all others” in the animal kingdom. Grouping nonhuman animals together treats them as a homogenous group, but in reality there are countless species of animals besides humans and this diversity is exactly what animal personhood sets out to capture. It acknowledges that animals are persons (not things): there are pig persons, cow persons, chicken persons, dolphin persons, etc., that are of no more or less value than human persons, and thus equally worthy of respectful treatment and a dignified existence. In other words, animal personhood divests itself from the idea of human exceptionalism and superiority. Separating animal species produces a moral hierarchy, which entails that some humans will always be at risk of being relegated to the realm of the “subhuman” and other animals will continue to be subordinated, persecuted and commodified.

Animal personhood offers an alternative perception of humans as animals and animals as persons, with the aim of mobilizing a cultural and legal shift towards non-anthropocentric attitudes, social norms, and practices. As right-bearing subjects, the most basic interests of animal persons will be protected by the law to ensure that they are not sacrificed or harmed for human gain, regardless of how much the greater good would profit from their violation. The commitment to inviolable moral rights is the foundation for intersubjective recognition. It is the appropriate (and compassionate) response to the common vulnerability of sentient beings because “they have their own subjective experience of the world, have their own lives to lead, and as such should be seen as ‘self-originating sources of valid moral claims’ who are not resources for others”. The negative rights to life and liberty generate a human duty to not

196 Donaldson and Kymlicka, Zoopolis, 19.
197 Donaldson and Kymlicka, Zoopolis, 30.
exploit or harm other animal persons. This means that industries that involve violence and abuse will be outlawed and abolished. Unlike the welfarist approach that strives to improve the conditions under which animals are violated, the animal rights perspective seeks to prohibit the infliction of pain/suffering and eradicate unethical relations and institutions.

To summarize, the decolonization of personhood is long overdue and we are in need of a legal subjectivity that does not marginalize or oppress vulnerable selves. Our understanding of personhood has evolved beyond the classical (Western) sense in which it has been used and this change should be reflected in the law. Animal personhood is responsive to the relationality, embodiment and vulnerability of sentient beings. This reformed conception of personhood is anti-discriminatory because all sentient animals are included into the moral community of equals regardless of their class, race, species, ability, age, creed, sexual orientation, ethnicity, gender, etc. The prospects for the implementation of animal personhood correlates to the question of whether our politics can be reformed in a way that adheres to this legal subjectivity.

3.2 Animal Persons as Political Agents:

Traditional animal rights theory has been preoccupied with affirming the intrinsic moral status of animals on the basis of their capacities and interests for over forty years. And although it is necessary to recognize the negative rights of animal persons for their protection, our obligations are not exhausted by nor limited to these sorts of legal restrictions on interference.

Justice requires an expanded conception of differentiated and positive relational duties that arise out of the various ways in which humans relate to other animal persons politically. This further dimension of animal rights theory and practice is exactly what Donaldson and Kymlicka explore in their book Zoopolis, which is an influential and ground-breaking piece of writing that
has propelled the ethical debate into the domain of political theory. In sum, the authors argue that:

Domesticated animals should be seen as full members of human-animal mixed communities, participating in the cooperative project of shared citizenship. Wilderness animals, by contrast, form their own sovereign communities entitled to protection against colonization, invasion, domination and other threats to self-determination. 'Liminal' animals who are wild but live in the midst of human settlement… should be seen as "denizens", resident of our societies, but not fully included in rights and responsibilities of citizenship.  

Donaldson and Kymlicka start off from the crucial premise that animals are entitled to inviolable rights in their development of a relational understanding of what justice demands of us. By identifying the different types of political relationships humans have with other animal groups and the distinctive responsibilities that flow from them, the concepts of citizenship, sovereignty, and denizenship bring animal rights theory and its agenda into new frontiers of social membership. Donaldson and Kymlicka defy existing ideas about who political actors are. This means that we need to rethink how political communities are constituted and how the demos should operate so that we can cultivate ethically desirable relationships in which all animal persons can flourish together.

In this closing section, I consider what the future may hold for animal persons in the political sphere of our coexistence. The animal personhood model of legal subjectivity requires a political conception of our relations with other animal persons, one that is attuned with their embodied, relational, and vulnerable nature as sentient beings. And because these features vary

across groups, given their unique geographical and historical situation, different political relations are appropriate. Donaldson and Kymlicka’s political theory of animal rights provides one way of thinking about the relational duties that arise from the kinds of political relationships we have with other groups of animal persons. I will focus on domesticated animals in particular because humans exploit them the most intensively.\(^{200}\)

The model of political citizenship that Donaldson and Kymlicka endorse tracks social membership.\(^{201}\) That is to say, those who are members of a shared society, and governed by its rules, should have the right to political voice and participation when it comes to shaping the norms that affect them.\(^{202}\) And since domesticated animals fit the description of what it means to be a member of society, they should be seen as full and equal citizens. Humans brought these animals into their social worlds and now the majority of them have become dependent on our care for their survival, so releasing them back into the wild is not a suitable option at the moment nor the right thing to do. However, domestication entails that these sorts of animals have the capacities that make citizenship possible, i.e. they engage in social relationships with humans that involve trust, communication, and cooperation.\(^{203}\) The domestication of animals, through generations of selective breeding, has been successful in that they are able to work and live with us.

