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**MIKE LIVERMORE:** Hi. This is Mike Livermore and with me today is Karen Bradshaw, who's a law professor at Arizona State University working in the areas of environmental and natural resource law as well as property law. She's the author of the book *Wildlife is Property Owners*, a new conception of animal rights which was published last year by the University of Chicago Press.

Today we're going to discuss the central claim of that book, the idea that property, typically thought of as a human affair, can be expanded to include non humans in ways that facilitate a more sane relationship between people and the environment. So Karen, thanks so much for joining me today.

**KAREN BRADSHAW:** Thank you so much for having me, Mike.

**MIKE LIVERMORE:** So as a starting place, maybe you could just give us the elevator pitch for the book. What's the general idea in 90 seconds or less?

**KAREN BRADSHAW:** Sure. So people have always shared the planet with other living things. We drink the water that fish swim in, we breathe the air that birds fly in. And yet our legal system divorces us from this biophysical reality and creates a system and property in which only humans own.

So we have created a legal system and a system of property that's at odds with the natural world. And as a result, we allow humans to displace and expropriate land and resources for wildlife, which is not such a problem when you have relatively small human populations.

But as people take up more and more of the planet, this land use and system of property is causing biodiversity loss, which is a huge and hidden crisis. So the elevator pitch of the book, if you will, is that property is a problem but it can also be the solution. Reforming property can be the key to reducing or slowing biodiversity loss.

**MIKE LIVERMORE:** OK, great. So that sounds like a good thing for sure. So what are the reforms that you have in mind?

**KAREN BRADSHAW:** Well, the book actually shows that legal reform is ideal. The best thing that could happen in some ways for this proposal is a statutory scheme enacted by Congress, but it's not necessary.

We actually have enough laws in place on the ground today that have been hidden in different areas of law, maybe not linked to wildlife law, or animal rights, or biodiversity that in fact can serve these purposes.

So individuals, private citizens can make actions in most states today that allow them to give property to wildlife. So really private action not law is maybe the necessary result. And the way that we can get there is just people realizing that they do have the option in many states to give land to wildlife.

**MIKE LIVERMORE:** OK, good. So then so one possibility is to maybe clarify matters through state or congressional action. But not necessarily-- one of the legal vehicles that you talk about quite a bit in the book is trusts.

And people are some people in any case are familiar with trusts from inheritance, people can set up a trust to benefit their children or grandchildren or whatever. And I take your argument to be at least in part that similar legal vehicles can be set up with respect to animals.

**KAREN BRADSHAW:** That's right. There's been this really surprising innovation in the last 10 years, where most American states have enacted laws that allow pets or in some cases animals generally to inherit property. And so using those laws allows people to leave land or resources to both either pets or actual wildlife as well depending on the state.

**MIKE LIVERMORE:** So then in a way, it sounds like the problem if we think that the current state of affairs is a problem. And I think you make a compelling case that this current state of affairs is a problem. That we have biodiversity loss, that this biodiversity loss is heavily caused by one of the major drivers of biodiversity loss, is habitat loss.

And if you want to stop habitat loss, that means setting aside lands or at least certain uses of lands for non-humans. So it sounds like we actually have the legal tools in place to address these issues or at least get some traction on these issues by essentially turning property over to animals or to vehicles like trust to act on behalf of animals.

So then I guess one question is really what we're talking about in a sense is the distribution of property rights, rather than the legal regime surrounding property right. So if it is the case that animals can own property right now under the current law, the issue isn't that they can't own property because they can't, it's that they don't own property that we haven't set aside a sufficient amount of land or a sufficient amount of-- we haven't allocated sufficient amount of property rights to animals.

**KAREN BRADSHAW:** I think that's right. But it requires a change in mindset. And I think this is a place where it's really exciting for environmental law scholars or animal rights advocates to think in a new way. What we need to do is not even necessarily change the laws, but we need to change people's mindset about property, property rights, and the law to allow for an inter-species model.

A way in which we can envision our property is being shared co-equally with other living things. Animals certainly, but perhaps plants as well. And one of the really interesting things about that is that we can think about this from either the current perspective of we have a biodiversity crisis, this is a tool to fix it or we can understand this as a principle that was embodied in many Indigenous legal systems in pre-colonial United States.

And so the idea that humans share Earth and resources with other living things is something that's common among many different indigenous legal systems, property regimes, and traditions over time, that we can reintegrate into our system.

And so if you're familiar with the rights of nature movement and I know you are, you've written some great things on it. You can see the property rights piece as one component of this broader attempt to reform the way that we think about animals and the relationship between human and nature.

And that's the great thing. As lawyers, where sometimes called deal killers, right? We're framed in this way that we are thinking negatively about the problems to achieving something. But in this book, and I think more broadly environmental law and environmental law scholars can think about ways to create change and use legal pathways to obtain the end and desired results that may require a shift in thinking.

**MIKE**  
**LIVERMORE:** So there's a couple of different things happening, sounds like simultaneously. So there's maybe a cultural reform project which is about changing how people think vis-a-vis their human uses of the land or human uses of natural resources. And this idea that people exist within a broader ecosystem and are dependent on it and so on.

And of course environmental law in general comes out of that, at least is in part informed by that shift in perspective. Of course, we saw a big shift in perspective back in the '60s and '70s and the first big wave of environmental statutes, the Endangered Species Act, the Clean Air Act, the National Environmental Policy Act.

How does the property rights regime that you're talking about are, this way of thinking about animals as property right holders. Do you see that as embodying like a fundamentally different way of thinking about the relationship of humans to the environment than we see embodied in the major environmental statutes in the US, that were adopted in the late '60s, early '70s?

