Feminist Jurisprudence for Farmed Animals

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Feminism and animal advocacy share a long history of interconnections. The application of feminist insights and analyses to the study of human-animal legal relations, however, represents a more recent development. This article proposes to examine the ways that feminist jurisprudence, as a distinct branch of feminist theory, might contribute depth and nuance to our collective understanding of the ways that human beings relate to animals through law. As this article will demonstrate, there is already a vibrant, if nascent, scholarly community developing feminist analyses of animal law. This article aims to identify this scholarly community, take stock of its emerging lines of inquiry, and sketch a set of common themes. In so doing, this article will offer an account of how the lessons and insights of feminist legal theory might apply to the field of animal law, and will furnish examples of how this work is already being done. In particular, this article will focus on four themes within feminist jurisprudence that stand to enrich the study of animal law, namely: a) revealing the importance of legal method; b) rethinking 'sameness' and 'difference'; and c) troubling categories of analysis; and d) recognizing rights as relational.

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* Assistant Professor, University of Alberta Faculty of Law. The author wishes to thank Martha Minow, Maneesha Deckha, the participants in the Harvard Law School SJD Association 2018 Workshop, the participants in the University of Alberta Faculty of Law Faculty Workshop, and the participants in the University of Victoria's Animals and Society Research Initiative, for helpful comments on early drafts. The author is also grateful to the burgeoning community of critical and feminist animal law scholars for the creative, passionate and compelling work that has inspired and shaped this contribution. Finally, thanks are owed to Carol J Adams, for her foundational work applying feminist theory to the lives, circumstances, and cultural representations of animals, and for her unflagging support for new voices and new directions building on her insights.

I. Introduction

Feminism and animal advocacy share a long history of interconnections. The majority of animal advocates have been women,[1] and feminist scholars have long drawn thematic and material connections between the exploitation of women and the exploitation of animals.[2] Most of the scholarship in this vein has taken the form of ethical and cultural studies, drawing on feminist themes developed in those same disciplines, with several edited collections and survey works gathering and taking

1. Emily Gaarder, *Women and the Animal Rights Movement* (Piscataway: Rutgers University Press, 2011) at 1, 7–13 (observing that "[f]rom its early stirring in Victorian England to contemporary times, one of the most striking characteristics of the animal rights movement is that the majority of its activists are women", and quoting a 1985 survey finding that "at all levels of participation…women constitute the single most important driving force behind the animal rights phenomenon" at 41).
2. Carol J Adams, *The Sexual Politics of Meat: A Feminist-Vegetarian Critical Theory* (New York: Continuum, 1990) is generally regarded as a foundational text in these explorations. For another early study of these interconnections, see Mary Midgley, *Animals and Why They Matter: A Journey Around the Species Barrier* (Athens: University of Georgia Press, 1983) at 74–88. These efforts have occasionally provoked controversy within the broader field of feminist theory. See Angela Lee, "The Milkmaid's Tale: Veganism, Feminism, and Dystopian Food Futures" (2019) 40 Windsor Review of Legal Social Issues 27 at 33–37 [Lee, "The Milkmaid's Tale"].

stock of their contributions.[3] The application of feminist insights and analyses to the study of human-animal *legal* relations, however, represents a more recent development.[4] This article proposes to examine the ways that *feminist jurisprudence*, as a distinct branch of feminist theory, might contribute depth and nuance to our collective understanding of the ways that human beings relate to animals through law. As the following survey will show, there is already a vibrant, if nascent, scholarly community developing feminist analyses of animal law. This article aims to identify this scholarly community, take stock of its emerging lines of inquiry, and sketch a set of common themes. In so doing, this article will offer an account of how the lessons and insights of feminist legal theory might enrich the field of animal law, and will furnish examples of how this work is already being done.

It bears emphasis at the outset that both animal legal theory and feminist jurisprudence are unruly fields — each beset by internal dissensions, terminological disputes, and competing orthodoxies and heterodoxies. It is decidedly not my intention here to suggest that either animal legal theory or feminist legal theory can be coherently bound by authoritative definitions. In particular, I want to avoid the implication that the argument presented here relies upon any one form or substance to feminist jurisprudence, or that there is any one set of lessons that feminist jurisprudence has to offer animal law. This is decidedly *not* a project about applying some canonical definition of feminism to a new

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3. See Carol J Adams & Josephine Donovan, eds, *Animals and Women: Feminist Theoretical Explorations* (Durham: Duke University Press, 1995) [Adams & Donavan, eds, *Animals and Women*]; Greta Gaard, ed, *Ecofeminism: Women, Animals, Nature* (Philadelphia: Temple University Press, 1993); Carol J Adams & Josephine Donovan, eds, *The Feminist Care Tradition in Animal Ethics* (New York: Columbia University Press, 2007).

4. See Maneesha Deckha, "Critical Animal Studies and Animal Law" (2012) 18:2 Animal Law 207 (describing the broader field of animal law as having a "strong liberal orientation" despite sustained critiques of liberalism as perpetuating various "exclusions," including on the basis of "gender and race" at 209–210).

material context.[5] In fact, much of the analysis that follows identifies areas of dispute and ferment within feminist theory and treats those conflicts and tensions as useful starting points for thinking through some parallel conversations and disputes that animal legal scholars might take up to enrich their approaches. Finally, I also want to avoid the implication that feminist theory is the best or only critical lens that might be applied to enrich animal legal theory. As will become clear, racial and postcolonial analyses offer particularly useful and distinct insights into the operation of law in the sphere of human-animal relations. Instead, my aim is to identify an emerging scholarly community and sketch an interpretation of its common prospects that is admittedly shaped by my own intuitions about valuable future directions for this field of inquiry.

This Article will begin by situating the emergence of feminist jurisprudence as a resource for the study of animal law within the broader field of feminist human-animal studies. To this end, Part II will examine the broader interrelationships between feminism and animal advocacy in those fields outside of legal scholarship where these themes have been more fully developed. Part III will argue that feminist *legal* theory offers a distinct set of contributions to the study of animal exploitation. This Part will set out some of the central contributions that feminist jurisprudence has made to the analysis of human-animal relations. The themes examined in this Part include a) revealing the importance of legal method; b) rethinking 'sameness' and 'difference'; c) troubling categories of analysis; and d) recognizing rights as relational. In the Conclusion, I will offer some brief thoughts on the seeds of divergence evident in the approaches canvassed, and reflections on how and why these differences in approach might be sharpened in ways that promise to enrich and deepen feminist analysis of animal law.

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5. To the extent that a definition of feminism is seen as necessary to this project, I would adopt Bell Hooks' big-tent version: "[s]imply put, feminism is a movement to end sexism, sexist exploitation, and oppression", Bell Hooks, *Feminism is for Everybody: Passionate Politics*, 2d (New York: Routledge, 2015) at 1.

II. Feminism and Animal Advocacy

Carol J Adams' pathbreaking work *The Sexual Politics of Meat*[6] shone a spotlight on the relationship between gender, violence, and animal consumption, and has since been taken up as a canonical text in the growing body of scholarship attending to these connections. Adams argues that cultural significations surrounding meat-eating "include association with the male role" operating "within a fixed gender system", and depend upon "patriarchal attitudes including the idea that the end justifies the means, that the objectification of other beings is a necessary part of life, and that violence can and should be masked".[7] Adams posits a common "cycle of objectification, fragmentation, and consumption, which links butchering and sexual violence in our culture".[8] On the other side of the coin, Adams argues that "our society equates vegetarianism with emasculation or femininity", and so proposes that a conscious rejection of meat-eating can constitute "a sign of autonomous female being" and "a rejection of male control and violence".[9] Adams is not the first to advance a feminist critique of animal consumption, and she observes that the "sexual politics of meat" is invoked in a host of existing texts, including by such celebrated feminists as Aphra Behn, Mary Shelly, Charlotte Perkins Gilman, Alice Walker, Marge Piercy, and Audre Lorde.[10] Adams' ambition, in part, is to expose as "comprehensive and cumulative" the "unrecognized" contributions of feminist theory to animal advocacy.[11]

Following Adams, a significant body of ethical, literary, and cultural criticism has explored the relationship between women, feminism, and

6. Adams, *supra* note 2.
7. *Ibid* at 27.
8. *Ibid* at 73.
9. *Ibid* at 27, 29.
10. *Ibid* at 29.
11. *Ibid* at 28, 29.

human-animal relations.[12] In some cases, this literature examines the way that common language usage reveals underlying gender dynamics infusing cultural conceptions of animality, with animality in turn infusing the construction of gender. Most obviously, "'animal' pejoratives" are frequently applied to women, who are alternately cast as "catty, shrew, dumb bunny, cow, bitch, old crow, queen bee, sow".[13] The most common insults invoke animals that are domesticated or farmed (bitches, dogs, cows, pigs, chicks and hens) — animals socially positioned as providers of comfort and service or as "mere bodies" to be consumed or exploited.[14] As Karen Davis suggests, the "analogy between women and nonhuman animals" is best understood with reference to the "more specifically crucial comparison between women and farm animals", given the casting of the latter as "creatures whose lives appear too slavishly, too

12. See Helena Silverstein, *Unleashing Rights: Law, Meaning and the Animal Rights Movement* (Ann Arbor: University of Michigan Press, 1996) (describing the "contemporary animal rights movement" as deriving mainly from natural rights theory and utilitarianism, but identifying "feminism and ecofeminism" as gaining "increasing prominence in the dialogue regarding animals" at 27).
13. Joan Dunayer, "Sexist Words, Speciesist Roots" in Adams & Donovan, eds, *Animals and Women*, *supra* note 3 at 11, 11–12. See also Ruth Todasco, ed, *An Intelligent Woman's Guide to Dirty Words: English Words and Phrases Reflecting Sexist Attitudes toward Women in Patriarchal Society, Arranged According to Usage and Idea* (Chicago: Loop Center YWCA, 1973) (identifying "Woman as Animal" as a common type of "patriarchal epithet" at 27). Of course, some animal descriptors are applied to men in gendered fashion, but these "usually…imply something more highly valued, even if ambivalently: Calling men studs or stags are examples": Lynda Birke, "Intimate Familiarities? Feminism and Human-Animal Studies" (2002) 10:4 Society and Animals 429 at 433, n 3.
14. Dunayer, *supra* note 13 at 12. Robert Baker observes that the few women-as-animals idioms that do not cast "women either as domesticated servants or as pets, or as both", tend to instead reference animals commonly hunted for sport, such as foxes or vixens: Robert B Baker, "'Pricks' and 'Chicks': A Plea for 'Persons'" in Robert B Baker, Kathleen J Wininger & Frederick Elliston, eds, *Philosophy and Sex*, 3d (Buffalo: Prometheus Books, 1998) 281 (elaborating that "[i]f women are conceived of as foxes, then they are conceived of as prey that it is fun to hunt" at 287).

