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Review

Animalization and Dehumanization Concerns: Another Psychological Barrier to Animal Law Reform

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Abstract

Legal systems across the world classify animals as property. There is growing global momentum asking courts in anthropocentric legal systems to revisit this position through test-case litigation. This has resulted in a few discrete victories for animals, but not much more. An ongoing issue is general legal conservatism and the belief in human exceptionalism that judges exhibit in these and related cases. In addition to general human exceptionalism, this article argues that a further psychological block for judges can arise from concerns about exacerbating racism and other intra-human prejudices given histories and legacies of animalizing and dehumanizing certain human groups. The first aim of this study is to illustrate this psychological phenomenon impacting judicial decision-making in relation to race. The article discusses the 2022 decision by the New York Court of Appeals with respect to the ongoing captivity of Happy, an elephant at the Bronx Zoo. This decision is selected given its recent and landmark status in North America. The second aim of the study is to outline why the dissociation of humans from animals is counterproductive to eliminating racism and other intra-human prejudices and inequities. The third aim of the study is to explain why affirming human proximity and kinship to animals—and thus putting a positive spin on animalization—in the legal system would be a more effective anti-racist and decolonizing gesture.

Keywords

animal rights, personhood, law, judicial psychology, human exceptionalism, animalization, dehumanization

Non-Technical Summary

Background

There are now more than a handful of high-profile court cases where animal rights organizations and advocates have sought legal personhood or other fundamental rights for animals, who are otherwise considered property by the law. Most of these cases have been unsuccessful. This article looks at the human psychological factors that make it difficult for animal rights arguments to succeed in court. It discusses how the belief in human superiority has resulted in the refusal by human judges in many countries to extend rights and the legal status of personhood to animals even though the law already recognizes other nonhumans, such as corporations, as legal persons with rights. The article also shows how concerns that extending rights to animals will animalize or dehumanize racialized peoples can be another psychological factor that prevents progressive animal law reform.

What does this article argue?

A major issue for judicial reticence to grant animal rights is general legal conservatism and the belief in human exceptionalism that judges betray in these and related cases. Judges are human and generally share with others an entrenched social and cultural mindset that most humans hold to some degree that humans are special and superior to animals. In addition to general human exceptionalism, this article argues that a further psychological block for judges to respond affirmatively to legal submissions asking them to place animals on more equal legal footing with humans can arise from concerns about exacerbating intra-human prejudices. Given histories and legacies of animalizing and dehumanizing certain human groups, particularly racialized peoples and peoples with disabilities, some judges will be concerned that any extension of rights to animals will call into question the human status of marginalized humans. The article discusses how such concerns about animalization and dehumanization in relation to race were present in a recent high-profile case decided by the New York Court of Appeals involving the liberty interests of Happy, an elephant and long-time resident at the Bronx Zoo in New York. The article further argues that such concerns, which resulted in judges emphasizing human separation from animals, are misplaced. The dissociation of humans from animals is counterproductive to eliminating racism and intra-human prejudices and inequities. Affirming human proximity and kinship to animals—and thus putting a positive spin on animalization—in the legal system would be a more effective inclusive gesture for both humans and animals.

What do these findings mean?

Animal advocates should recognize the psychological barrier animalization and dehumanization concerns can pose and address it in their advocacy, helping judges and others to see the mutual benefits across species by establishing human proximity to animals in law. Turning to certain non-Western human worldviews and legal systems as models to better accept proximity to animals may be helpful for guiding Western legal decision-making regarding

animals' legal interests, as these legal systems generally emphasize kinship, connection, and interdependence with animals.

Common law and civilian legal systems across the world classify animals as property and thus enable their commodification and use within an array of anthropogenic activities. Despite the availability of precedent in these traditions to legally classify animals as persons, judges across multiple jurisdictions have traditionally denied seeing animals as persons in the limited instances where they have grappled with the scope of legal personhood (Kurki, 2019; Naffine, 2009). There is growing global momentum asking courts to do so through test-case litigation challenging animals' long-standing legal "thinghood" and lack of fundamental legal rights. This has resulted in a few discrete victories liberating individual "wild" animals in Argentina, Colombia, Ecuador, and Pakistan, but also some bold "rights" language affirming certain types of protections for animals that may have meaningful impact for a larger cohort in coming years (Pallotta, 2020; Stucki, 2020, pp. 533, 535). None of this test-case litigation has secured rights for animals in the sense that we understand them in relation to humans, that is, as a bar to killing or non-consensual use or even declassifying animals as property (Eisen, 2022; Kurki, 2021, p. 47, Stucki, 2020, p. 536). An ongoing issue is general legal conservatism and the belief in human exceptionalism that judges betray in these and related cases (Liebman, 2011). It is reasonable to speculate that judges in common law and civilian systems share the larger cultural belief that humans are special and superior to animals (Caviola et al., 2019).