**KAREN**  
**BRADSHAW:** I think they are early statutes. And the field of environmental law as it's generally understood this body of statutes from the 1970s like NEPA and ESA, Clean Air Act, Clean Water Act is a really narrow conception of environmental law. It's necessary, but it's not sufficient.

These laws weren't enacted at the time that we fully understood the climate change crisis or biodiversity loss. And so we need innovation in the field. And yet as a field I think we felt somewhat cabin in by the laws that were created in congressional inaction.

And I think the crisis presents or the crises present an opportunity for environmental law scholars to do really radical work that goes beyond just the statutes. I think we've allowed ourselves to be defined in this narrow statutory basis, but law is so much broader.

And considering the radical re-imagining of the human relationship with nature and what that could look like, often opens the door to things that we want, the goals we want to get to. And then the thing that we can do collectively as a field, which is really exciting is think about how do we get from where we are to those places given the political realities of our time.

If Congress is not going to act to address these issues, how can we get there? And that's something that I think is really exciting. It's innovative. It is scholarly exploration of ideas of this vast array of legal tools that we teach our students in the classroom and can now turn to the problems of our time.

And that means looking outside the confines of environmental law as it's narrowly and traditionally understood. And looking into other fields like trust and estate, or property, or indigenous law to find different pathways to get to the goals that we so desperately need to achieve.

**MIKE**  
**LIVERMORE:** So just to return to the distributional question a little bit and can press on this. So it sounds like we have the legal tools necessary to vest animals with property rights. This says that's what I take to be part of the argument of the book.

So then the question becomes not like how do we do it? Maybe there's a little bit of work there to be done, but it's like-- but just to make an analogy. We know that human beings can hold property. There's no dispute about that, other people in the United States.

But we still have huge amounts of economic inequality, where some people have a lot more than other people. So if we were to kind of extend that argument outward, we might say, well there's some people that have a lot more than other people. And then the people, the human beings have a lot more than the animals because the animals have very few property rights.

Right now they have the capacity to have property rights. But there's not a lot of property that has been set aside in this way. So then the question goes how do we go from the status quo, which is inequality, very substantial amount of inequality, you could say on the human side, but more to your point between human beings and other species.

How do we get from that status quo to one in which animals was just to start with actually hold a substantial amount of property that is used on their behalf.

**KAREN  
BRADSHAW:**

Sure. I think this distributional question is so important. So the threshold is we need to first understand and agree upon the idea that animals can own property. So historically there were different groups in the United States and elsewhere around the world who could and couldn't hold property. Women, for example at different points in our nation's history couldn't hold property or couldn't own property independently.

And I think we shouldn't overlook the importance of being considered part of the system of property which is part of the way the world works or our portion of the world works. We live in a capitalist society.

So the pragmatic benefits of owning property is incredibly important to other related aspects of rights and dignity and ways of being in the world. It matters a great deal whether or not you are in the category of legal persons who can participate in markets and capitalism or not.

And I think until 10 years ago as a matter of law, you could say that animals did not own property in the US or weren't recognized as property owners. And until maybe this book, it wasn't something that was a serious argument that animals are already property owners in the US.

So I think that threshold question is something that's really important to focus on for a variety of pragmatic but also qualitative concerns around the importance of animals in our society. And then if we get to this question of inter-species equity. If animals can own property and that's an established and recognized right.

How do we use that distributional benefit to accomplish our goals like reducing biodiversity loss? And I think the answer is actually really exciting. So one third of the United States, one third of the landmass of the United States is public lands.

These are lands that are held by the federal government through the public trust on behalf of All-American citizens. And Congress controls these lands. And one third of the landmass is really significant. And I argue in the book is already being managed most of these lands at least for some portion of animal interests.

And in some cases are being managed almost exclusively for animals. Like there are 31,000 acres in Montana that exist for the benefit of a specific herd of horses, but our public lands. And so one of the ways that we could really move the needle on animal ownership of lands and public lands is through congressional action, to co-title, if you will public lands in the interests of animal occupants, wildlife occupants, plant occupants.

So this would be essentially to understand that although the US citizenry owns these public lands, we share them with non-human occupants on the land as well. And so in that single move, we would go very close to allocating one half of the United States for non-human animals.

Which is that's the magic number according to social biologist E.O Wilson. He has this book *Half Earth* that says we are in a biodiversity crisis. The only way through it is to set aside half of the landmass on Earth for animals. But in a single move, in a single statute Congress could achieve that in public lands.

So I think the distributional questions become a matter of public debate once we establish a threshold manner then animals can and perhaps should own land as co-equal owners or perhaps on their own.

**MIKE  
LIVERMORE:** It's a very interesting thought. I guess the skeptic in me just to play devil's advocate for a second. Might say, well, wait a second here. There's a certain amount of land that we have that's owned by the federal government that's managed in different ways, let's just say.

Broadly speaking there's some land, we have lands that are parks, we have agriculture-- we have lands that are grasslands that are used for grazing, we have national forests, a lot of multiple uses that this land gets put to. But in any case, it's managed by the US government broadly to achieve some set of social goals, which include conservation and avoiding biodiversity loss and so on.

So if that's the case, and we're just we're talking about literally the same land and it's just whether we call it public lands that are being managed in part to achieve conservation goals, or we have the same land that we say is co-owned or something, there's some property right, get into the detail of what that would actually be, I guess.

But it's more explicit that it's not just that it's being managed by the federal government on behalf of animals, it's that the animals own it. And then there's some entity that is charged with managing that land or somehow having input and how do that land is managed. That takes the interests of animals into account.