boringly, too stupidly female, too 'cowlike'" to warrant justice or ethical concern.[15] The equation of women with animals is most commonly read as insulting to women, but the underlying dynamic works to reinscribe species hierarchies as well: "[w]hen your name is used to degrade others by attribution, it locates your relative standing as well, as 'girl' is an insult for boys".[16] The valorization of the masculine as *non*-animal operates according to related linguistic tropes, for example in the use of the "pseudogenerics *man* and *mankind*" to describe human beings.[17]

Material connections have also been drawn between the exploitation of women and animals, particularly in the farming context where control of female bodies for reproduction is so central to the lives of animals.[18] Kathryn Gillespie has, for example, explored the ways that dairy cows are subject to "sexualized violence" and "gendered commodification" in an industry that relies on tropes of (human) female sexuality to explain and normalize dairy practices requiring continual impregnation of cows

15. Karen Davis, "Thinking Like a Chicken: Farm Animals and the Feminine Connection" in Adams & Donovan, eds, *Animals and Women*, *supra* note 3 at 192, 196 [Davis, "Thinking Like a Chicken"].
16. Catharine A MacKinnon, "Of Mice and Men: A Feminist Fragment on Animal Rights" in Cass R Sunstein & Martha C Nussbaum, eds, *Animal Rights: Current Debates and New Directions* (New York: Oxford University Press, 2005) 263 at 266 [MacKinnon, "Of Mice and Men"]. See also Dunayer, *supra* note 13 at 12.
17. Dunayer, *supra* note 13 at 11, 19.
18. See Davis, "Thinking Like a Chicken", *supra* note 15 (remarking on "the exploitation of the reproductive system of the female farm animal, epitomized by the dairy cow and the laying hen" at 193); Syl Ko, "Black Lives, Black Life" in Aph Ko & Syl Ko, eds, *Aphro-ism: Essays on Pop Culture, Feminism, and Black Veganism from Two Sisters* (New York: Lantern Books, 2017) 1 (arguing that the casting of animals as "merely bodied" justifies "the gross manipulation of female nonhuman reproductive capacities for dairy and egg production" at 1–2) [Ko & Ko, eds, *Aphro-ism*].

through artificial insemination.[19] These include the use of "sexual humor" in intra-industry publications, with advertisements asking of cows, "if she can't stay pregnant, what else will she do?" and describing cows as having "youthful mammary systems that catch the eye" or being "the kind you can have fun with".[20] This sort of "ribald humor" surrounding the sexual and reproductive use of animals has also been observed and critiqued in other animal use contexts.[21] Donna Haraway, for example, recounts the "misogyny…deeply implicated in the dream structure of laboratory culture", quoting one scientist's sniggering description of insemination of primates for experimental purposes: "we resorted to an apparatus *affectionately* termed the rape rack, which we leave to the reader's imagination".[22]

A distinct set of material connections are commonly raised in the context of family and intimate partner violence and violence against companion animals. Such accounts often rely on a growing body of evidence suggesting that these forms of violence often occur at the hands of the same perpetrators, within the same households, and with threats and violence toward companion animals used by abusers to control the human family members who love those animals.[23] Emily Gaarder's study of women in the animal rights movement, moreover, finds that many

19. Kathryn Gillespie, "Sexualized Violence and the Gendered Commodification of the Animal Body in Pacific Northwest US Dairy Production" (2014) 21:10 Gender, Place and Culture 1321 at 1323 [Gillespie, "Sexualized Violence"]. Gillespie observes that both male and female farmed animals experience unique forms of exploitation, determined by human beings on the basis of the animal's sex, and often supported by images and rhetoric drawn from intra-human gender norms. See also Kathryn Gillespie, *The Cow with Ear Tag #1389* (Chicago: University of Chicago Press, 2018).
20. Gillespie, "Sexualized Violence", *supra* note 19 at 1329, 1331.
21. Donna Haraway, *Primate Visions: Gender, Race, and Nature in the World of Modern Science* (New York: Routledge, 1989) at 238.
22. *Ibid*, quoting Harry Harlow, Margaret K Harlow & Stephen J Suomi, "From Thought to Therapy: Lessons from a Primate Laboratory" (1971) 59:5 American Scientist 538 at 545 [emphasis added].
23. See *e.g.* Carol J Adams, "Woman-Battering and Harm to Animals" in Adams & Donovan, *Animals and Women*, *supra* note 3 at 55.

women animal activists draw connections between animal abuse and their own personal experiences of physical or sexual violence.[24]

These linguistic and material connections between the status of women and animals are often cast as expressive of a deeper shared ideological structure supporting women's oppression and animals' oppression.[25] Like women, animals have been cast in mainstream political theory as exploitable because they are irrational, governed by instinct, and more 'nature' than 'man'.[26] Criticism of this recourse to naturalized

24. Gaarder, *supra* note 1 at 148–49.
25. See *e.g.* Greta Gaard, *Ecological Politics: Ecofeminists and the Greens* (Philadelphia: Temple University Press, 1998) (describing the project of exploring "the interconnections among numerous forms of oppression in order to expose the structure and functioning of hierarchy itself" at 51).
26. See generally Carolyn Merchant, *The Death of Nature: Women, Ecology, and the Scientific Revolution* (New York: Harper & Row, 1980); Syl Ko, "Women, Beauty and Nature" in Ko & Ko, eds, *Aphro-ism*, *supra* note 18 at 33; Anne Peters, "Liberté, Égalité, Animalité: Human–Animal Comparisons in Law" (2016) 5:1 Transnational Environmental Law 1 ("[l]egal rules…were justified historically with reference to the supposed 'animalistic' nature of women, who were said to be at the mercy of their menstrual cycle and pregnancy, and thus moody, driven by instinct, sexually suggestive, insufficiently rational, and so on" at 8). Efforts to align the exploitation of women with that of animals and nature have been controversial within feminist theory. See Lee, "The Milkmaid's Tale", *supra* note 2; Barbara Noske, *Beyond Boundaries: Humans and Animals* (Montreal: Black Rose Books, 1997) at 110.

hierarchy ("man over beast, man over woman")[27] is a central theme in feminist human-animal studies, often bolstered by an underlying critique of philosophical and scientific 'objectivity'.[28] Accounts of intellect and rationality as objective and defining features of humanity have often been wielded so as to leave women and people of colour on the 'animal' side of the divide.[29] As Syl Ko has emphasized, this critique has implications for advocacy as well. The common rhetorical claim that

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27. Jessica Eisen, "Milk and Meaning: Puzzles in Posthumanist Method" in Mathilde Cohen & Yoriko Otomo, eds, *Making Milk: The Past, Present, and Future of our Primary Food* (New York: Bloomsbury Academic, 2017) 237 at 240 [Eisen, "Milk and Meaning"]. The particular Western identification of women with nature, and the devaluation of both, is not universal. As Huey-li Li notes, however, this "Western cultural perception" is arguably "more implicated in today's worldwide environmental degradation" than the cultural perceptions associated with other traditions: Huey-li Li, "A Cross-Cultural Critique of Ecofeminism" in Gaard, *supra* note 3 at 272–73). See also Maneesha Deckha, "Is Multiculturalism Good for Animals" in Luis Cordeiro Rodrigues & Les Mitchell, eds, *Multiculturalism, Race and Animals: Contemporary Moral and Political Debates* (London: Palgrave, 2017) 61 (identifying "European thought" as the source of certain "toxic epistemologies" including "[d]isavowal and abjection of the body and those beings associated with it — everyone other than the white propertied male," and therefore also as a source of resulting "social stratifications on multiple registers of difference" at 67–68); Angela P Harris, "Compassion and Critique" (2012) 1:3 Columbia Journal of Race and Law 326 at 339–40 [Harris, "Compassion and Critique"].
28. On the feminist critique of scientific objectivity, see Lynda Birke, "Exploring the Boundaries: Feminism, Animals and Science" in Adams & Donovan, eds, *Animals and Women*, *supra* note 3 at 32; Davis, "Thinking Like a Chicken", *supra* note 15 at 208. *Cf.* Haraway, *supra* note 21. On the feminist critique of philosophical objectivity, see Cathryn Bailey, "On the Backs of Animals: The Valorization of Reason in Contemporary Animal Ethics" (2005) 10:1 Ethics & Environment 1 at 11.
29. Maneesha Deckha, "The Subhuman as a Cultural Agent of Violence" (2010) 8:3 Journal for Critical Animal Studies 28 [Deckha, "Subhuman"]; Angela P Harris, "Should People of Color Support Animal Rights?" (2009) 5 Journal of Animal Law 15 at 21–24 [Harris, "Should People of Color Support Animal Rights"].

animals and oppressed human groups are relevantly similar to privileged groups is "motivated by the implicit assumption that these presumed differences are fueling the disparity in treatment" — an assumption that places too much credence in the justificatory rhetoric of hierarchy and exploitation.[30] Instead of accepting the benchmarks of 'rationality' and 'intelligence' at face value, and trying to prove that the oppressed meet the standard, Ko has urged strategies that "reveal, first, the source of the fiction" that objective difference explains social hierarchy and justifies violence, "and then, secondly, uproot the source by changing the terms of the conversation".[31]

Gender is just one of the many dimensions of human social hierarchy that find expression in our everyday conceptions of animality. Ko's work centers not only the role of gender, but also the role of race in co-constituting the debased status of animals and devalued humans. On Ko's account, the "notion of 'the animal'—construed under [a] white supremacist framework as 'subhuman', 'nonhuman', or 'inhuman'—is the *conceptual vehicle for justified violence*", or, in Maneesha Deckha's terms, a "violence producing category", on which racist logics depend.[32] White and colonial authorities have long equated racialized and colonized people with animals as a justification and symbolic referent for violence

30. Syl Ko, "Emphasizing Similarities Does Nothing for the Oppressed" in Ko & Ko, eds, *Aphro-ism*, *supra* note 18 at 37, 40–41 [Ko, "Emphasizing Similarities"] [emphasis omitted].

31. *Ibid* at 42.