However, as I argue here, a further psychological block for judges to respond affirmatively to legal arguments asking them to place animals on more equal legal footing with humans can arise from concerns about animalizing and dehumanizing certain human groups. I illustrate this phenomenon with respect to race and racism in a June 2022 decision by the New York Court of Appeals. The decision revolves around Happy, an elephant that the United-States-based Nonhuman Rights Project (NhRP) sought to move from the Bronx Zoo and send to a sanctuary through legal personhood and fundamental rights-based arguments (Nonhuman Rights Project, Inc. v. Breheny, 2022). I focus on the New York Court of Appeals decision given its recent and landmark status in North America; it was the first time that "a court of last resort" in the continent addressed a matter of animal rights (as opposed to welfare) (Marceau & Fernandez, 2022).

To contextualize this discussion, I first explain the cultural origins of the human exceptionalism and corresponding judicial arbitrariness regarding personhood and fundamental rights for animals that form the backdrop of animal test-case litigation. I then discuss how psychological concerns about dehumanization and animalization of racialized and Indigenous peoples surfaced in the majority and the dissenting decisions at the New York Court of Appeals in regard to Happy. Relying on existing scholarship,

in the last section I affirm the view that such judicial concerns, while understandable given the history and contemporary realities of racism in the United States (Kim, 2015), are misguided. I outline why the dissociation of humans from animals they advance is counterproductive to eliminating intra-human prejudices and inequities. I also explain why affirming human proximity and kinship to animals—and thus putting a positive spin on animalization—in the legal system would be a more effective anti-racist and decolonizing gesture.

This article's purpose is not to advocate for legal personhood for animals or endorse the humanizing discourse of campaigns that the NhRP and other law reform efforts have advanced. Feminist animal law scholars and other vegan ecofeminist and critical animal studies critics, myself included, have expressed reservations about any campaign that relies on humanizing animals (Deckha, 2018; Fox, 2004, p. 480; Muller, 2020, pp. 33–58). I consider legal personhood for animals as undesirable for this reason and have called for the creation of a new protective legal status that better respects animals' alterity (Deckha, 2021). The focus of the article is also not to laud the dissenting judgments in Happy even as I discuss their meritorious aspects. Rather, the present discussion is aimed at revealing the potency of racial anxiety surrounding dehumanization/animalization in impeding animal law reform. A second main objective is to explain why psychological concerns about dehumanization and animalization of racialized peoples is not a sound reason for courts to decline extending legal protections to animals. Relatedly, a third objective is to explain why affirming human proximity and kinship to animals—and thus putting a positive spin on animalization—in the legal system would be a more effective anti-racist and decolonizing gesture.

Human Exceptionalism in the Common Law and Civil Law—A Cultural Explanation for Judicial Arbitrariness

The common law and civil law are European in origin but spread throughout the world through British, French, Spanish and other European colonialism (Anghie, 2005; Girard et al., 2018). As human institutions, these legal systems reflect cultural views about animals that shift across time and country and even vis-a-vis individual animal species. Consider that no country would charge and put an animal on trial for a crime today, but that this type of legal proceeding did take place in Europe in medieval times and thereafter (Suntrup, 2017, p. 4). Consider also that a handful of countries have banned the captivity and forced reproduction of cetaceans in aquaria and dolphinaria but not that of any other animal (Sykes, 2019, p. 353). Or that a small cohort symbolically recognizes the sentience or dignity of animals at the highest legal level, that is through their national constitutions, while others may do so through anti-cruelty legislation that only legislates certain very basic standards of care rather than stops their exploitation (Blattner, 2019).