How does that really change the state of affairs? Because it's really the same land that we're talking about. We're not talking about increasing the total amount of land that's devoted for conservation purposes, it's more about-- it's a legal difference. What is the practical on the ground difference?

**KAREN  
BRADSHAW:** Sure. And so this is specific to public lands and of course, we could say the same thing in private lands that other 2/3 of the US landowners can voluntarily give portions of their land to animals, but specifically on this one third of public lands, 95 million acres are already managed primarily for wildlife interests through the National Wildlife Refuge System.

National parks, multi-use yield, sustained yield act. All of these different statutes create what I would consider quasi property rights for animals. So I guess the question is if we formalize that or if we had a single act or a set of acts that vested animals as property owners or property interests holders on public land, what does that accomplish?

Well, first of all, I think it formalizes what is currently spread against disparate or across disparate statutes to manage land on behalf of wildlife and it secures that right. But we think this is important to do and we've done it in other contexts where we vest humans, different groups of humans with particularized interests on public lands.

And those interests give them a quasi property right or in some cases, I would argue an explicit property right to have their voice heard and how the lands are managed. So they're managed in such a way that it allows for their interest to be prioritized.

And I think the same is true for animals. Animals are already prioritized on many public lands. In fact, I argue that's one of the reasons we're not in even a bigger biodiversity crisis, is because public lands have supported wildlife population as private land development has increased.

But because of that, public lands play a crucial role in biodiversity and biodiversity preservation. And when we have things like the divestiture movement that's interested in selling public lands, we realize that there is remaining habitat for wildlife that has been somewhat effectively protected by existing statute is in fact vulnerable.

So creating property rights for animals reduces that vulnerability by creating for them standing recognized interest, instead of the informal statutory interest that they presently have. So the property rights, of course, are protected in some ways by the taking clause.

And we have very strong protections around property rights. If animals are recognized as rights holders on public land, their interests could not be stripped or sold in the way that they presently could be.

**MIKE LIVERMORE:** So this is a very interesting point. It's subtle so maybe we could just go through it again to make sure we it's clear maybe-- for me to make sure that I'm clear about the argument here.

So the idea is at least some portion of our public lands are exclusively set aside for biodiversity, habitat protection, management for with animals in mind. And then of course there's a larger amount of public lands that are managed for multiple uses, including conservation.

But because these lands are public, they are subject to a political process or the political process. And at any time if the political stars align these public lands could just be put on the auction block and sold or given away to private interests and could be developed in any way that the private-- to then private landowner wanted.

So that's maybe just a pause there, that's step 1 of the argument. And that's in a sense the problem that you're thinking about. So let's just get pause there. Is that a roughly correct kind of statement of like the concern?

**KAREN BRADSHAW:** That's exactly right with regard to public lands. Public lands are really important to biodiversity, but they're also at risk in ways that we usually don't think about. They could be sold or put on the auction block in exactly the way you described.

**MIKE LIVERMORE:** Right. And we've seen some, of course. In the last administration, there was-- and this happens as the political wings change, different lands are being protected as there were the debates over Bears Ears monument and so on and so forth. So this is an implausible concern at all. This is something that we actually see in real politics.

And then there's also the kind bit of background here is that in the United States, we actually have constitutional provisions that are oriented towards private property. So the government can't just take your land or your property, including your land without compensation. And it has to be for a public purpose. So that's right. That's the Fifth Amendment part of the piece. So that's also doing some important work with the argument here. Is that right?

**KAREN** That is correct. Once you have a recognized property interest or property right, the government can't take it  
**BRADSHAW:** without compensation.

**MIKE** Right. OK, good. So we've got this concern, which is kind of essentially political backsliding. We've got this  
**LIVERMORE:** constitutional provision that makes it difficult for Congress or the executive to interfere in property rights.

And so putting those together, the idea is well look, we have a Wildlife Refuge that it's intended to protect say bird populations, migratory bird populations. Well, if we actually take this land and we turn it over to the birds in property, in fee simple or however we want to define the property. We'll think a little bit about who's going to manage the land on behalf of the birds, but that's not that big of a deal. We figure that out in other contexts all the time. Trust corporations and the like.

And that way once we set aside land and establish property rights in that land that are held by these animals, then it's much more difficult to unwind that and to basically to reverse or to threaten those lands once that decision has been made.

**KAREN** I think that's right. Yes. The idea is that property rights are so protected in the United States, but it's currently  
**BRADSHAW:** seen as very binary. Either you have the right or you don't. And if you have the right, it cannot be stripped from, you cannot be excluded, you cannot be shoved off the land.

And if you're not a right holder, you can be. So it's this binary system and when animals are non right holders, the protections that we think they enjoy from things like public lands and the statutes that provide for conservation purposes, can be taken away very easily as the political winds change. Whereas a property right is more secure, it's more stable.

**MIKE** Yeah. It's very interesting. There's lots of different ways that we could kind of take this. Just a couple of ideas with  
**LIVERMORE:** this. So one is we could probably do a similar thing with private entities or not for profits like the Nature Conservancy or other universities or other institutions. And say OK well the University of Virginia will manage will actually give this-- maybe not states actually, because they're subject to the political process.

But private universities may be. And say look this is your land now and but you're kind of charged with managing it on behalf of the wildlife for wildlife conservation purposes or whatever. Is there anything special about the animals themselves as the owners compared to a not for profit that's set up under bylaws that provide that the land will be managed for conservation purposes, entities like the Nature Conservancy?