32. Syl Ko, "Addressing Racism Requires Addressing the Situation of Animals" in Ko & Ko, eds, *Aphro-ism*, *supra* note 18 at 44, 46, citing Deckha, "Subhuman", *supra* note 29. See also Aph Ko, "Bringing our Digital Mops Home: A Call to Black Folks to Stop Cleaning up White Folks' Intellectual Messes Online" in Ko & Ko, eds, *Aphro-ism*, *supra* note 18 at 7 (describing "animality as a racialized weapon of white supremacy" at 11); see also Aph Ko, "#AllVegansRock: The All Lives Matter Hashtag of Veganism" in Ko & Ko, *Aphro-ism*, *supra* note 18 at 13 ("[t]he conceptual chains that oppress animals have been forged by race and gender constructs" at 19).

against them.[33] Ko's vision of "chang[ing] the terms of the conversation" therefore includes both conceptualizing white supremacy as "*the* fundamental threat to justice everywhere" and "de-centering whiteness" by "taking seriously non-white art, literature, music, systems of belief, and other rituals as a way of reimagining the world outside the constraints developed by white supremacy".[34] Scholarship in a postcolonial feminist vein sometimes emphasizes a related rejection of prevailing animal use

33. A Breeze Harper, "Introduction: The Birth of the Sistah Vegan Project" in A Breeze Harper, ed, *Sistah Vegan: Black Female Vegans Speak on Food, Identity, Health, and Society* (New York: Lantern Books, 2010) xiii ("Black Americans were *derogatorily* categorized *as* animals within a racist colonial context" at xv); Syl Ko, "By 'Human,' Everybody Just Means 'White'" in Ko & Ko, eds, *Aphro-ism*, *supra* note 18 at 20, 20–21 [Ko, "By 'Human,' Everybody Just Means 'White'"]; Michelle R Loyd-Paige, "Thinking and Eating at the Same Time: Reflections of a Sistah Vegan" in A Breeze Harper, ed, *Sistah Vegan: Black Female Vegans Speak on Food, Identity, Health, and Society* (New York: Lantern Books, 2010) 1 ("[i]n order to justify the brutality of slavery, the oppressors deemed Africans as less-than-human and undeserving of decent housing, education, food, health care, justice or respect" at 5); Andrea Smith, *Conquest: Sexual Violence and American Indian Genocide* (Cambridge, MA: South End Press, 2005) (arguing that "colonizers see animals as rapable and expendable" and that "[b]y extension, because colonizers viewed Indian identity as inextricably linked to animal and plant life, Native people have been seen as rapable, and deserving of destruction and mutilation" at 117).

34. Ko, "Emphasizing Similarities", *supra* note 30 at 42–43. See also Harris, "Should People of Colour Support Animal Rights", *supra* note 29 (noting that, "[t]here are certainly cultural resources in indigenous American, indigenous African, and African diasporic cultures for respecting animals, as there are such resources available for respecting nature. These cultural resources are linked with material and ideological economic practices that place stewardship and respect rather than exploitation and profit at the center. In this way supporting animal rights could be seen as a practice that is specifically identified with ethnic traditions, but from within those traditions rather than from without" at 28).

practices as a critical component of decolonial practice.[35]

III. Feminist Legal Theory for Animals

Law, while intersecting with and co-constituted by other aspects of social life, operates according to its own distinct languages and structures. Legal theorists are well-positioned to enrich, complicate or challenge the relationship between feminism and human-animal relations in this distinct sphere of material and political engagement. As the following survey will show, this work is already underway. In particular, feminist theorists of animal law have examined the specifically legal dimensions of a) the relationship between fact and method; b) the politics of sameness and difference; c) the social construction of categories; and d) the relational nature of law and society.

A. Fact and Method

Facts are critically important to legal analysis. Law students are taught to distill a concise statement of the facts — to read or listen to a complex story and boil it down to its legally-relevant essence. In short, legal method defines which facts are relevant to a dispute and how we know

35. Harper, *supra* note 33 (observing the practice of some "Black-identified females/females of the African Diaspora" of "actively decolonizing their bodies and minds via whole-foods veganism and/or raw foodism" at xix); Ko, "By 'Human,' Everybody Just Means 'White'", *supra* note 33 ("[d]ismantling racism might require dismantling our patterns of consumption, including our food practices" at 27). *Cf.* Margaret Robinson, "Veganism and Mi'kmaq Legends" (2013) 33:1 Canadian Journal of Native Studies 189 (acknowledging the traditionally meat-heavy diets of Mi'kmaq people, but finding that "[s]ince the consumption of animals for food, clothing and shelter is no longer necessary . . . the Mi'kmaq tradition, as manifested in our legends, suggests that hunting and killing our animal brothers is no longer authorized", and further arguing that "those who value only the preservation of an unchanging tradition join with the colonial powers in seeing no place for a contemporary Indigeneity" at 193).

"what counts as evidence and…what is taken as verification".[36] One of the most central insights of feminist legal theory has been that "Just the Facts, Ma'am" is never as simple a directive as it seems. What counts as a legal fact is instead a political question.[37] Building on a broader feminist commitment to 'standpoint' as a critical meta-project across a number of disciplines,[38] feminist jurisprudence has taken up the task of illuminating perspectives and experiences long presumed to be *legally irrelevant* and arguing that these exclusions represent a defect in prevailing legal methods.

One example has been the promotion of "consciousness raising" among women as a relevant source of legal knowledge: a methodological approach through which women's collective accounts of their own experiences are deployed to analyze and transform law and policy.[39] The #MeToo movement has been described as a digital-age recurrence or continuation of this foundational feminist praxis.[40] Kimberlé Crenshaw's pathbreaking article on "intersectional" analysis engaged a distinct

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36. Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989) at 106 [MacKinnon, "Toward a Feminist Theory of the State"]. See also Kathryn Abrams, "Feminist Lawyering and Legal Method" (1991) 16:2 Law and Social Inquiry 373 at 373; Sandra Harding, "Introduction: Is there a Feminist Method?" in Sandra Harding, ed, *Feminism and Methodology* (Bloomington: Indiana University Press, 1988) 1 at 2.
37. See *e.g.* Mary L Shanley & Victoria Schuck, "In Search of Political Woman" (1975) 55:3 Social Science Quarterly 632 (remarking that, "[m]ethod is not neutral; it establishes the criteria by which one judges the validity of conclusions, and consequently carries with it not simply technical skills but deeper philosophical commitments and implications" at 638).
38. See Sandra Harding, ed, *The Feminist Standpoint Theory Reader* (New York: Routledge, 2004).
39. Katharine T Bartlett, "Feminist Legal Methods" (1990) 103:4 Harvard Law Review 829 at 863–67; MacKinnon, "Toward a Feminist Theory of the State", *supra* note 36 at 83–105.
40. Lauren Rosewarne, "#MeToo and Modern Consciousness-Raising" (19 October 2017), online: *The Conversation* <theconversation.com/metoo-and-modern-consciousness-raising-85980>.

methodological project, contrasting "Black women's experience" with prevailing anti-discrimination doctrines that work to "distort these experiences".[41] Another example is Mari Matsuda's proposal that legal scholars engage in the practice of "looking to the bottom" in developing legal theory and critique, drawing on the self-expression of those "who are uniquely able to relate theory to the concrete experience of oppression".[42] This feminist project of revising and politicizing legal method is necessarily fraught and always incomplete.[43] Feminist legal method is thus not conceptualized as a one-time corrective through which a new form of objectivity is achieved, but rather as a process through which relevance and background assumptions are continually reconstructed through contest and deliberation.

Animals face serious problems in the context of legal method. Their experiences, their consent, their desires, their pain, are almost never relevant facts, as far as the law is concerned. Even those laws which seem most clearly on their face to protect animals from harm — provincial and criminal anti-cruelty provisions, for example — generally contain blanket exemptions for common agricultural practices and bear traces of their historical origin in protecting human community morals, rather than animal well-being.[44] On the farm, violent or sexual use of animals

41. Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" (1989) 1989:1 University of Chicago Legal Forum 139 at 139.
42. Mari Matsuda, "Looking to the Bottom: Critical Legal Studies and Reparations" (1987) 22:2 Harvard Civil Rights – Civil Liberties Law Review 323 at 325 (explaining that, "[l]ooking to the bottom—adopting the perspective of those who have seen and felt the falsity of the liberal promise—can assist critical scholars in the task of fathoming the phenomenology of law and defining the elements of justice" at 324).
43. See Martha Minow, "Feminist Reason: Getting It and Losing It" (1988) 38:1 Journal of Legal Education 47.
44. Lesli Bisgould, *Animals and the Law* (Toronto: Irwin Law, 2011) at 58–67, 186–92. On "human-use typologies" as the dominant organizing principle in animal law, see Jessica Eisen, "Liberating Animal Law: Breaking Free from Human-Use Typologies" (2010) 17:59 Animal Law Review 59 [Eisen, "Liberating Animal Law"].

is perfectly legal as long as it is commonplace (which it is).[45] In such cases, the relevant legal facts do not relate to any animal's experience of being farmed, but rather to how usual a practice is, whether it harms humans, and whether it represents some kind of moralistic deviation that threatens human community life.

Feminist legal scholars have begun the work of exposing the erasure of animal experience from legal method and pressing for legal analyses that render those experiences relevant and cognizable. In some cases, the methodological erasure of animal experience is expressly linked to feminist methodological challenges, as in Yoriko Otomo and Cressida Limon's reflections on the legal statuses of dogs, pigs, and children in colonial Britain.[46] Otomo and Limon observe that dogs, pigs, and children were each "liminal" in the sense that, although highly valued and socially integrated in certain respects, their own experiences were not legally relevant: they were each "absent *as subjects* from the vast tracts of legal scholarship that purport to deal with topics such as domesticity, sexuality, criminality and responsibility".[47] Instead, Otomo and Limon posit, they have "lived through law in similar ways to women", as "the property of political actors, as half-subjects or as virtues" and caricatured according to dominant perceptions of their essential qualities: "like women who are too often discussed in terms of femininity, where dogs, pigs and children do appear as subjects of discussion, they are over-determined by ideas of

45. Bisgould, *supra* note 44 at 167–73; Jessica Eisen, "Milked: Nature, Necessity, and American Law" Berkeley Journal of Gender, Law and Justice (2019) 34:1 Berkeley Journal of Gender, Law and Justice 71 [Eisen, "Milked"]; Gillespie, "Sexualized Violence", *supra* note 19.
46. Yoriko Otomo & Cressida Limon, "Dogs, Pigs and Children: Changing Laws in Colonial Britain" (2014) 40:2 Australian Feminist Law Journal 163.
47. *Ibid* at 163–64 [emphasis added].

beastliness, abjection, innocence and breeding".[48]

Feminist analyses of animal law have tended to promote strands of jurisprudence, advocacy, and legal theory that center animal experience, often in contrast to strategies that seek to prove that animals deserve rights on account of their human-like capacities (a point that will be explored in Part III.B). Maneesha Deckha, for example, has observed the "disavowal of legal subjectivity for animals" as "a critical source of animals' overall vulnerability", and commended Alberta Chief Justice Catherine Fraser's disruption of this pattern of methodological erasure in her dissenting judgment in *Reece v City of Edmonton*.[49] By attending to the particular experience of Lucy, the elephant whose isolated captivity was at the center of this legal challenge, Fraser CJ is cast by Deckha as offering a rare "non-instrumentalist rendering of animals that is unprecedented in Canadian law".[50] Marie Fox has similarly approved of the New Zealand hominid rights amendment as "contesting the complete erasure of animal

48. *Ibid*. See also Yoriko Otomo, "Law and the Question of the (Nonhuman) Animal" (2011) 19 Society & Animals 383 (remarking that animal welfare legislation imposes a "double violence" on animals: "first, in their de-subjectivization through propertization, and second, in their designation as 'things' in the eyes of the law" at 387) [Otomo, "Law and the Question of the (Nonhuman) Animal"].