Despite these culturally-induced legal differences, one thing has remained constant in common law and civil law jurisdictions historically and in the present-day: animals are legally classified as property first and foremost and not persons, the other major legal category in binary legal systems. To be a legal person, is to be a legal subject and a rightsholder. Personhood is presently formally extended to all humans but also to certain nonhuman entities, notably corporations. It is only in a handful of instances worldwide that courts have explicitly identified and critiqued the anthropocentrism of the law and recognized an individual animal as a rightsholder. These have all been cases concerning the legality of wild animals' captivity in a private residence or in zoos (Pallotta, 2020; Wright, 2022). Even in India, where the Indian Constitution speaks of the duty that all citizens have to "have compassion for living creatures" (Constitution of India art. 51A) and the apex court has recognized rights to peaceful existence and dignity for all animals, such pronouncements have not stopped routine commercial animal use (Eisen, 2022).

But at least in these cases, the courts have taken animal interests much more seriously than contemporary Western legal systems otherwise do. As Ngaire Naffine (2009), a legal scholar who has explored the conceptualizations of legal persons by judges in the common law jurisprudence of Canada, the United Kingdom, the United States, Australia and New Zealand, observes: "There is profound legal resistance to the idea that law is for (non-human) animals and that animals should be rightsholders and therefore legal persons. This still strikes most of the legal community as a preposterous suggestion" (p. 8). Such a response prevails even though the law already recognizes some nonhumans as persons (notably, corporations), and further recognizes that animals are similar to humans as sentient beings (Blattner, 2019). It also persists notwithstanding that the law already provides some modest protections to animals (consider anti-cruelty legislation) that may (on a very generous reading) be construed as "rights" (Kurki, 2021, p. 52) and thus a form of implicit "partial personification" (Suntrup, 2017, p. 6). Such protections could provide precedent for more qualified or limited iterations of personhood (Fernandez 2018; Kurki, 2019; Naffine, 2009) and possibly support the emergence of fundamental rights for animals (Stucki, 2020, p. 559). However compelling personhood arguments for animals may be due to any of these reasons, as noted at the outset, the law has thus far stayed adamantly opposed to such an initiative for all but a handful of animals (Kurki, 2021, p. 47). The technical formalist model of personhood that permits corporations or anything else to be a person if a legal authority declares them to be, as well as the sentience-based model of personhood that affords personhood to those that are sentient, have not helped animals procure higher legal status (Naffine, 2009, pp. 22–24, 136–138).

This opposition cannot be explained solely by the inherently conservative nature of the legal system on the whole, particularly the common law system tied as it is to judicial precedent. Jurists who respond to the arguments from these models consis-

tently filter them through dominant anthropocentric worldviews (Naffine, 2009, pp. 8, 136–138; Liebman, 2011, pp. 138, 140–141). Colonial legal systems entrench the human exceptionalism present in modern society in general (Grear, 2015, pp. 1–2), which is a type of bias difficult to overcome even for judges who are expected to be objective in decision-making (Liebman, 2011, pp. 135, 149). Naffine highlights the paradox in this refusal: social institutions, including law, have embraced Charles Darwin's teachings about the continuities among species, yet this scientific orientation has not led to a legal disposition willing to interrogate the sharp legal species divide that maps onto personhood and property categories (Naffine, 2009, pp. 160–161). It may also be that the dietary preferences—in general, preferences deeply shaped by psychological factors (Dhont et al., 2019)—of judges asked to favour animal rights reinforce a human exceptionalist orientation through which they view questions about animals' moral and legal status (Liebman, 2011, p. 135).

A variety of factors thus explain the collective judicial arbitrariness in denying personhood to animals, not the least of which is the incremental pace of most legal change and the human exceptionalism we can presume judges accept like other members of the animal-consuming public. This is an attitude likely bolstered by the anthropocentric legal systems which envelop these judicial decisions (Deckha, 2021).