**KAREN** It's an interesting question because we have conservation easements already that allow NGOs to manage land  
**BRADSHAW:** for a variety of conservation purposes, which can include biological easements for plants and animals.

So I think conservation easements to a certain degree are just very closely related to the idea of animals as property owners. But I think both functionally and in terms of the way we think about property and wildlife and ownership, there is something specific about having the animal themselves own the property that matters.

And we see this unfolding in animal rights in the legal personhood debates. Line of cases from the Ninth Circuit that consider whether animals can bring cases in court. And then also happy the elephant and other cases brought by the non-human rights project, to think about animal suing or being sued on behalf of people.

And so I think in those cases the litigants rightly note that there are certain benefits that accrue to having the animals recognized as the rights holder. And I think that those are true in property as well. So to my mind, pragmatically biological easements can accomplish a lot. But to really accomplish this reframing of how we relate to nature through law, I would prefer to see the animals themselves or the ecosystems even better as the actual rights holder.

**MIKE  
LIVERMORE:** I get the framing point. The idea of that it sends a message or that there's a symbolic or an expressive component to having the animal or ecosystem as the right holders. Or to have happy the elephant be the litigant versus people who are empowered through some statute to bring a lawsuit to enforce an animal welfare statute.

So I get the symbolism and the expressive value. I don't that I fully understand yet the legal implications and why that matters. And I should just note that the expressive value might be fully sufficient to provide a reason for why we want the animals to be the right holders themselves or the litigants.

Just out of curiosity, what are some of the kind of real legal consequences? So let's just say in the endangered species context. We don't have people bring suits on behalf of the species to enforce the Endangered Species Act, say a listing process or something like that.

What we have are people acting in their own capacity, who have an interest that's somehow affected by a government decision that bears on the Endangered Species Act. It always struck me that those are actually like pretty the same from a legal perspective, although the symbolic expressive content might be different.

**KAREN  
BRADSHAW:** Sure. Well, one of the ways that I think this can unfold. If we go down the route of conservation easements are they alone enough. Is that you can have a goal within a conservation easement, a purpose for that conservation easement that is at odds with the interest of a particular animal or a species of animals.

So I'm thinking specifically about the New Zealand context, where top of the line, like best practices in ecology in the early 2000s was to just kill, essentially slaughter mammalian wildlife, mammals who had been introduced by colonialists to the New Zealand land mass because they were detrimental to bird populations. So killing one animal to save it another.

And under a conservation framework as looking at the whole ecosystem that might be supportable. But if you were a person, private person who was particularly interested in saving say the deer of New Zealand, you could establish a property interest for the deer in a particular plot of land, where they could live safely.

And so in that example I'm highlighting the tension between the conservation goal and the goal of a particular animal species. And one of the nice things about property is it can be highly localized and it can be species centered.

And so individuals get to make decisions in a system of private property about which species or which animals they leave the property to. And they can very finely tune that to deal with issues like invasive species or to manage some of the inherent tensions that exist within an ecosystem.

So I can imagine situations where a conservation system or the goal of an NGO might be antithetical to a particular species or even an individual animal, and that property might allow appropriate customization to achieve the goals of protecting a particular species or a particular animal in a way that a broader conservation mandate might not.



**MIKE** Just to put a fine point on it. You could structure your conservation easement like that as well, though?

**LIVERMORE:**

**KAREN** Yes. You absolutely can. But one of the problems with conservation easements as I understand the work of

**BRADSHAW:** Jessica Cowley who's done remarkable work on conservation easements, is that they're poorly recorded, they're poorly enforced, and that the easement itself may have a goal at the time of establishment that doesn't track the changed ecosystem or ecological conditions over time.

Whereas vesting the interest in an animal or a species allow a goal that can change over time depending upon your circumstances. So sometimes for example, it might make sense to sell a particular plot of land that's no longer useful to the species because it's migrated. And property allows this kind of flexibility in a way that the easements may not.

**MIKE** Interesting. There's a lot in there as well. So it actually sounds like just as you were talking about this tension

**LIVERMORE:** between different types of conservation goals. So you've got land and if you were to manage it from an ecosystem perspective, then you might kill off the deer. And if you were to manage it from the deer's perspective, you're good and not going to kill off the deer.

You might even sell some of the land in order to buy kibble that is used to feed the deer. You might cut down the trees or just turn it into a whatever the deer like to eat. Just like plant a bunch of that.

If you manage it from the bird's perspective. If the birds are bad-- if the deer are bad for birds and again you'll kill off the deer. In fact, if you manage it from the birds perspective, you might kill more deer because maybe there's a certain equilibrium between the deer and the birds that is good for the ecosystem, but the birds would prefer to have even more foraging. I clearly see there are tensions there.

And I guess if we're talking about private land then people can do whatever they want. If they want to leave land to the Blue Jays, they can leave land to the Blue Jays, and if they want to leave it to the deer they can leave it to the deer.

What about if we're thinking about public lands, is it is it sensible to be leaving land to individual species or would it make more sense to leave it to ecosystems or to just designate ecosystems as a co-property owner? Is that the right entity to devote public resources to protecting?

**KAREN** Right. It's hard to know where to draw the boundary around the owner. Is the owner of a river? Is the owner of

**BRADSHAW:** wild rice? Is the right holder a particular species like a Buffalo or is it an ecosystem, a region?

And I think that there are sensible arguments to be made for any level of ownership interest, depending upon the context. And that's one of the things that I have had so much fun. This book came out a year ago. And it's been so much fun to see how people are applying this.