49. 2011 ABCA 238; Maneesha Deckha, "Vulnerability, Equality, and Animals" (2015) 27:1 Canadian Journal of Women and the Law 47 at 64 [Deckha, "Vulnerability, Equality, and Animals"]. See also Maneesha Deckha, "Initiating a Non-Anthropocentric Jurisprudence: The Rule of Law and Animal Vulnerability Under a Property Paradigm" (2013) 50:4 Alberta Law Review 783 [Deckha, "Initiating a Non-Anthropocentric Jurisprudence"].

50. Deckha, "Vulnerability, Equality, and Animals", *supra* note 49 at 65. See also Deckha, "Initiating a Non-Anthropocentric Jurisprudence", *supra* note 49. Deckha has similarly approved of the centering of animal subjectivity in the litigation strategy of People for the Ethical Treatment of Animals in the unsuccessful US *Tillikum* suit. See Maneesha Deckha, "Humanizing the Nonhuman: A Legitimate Way for Animals to Escape Juridical Property Status?" in Atsuko Matsuoka & John Sorenson, eds, *Critical Animal Studies: Towards Trans-species Social Justice* (London: Rowman & Littlefield, 2018) 209 [Deckha, "Humanizing the Nonhuman"].

subjectivity, enshrined elsewhere in Western legal systems", including through incorporation of a "best interests" standard analogous to that applied to human children, whose experiences are legally valued despite the ill-fit between their communicative modes and formal legal settings.[51]

The challenges associated with representing animal subjectivity in legal settings are not taken lightly. Feminist legal theory has long urged caution in the risky enterprise of "speaking for the other".[52] My own work has observed the "real, embodied, experiential factors that make it particularly challenging for participants in human language communities—including those with posthumanist political orientations—to make knowledge claims about animal experiences",[53] and has explored the particular institutional challenges arising from animals' lack of access to "traditional constitutionalist checks of client instruction and democratic consent".[54] Deckha's analysis of Canadian regulation of animal experimentation takes up an instance of this challenge, advocating legal analyses that "foreground the laboratory rat's first person perspective", while also acknowledging that we have not resolved the problem of "how humans can know what animals are

51. Marie Fox, "Rethinking Kinship: Law's Construction of the Animal Body" (2004) 57:1 Current Legal Problems 469 at 493 [Fox, "Rethinking Kinship"].
52. MacKinnon, "Of Mice and Men", *supra* note 16 at 270. See also Jessica Eisen, "Animals in the Constitutional State" (2018) 15:4 International Journal of Constitutional Law 909 at n 137 and accompanying text (referencing feminist and other commentary highlighting "the deep challenges that inhere in efforts to imagine the lives and priorities of others across substantial power differentials") [Eisen, "Animals in the Constitutional State"].
53. Eisen, "Milk and Meaning", *supra* note 27 at 243; see also Jessica Eisen, "Beyond Rights and Welfare: Democracy, Dialogue, and the *Animal Welfare Act*" (2018) 51:3 University of Michigan Journal of Law Reform 469 at 504–507 [Eisen, "Beyond Rights and Welfare"].
54. Eisen, "Animals in the Constitutional State", *supra* note 52 at 953.

thinking and feeling".[55] As Catharine A MacKinnon notes, "[h]ow to avoid reducing animal rights to the rights of some people to speak for animals against the rights of other people to speak for the same animals" remains a serious challenge.[56]

These challenges, though acknowledged, are not taken by feminist theorists of animal law as a reason to abrogate the responsibility to find ways of repairing the methodological erasure of animals. Art, literature, science, and direct communications from animals are all taken as resources in the exercises of "imagination" that are necessary, despite their risks, to "[a]ll our ethical life", including human-animal legal relations.[57] Particularized storytelling and emotional appeals grounded in animal experience are taken up as valid and necessary tools in projects of legal transformation. Angela Lee, for example, argues that "[n]arrative methods, especially those that focus on the particular lives of individual nonhuman…can transcend the constraints of dominant ideology to

55. Maneesha Deckha, "Non-Human Animals and Human Health: A Relational Approach to the Use of Animals in Medical Research" in Jennifer J Llewellyn & Jocelyn Grant Downie, eds, *Being Relational: Reflections on Relational Theory and Health Law* (Vancouver: UBC Press, 2012) 287 at 306 [Deckha, "Non-Human Animals and Human Health"]. See also Fox, "Rethinking Kinship", *supra* note 51 (quoting Donna Haraway's desire "to use the beady little eyes of a lab mouse to stare back at my fellow mammals, my hominid kin, as they incubate themselves and their human and nonhuman offspring in a technoscientific culture medium" and contending that this "shift in perspective" reveals important features of the governing legal regime (at 484)); Marie Fox, "Animal Rights and Human Wrongs: Medical Ethics and the Killing of Non-Human Animals" in Robert Lee & Derek Morgan, eds, *Death Rites: Law and Ethics at the End of Life* (London: Routledge, 1994) 133. See also Deckha, "Humanizing the Nonhuman", *supra* note 50 (commenting that, "of course, the legal system is a human institution that depends upon human interpretation and reasoning to operate. The injustice of thwarting animal capacities that human jurists can relate to will resonate more with them. This is an anthropocentric element of legal architecture that is very difficult to eliminate" at 221–22).
56. MacKinnon, "Of Mice and Men", *supra* note 16 at 270.
57. Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge: Harvard University Press, 2007) at 354.

illuminate a more emotional — and perhaps more convincing — basis for addressing non-human animal suffering" through law.[58] The ongoing tasks of identifying and elaborating excluded animal standpoints and finding ways to incorporate animal experience into legal method, are taken as necessary, though necessarily fraught, enterprises.

B. Rethinking Sameness and Difference

The centrality of 'standpoint' in feminist theory supports a broader feminist critique of legal forms that claim to assign rights and entitlement through objective analyses of whether an *out group* is relevantly *the same* as those in the *in group*. The basic structure of the classical analysis at which feminists take aim is this: that rights are defined by nature, not politics; that they can be discerned from the nature of man; that the nature of man is that he is rational, intelligent, and independent; and that those who are not rational, intelligent, and independent are therefore not rights-holders. Feminist and critical theorists have attacked many aspects of this formulation, but here I will focus on feminist criticism of one outgrowth of this classical construction, namely the strategy of seeking legal and political recognition for *out groups* on the basis that they meet the criteria by which the idealized 'man' is defined.

Feminist legal argument has sometimes advocated for women's inclusion in public life on the basis that women are relevantly 'like men', although such arguments are now widely believed to have serious limitations. The proposition that women should be recognized in social and political life because they are the same as men seems most starkly to run out when dealing with questions relating to pregnancy. Calls for access to maternity leave or abortion seem only to make sense as justice problems through a lens that acknowledges women's lives and bodies as important *even if* they are different from men's lives and bodies. In other words, feminist legal argument has largely come around to the proposition that women's lives ought to matter, not because women are

58. Angela Lee, "Telling Tails: The Promises and Pitfalls of Language and Narratives in Animal Advocacy Efforts" (2017) 23:2 Animal Law Review 241 at 264 [Lee, "Telling Tails"].

like men, but on "their own terms".[59] (I will, for the moment, bracket the thorny questions this proposition implicates respecting the category of 'women' and who is empowered to define 'their own terms', but will return to these problems in the next Part).

Mainstream animal legal advocacy often centers on efforts to 'prove' as a matter of 'fact' that animals are 'like' people. This legal argument parallels a long-standing two-stage analytic focus on animal status and entitlement identified by Tzachi Zamir within the field of animal ethics.[60] In Zamir's view, this two-stage analytic structure arises from a perceived need to respond to the prevailing view that animal experience lacks moral significance because animals have no moral status.[61] In the legal iteration of this debate, animal advocates may feel compelled to respond to prevailing assumptions that animals do not qualify as persons because they lack relevant capacities, and are thus properly consigned to the rightlessness that flows from their legal status as 'property'.[62] The most direct counterargument has been that opponents of animal rights make a category error grounded in factual mistake. For example, in Canada, Animal Justice has advanced an "Animal Charter of Rights and Freedoms", expressly "premised on the recognition that animals experience suffering and pleasure in a way that is not biologically distinguishable from that of humans".[63] This emphasis on biological similarity and the arbitrariness of species distinctions echoes a strand of American legal advocacy that has sought recognition of animals as 'persons' under the law, including through recourse to extensive scientific briefs on the intellectual capacities

59. MacKinnon, "Of Mice and Men", *supra* note 16 at 265.
60. Tzachi Zamir, *Ethics and the Beast: A Speciesist Argument for Animal Liberation* (Princeton: Princeton University Press, 2007) at 16–17.
61. *Ibid* at 17.
62. On animals' status as property, see Gary Francione, *Animals, Property, and the Law* (Philadelphia: Temple University Press, 1995).
63. Animal Justice, "Animal Charter of Rights and Freedoms" (2015), online: *Animal Justice* <www.animaljustice.ca/charter> (elaborating, in support of their proposed Charter, that "discrimination on the basis of arbitrary characteristics, such as species, is a violation of equity, natural justice and the rule of law…").

of chimpanzees, among other species.[64]

The force of these assertions of animal-human 'sameness' is evident. The rhetorical need Zamir perceives within analytic philosophy has a clear analogue in law and politics: as long as animal advocates are confronted with the widespread view that, as a matter of 'fact', animals are mindless, empty vessels lacking meaningful experiences of their own lives, there will be a need for some strands of advocacy that meet this argument on its own terms.[65] But feminist theory teaches us that there are real dangers in letting conversations about justice slip into apparently factual disputes about how 'similar' or 'different' members of exploited or disadvantaged groups are with reference to benchmarks designed to reflect what powerful groups most value in themselves. This critique has generally taken two interrelated approaches, each of which has been adopted by feminist theorists of animal law. The first is to point out that sameness arguments structurally replicate oppressive logics of domination that are inseparable from their historical use to exclude women and people of colour from moral and legal concern on the basis of their perceived inferiority along the same set of metrics.[66] The second is that a focus on sameness and difference obscures the reality that power relations, not factual similarities and differences, define social hierarchies — that women and animals *are* different (from men/humans, who also differ amongst themselves, and from each other), but that facts about difference do not explain why

64. See *e.g.* Steven M Wise, *Rattling the Cage: Toward Legal Rights for Animals* (Cambridge, MA: Perseus Books, 2000); Steven M Wise, *Drawing the Line: Science and the Case for Animal Rights* (Cambridge, MA: Perseus Books, 2002). See also Paola Cavalieri & Peter Singer, eds, *The Great Ape Project: Equality Beyond Humanity* (New York: St Martin's Press, 1993).