Legacies of Dehumanization and Animalization in Animal Rights Litigation

Notwithstanding the deep entrenchment of human exceptionalism and anthropocentrism in Western legal systems, alternative thinking is still possible. As a prominent example, legal outcomes favouring personhood for rivers have materialized in multiple jurisdictions in the past several years (Stilt, 2021). Doubtless, there are also individual judges who will agree with the argument that it is time that the law stop regarding animals as property and consider their entitlement to fundamental legal rights such as bodily integrity. However, such judges sympathetic to animal advocates' arguments might worry about being overturned on appeal should they go against centuries of precedent. As Visa Kurki (2021, p. 48) has recently observed in this regard, "(t)hough some judges are braver than others, very few dare upset the whole fabric of the legal system". Some may also resist the recourse to the courts for this reason, repeating the common viewpoint that a decision with such dramatic societal repercussions is better taken by a legislative body. Indeed, the NhRP has encountered both of these objections in previous lawsuits (Nonhuman Rights Project, Inc. v. Breheny, 2022, p. 3; Wright, 2022). These types of objections are not particular to the animal-centered nature of the NhRP's claims and there are multiple reasons that other scholars have discussed for courts to embrace social change where justice calls for it (Roach, 2011, p. 332).

But some judges who might be willing to challenge human exceptionalism for at least some animals might refrain from doing so due to concerns regarding dehumanization and animalization. This is a type of objection that is a direct outcome of the animal-centered nature of NhRP's claims. In fact, such concerns have come to the fore in recent liberty litigation advanced by the NhRP. In cases where the NhRP sought to free chimpanzees living in private roadside zoos, the NhRP presented an analogy to African American enslavement to illustrate the injustice of captivity for any being that is autonomous (Fernandez, 2018, p. 204). Some judges voiced their difficulty with this line of argumentation to illuminate the need for chimpanzee rights. Although specific reasons were not articulated, we can surmise that the invocation raised racial anxieties given the legacy of comparing Black people to nonhuman primates (Fernandez, 2018).

Most notably, dehumanization/animalization concerns were present in the *Happy* decision rendered by the New York Court of Appeals on June 14, 2022. Happy, at the time the decision was rendered, was a 51-year-old female Asian elephant. She was taken from her family in the wild as a baby and has lived at the Bronx Zoo ever since. The NhRP petitioned the lower courts in New York through the ancient common law writ of habeas corpus, which is a legal tool to secure liberty for someone unlawfully detained. The NhRP sought to have Happy released to a sanctuary, arguing that her zoo confinement was unlawful because it violated Happy's right to bodily integrity, a right Happy had by virtue of her intelligence, self-awareness, and capability for suffering (Nonhuman Rights Project, Inc. v. Breheny, 2020, p. 16). The NhRP was unsuccessful in the lower courts but received leave to appeal from New York's Court of Appeals.

The New York Court of Appeals dismissed the appeal by a margin of 5:2 (Nonhuman Rights Project, Inc. v. Breheny, 2022). The reasoning on each side is multi-layered and cannot be fully explored here. Recalling my aim in this article, the purpose of the present discussion is to elucidate how concerns about dehumanization and animalization in relation to race and racism influenced both the majority and two dissenting judgments. Beginning with Justice Wilson's dissent concluding that the writ of habeas corpus is flexible and can encompass animals, we can observe that he highlighted how the remit of the writ in New York's common law was gradually extended over the years to secure the release of various oppressed human groups. Justice Wilson discussed how the writ liberated Black slaves, children, and women as their confinement and control by whites, fathers, and husbands, respectively, came to be seen by society as unjust even though previously lawful. To make his point that both humans and animals can suffer from confinement, Justice Wilson also opened his decision by noting that the Wildlife Conservation Society, which operates the Bronx Zoo, displayed an African man at the turn of the last century who eventually committed suicide. Justice Wilson's dissent also drew connections between the evolution of human slavery abolitionist movements, human child protection campaigns, and animal rights advocacy in the United States and recalled

Charles Darwin's finding regarding our shared evolutionary origins with animals (pp. 17–27).

By every comparative measure, Justice Wilson's dissent qualifies as a strong critique of human exceptionalism. He even used the term—a rarity in common law decisions as a whole—in observing that "(a)s scientific research progressed in the 20th century, researchers began to discredit the notion of human exceptionalism" (p. 27). He also called for "approaching the question of animal sentience, feeling and confinement with humility and deference to the unknown", pointing out that we know that animals suffer but reminding us that our knowledge about animals is "surely incomplete" (p. 28). Such statements challenging anthropocentrism in a legal judgment are a remarkable feature of the decision. At the same time, the spectre of animalization and dehumanization that infuses historical and contemporary race relations in the United States compelled Justice Wilson to include in his judgment comments about the dangers of drawing comparisons between animals and racialized peoples. This racial spectre led him to ultimately reinforce the human-animal species divide and human exceptionalism.