Even though domesticated animals have already joined our society, as workers and family members, they have not been recognized as citizens.\(^{204}\) We relate to them as if they were “a caste group intended to serve us. Every aspect of their lives is governed and regulated by a


\(^{204}\) See Kymlicka, “Social Membership”. 
human political order that ignores their interests. They are tyrannized, in short. For Donaldson and Kymlicka, citizenship has emancipatory potential when used as a legal tool to acknowledge that they belong here as forming part of the people, and should therefore have membership rights. Indeed, this is how we have responded to unjust human relations that were predicated on caste hierarchy and it is what we now owe to domesticated animals as a dominated caste.

Donaldson and Kymlicka are committed to the view that social membership is a sufficient condition for political citizenship. They contest the idea that a person must qualify for citizenship by possessing certain cognitive and linguistic capacities because it “divides society into two groups: human adults capable of political agency… and everyone else, human or animal, who are seen as ‘voiceless’ or ‘mute’, and hence covered by schemes of plenary guardianship and indirect fiduciary representation”. Like many others who also advocate for the membership rights of children and people with cognitive disabilities, Donaldson and Kymlicka find the passive status of wardship inadequate since it denies self-representation and direct participation in political decision-making. The normative logic that underpins the rejection of wardship in the human case is equally applicable to domesticated animals and there is no conceptual barrier to their inclusion.

In Animal Agora: Animals, Citizens and the Democratic Change, Donaldson goes over several moral and epistemic reasons as to why the political participation of all members of society should be enabled. First, it is anti-democratic to make citizenship contingent upon

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meeting some measure of cognitive and linguistic ability because those who are deemed “incompetent” are inevitably going to be ruled by able-bodied and neuro-typical adults. Simplican argues that this approach is one version of the “domination contract”, whereby, as Donaldson explains, “members of the dominant group treat each other according to norms of equality and consent, while asserting the natural right to govern others”. The alleged incompetency of select groups has been used to justify their exclusion and subordination, which can be seen in multiple citizenship struggles of the past and present; namely, for people with cognitive disability and children in the “capacity contract,” for women in the “sexual contract,” for blacks in the “racial contract,” and indigenous peoples in the “settler contract”.

Second, the capacity contract represents a narrow understanding of how political citizenship is/should be exercised and who is capable of such expression. It sets an “unrealistic and unnecessary standard… for reflection, deliberation, and independent self-rule” while “withholding our responsiveness to the expressed agency of these individuals, and thereby denying them the very experience and uptake that could confirm and support their agency”. The purpose and meaning of democratic citizenship is undermined when it is defined in terms of a person’s cognitive and linguistic capacity. Those who deviate from the ‘norm’ and fall below the threshold are rendered deficient and thus incapable. However, citizenship should embrace the range of diversity among people, and should not arbitrarily exclude members of society.

216 Donaldson and Kymlicka, “Unruly Beasts,” 34.
Third, including the interests of wards is not enough for their recognition as equals. Every member of society should have equal political rights, which “are not just one means amongst others for representing interests: they also carry enormous expressive or symbolic significance as a marker of citizenship. If groups are excluded... this reflects and reproduces a wider problem of social invisibility”.  

Fourth, it is impossible to figure out what kinds of relationships domesticated animals want to have with humans without their active participation. As such, experimentation plays a key role in the collaborative project of actualizing animal citizenship. Donaldson writes,

Better knowledge requires creating opportunities for DAs, as individuals, to explore options and to express preferences about different possible lives and social arrangements. They are the experts on many dimensions of their individual subjective good, and we can only access this knowledge if they are able to engage in processes of exploration, contestation, and self-representation. Under the wardship model of (partial and passive) citizenship, humans assume that they know what is best for domesticated animals. But that is not necessarily true, especially when the human perspective is largely biased and corrupted by self-interest. We are bound to commit an epistemic injustice against domesticated animals if they are deprived of direct political agency and voice.