65. But see Taimie L Bryant, "Similarity or Difference as a Basis for Justice: Must Animals Be Like Humans to be Legally Protected from Humans" (2007) 70:1 Law and Contemporary Problems 207 at 253 [Bryant, "Similarity or Difference"].

66. *Cf.* MacKinnon, "Toward a Feminist Theory of the State", *supra* note 36 at 215–34.

powerful groups exploit and harm less powerful groups.[67]

Yoriko Otomo relies on Jaques Derrida's concept of "carnophallogocentrism" in her critique of efforts to seek personhood status for some animals, like chimpanzees, on the basis of their sameness to human persons. Although strategically useful in the short term, Otomo protests that this form of argument relies upon animals meeting the standards developed in contractarian liberal theory, in which the subject of rights is defined as a "free, whole, and delineated individual" whose "reflection is guaranteed by the all-seeing gaze of the law, with which the subject has a contractual relation".[68] In Otomo's view, this legal construction is irredeemably linked to:

> …language and the exchange of words, from which nonspeaking beings are excluded. This onto-theological structure is further maintained through a sacrificial economy of exclusionary relations: what Jacques Derrida describes as "carnophallogocentrism" (Derrida, 1990, p. 953). Through the symbolic act of eating and speaking, those identified as they-who-are-eaten (animals) and they-who-do-not-speak, or those who do not have language (historically "women" and "animals"), enable the founding of a masculinized, rightsbearing, speaking subject of law. The use of such an oppressive logic to argue for so-called "animal rights" risks perpetuating an identity politics that at best leads to an endless exercise in line-drawing.[69]

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67. *Cf*. Martha Minow, *Making All the Difference: Inclusion, Exclusion, and American Law* (Ithaca: Cornell University Press, 1990) (arguing that social choices, not factual differences, define which differences matter in law and politics, and how). See also Lori Gruen, *Entangled Empathy: An Alternative Ethic for our Relationship with Animals* (Brooklyn: Lantern Books, 2015) ("[a] focus on similarities can…run the risk of unwittingly projecting our human preoccupations onto other animals and engaging in arrogant anthropocentrism" at 24).
68. Otomo, "Law and the Question of the (Nonhuman) Animal", *supra* note 48 at 388.
69. *Ibid*. See also Fox, "Rethinking Kinship", *supra* note 51 (remarking that, "[a]lthough I would concede its strategic and symbolic value, I have reservations about a campaign [seeking rights for great apes], whose strategy is basically to encompass certain animals as honorary humans, and then accord them limited legal rights. The main problem with this tactic is that it does little to destabilise the boundary itself, and runs the risk of entrenching it more firmly, by bringing certain privileged animals within its moral compass" at 480–81 (citations omitted)).

There are, moreover, real, embodied, and experiential differences between humans as a group and any given species of non-human animal.[70] For this reason, Taimie Bryant has argued that "[t]he focus should not be on those qualities of women or animals or excluded others which, if documented, would qualify them for entrance to the community of those worthy of respect".[71] Instead, advocates should seek to focus public attention on "exploitative, oppressive acts and thoughts" and "seek changes in those assumptions, thoughts, and acts that are completely incompatible with respect for others".[72]

Challenges to the use of sameness arguments often emphasize the extent to which the terms of 'sameness' are defined by those in power for the purpose of preserving hierarchical relations, with the result that goalposts will always shift as needed to serve those ends. Fox, for example, posits that "once animals are shown to possess any of the qualities we have hitherto designated as a mark of humanness, such as speech, we immediately refine our notion of what does constitute human qualities and revise that account upwards".[73] In a similar vein, Bryant points out that the discovery that chimpanzees make and use tools may be taken as grounds to shift the definition of "what it means to be human" rather

70. See Bryant, "Similarity or Difference", *supra* note 65 (noting that, "[a]dvocacy based on similarity proceeds with great difficulty when differences are obvious" at 249); Harris, "Compassion and Critique", *supra* note 27 (remarking that "despite the just-so story of species difference and repeated attempts to stabilize the story with scientific proof, the color line is much more difficult to maintain than the line between human and animal" at 341–42).
71. Taimie Bryant, "Animals Unmodified: Defining Animals / Defining Human Obligations to Animals" (2006) 2006:1 University of Chicago Legal Forum 137 at 161–62 [Bryant, "Animals Unmodified"]. See also Fox, "Rethinking Kinship", *supra* note 51 (proposing that "the key project lies, not in arguing about who falls within which category, whether that category be 'human' or 'ape', but in seeking to break these traditional categories apart as too simplistic" at 489).
72. Bryant, "Animals Unmodified", *supra* note 71 at 162.
73. Fox, "Rethinking Kinship", *supra* note 51 at 479.

than grounds to "redefin[e] animals as part of the human community".[74] The foundations of 'sameness' arguments are thus always premised on what powerful humans value in themselves: "[i]t is simply raw power, not justice, that makes humans the center of value definition".[75] Citing Catharine A MacKinnon's feminist legal theory, Bryant thus proposes that "[j]ust as…women should not be defined by, or be defining themselves by, reference to the achievements and desires of men, animals should not be defined by the abilities and preferences of humans".[76]

Arguments that animals deserve rights because they are 'the same' as people have also given rise to troubling advocacy campaigns that seem to threaten or misunderstand other justice struggles. Animal advocates, for example, have attracted significant criticism for drawing blunt comparisons between the oppression of animals and racial slavery in the United States, particularly where those campaigns give the false impression that racial justice struggles in that country have come to their successful completion.[77] This "dreaded comparison", as it has famously been termed by Marjorie Spiegel,[78] has been deployed in unnuanced campaigns that have been charged with ignoring "the dynamic relationship between people of color and animals given their historic linkages in the white western mind".[79] Angela P Harris links racial, gender, and species politics in explaining the need for care in drawing comparisons between

74. Bryant, "Similarity or Difference", *supra* note 65 at 210. See also Bryant, "Animals Unmodified", *supra* note 71 (observing that "when scientists suggested that fish feel pain, others responded that, while fish may appear to experience pain like humans experience pain, fish do not cognitively process pain the same way that humans do" at 164).
75. Bryant, "Animals Unmodified", *supra* note 71 at 168 ("[a]s MacKinnon has noted with respect to women, '[d]ifferences are inequality's post hoc excuse.' Because it serves human interests to treat animals without respect, differences can be identified to support that treatment" at 170).
76. Bryant, *ibid* at 168.
77. Harris, "Should People of Color Support Animal Rights", *supra* note 29 at 25.
78. Marjorie Spiegel, *The Dreaded Comparison: Human and Animal Slavery* (Philadelphia: New Society Publishers, 1988).
79. Harris, "Should People of Color Support Animal Rights", *supra* note 29 at 27.

oppressions:

> [i]n some ways, animals are to people of color — particularly African Americans — as prostitutes (Margaret Baldwin has argued) are to women. The existence of the prostitute creates a dynamic in which the woman, to achieve dignity, must always and constantly dissociate herself from that abject figure. She is set up to seek respectability, to make clear, "I am not that".
>
> Animals — and for African Americans, especially primates — activate, I think, this urge to disassociate on the part of people of color, based on the intuition that our dignity is always provisional. [Campaigns invoking the 'dreaded comparison' often] assume a comfort in associating oneself with animals and animal issues that people of color can only assume with difficulty… It is, of course, the opposition between woman and prostitute, animal and African that needs itself to be destroyed. But to assume that this opposition-identification is unproblematic, as the dreaded comparison does, is to implicitly code the campaign itself as white.[80]

At first blush, this hesitation to analogize oppressions might seem at odds with the tendency within feminist analysis of animal law to draw connections between the oppression of women and animals. With some exceptions, however, the thrust of this analysis has not been to directly analogize the harms experienced by women and animals, but rather to illuminate similarities in the institutional and ideological structures of oppressive systems.[81] The strongest claims of feminist legal theorists analyzing animal exploitation do not take the strict analogical form that 'doing x to animals is bad because we have already agreed it is bad to do x (or something analogous to x) to women or people of colour'. Instead, they offer the more complex suggestion that there are shared ideological, legal and material forces shaping the experiences of humans and animals, which in turn shape many diverse experiences of harm.

For this reason, Harris proposes that, as an alternative to "identity-based comparisons and analogies,…anti-racist activists should embrace

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80. *Ibid*.

81. For an interesting and unusual comparison running in the opposite direction, see Sherry Colb, "'Never Having Loved at All': An Overlooked Interest that Grounds the Abortion Right" (2016) 48:3 Connecticut Law Review 933 (taking the harms of dairy calf separation as illuminating human women's interest in access to abortion before they develop a bond with their offspring).

animal rights as a practice of justice and love" — an approach that renders identity "irrelevant, except insofar as the grounded experience of identification teaches us the necessity of compassion".[82] In Harris' view, compassion does not require fraught comparisons, line-drawing and projection, but rather allows us to develop ethical postures that "reduce the suffering of animals and of humans" in ways that avoid "reducing one to the other".[83] The result, then, is an overall caution against simple analogies — either to the dominant norms of liberal theory, or to the unique experiences of oppression that have characterized other justice struggles.