Because there are many people working on these issues and have been working on these issues for decades, that have really well developed understandings of how ownership interests would work in different contexts. That have one broadened my perspective frankly since I've been writing the book on what's possible.

So just to give a couple of examples of the diversity of approaches that I'm seeing unfold. May shed some light on the answer to the question of how should we do this on public lands. So one of the applications that I'm seeing is the United Nations has a biodiversity convention, meeting for the third time to discuss biodiversity in the high seas, which are essentially unknown waters that are held by all nations collectively but no nation individually.

And over-fishing has been a tremendous problem in the high seas to classic tragedy of the Commons. And the question is, how do we preserve biodiversity in this waters. And one suggestion has been to allocate different segments to different countries. With the idea, the classic privatization solution to tragedy of the Commons.

But a response that has emerged from the wildlife is property owners' idea is in fact, the high seas do not only accrue ownership interest to the countries that collectively manage in. They also belong to the animals living in the high seas, the animal occupants.

So this is an example of the radical reframing. Thinking of something that we believed a bunch of countries own and saying no actually this is something that the animals that live there also own. And recognizing that animal right, the animal property right prior to the allocation and privatization creates different segments of the ocean potentially in which the animal occupants would have rights that would coexist or have to be recognized by the nation states, controlling those different segments of water.

So that's one way that this could unfold it. Could be an understanding that the occupants of a particular place, including non-human occupants can be the basis for establishing interest. A first in time or occupancy argument to the property in question.

Another example is I'm working with World Wildlife Fund, the North American Bison program. To think about the ways in which this could be used to benefit bison. And there are some really exciting very innovative approaches to bison restoration happening with different Indigenous governments in the United States.

And because of Indigenous governments and indigenous law, there are many, many different systems of land and property allocation depending upon the particularized context. And so you can begin to understand the different ways that allocating these rights to bison, or type of bison or herd of bison might be different in different property contexts. So you see some really diverse approaches.

But in that context the bison is important culturally as well as pragmatically as a species on the landscape. And one of the really innovative things that I've seen in that context is how that cultural conception and connection with the bison can inform and frankly reform the way we think about property. So that's another context.

A final context which is really close to home to me is I'm working with a trust and estate lawyer in Phoenix to title the land that I own. My little 1 acre in Phoenix with the wildlife occupants on the land. And so we're working through exactly this question of, do we choose to have Alana or desert tortoise that lives for 100 years or is it the ecosystem? Is it all of the animals and the plants on the landscape and does that include native or non-native plants.

So through working through these kinds of questions in different contexts it has become clear to me that there are so many diverse systems of property. And so in the French context, there are scholars thinking how would we do this in a system that doesn't have the same understanding of property rights. How do we adapt this to local conditions

And I think the answer is the idea that you have to accept the threshold idea is we share the land with animals and they deserve to have rights to it. And then the question is like how do you work within the particularized context to make that first legally possible? And secondly how does it work pragmatically?

And so I think this is a very long way of saying it's highly localized, it's specific on the context, it can be influenced by things ranging from the current owner to the cultural relationship of the people who are coexisting with animals on the land. And it really, to give the most lawyerly and simple answer possible, it depends.

On public lands I think ecosystems are probably the right answer in most cases, but again it's very, very variable. And there are 663 million acres of federal public lands, I imagine it will look different place to place.

**MIKE  
LIVERMORE:**

Yeah. There's a lot there. Like any one question that immediately comes to mind is how do we make these decisions? Sure, it depends. That's a good lawyerly answer. But what are the values that we might use? But maybe just setting that aside for a second because there was a lot there.

One of the pieces of this that keeps striking me, is comparing the property rates regimes to other management systems and to compare animal property rates or ecosystem property rates to other private alternatives.

So if we think of the high seas example, we might imagine a couple of different ways of managing this resource. One would be just turn it over to the countries as you said. The alternative that you offer is some of it's turned over to the country some of it is allocated to wildlife through property rights system.

An addition alternative would be to have a private conservation organization manage this resource to some extent or an intergovernmental body like the United Nations or some other treaty entity.

I don't that if we're going to have time. But I think it is useful and potentially informative to think about what the pros and cons of these different arrangements might be. And then just the meta question is like what values are we using to think about that? What's the underlying as they say in economics the utility function that we're trying to maximize?

But just to take your land because that's a fun example that if you're personally doing this. So you've really been thinking about the mechanics and so on. So then the questions I have are kind of a couple.

So one is in your particular case, the pros and cons of going with the wildlife ownership approach versus like an easement to the Nature Conservancy. And how you've seen those differences play out in your own thinking.

And the related question, which goes back to a point that you raised earlier that I would just be curious about your thoughts on is, it is the case that a lot of conservation easements, they're not well recorded, they just sit around, they might go into disuse, no one is necessarily enforcing them. The Nature Conservancy probably does a pretty good job, but even they have a lot of land under conservation easements. It's hard to monitor and so on.

If you were to leave your chunk of land to the local desert tortoise or some other natural entity like that, does that or how does that or how does one address or how have you thought about addressing a similar problem where after you're gone or in 50 years whatever period of time 100 years from now.

How do that the land's being managed for the benefit of that species? Are you setting aside money to fund like-- to pay a lawyer on behalf of the tortoise or just logistically how are you thinking about that. So the two questions-- sorry, those very long winded.

Just the two questions were comparing and contrasting the wildlife property owner regime with a more standard thing which would just be to donate the land to the Nature Conservancy or have an easement. And then particularly with respect to this kind of problem of long term enforcement.