Donaldson and Kymlicka persuasively argue that interspecies citizenship is both a possibility and moral imperative. One’s cognitive and linguistic capacity should not determine whether one is a political citizen, for this is an exclusionary conception of who has membership rights. Alternately, Donaldson and Kymlicka believe that “the appropriate test for animal

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citizenship… is whether animals exhibit norm responsiveness and intersubjective recognition in actual interactions”, which “is an empirical question” that has been answered in the affirmative by fifty years of ethological research.\textsuperscript{219} The evidence demonstrates that:

many different kinds of animals experience and act on the basis of moral emotions such as love, trust and empathy, engage in a variety of co-operative tasks requiring impulse control or delayed gratification, are socialized into norms of behaviour which can subsequently be modified, resisted and/or renegotiated, and exercise self-restraint and self-sacrifice out of concern for others, fear of consequences, or even a sense of fairness.\textsuperscript{220}

Therefore, the inclusion of domesticated animals into citizenship is practically feasible because they are capable of and disposed to having civil relations with humans. What this means is that, as citizens, domesticated animals will have various membership rights and responsibilities.\textsuperscript{221}

In their writing, Donaldson and Kymlicka elaborate on how we can reconfigure the polis with nonhuman animals as interlocutors. They suggest two ways this can be advanced: (1) by “democratizing the existing landscape of citizenship” which involves “bringing participation down to the ‘spaces and place’ that are meaningful to animals, relying on ideas of relational agency and embodied communication”; (2) by creating “a new democratic commons, or animal agora, in which animals are empowered to co-author the fundamental nature of political community alongside us”.\textsuperscript{222} Donaldson and Kymlicka’s political theory of animal rights offers an expanded conception of citizenship that is inclusive of all members of society as political actors. It is a new conceptual framework through which we can rethink the relationships that humans have with other animal persons.

\textsuperscript{219} Donaldson and Kymlicka, “Unruly Beasts,” 34.
\textsuperscript{220} Donaldson and Kymlicka, “Unruly Beasts,” 34.
\textsuperscript{222} Donaldson, “Animal Agora,” 3, 8.
In the same vein, Eva Meijer’s work on animal agency and voice examines how we might enter into an interspecies democracy. She incorporates evidence from biologists and ethologists on animal languages, cultures, and collective decision-making (e.g., voting, negotiating, and deliberation) into her non-anthropocentric reinterpretation of political concepts and actions.\footnote{Eva Meijer, “Interspecies Democracies,” in \textit{Animal Ethics in the Age of Humans: Blurring Boundaries in Human-animal Relationships}, eds. Bernice Bovenkerk and Jozef Keulartz (Springer, 2016), 53.} As it stands, our democratic institutions and procedures are made exclusively by humans for humans, which means that the “norms of proper political communication reflect the preferences and style of the dominant group” and nonhuman animals “cannot make themselves themselves heard in the dominant political discourse because they do not speak in the language of power”.\footnote{Eva Meijer, “Interspecies Democracies,” 57-58.} In other words, animals are silenced politically. Oftentimes humans fail to notice and/or respond to animal acts of political resistance because they are not thought of as political actors.\footnote{See Jason Hribal, \textit{Fear of the Animal Planet: The Hidden History of Animal Resistance} (2011).} Meijer argues that moving towards new ways of co-existing and interacting with other animals entails “learning about their languages and behaviors, and being creative in speaking back”.\footnote{Eva Meijer, “Interspecies Democracies,” 64.} One context in which this does occur is in the anti-paternalistic model of animal sanctuaries that Donaldson and Kymlicka envision as intentional communities. In summary, this section has concentrated on the political relationship between humans and domesticated animals, and a similar analysis would be required for liminal and wild animal persons.

**Conclusion**

A future of animal justice and interspecies democracies is unattainable under the property status of nonhuman animals. Legal reform is therefore necessary to bringing an end to animal
oppression. As Deckha’s critique reveals, the existing conception of personhood that the Canadian legal system has inherited rests on problematic foundations, which remain untouched through the method of inclusion by extension and has undesirable consequences for marginalized human groups. In response, Deckha’s concepts of relationality, embodiment, and vulnerability are helpful in the reorientation of the law’s valuation of animal persons. However, I have argued against Deckha’s proposal of beingness because it maintains the human-nonhuman division of animals, blurs the moral distinction between sentient beings and non-sentient things and does not address the shortcomings of personhood for humans. These factors implicitly reproduce and contribute to social injustice by leaving human supremacy and intra-human hierarchies intact.

The legal subjectivity of animal personhood that I propose is a reimagination of what it means to be a person of intrinsic moral value. Animal personhood is grounded in selfhood, which I attribute inviolable rights to. In addition to the legal protection universal basic rights provide for vulnerable selves, Donaldson and Kymlicka’s theory of relational/group-differentiated rights for nonhuman animals challenges the assumption that humans are the only political animals we have positive obligations towards. Put differently, animal persons should have their moral and political rights recognized by Canadian law, regardless of their cognitive or linguistic capacity.

A legal system that redefines personhood in terms of animal subjectivity opens the doors to worlds that exist beyond the hellish relationships and living conditions that humans routinely subject other animals to. The realization of animal personhood in the law entails that only peaceful and just interspecies relationships will be promoted and tolerated. What this means concretely is that the needs, interests, and wellbeing of animal persons will be respected and attended to equally. The ideal of animal liberation can be a reality, if we want it to be. But I
would argue that either way, the implementation of animal personhood is a requirement of justice and it will bring about greater standards of relational practices and inclusiveness for all, especially the most vulnerable.
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