In this vein, Bryant has drawn on the advocacy experiences surrounding family medical leave and disability accommodation to highlight the limits of sameness arguments (since both forms of advocacy necessarily demand respect despite difference from the dominant norm), and has identified endangered species protections and wildlife corridors as forms of animal protection that are not predicated on proving animals' sameness to humans.[84] Deckha similarly approves of a litigation campaign on behalf of captive marine mammals that emphasizes the harms of captivity with reference to the animals' own "bodies, social relationships, autonomy, and natural dispositions" rather than those animals' similarities to human beings.[85] The campaign in question was brought under the 13th Amendment to the US Constitution, prohibiting involuntary servitude. Deckha considers the "dreaded comparison", and concludes that the comparison in this case amounts to "drawing parallels between oppressions" in a way that "is not the same as comparing animals to humans so that we care about them".[86] This is arguably only a partial answer to Harris' concerns about this particular form of analogical

82. Harris, "Should People of Color Support Animal Rights", *supra* note 29 at 31.
83. *Ibid* at 32.
84. Bryant, "Similarity or Difference", *supra* note 65 (remarking that "[n]either advance was premised on the argument that animals are similar to humans, and, in fact, diversity is affirmatively supported" at 251).
85. Deckha, "Humanizing the Nonhuman", *supra* note 50 at 227.
86. *Ibid* at 229.

reasoning in animal legal advocacy. Regardless of where one lands on this question, however, it is clear that Deckha and Harris are united both in their desire to focus animal advocacy on animal experience, not human 'sameness', and to exercise care in the use of analogies that risk imperiling human justice struggles or re-enacting oppressive tropes of racial animality.

The lesson of feminist theory for animal justice struggles is not that animals' problems or solutions are the same as women's, but rather that attention to the particulars of oppression matter: "[n]ot that women's solution is animals' solution. Just as our solution is ours, their solution has to be theirs".[87] In short, a crucial theme is that justice for animals must be defined "on their own terms".[88] As promised, we now tread back into the troubled territory bracketed at the beginning of this discussion of sameness and difference: who are 'they', what are 'their terms', and who decides?

C. Troubling Categories

The project of learning to respect and recognize animal lives on 'their own terms' is bound to be endlessly complex, not only because of the challenges already raised respecting method, but also because of what we ought to have learned from feminist debates over the use of categories and labels in describing women's experiences. In the previous Part, we uneasily bracketed the problem of defining women and animals and determining who should be empowered to articulate 'their own terms'. Here, we return to that set of puzzles and a related lesson that feminist jurisprudence brings to animal law: to be careful with categories, and to attend to diverse particular circumstances.

The story of Catharine A MacKinnon and her critics is instructive here. In short, MacKinnon developed a theory of sexuality as the linchpin of women's oppression, emphasizing the hierarchy of men over women (as expressed through the eroticization of dominance) as a basic process of

87. MacKinnon, "Of Mice and Men", *supra* note 16 at 270.
88. *Ibid* at 265.

social life.[89] Importantly, MacKinnon described her theory as being based on the experiences of "all women".[90] This claim to base her theory on the experiences of "all women" prompted a quick succession of feminist critics protesting that MacKinnon's theory was wrong or incomplete when it came to them. Angela P Harris explained that MacKinnon's approach failed to attend to the ambivalence that many Black women feel about rape laws, which are deeply implicated in histories of racial terrorism in the United States.[91] Carol Vance argued that MacKinnon's account of sexuality failed to capture many women's more nuanced experiences of their own sexuality as more than pure oppression, in the introduction to *Pleasure and Danger*.[92] And Patricia Cain identified the problem of the "invisible lesbian" in the accounts of "women's experience" offered by radical feminists among others.[93] At the same time as this debate was unfurling (and sometimes in the same articles), a similar battery of criticism was being leveled at a distinct body of feminist legal theory, termed "cultural" or "difference" feminism, that purported to identify women's positive attributes, for example as caregivers.[94] In sum, many feminist scholars simply did not see themselves in the vision

89. MacKinnon, "Toward a Feminist Theory of the State", *supra* note 36.
90. *Ibid*. MacKinnon acknowledges the tension within this claim, explaining that "[f]eminism aspires to represent the experience of all women as women see it, yet criticizes antifeminism and misogyny, including by women" (at 115). MacKinnon argues that the claim to develop theory on the basis of the experiences of "all women" does not depend upon the false assumption that differences between women are irrelevant or nonexistent: "[f]eminism's search for a ground is a search for the truth of all women's collectivity in the face of the enforced lie that all women are the same" (at 38).
91. Angela P Harris, "Race and Essentialism in Feminist Legal Theory" (1990) 42:3 Stanford Law Review 581 [Harris, "Race and Essentialism"].
92. Carol S Vance, "Pleasure and Danger: Toward a Politics of Sexuality" in Carol S Vance, ed, *Pleasure and Danger: Exploring Female Sexuality* (Boston: Routledge, 1984) 1.
93. Patricia Cain, "Feminist Jurisprudence: Grounding the Theories" (1989) 4:2 Berkeley Women's Law Journal 191 at 191.
94. See Robin West, "Jurisprudence and Gender" (1988) 55:1 University of Chicago Law Review 1.

of 'women' being expounded in much of the most celebrated feminist literature — a critique crystalized in Harris' claim that these accounts were premised upon "gender essentialism", or the incorrect "notion that a unitary, 'essential' women's experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience".[95]

In the face of all these challenges to "White Feminist" accounts of women's experience, it became necessary for all feminists to confront questions about who defines the terms by which women's experiences are understood (with varying degrees of commitment and success),[96] and, more fundamentally, to ask whether and when 'women' was even the most important category for understanding the social relationships that critical scholarship seeks to describe and challenge.[97] In the context of feminist legal theory, the main challenge was that straight, white women were claiming to speak for all women in ways that did not ring true for many people whose lives they claimed to describe. For animals, the problem is not one of a relatively well-resourced group of non-human animals claiming to speak for others, but of human beings speaking for animals in a way that fails to take seriously the specificity of animal lives and exploitation. In the case of animals, the inability to speak in the human languages that are elemental to dominant legal and political institutions contributes to a discourse on 'animals' that treats this dazzlingly diverse array of lives and beings as though their suffering and struggles are all essentially the same. This challenge is exacerbated by the absence of public and legal spaces where animals' actual lives might be articulated, even in mediated forms.[98]

Legal theory pertaining to animals often treats 'animals' as a

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95. Harris, "Race and Essentialism", *supra* note 91 at 585. See also Elizabeth B Spelman, *Inessential Woman: Problems of Exclusion in Feminist Thought* (Boston: Beacon Press, 1988).
96. See Mariana Ortega, "Being Lovingly, Knowingly Ignorant: White Feminism and Women of Color" (2006) 21:3 Hypatia 56.
97. See Janet Halley, *Split Decisions: How and Why to Take a Break from Feminism* (Princeton: Princeton University Press, 2006).
98. See Part III.A.

monolithic category.[99] Feminist theorists of animal law have worked to reveal the apparently 'obvious' and 'natural' categorical distinction between humans and animals as a social and legal construction.[100] These studies build upon a broader project within human-animal studies across the disciplines to reveal the prevailing distinction between 'humans' and 'animals' as a social choice by which humans purport to distinguish themselves from all other life, despite our continuities with some of them and their discontinuities amongst each other.[101] Deckha, for example, argues that "[h]uman as a category is no more a natural fact of science

99. Some specificity is acknowledged through recognition of varying legal regimes for farmed animals, research animals, companion animals or wildlife, and, of course, we have seen that some analysis occurs at the level of 'species', for example examining the legal status of chimpanzees irrespective of use-context. On human-use legal typologies and alternatives, see Eisen, "Liberating Animal Law", *supra* note 44.

100. See Cressida Limon, "Inventing Animals" in Yoriko Otomo & Ed Mussawir, eds, *Law and the Question of the Animal: A Critical Jurisprudence* (New York: Routledge, 2013) 54 [Limon, "Inventing Animals"]; Fox, "Rethinking Kinship", *supra* note 51 ("[l]aw thus reflects dominant societal attitudes in presuming the existence of a self-evident dividing line between human and non-human animals, according to which humans are designated as persons and animals as their property. I contend that such a position is fundamentally incoherent given the problematic and unstable nature of the human/animal binary. First, the existence of certain 'boundary animals' (such as primates and whales) trouble distinctions conventionally drawn between humans and animals, and secondly, recent techno-scientific developments (such as genetic engineering and xenotransplantation) further blur this supposed dichotomy, by calling into question what we mean by the categories 'human' and 'animal'" at 469).

101. See Otomo, "Law and the Question of the (Nonhuman) Animal", *supra* note 48 (identifying Jaques Derrida, Martin Heidegger, Donna Haraway, Bernard Stiegler, Giorgio Agamben, Matthew Calarco, Mark Rowlands, and Carey Wolfe as scholars advocating "attention to the economic, historical, linguistic, and social forces that engender the separation of 'human' from 'animal,' and broadly interrogat[ing] the technologies and discourses through which the 'human' is constructed" at 385).

or divinity than are ideas of gender, race, class, or sexuality".[102] Fox, moreover, has proposed that law not only reflects but actively works to "police" the presumed "boundaries" between human and animal, for example through regulations that allow a wide range of reproductive technologies crossing elements of various species, while drawing a strict line preventing the placement of human gametes and embryos in animals, or the mixing of human and animal gametes.[103]

Other feminist theorists of animal law have observed that the legal categories by which animals are defined are almost exclusively determined by the ways human beings use or value them.[104] Taimie Bryant explicitly links the significance of human naming of animal categories to feminist theory, drawing on MacKinnon's work in concluding that animals do not get to define or categorize themselves, and are "prevented from having anything to say".[105] Animals' overarching legal status as "potential or current property" are "the grandparents of all specific legal definitions of animals",[106] but lower-order categories also reflect human-use interests, defining animals (even sometimes animals of the same species) as pets, pests, research subjects, or food — with each category giving rise to

102. Maneesha Deckha, "The Salience of Species Difference for Feminist Theory" (2006) 17:1 Hastings Women's Law Journal 1 at 37.
103. Fox, "Rethinking Kinship", *supra* note 51 at 486 (remarking that this legal regime "clearly betrays a fear of hybridity, which seems to evoke a deep-rooted fear and repulsion. Significantly it is also suggestive of law's key role in boundary maintenance — a concern to police boundaries which prevent the destablilisation of the notion 'human'" at 486).
104. Bryant, "Animals Unmodified", *supra* note 71 (remarking that "as a general legal matter, animals have no consistent legal identity separate and apart from the various statutes that regulate or allow humans to use them" (at 153) and that "[d]efinitions of animals change at the convenience of humans who want to use them or destroy them" at 142). See also Eisen, "Liberating Animal Law", *supra* note 44.
105. Bryant, "Animals Unmodified", *supra* note 71 at 144.
106. *Ibid* at 153.

distinct legal regimes governing those animal lives.[107] Bryant explains, for example, that as a matter of statutory definition, a chicken is an 'animal' for the purpose of US cockfighting prohibitions, but *not* an 'animal' for the purposes of the *Humane Slaughter Act*.[108]