**KAREN**

**BRADSHAW:**

Sure. So the first question this idea of whether to give it to the conservation easement or to title it in animals. Is an interesting one from a tax question. So using my own property as a pilot project, one of the questions is, how can we structure this in a way that it's attractive, frankly to a lot of people to do going forward.

That it can be a model or a pilot or an educational tool to help other people envision what it might look like. And an attractive feature of conservation easements is that many times, if not all they come with a sometimes substantial tax benefit.

So one of the questions, I'm working with an incredibly talented trust and estate lawyer Katie Callaway in Phoenix, who is working through those questions and considering the different tax implications of the different models. But for my project specifically and it is I guess somewhat idiosyncratic. I wrote the book and I clearly believe in this idea.

**MIKE**

**LIVERMORE:**

That's fun. Yeah.

**KAREN**

**BRADSHAW:**

But I think I'm looking to go away from the anthropocentric property. And so even if the tax benefits aren't there. For me the mindset shift is worth it. I think it's significant to have what is I think will be the first land that's owned by animals in the United States.

And I think that that's really important from all the expressive functions that you mentioned, but also just reshaping the way that we think we interact with animals and the way we interact with property. And what individuals can do.

So many people, me included, have concerns about the state of the world and the state of the environmental crises that we're in. And it's hard to how to react within that. We are still living our lives, we still use and consume resources.

But there's something very attractive, to me personally about being able to do something locally with the resources that I have and own to create the kind of change that I want to see. And I think of many people do that collectively, it could accomplish something really strong.

So I want to personally, I'm going outside of just sort of the pragmatic and pecuniary interests of taxes and that thing. I'm looking at it with clear eyes, but I'm also interested in saying, no this is something I believe in. Much like we have corporate social responsibility, maybe so too should we have personal responsibility.

And if we have the privileges of home ownership or owning land, thinking about ways that we can manage that responsibly and tandem with other living creatures in this space might be worth doing. So that reframing to me answers the question of conservation easements and shows why it's important to have the animal ownership.

But also gives animals standing in court, which is something I'm very interested in. We've been fighting or animal rights advocates. I wouldn't say I have been fighting by any means, but animal rights advocates have been fighting to get legal person-hood or legal standing for animals in court for a long time. And property ownership is essentially a backdoor way of doing that.

If you own property, you can sue someone who is trespassing against it or causing a nuisance on your property. And so in this way, animals at least my Havelina and bobcat could have that kind of standing in court to protect their interests. And I think that is important to me.

So the second question then is how do you manage this? What are the functions? And the good news is huge--

**MIKE LIVERMORE:** And again just to put a fine point on it. Specifically with respect to the criticisms that you mentioned about the long term, over time challenges that we've seen in the easement context, are there differences here or is it just a matter of similar problems and with similar solutions?

**KAREN BRADSHAW:** Well, I think one of the really important things of trust is that it's a really old concept, it's really well established. There's a huge body of laws around trusts and every American state and a lot of assets are held in trust. So it's a very well-funded little pocket of the law. And trusts have a fiduciary duty.

So trustees must act in the interest of a beneficiary in a way that I'm personally not aware that the holder of a conservation easement need to act on behalf of the biological easements that they're holding. And correct me if you're aware of a fiduciary duty that attaches to that, but to my mind I'm not familiar.

**MIKE LIVERMORE:** It would be with respect to the NGO in general to manage its resources in line with its mission and that kind of stuff.

**KAREN BRADSHAW:** Right. But not a fiduciary duty to the animals that were the subject of the biological easement.

**MIKE LIVERMORE:** Yeah. It's usually set up a little bit differently. That's just part of your point. So when someone does easement on their land, say an agricultural easement very common type of easement. People say this land is-- I'm going to sell on land agricultural rights to this land. Just to take a step back that's what an easement is which we haven't really articulated.

So say you are someone who has a lot of land that you currently use for agriculture purposes and you want to keep the land in agricultural uses, but part of the value of your land is the possibility of using it for to develop for real estate, to put a housing development on.

And your tax rates are based in part on the fact that you can use this land to put housing development on. And so the way this works is say, I'm at The Nature Conservancy or a similar organization, I buy from you or you donate typically more. You donate to me that portion of your right, the portion of your right to develop the land for anything other than agricultural uses.

Then I hold that part of the property right, you hold the part of the property right that allows you to use the land for agricultural purposes. The value of the rights that you have are less now because you can't build a housing development or sell it to a housing developer and so you pay less in property taxes and the like.

Now I'm holding onto this easement as the Nature Conservancy. And then the question of enforcement that we've been playing around with is something along the lines of 50 years from now, what's to make sure that there's not a housing development that's built on this land?

There is this easement that in theory. I can enforce, but maybe I don't worry about it, I don't care about enforcing, I'm not keeping track of it, that kind of thing. My guess is that there's something of a fiduciary responsibility.

There's certainly all kinds of incentives that the Nature Conservancy has to fulfill its mission, it's out there raising money. And if it was widely known that the Nature Conservancy just didn't bother enforcing these easements, it probably would not be good for them.

So any case, that's just a little bit of background. So in here, the distinction is you're not selling to someone else a portion of the rights to use the land in certain ways or whatever else works in the ecosystem context.

You're turning over, it sounds like your entire property in fee simple meaning the entire set of rights that come with property to whatever you ultimately decide on, the Bobcats let's just say because that's fun on this piece of land. Yeah. So anyway that was just a little bit of background just to make sure that I'm understanding the difference here.

And just turn it back over to you. So now we're talking about the long term management. So you're mentioning a trust. So that means that is the idea that you're going to set aside some money to pay a lawyer who's going to be managing this trust or what is the idea there?