In terms of the danger of comparisons, he explicitly noted two troubling patterns: 1) how the historical animalization of racialized humans upheld slavery and marginalization; and 2) how some contemporary animal rights campaigns (singling out People for the Ethical Treatment of Animals or PETA) draw analogies to human injustices that "intentionally or not, further dehumanize non-white and indigenous peoples" (p. 30). In the course of discussing these phenomena, he stated that "(a)ny discussion of slavery in the context of animal rights demands an acknowledgement of our country's reprehensible history of denying the humanity of racial minorities" (p. 30). Referencing critical race animal law scholarship regarding the whiteness of PETA's animal rights advocacy, he stressed that it is important to advocate for animals "in anti-racist ways" (p. 30). But even though Justice Wilson cited learning from Indigenous cultures that treat animals much better as one way to advocate for animals in an "anti-racist" way, he did not say that this "anti-racist" solution to advocating for animals requires affirming human proximity to animals.

Rather, Justice Wilson's solution sought to keep humans distinct from animals. Justice Wilson called for a "moving away from questions of animal "personhood""; he sought a distancing from personhood to convey a clear signal that the courts recognize "that animals are not humans" and to prevent "comparisons that have harmful racial-coding and dehumanizing effects" (p. 31). His overall decision clearly expressed the view that the common law should catch up to changing public views about animals like Happy. However, as a result of this human-animal distancing, the decision ultimately reinforced human legal superiority due to concerns about the effects of animalization and dehumanization on intra-human equality.

Perhaps Justice Wilson's "distancing" move was a concession to persuade his colleagues who worried about such effects. The majority called the dissenters' analogies

"odious" despite both dissents' acceptance of human superiority/specialness and, it must be noted, despite the racialized social locations of both dissenting judges (p. 5). Justice Rivera, in her dissent, endorsed Justice Wilson's dissent, but did not dismiss the possibility of animal personhood. She did take pains to emphasize his point that "comparisons between animals and humans are fraught with the potential to ignore the ways that those comparisons have denied the dignity and personhood of people of color" (p. 44). Yet, she also explicitly objected to the majority's "odious" remark as "profoundly misconstru(ing) the point" (p. 44). However, she also wrote that "no one is equating enslaved human beings or women or people with cognitive disabilities with elephants" (p. 44). This statement suggests she accepted the premise of the majority, too, that humans are superior/special and that associations with animals are unfortunate and to be avoided. More to the point of this study, though, we can observe how animalization and dehumanization concerns were addressed by Justice Rivera as well.

Justice Rivera's position on the need to see humans as distinct seems to be equivocal from her written decision. Justice Rivera was equally if not more critical of human exceptionalism initially in her judgment, labelling the lives of elephants in zoos as a "miserable existence" and quipping that "Day in and day out, Happy is anything but happy" (p. 41). And at many points, she emphasized continuities between humans and animals. Notably, she incorporated all animals under the term "beings" (pp. 44, 45), emphasizing the "tautological evasion" of the majority's reasoning. She further pointed out than the human/animal binary is false and, contrary to the distancing response in Justice Wilson's reasoning, that "humans are animals" (p. 44). The important point for present purposes is not to conclude which way Justice Rivera leans on the benefits of stressing our proximity to animals rather than distancing. It is to see that the spectre of animalization and humanization vis-à-vis marginalized human groups that mobilizes the other judgments educes a more-than-passing response from Justice Rivera, who ultimately concludes that Happy's captivity is "inherently unjust and inhumane" and "an affront to a civilized society" (p. 51).