Despite these complexities, however, it remains understandable that 'animal' emerges as a central category of legal theory and analysis. As with the term 'woman' within feminist legal theory, there is something critically important about developing theories that recognize and respond to socially and legally relevant categories, even while protesting the naturalization of these categories and their contents in the same breath.[109] And 'animal' is certainly a socially and legally relevant category. As Fox explains, despite the persistence of preferential treatment of companion animals, the overarching structure of the human-animal property divide has the effect of "subsuming all non-human species into a single essentialist category of otherness or beastliness".[110] In such a context, it is understandable that scholars and advocates seek to address the

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107. Ani Satz, "Animals as Vulnerable Subjects: Beyond Interest-Convergence, Hierarchy, and Property" in Martha Albertson Fineman & Anna Grear, eds, *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (London: Routledge, 2013) 171 at 183; Bryant, "Animals Unmodified", *supra* note 71 at 143, 149–51; Fox, "Rethinking Kinship", *supra* note 51 (discussing Martha Minow's treatment of Harold A Herzog's description of "the impact of labelling on moral responses to mice," and in particular the observation that the same mouse may be subject to very different social and legal protections depending on whether she is categorized as a pest, or a laboratory research subject, or a pet, or snake food (at 471–72)).
108. Bryant, "Animals Unmodified", *supra* note 71 at 151.
109. See Sumi Cho, Kimberlé Williams Crenshaw & Leslie McCall, "Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis" (2013) 38:4 Signs 785 (criticizing the deployment of "intersectionality" analysis by some scholars to "repudiate any potential embrace of social categorization", and instead supporting the "reconstructive move" of resisting "an easy cynicism about all identities per se and, thus, about politics in general" at 800).
110. Marie Fox, "Taking Dogs Seriously?" (2010) 6:1 Law, Culture and the Humanities 37 at 38 [Fox, "Taking Dogs Seriously"].

circumstances and legal position of 'animals' as a category. But feminist theory has important lessons for an emerging body of theory that rests at high levels of generality: that generalizations can efface important differences in context and experience, obstructing a full understanding of the practical social dynamics at play — that we lose sight not only of the particulars, but also of the big picture, when we try to define theories 'from above' without attention to the granular facts of the material context under consideration.

The fact that animal legal theory is an endeavour engaged in by more powerful humans seeking to describe and understand the experiences of less-powerful and non-verbal animals means that the risks of misapprehension and projection are significant.[111] Our theories will necessarily be further limited if our explorations remain at the level of the 'animal' — or even at the level of the 'farmed animal'. The intersection of species and use context *within* farming is critically important to understanding the multitude of justice contexts embraced by this term. The life of a breeding sow and a dairy bull and a broiler hen are certainly conceptually, legally, and socially linked by the fact that all are classed as agricultural animals, but the experience of feminist jurisprudence should caution us to develop more nuanced accounts of these diverse contexts. Even within a single species the differences in these animals' lives is pronounced, including according to the animal's assigned sex (dictating, for example, whether a given being will be raised as a veal calf or a dairy cow)[112] and the social and economic structure of the farms and supply chains into which they are born.

Feminist legal scholarship has begun the work of exposing the ways that public institutions prevent legal attention to the individual stories of animals' lives, and the work of developing legal analyses that attend to the circumstances of particular groups of animals whose life experiences are shaped in particular ways by human laws.[113] My own study of the US *Animal Welfare Act*, for example, observes that several elements of

111. See Part III.A.

112. Gillespie, "Sexualized Violence", *supra* note 19.

113. See Lee, "Telling Tails", *supra* note 58 and accompanying text.

the statutory scheme work together to conceal the individual lives of laboratory animals from public view and debate.[114] My research on the US dairy industry similarly revealed the operation of legal tropes of 'privacy' and the 'private sphere' to keep the lives of dairy cattle out of public and legal view — a theme that resonates with feminist animal law research more broadly.[115] In this vein, many feminist legal scholars have sought to illuminate the relationship between law and animals' experiences in greater detail than the term 'animal' would seem to allow — for example in Deckha's analyses of the legal status and lived experience of the laboratory rat,[116] Fox's efforts to "take dogs seriously" as a matter of legal concern,[117] Cressida Limon's inquiry into the legal position of transgenic goats,[118] and

114. Eisen, "Beyond Rights and Welfare", *supra* note 53.
115. Eisen, "Milked", *supra* note 45; Eisen, "Milk and Meaning", *supra* note 27. See also Mathilde Cohen, "Of Milk and the Constitution" (2017) 40:1 Harvard Journal of Law and Gender 115 (remarking that, although "milk has become an increasingly public, masculinized substance, milk producers, i.e., cows, have remained hidden from the public gaze, confined to the 'privacy' of their farms under the dominion of their owners, much like generations of women before them were confined to the privacy of their home under the dominion of their husbands" at n 238) [Cohen, "Of Milk and the Constitution"]; Yamini Narayanan, "Dairy, Death and Dharma: The Devastation of Cow Protectionism in India" (18 June 2017), online: *Animal Liberation Currents* <animalliberationcurrents.com/dairy-death-dharma/> (describing dairying as "completely institutionalised, and thus invisibilised"); Dinesh Wadiwel, *The War against Animals* (Boston: Brill, 2015) (drawing on feminist legal analysis of rape in concluding that "[f]or animals, the inadequacy of anti-cruelty and protection laws to prevent violence toward some animals (for example 'livestock' and experimental animals) is an explicit strategy of law to create a space where systemic violence might be enacted" and that "the micropolitics of large scale violence requires a 'privatisation' of the sovereign right to violence" at 186).
116. See Deckha, "Non-Human Animals and Human Health", *supra* note 55 and accompanying text.
117. Fox, "Taking Dogs Seriously", *supra* note 110. See also Vanja Hamzić, "The (Un)Conscious Pariah: Canine and Gender Outcasts of the British Raj" (2014) 40:2 Australian Feminist Law Journal 185.
118. Limon, "Inventing Animals", *supra* note 100.

the growing cluster of feminist scholars attending to the legal and social lives of dairy cows across a number of jurisdictions.[119] Together, this work aims to flesh out the legal abstraction of the 'animal'. It demonstrates that animal law has something to learn from the feminist experience that — while categories like 'woman' and 'animal' are useful, particularly insofar as they are legally operative — we risk missing much of how these categories actually operate when we treat them as monoliths. Attention to the logics and mechanics of exploitation, as they arise across a range of more particular contexts, stands to enrich our analysis of 'animals', both in terms of their particular histories and legal constructions, and in terms of the ways these particularities engage with broader analytic categories such as 'animal' or 'farmed animal'.

D. Rights and Relationships

Taken together, these insights from feminist jurisprudence point to a final, overarching theme informing feminist scholarship pertaining to animals and the law: that legal relations and social relations are always, already intertwined. Feminist legal theorists, along with other critical and realist scholars, have worked to challenge the classical liberal image of rights as hard, historic boundaries, discernible through logic.[120] Patricia J Williams describes this project as unsettling the presumption that law arises from "inanimate, unemotional, unbiased, unmanipulated" principles, "solid as rocks" and "frozen against the vicissitudes of life".[121] Even rights —

119. Mathilde Cohen, "Animal Colonialism: The Case of Milk" (2017) 111 American Journal of International Law Unbound 267 [Cohen, "Animal Colonialism"]; Mathilde Cohen, "Regulating Milk: Women and Cows in France and the United States" (2017) 65:3 American Journal of Comparative Law 469; Cohen, "Of Milk and the Constitution", *supra* note 115; Eisen, "Milk and Meaning", *supra* note 27; Eisen, "Milked", *supra* note 44; Yoriko Otomo, "The Gentle Cannibal: The Rise and Fall of Lawful Milk" (2014) 40:2 Australian Feminist Law Journal 215 [Otomo, "Gentle Cannibal"].

120. See Eisen, "Beyond Rights and Welfare", *supra* note 53 at 516–17; Silverstein, *supra* note 12 at 81–122.

121. Patricia J Williams, *The Alchemy of Race and Rights: Diary of a Law Professor* (Cambridge: Harvard University Press, 1991) at 11–12.

often cast in the language of boundary — are in fact arrived at through debate and dialogue, interacting with, reflecting, and constituting dense networks of social relationships.[122] The contestability of categories, the construction of 'sameness' and 'difference', and the politics of method all converge on this central cluster of feminist insights: that law and rights are "relational", that their forms are best explained by the relationships that generate them, and that they are best evaluated through attention to the relationships they support.[123]

Feminist analyses of animal law have taken up these insights in their expository and prescriptive projects — attending to actual relationships rather than mere legal form in assessing both the origins of animals' legal status and the possibilities for reform. While the centrality of animals' status as 'property' has long been a theme in the animal law literature,[124] scholars operating in critical and feminist traditions have exposed this legal structure as reflecting and consolidating a dense web of power relationships. Angela P Harris, for example, has traced the ideological underpinnings of property, with race and 'humanity' operating in tandem to support "the violent Euro-American seizure of the means of agricultural mass production in the New World", and with property continuing to play various "ideological function[s]", including defining "animals…as objects that can be bought, sold, and transferred".[125] My own work on US dairy farming has sought to reveal other elements of the social construction of legal property, illustrating the colonial construction of land rights through the vectors of land 'improvement' and animal ownership, and demonstrating the role of regulatory interventions in shaping the ostensibly private choices that contemporary dairy farmers make respecting their animal property.[126]

Yoriko Otomo and Mathilde Cohen have offered complex portraits of the social and relational forces that characterize contemporary

122. Jennifer Nedelsky, *Law's Relations: A Relational Theory of Self, Autonomy, and Law* (New York: Oxford University Press, 2011) at 5–7.
123. *Ibid*.
124. See *e.g*. Francione, *supra* note 62.
125. Harris, "Compassion and Critique", *supra* note 27 at 341–45.
126. Eisen, "Milked", *supra* note 44.

dairy practices, including through law. Cohen, for example, traces the development of the modern dairy economy, including its expansion into food systems with no Indigenous dairy traditions as a function of colonialism and international law.[127] Observing the ideological drive to masculinize and medicalize infant feeding, Cohen concludes that "[b]y taking milk from animals and feeding it to humans, particularly human babies, dairying severs the nursing relationship twice: between lactating animal mothers and their offspring and between human mothers and their offspring".[128] For her part, Otomo weaves together histories of growing regulatory control and prohibition of wet nursing in France, the rise of industrial milk production and marketing boards in the United Kingdom, and the colonial and postcolonial introduction of industrial dairying in India to illustrate the political and legal dimensions of questions regarding "*who* controls the circulation of (*whose*) milk in our economies, and *how*".[129] Otomo proposes that the state's interest in promoting an isolated and industrial dairy economy is linked to its interest in controlling human female bodies, producing "[t]he city" as "a masculine, clean, rational and pure space, transcendent from the body that is coded dirty, irrational and impure: female and animal".[130] Detailing the suffering produced by industrial dairy processes, and the "juridical work of drawing consumers into" the attendant "regulatory and ideological system", Otomo provocatively asserts that "[t]he violence of this process is not incidental, nor is it accidental. Sanitising the agony of making life, and then the agony of losing it — to the slaughterhouse, to the state — is a deliberate expression of masculinised political power".[131]

127. Cohen, "Animal Colonialism", *supra* note 119.
128. *Ibid* at 270.
129. Otomo, "Gentle Cannibal", *supra* note 119 at 227 [emphasis in original].
130. *Ibid* at 224. See also Marc Trabsky, "Institutionalising the Public Abattoir in Nineteenth Century Colonial Society" (2014) 40:2 Australian Feminist Law Journal 169 (describing the colonial legal and regulatory establishment of public abattoirs in Melbourne as exemplifying "the civilising process of colonial society" (at 171) and implicating the colonial ambitions of "domesticating nature and subjugating the Aboriginal inhabitants of the land" at 175).
131. Otomo, "Gentle Cannibal", *supra* note 119 at 225.