**KAREN  
BRADSHAW:**

Right. So where is trust law unlike the conservation easement, you have this fiduciary duty. So for example, my trust currently the beneficiary is my 6-year-old daughter. So if something happened to me and my daughter came to own the assets and the trust, a trustee would manage those assets on her behalf.

They would have this fiduciary duty. They would have a legal obligation to put my six-year-old interests above their own in the management of the trust. And it's legally enforceable. If they fail to do that, someone can sue them on my daughter's behalf and a court will enforce the obligation to manage the land on behalf of the beneficiary. And that's what's missing in the conservation easement context, at least as far as I'm aware. Certainly TNC.

**MIKE  
LIVERMORE:**

It's different.

**KAREN  
BRADSHAW:**

Right. It's different. They're doing a great job and they have public accountability. We're not worried about the TNC is in the world with the conservation easements, but there are certainly lesser organizations or perhaps idiosyncratic individual management that may not track the purpose of the conservation easement.

But even with the Nature Conservancy, my understanding is they don't have this fiduciary duty. That a legally enforceable obligation to the animals' underlying the land. And certainly that could be the case, that might be the case. I think that's an open question for both of us. But in the trust context it's incredibly well established.

And so whomever the trustee is, whether it's a private party, whether it over time becomes my daughter or the attorney, whomever is put in place as the trustee will have an obligation to the animals. However, they're defined in the trust to manage it for the benefit.

And the cool thing is we're figuring this out on one hand for the first time with the wildlife interests. But it turns out that lawyers trust me, estate lawyers have for years been managing trusts on behalf of pets for their human clients.

**MIKE  
LIVERMORE:** All right. Firstly, I think the pet thing. Well, and maybe we could get to this in a second, which is I think another interesting dynamic of it. But again I think one of the things here that maybe we're blowing through quickly and I want to make sure we're taking a moment to appreciate is.

In a way there are the property rights regime that you're talking about here in this instance taking some private land and turning it over to a trust. We're in the weeds. we're in the legal mechanics about should we be in easement and is there a fiduciary duty. And that kind of stuff. And the point is that's very important which we that's where the action is in a lot of ways.

That's going to determine whether what you're doing here in this particular case is going to have the effect that you want it to have over the long term. Trusts as you note are very stable. And we should just also note-- this will be a question.

You can't force someone to be a trustee, you can't make me be a trustee for this land if I don't want to be a trustee for the animals. This is a matter of like people voluntarily take on these duties.

**KAREN  
BRADSHAW:** That's exactly right. I think I could name you as a trustee and then at the time of my death someone would approach you and say, guess what, Mike? You get to be there for the Bobcat.

**MIKE  
LIVERMORE:** Congratulations. Right. Exactly. Which I might do but, it'd probably be nice to talk about it first.

**KAREN  
BRADSHAW:** I think that you would be free to decline. No one will make you be the trustee. So that's right. The trustee has to be appropriate but also voluntarily acting in this role. They might be compensated, it might be someone who's connected to the land. But it's not as if we're going out and forcing people to be trustees against their will.

**MIKE  
LIVERMORE:** And so one of the things, but they have this responsibility to manage the land in a particular way. And so you could actually now that I'm thinking about this, of course, you could do this. It doesn't have to be in fee simple. You could have an easement on your land that you then turn the easement over to the Bobcats too. That's completely fine.

An easement is just a form of property just like all of the property rights. And so you could say I want to have an easement that basically allows these a family of Bobcats to live here and not be disturbed. They have an easement just like-- I could have an easement to walk across my neighbor's land.

And so you could do something like that. But the point I take it, the important point here is that the holder of that easement is they're going to be the animals right or that or the ecosystem. Let's just say animal here. And then there's going to be a designated trustee who's under a fiduciary responsibility if they choose to take it to manage the land in a particular, to make decisions in ways that are commensurate with the interests of the trustee.

The entity on whom whose behalf the trust is being managed. And that is a little different than to say the Nature Conservancy which holds the easement and it holds the easement more like broadly commensurate with its goals as an organization.

And maybe not with the Nature Conservancy, specifically, but just with this idea of turning these easements over to these not for profits. Maybe a little bit less comfortable with the long term stability of an arrangement like that compared to a trust in an animal's name where there's a name trustee.

The one thing I keep returning to is someone's going to have to pay this trustee typically. That's usually how it works. And I guess they could just slowly sell off the land or rent a portion of it or something like that as a way of paying themselves. Is that the idea?

**KAREN**  
**BRADSHAW:** Absolutely. I mean, there are many ways that lands generate value. For example, someone could rent the house that's located on the property. You can imagine. I mean, this is a little wild seeming but there could be hunting rights for animal species on the land. That's certainly not what I'm doing in my personal yard.

But you can imagine a million variations on ways that the land itself would generate revenue. Hikers could go there, recreational lists could pay a fee and in this way you can generate funds from the land that will create a self-sustaining trust model. And we should say, you're right like you said, we're in the weeds. We are far in the weeds on trust law right now.

**MIKE**  
**LIVERMORE:**

**KAREN**  
**BRADSHAW:** It is fun. And it's one tiny example of the many different ways to get to the goal. Trust is one legal pathway, but there are 4 or 5, 6, 10, 12 other legal pathways that you can take to achieve this broad goal of animal property rights.

And trusts are great for US lawyers because we're familiar with them and they are stable in the way that you said they're well established, but there are so many different variations and ways to get to that goal trust being only one of them. Public lands are another, high seas are another, indigenous systems of property are another. So many different pathways that if one is foreclosed for any reasons, there are many other ways to get to the goal.

