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## Book Review: *Wildlife as Property Owners: A New Conception of Animal Rights* written by Karen Bradshaw

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## BOOK REVIEW

*Wildlife as Property Owners: A New Conception of Animal Rights* by Karen Bradshaw (University of Chicago Press, 152 Pages; 2020)

“[A] right to property is founded in our natural wants, in the means with which we are endowed to satisfy these wants, and the right to what we acquire by those means without violating the similar rights of other sensible beings.” —Thomas Jefferson.

*Wildlife as Property Owners: A New Conception of Animal Rights*, written by Karen Bradshaw,<sup>1</sup> seeks to expand one of the most important rights in American culture into the realm of wild animals. By proposing an expansion of property law to grant animals new rights and protections, Bradshaw has captured the public imagination: *Wildlife as Property Owners* was featured in the Official 2022 GRAMMY gift bags and received a “highly recommended” rating in a Forbes book review. However, despite its attractive veneer, *Wildlife as Property Owners* does not provide a fully practicable solution to an increasingly prevalent problem.

Undoubtedly, the concept of property ownership and protecting the rights that such ownership entails is held sacred by most Americans. Historically, these rights have exclusively been afforded to human beings, but in *Wildlife as Property Owners*, Bradshaw argues that wild animals should be afforded property rights akin to humans. She proposes that all wildlands be placed into a trust, managed by a human trustee, of which wild animals are the beneficiaries. In addition to being managed by a human trustee, this trust would also be governed by an extensive oversight committee tasked with ensuring that the trustee manages the trust in the best interest of the beneficiaries. While Bradshaw’s argument is certainly compelling, it is ultimately unworkable and too economically controversial. Nevertheless, Bradshaw has provided a springboard for further discussion into the topic of animal rights and has shed light on the legal standing of animals within our culture.

The book is well-organized into four parts: Part I—A Foundational Understanding of Animal Property Law; Part II—Revealing the Existing Body of Animal Property Rights; Part III—A Roadmap for Property Ownership to Benefit Biodiversity; and Part IV—Analyzing the Potential of Animal Property Ownership. Each part plays a key role in presenting Bradshaw’s argument. In Part I, Bradshaw discusses animal rights and animal law in general and provides a sufficient foundation as to where the United States stands with respect to animal rights. Here, she introduces an urgent call to action—the threat of overdevelopment and the need to mitigate potential mass extinction. In Part II, Bradshaw discusses current animal property rights and explains the historical and cultural context of these rights. In Part

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<sup>1</sup> Karen Bradshaw is a Professor of Law at the Sandra Day O’Connor College of Law. She is a Senior Sustainability Scientist at the Global Institute of Sustainability and a Faculty Affiliate Scholar at the New York University School of Law Classical Liberal Institute.

III, Bradshaw dives into her thesis and proposes granting property rights to wildlife. Lastly, in Part IV, Bradshaw explores the potential benefits and implications of animal property rights.

Textually, *Wildlife as Property Owners* contains many strengths. Foremost, Bradshaw's writing makes her arguments easy to follow. The book is tailored to anyone concerned with humanity's effect on wildlife and Bradshaw's straightforward explanations mean a legal background is not necessary to appreciate the text. However, in writing for a wide audience, Bradshaw faced an uphill battle. One of the inherent difficulties with her argument is the legal complexity of the proposed solution and the challenges a layperson would encounter when faced with it. Specifically, Bradshaw's proposition involves one of the more complicated legal concepts: a trust. Certainly, those in positions to demand and enact change—such as legislators and the bulk of the general public—are not legal scholars. To this end, anyone seeking to act on Bradshaw's solution would need to conduct additional research to fully understand the concept and create a comprehensive system based on it. To her credit, however, Bradshaw superbly explains the trust system using lay terms. The book is mercifully free from unnecessary legal jargon and a legal dictionary is not needed to read and understand the crux of the arguments.

Second, Bradshaw masterfully contextualizes animal property rights with historical, legal, and cultural analysis. She notes that many cultures already treat the environment in a way that resembles affording it some form of property rights. Indigenous people, for example, have consistently treated animals in a way that resembles Bradshaw's vision of animal property rights. Bradshaw draws connections from historical and cultural analysis by pointing to American legislation such as the Endangered Species Act (ESA). Bradshaw uses the ESA as evidence of public support for animal property rights. By contextualizing animal property rights, Bradshaw provides a side-by-side comparison that makes animal property rights a concept that many people can feel comfortable supporting.

Unfortunately, despite its strengths, the book's weaknesses leave much to overcome. A trust system containing all wildlands within the United States will be expansive and require multiple trustees and a large oversight committee. Paying the trustees and committee members will likely be very costly, and, since the trust is privately owned, the government is unlikely to cover the bill. Not to mention—as Bradshaw admits—affording property rights to wild animals opens the trust to lawsuits for nuisance, trespass, and tort, which potentially opens the floodgates for more expensive bills.

Additional hypotheticals raise friction points within the concept. For example, imagine a private investor offers \$10 million for two square miles of habitat. The trustee owes a fiduciary duty to the animal beneficiaries and is therefore faced with a challenging decision—accept the offer and willingly lose habitat or reject the offer and risk depletion of the trust's bank account. Both choices are in direct conflict with the purpose and application of Bradshaw's system.

Furthermore, the concept of supply and demand raises economic implications that are likely too controversial to be accepted by many Americans. One of Bradshaw's main premises is that there is too much demand and too little supply. In other words, there are simply not enough natural resources available to sustain both humans—including their domesticated animals—and wildlife. Bradshaw

presents a case study that discusses wild mustangs in the southwest United States and the conflict with ranchers and their cattle. The study notes the lack of sufficient nutritional resources for both the mustangs and the cattle. Thus, both species compete for the same grazing pastures by necessity. Bradshaw discusses how the current federal law that grants mustangs first-in-time access to public lands is insufficient. Namely, since ranchers have successfully lobbied for decreased federal intervention, mustangs have become subject to management programs: mustangs have lost their “rights” and are the subject of population control. Bradshaw suggests that her property rights solution forever protects mustangs and other wild animals’ first-in-time rights to forage the land.

However, Bradshaw does not fully address the implications. Without the ability to access cheap grazing acreage, ranchers will be unable to afford to graze large herds. As a result, more nutritional resources will become available for wild mustangs, leading to an explosion of unmanaged mustang populations. Bradshaw suggests a natural correction will occur since ranchers will no longer kill the mustang’s natural predators and the mustangs’ population will fall back under control. However, the mustang’s natural predators also target cattle and an increase in predators on mustang trust lands would result in an increase in predation on adjacent cattle grazing land. Thus, in any event, the supply of cattle—and therefore the supply of meat—will decrease, and consumer cost will increase. Issues like this are prevalent throughout Bradshaw’s arguments and introduce substantial economic implications. Affording property rights to wild animals places humans and wild animals on the same level. In the event of a famine or food-supply shortage, farmers or other producers would be unable to use animal trust lands to increase production. Would humans still honor their commitment to protect wild animals if it means potential starvation? While this is a drastic example, the economic impacts of Bradshaw’s ideas will likely be too extreme for many to support.

*Wildlife as Property Owners* presents a provocative and compelling concept that has not been previously explored in any depth, and in writing it Bradshaw has contributed significantly to the conversation surrounding animal rights. This book is suitable for animal rights activists of all backgrounds looking for fresh air: the ideas are innovative and the call to action is compelling. While this solution may not be ready for implementation and leaves unanswered questions, Bradshaw has nevertheless contributed to the public debate in a novel way.

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