In each of these accounts, the legal status of animals is presented with depth, specificity, and attention to the various values, constituencies and power relationships that give property status its meaning.

Operating in this same tradition of exposing the social and ideological relations underpinning legal rules, Cressida Limon has detailed the ways that the legal patentability of non-human animals (even in jurisdictions where human life cannot be subject to patent) manifests and expresses "control of the means of biological reproduction" of animals.[132] Her study of the patent specifications respecting transgenic goats, bred to produce spider silk in their milk, emphasizes the underlying acknowledgment that these animals have preferences and subjectivities: Dwarf goats, she observes, were selected for this project in part because of their "personable nature".[133] Limon proposes that these legal and material relations reveal "a paradoxical state" in which "biotechnology signals the demise of the ontological divide between humans and non-humans", while at the same time supporting "ever greater (neo-liberal) freedom of the human to (be) come (healthier, smarter, longer-lived, etc.)".[134] This paradox, however, dissolves, in Limon's view, when we move away from considering the problem "from the perspective of an abstract, universal human", and instead attend to how these legal structures enforce social power and status: "[f]rom a feminist perspective, the paradox looks more like an old enforcement and control of the means of reproduction".[135] Again, explorations of power, values, material relations and social choice are preferred to abstract, universalizing theory.

When it comes to legal prescriptions, feminist theorists of animal law retain this focus on the social dimensions of law and rulemaking. Several feminist legal theorists have reacted critically to the common 'animal rights' advocacy focus on creating hard prohibitions and formal boundaries. These scholars posit that substantial changes in underlying material relationships might be achieved in a number of different ways, and that changing relations matter more than the legal form of 'rights'.

132. Limon, "Inventing Animals", *supra* note 100 at 56.
133. *Ibid* at 64–65.
134. *Ibid* at 65.
135. *Ibid*.

Bryant, for example, relates the story of a United States *Animal Welfare Act* rule that required researchers to 'consider' alternatives to animal research. Bryant explains that his formally weak directive was supplemented by an advocacy campaign by the Association of Veterinarians for Animal Rights to produce a substantial decrease in terminal uses of animals by veterinary medical schools.[136] Bryant concludes that the rule that worked to effect this change could not reasonably be cast as a 'right' protecting animals, or even as a duty to use alternatives, but nonetheless partially achieved "the same pragmatic result that rights advocates would seek" through a combination of legal rules and their interaction with social context.[137] I have similarly pointed out the achievement of rights-like outcomes in the phasing-out of experimental use of chimpanzees in the United States as a result of a confluence of regulatory provisions, none of which constitutes a ban.[138] Deckha has also taken up the question of chimpanzee-human relations, relying on an empirical survey of caregivers at a chimpanzee sanctuary to support "the critique of the animal rights movement lodged by feminists who advocate for an ethic of care toward animals rather than rights-oriented personhood claims".[139] The focus, on this approach, is not on creating clear legal boundaries, but rather on developing rules, regardless of form, that foster sound ethical relations in practice.[140]

To this end, feminist legal theorists have often preferred more social analyses to those offered by mainstream animal rights and welfare discourse, for example taking up such analytic frames as "vulnerability",[141]

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136. Bryant, "Animals Unmodified", *supra* note 71 at 184–85.
137. *Ibid* at 184–87.
138. Eisen, "Beyond Rights and Welfare", *supra* note 53 at 520–24.
139. Deckha, "Humanizing the Nonhuman", *supra* note 50 at 216, citing Julietta Hua & Neel Ahuja, "Chimpanzee Sanctuary: 'Surplus' Life and the Politics of Transspecies Care" (2013) 65:3 American Quarterly 619. *Cf.* Fox, "Taking Dogs Seriously", *supra* note 110 (positing that "complete non-intervention in the lives of dogs is an impossible ideal" at 53).
140. Deckha, "Humanizing the Nonhuman", *supra* note 50 at 216.
141. Deckha, "Vulnerability, Equality, and Animals", *supra* note 49; Deckha, "Initiating a Non-Anthropocentric Jurisprudence", *supra* note 49; Eisen, "Animals in the Constitutional State", *supra* note 52; Satz, *supra* note 107.

"relationality",[142] "kinship",[143] "connexion",[144] "capabilities"[145] and "compassion".[146] As with feminist and critical legal theory more broadly, these projects are invested in shifting praxis,[147] and are conscious of the complexities this kind of scholarship requires. Otomo, for example, observes Derrida's skepticisim of the "miracle of legislation", but she insists that "we must believe in, or make-believe, the miracle, since there is, in the ontological sense, no outside of law as such", and since transformation is urgently needed.[148] The mapping of animals' legal status, and advocacy projects that aim to improve that status, cannot be taken in isolation, but must always acknowledge and confront the many registers of status and hierarchy engaged by animality — from race, to colonialism, to gender,

142. Deckha, "Non-Human Animals and Human Health", *supra* note 55; Eisen, "Beyond Rights and Welfare", *supra* note 53; Nedelsky, *supra* note 122 (sketching a "relational approach" to animals, premised on an initial inquiry into "how human actions are currently structuring patterns of relations among the diverse entities of our world and where these can be easily identified as harmful" at 194–99).
143. Fox, "Rethinking Kinship", *supra* note 51 at 492.
144. John Enman-Beech, "Connexion: A Note on Praxis for Animal Advocates," (2017) 40:2 Dalhousie Law Journal 545.
145. Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge: Harvard University Press, Belknap Press, 2006); Martha C Nussbaum, "Human Capabilities and Animal Lives: Conflict, Wonder, Law: A Symposium" (2017) 18:3 Journal of Human Development and Capabilities 317 (introducing a symposium on application of the "capabilities" approach to animals).
146. Harris, "Compassion and Critique", *supra* note 27; Harris, "Should People of Color Support Animal Rights", *supra* note 29; Sabrina Tremblay-Huet, "Should Environmental Law Learn from Animal Law? Compassion as a Guiding Principle for International Environmental Law Instead of Sustainable Development" (2018) 1:1 Revue Quebecoise de Droit International 125 (drawing on ecofeminist theory in arguing that environmental law should develop compassion as a value, and thus accord value to animals' subjective experiences).
147. See *e.g.* Bryant, "Animals Unmodified", *supra* note 71 (emphasizing the need to seek and generate "advocacy spaces" at 188); Eisen, "Beyond Rights and Welfare", *supra* note 53.
148. Otomo, "Law and the Question of the (Nonhuman) Animal", *supra* note 48 at 389.

and beyond.[149] The problems of animal exploitation implicate a range of values and interests, and are properly understood with reference to a range of institutional contexts, from the interpersonal to the international, and from the distributive to the identarian.[150] A consistent theme is the need to arrive at legal frameworks that advance broad social dialogue and create room for viable progress, rather than discerning logical 'correctness' as a matter of abstract theory. Harris, calling for "compassion" as a guiding principle urges that "the goal is a dialogue between law and ethics, love and justice".[151] Emotion and affective appeals are recognized as critical forces for transforming human-animal relations, unruly and dynamic as those forces may be: "[t]he goal is not to control or direct fugitive currents of affect, but to watch where they go, and watch out".[152]

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149. Some vectors that have been explored in the wider fields of Human-Animal Studies and Critical Animal Studies, but not yet, to my knowledge, in animal legal scholarship, include class and disability. See Jason Hribal, "'Animals Are Part of the Working Class': A Challenge to Labor History" (2003) 44:4 Labor History 435; Sunaura Taylor, *Beasts of Burden: Animal and Disability Liberation* (New York: The New Press, 2017). But *cf.* Sue Donaldson & Will Kymlicka, "Rethinking Membership and Participation in an Inclusive Democracy: Cognitive Disability, Children, Animals" in Barbara Arneil & Nancy Hirschmann, eds, *Disability and Political Theory* (Cambridge: Cambridge University Press, 2016) 168.
150. Eisen, "Milked", *supra* note 45 at 71.
151. Harris, "Should People of Color Support Animal Rights", *supra* note 29 at 31, citing Robin West, *supra* note 100.
152. Harris, "Compassion and Critique", *supra* note 27 at 352. See also Eisen, "Beyond Rights and Welfare", *supra* note 53 (commending an "evolving ethic" that acknowledges that "shifts in values and legal rules build upon each other, often in ways that are not entirely controllable or predictable in advance" at 516); Otomo, "Law and the Question of the (Nonhuman) Animal", *supra* note 48 (casting animals as "as animated subjects for whom politics, or a polis, emerges out of the aporia of the human/animal binary" at 389–90).

IV. Conclusion

What I hope to have shown here is that feminist legal theory has a good deal to contribute to our understanding of human-animal relations, and that the complex work of bringing these contributions to fruition is already underway. In this exposition, I have largely focused on common trends and themes, but careful readers will already have detected the splits tenuously held in place by this structure. The scholars canvased in this article are situated within distinct feminist traditions, with some invoking feminist care ethics, some aligning more clearly with radical feminism, some hewing to relational or vulnerability-based approaches, and some more clearly aligning with postcolonial, postmodern or posthumanist scholarship. A parsing of these distinct strands is beyond the scope of this article, whose main objective is to identify a common community of scholarly interest and highlight some of its members' key contributions to the broader discipline of animal law. But the presence of these potential sources of tension is remarkable, and stands to enrich the field if explored. A hallmark of the most productive forms of feminist legal theory has been this: saying what is difficult to say, and hearing what is difficult to hear, even (perhaps especially) in dialogue with those who share both deep commitments and deep divisions. The hope is not that feminist legal theory for animals will split into camps that align with those that characterize feminist theory more broadly. Instead, the hope is that the field grows richer and deeper and more persuasive as it develops its own contours and complexities.