This type of robust exchange amongst judges about animalization, dehumanization, and comparisons between groups in an animal law case is rare. Indeed, discussing critical race theory-informed animal law scholarship is surely a first in an animal law judgment. As remarkable and rare as this feature of the *Happy* decisions is, it is not the first time that a judge in hearing animal rights arguments has objected to arguments drawing comparisons to human injustices due to dehumanization or animalization concerns (Deckha, 2019). It likely will not be the last given the common law's precedent-based system making analogical reasoning routine and expected. It is also reasonable to expect more judicial attention to animalization and dehumanization concerns in animal rights cases due to the pervasive psychological viewpoint that human equality means stamping out dehumanization, which is assumed to be best achieved by *maintaining* the human-animal

divide. In this conceptualization of the problem, dehumanization is also assumed to be a phenomenon uncorrelated with animal subordination (Kim, 2015; Kymlicka, 2018).

The New York Court of Appeals' exchange in *Happy* is better regarded as an explicit articulation of thoughts that normally lie below the surface. It illustrates that when a dramatic change to animals' present legal status is sought, and the inconsistency of the common law becomes transparent, how animalization and dehumanization can become central preoccupations for the majority—to which even dissenting judges felt compelled to reply. Such concerns, while understandable, arguably detracted from the main legal question regarding animals and also lead to an artificial separation of humans from animal life that ultimately, as outlined below, compromise human equality and keep animal justice elusive. It behooves animal advocates to recognize the psychological barrier animalization and dehumanization concerns can pose and address it in their advocacy, helping judges and others to see the mutual benefits across species by establishing human proximity to animals in law.

How Anthropocentrism and Human Exceptionalism Uphold Racism

Most judges and those of us legally trained in common law and civilian legal orders do not even notice the human exceptionalism in legal systems since the former is a widespread cultural norm that is also part of these systems' background architecture (Liebman, 2011). But if we look closely, we see that human exceptionalism is not simply a species demarcation. It is also racially and otherwise coded due to the trope of dehumanization/animalization that scaffolds it. This manifests in its legal expression as well and is why judicial efforts to avoid dehumanizing and animalizing humans by maintaining animals' legal oppression and subordination is ultimately counterproductive.

The premium on the rational autonomous individual in liberal legal systems strongly influences what colonial legal understandings signify when they speak about "humans". The prized rational autonomous individual legal actor is presented as every human but belies gendered colonial and capitalist origins that correlated "humanity" with a particular type of human privileged by gender, race, class, ability and age (Deckha, 2021, pp. 87–90). Women, the poor, racialized colonized peoples, those with mental capacity issues, and children did not come under this definition since they were seen to be less rational, more emotional and body-bound, and thus closer to animals and thus subhuman (Grear, 2015, p. 241). The preference for a human-first approach to personhood and rights by judges today now embraces a much larger remit for who counts as "human" and condemns, as we see in both *Happy* decisions, the subhumanization or dehumanization of all previously animalized humans. Yet, this does not mean that the underlying animalizations producing historical visions of the "human" and justifying ongoing legal discrimination against animals as Other have become socially irrelevant to human social

justice struggles or to judicial concern about the marshalling of these struggles for animal rights purposes.

To believe that the animalization of animals (which is the basis of legal and other human exceptionalism; Deckha, 2021) is unrelated to the phenomenon of intra-human inequities, as the majority and dissenting judgments discussed above suggest, misunderstands the mutual constitution of species, race, ability, and other hierarchies. With respect to race specifically, it fails to grasp that animalization and how we treat animals is at the root of Western forms of racism, slavery, and colonialism (Boggs, 2013; Cohen, 2017; Deckha, 2020; Kim, 2015). It also overlooks the possibility that the Lockean vision of human equality that underpins the common law *depends* on subordinating animals, and further, that this dynamic is a vector for racism (Guha-Majumdar, 2021).

As Kymlicka (2018, pp. 772–777) has also shown, a human equality or dignity mindset that relies on human superiority to animals to justify human rights remains additionally unresponsive to recent social psychological studies examining correlations between speciesism and support for human rights. Such studies indicate that those who justify animal subordination also more robustly support intra-human hierarchies than those who are more compassionate toward animals (Dhont et al., 2019; Wills, 2020, p. 219).[1] Wills (2020) has explored this social psychological literature specifically in relation to the NhRP's personhood litigation to critically assess arguments that opposed the NhRP's quest for personhood for intelligent animals due to concerns that human-animal comparisons will dehumanize people with cognitive disabilities. His conclusion based on this literature as well as the interrelatedness of speciesism with intra-human inequities is that "expanding the circle of legal personhood to nonhuman animals would likely be beneficial rather than detrimental to the rights of cognitively impaired humans" (Wills, 2020, p. 21).

All of this literature suggests that human equality, including racial equality, and human rights are undermined, not promoted, by affirming human exceptionalism and supremacy to avoid dehumanization (Deckha, 2010; Srinivasan, 2022). But neither Western legal scholarship nor general public commentary adopt this correlation. This is likely because entrenched racial disparities due to animalized ideologies have generated corresponding racial anxieties and bodily harm that make such conversations too fraught in Western public discourse, including judicial decisions (Sze, 2020). It may be possible, however, to envision animalization through a more benign, even affirming, lens in law if we consult certain non-Western human worldviews and legal orders.

1) See also discussion and sources cited in Wills, 2020, p. 219.

Animalization as Something Positive and Affirming: Legal Kinship With Animals

Legal anthropocentrism resulting in the prevailing legal view that animals are inferior and thus not persons, or can be the subject of welfare and compassion but not fundamental rights, a view expressed by the majority in Happy's case (Nonhuman Rights Project, Inc. v. Breheny, 2022), is itself a specific cultural worldview. Indigenous legal systems that view animals much differently remind us of this cultural valence to laws. These legal systems generally emphasize kinship, connection, and interdependence with animals (Deckha, 2020; Fraundorfer, 2018). They also do not start from a presumption of a shared and abject animality that is assumed to be a permanent bar for animals to achieve legal personhood. As Fraundorfer notes, in discussing Amerindian thought:

> Instead of treating animals as legal objects, Amerindian thought sees animals as subjects without creating an artificial realm to separate humans from non-human animals. Amerindian cultures are very clear in their conviction that humans are just one species among many and that all living species have the capacity to be persons, depending on the context and the situation (Fraundorfer, 2018, p. 21).

The diversity amongst Amerindian cultures, their corresponding legal systems, and Indigenous human cultures across the globe in general, does not eclipse the fact that associations and identifications with animals can carry positive connotations, and not stigma, within many Indigenous legal orders where humans are not morally elevated above animals (Bradshaw, 2021; Watts, 2020).

This type of positive legal outlook about human association with animals and human *as* animals, also found in other non-Western jurisdictions (Bradshaw, 2021), is markedly different from Western common law or civil law systems that position humans as superior to animals and emphasize discontinuity between the two. This is not to say that extraordinary harm or death do not befall animals in non-Western legal orders as well, but that the contestation of human superiority and difference, however partial, is a promising feature of such legal orders. Learning from these models to welcome association with animals into Western legal systems can be read, then, as a decolonizing practice with wide remit across legally-enabled intra-human and species hierarchies. Such decolonizing potential would be in addition to the destabilization of the colonial classification of animals as property in the first instance (Deckha, 2020, p. 78). Legal decisions that let pass an opportunity to reform the law vis-à-vis animals on the misguided presumption that doing so imperils human equality or dignity overlook this reality. It bears noting that a distancing stance also remains unresponsive to accelerating planetary crises that disproportionately harm marginalized human groups (Srinivasan, 2022).

Conclusion

This article reviewed the range of factors preventing judicial uptake of arguments for animal personhood or even the protection of their bodily integrity. It argued that the factors explaining judicial rejection can go beyond general legal conservatism, or even the general upholding of human exceptionalism, to implicate a related psychological concern about exacerbating intra-human identities and hierarchies. This article spotlighted the New York Court of Appeals' recent landmark decision about Happy the Elephant at the Bronx Zoo as a notable example of how concerns about the dehumanization and animalization of racialized and Indigenous peoples that might flow from destabilizing the human/animal legal divide can influence the judicial treatment of animals. The article explained why such concerns, while understandable, are misguided. They miss how legal anthropocentrism upholds intra-human prejudices and inequities rather than guards against them because the Othering of animals is constitutive of these inequities and prejudices. Anti-racism is not furthered when courts deny improving animals' legal status due to concerns about dehumanization or animalization of racialized or Indigenous peoples. The article pointed to non-Western legal orders emphasizing human kinship and association with animals as a more promising model that common law and civil law courts can learn from in how to relate to animals given that these legal orders do not abjure human approximations to animals but welcome them.

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