**MIKE**  
**LIVERMORE:** Great. Yes, absolutely. That's one of the nice things about US law or the law in general. Is that there's a lot of tools and it just takes creative smart folks to figure out how to put that stuff to use.

So maybe just to take a bit of a left turn here. I'm just curious to add a couple of questions just for how thoroughgoing you are in the animals have property rights or should have property rights, the normative side of that.

We talked a little bit about the distributional piece, but you mentioned a little earlier like maybe we should think of animals as acquiring property rights the same way we think of people as acquiring property rights. That you mentioned in the high seas like a first in time.



So that idea is very common in property rights law where in the-- well, how do people get property, obviously we can sell it to each other. But like right initially how do you get the property? Who's the first one to get the property and one idea is like whoever occupies it first, whoever of gets there first is the one that gets the property.

There's a lot of discourse around the different ways of acquiring property and some of the historical injustices that happen and so on and so forth. But maybe just putting those aside for a moment, I'm just curious like does that, do you think normally that the same kinds of reasons and rationales that we apply to people and how they acquire property rights should also apply to animals.

So just to give two examples. You mentioned first in time. So if the whales are using a Seaway first before humans got there, does that mean humans shouldn't use it? Or does that at least provide a reason the same way or does that provide the same kind of reason as if some people were using that sea land first and therefore some other people shouldn't use it.

So that's one question is how this first and time thing-- how strong of a normative foundation does that provide for allocating property rights to animals? And then the second one I'm thinking of is adverse possession. So I'm just thinking like hell have the Blue Jays in my backyard adversely possessed my trees.

And now I can't kick them out because they've been using it openly for a very long time. Is that or at least an easement to use my land? The same way that if there was a family that I allowed over many years to cross over my land, to get from one place to another they would acquire an easement or at least they certainly could acquire an easement that way.

Should animals be able to acquire property in that same way or do we really need to think at the end of the day that there are fundamental differences here and that we shouldn't be thinking of animals as acquiring property in the same way as people.

**KAREN**

**BRADSHAW:**

Well, you so interesting. How do animals come to own property? And that question includes human animals. We are animals. We're just one species among many. And one of the ways I like to think about property when we consider it through this perspective is as many different overlapping inter-species systems of property, which sometimes intersect.

So one of my favorite chapters in the book is Chapter 3 where I talk about all of the non-human systems of territorial behavior that exists. And I argue that it's just property by another name. Animals of all sort of limbs of the tree of life. Things ranging from orcas, to lions, to ants, to bees engage in these property that if we are these behaviors that if we saw people do it, we would say that's property.

And instead we call it territoriality but we have thousands of scientific studies that show how animals defend space and resources. And some of my favorite examples are some species create scent-based fences around their territory. There's great non-violent dispute resolution among species like fish or spiders where they decide, they determine property disputes or territorial disputes without killing one another.

And so we have all of these different animal species that are engaging in their own interest species systems of property. And we're simply one species doing the same in a shared landscape.

**MIKE**  
**LIVERMORE:** Great. Because we do only have so much time and I think right there you've already said something really interesting. So I wanted to just push on it a little bit because otherwise we it might get lost. So this is just a bigger question, which is what is property now under your understanding?

Because I can imagine property as a normative concept, property as a legal concept. And I'm trying to understand how that relates to what you're describing as quote unquote "property in nature." I get the territoriality behaviors and that kind of thing.

Maybe you could just explain how is that property, in what way, I hear exactly like if we observe these behaviors we would think of it as property like behavior in people. I think a property is a legal regime. Clearly ants don't have laws. So

What is the relationship between these the normative, the legal, and then the behavioral that we see on the animal side? Because that was something that was really interesting part of the book. I was just curious to hear more about your thoughts on that.

**KAREN**  
**BRADSHAW:** Well, it's interesting because property law scholars, people like Robert Alexon and Jeffrey Stakes and James Cryer have discussed for a long time. That we can learn about property law by looking at animal behavior. And of course, we want to be careful how we do this.

There's really ugly history of scientific comparison of animals and humans in the past. And that's by no means where these scholars are going. Well, they're looking status for universality. The idea that maybe property law is just a codification of an underlying biological behavior of managing land and resources.

When you think about it, there's something evolutionarily efficient about having a space that is yours in a space that we know as mine, and even more so having it transferred through generations. And animals like birds and Jaguars have intergenerational rules governing how property is distributed upon--

**MIKE**  
**LIVERMORE:** For how land.

**KAREN**  
**BRADSHAW:** Yes. There we go. How territory, we should say. For how territory because it can include other non land resources is distributed upon the death of the territorial holder. And so when we look at these behaviors and relate them to property law, one way to see property law is the human codification of biological principles.

I personally think that there are normative and value-based judgments that we as humans need to infuse into a property that may not be shared among other animals. But I think it's important to note the territorial behavior establishes at least the idea that we're not the only people with property. Or we're not the only-- I should say we're not the only animals with property. And when we take property from other species--

**MIKE**  
**LIVERMORE:** Just to put again maybe a fine point. That there's some analogy between what we do through our property systems and what animals or other organisms behaviors that they engage in. And that's what I'm trying to get at in my mind anyway, get clear in my mind is the property part of this.

For example, is it like language where we could say, OK communication is something that's done by lots of different species. But language is something that we see only humans or maybe in some very limited other species. So there's communication is the general category and then language is a subset of that, that's more formal, symbolic, whatever, whatever, whatever.

And then we could think of territoriality in the behaviors that you're describing as the general case and then property law, property norms that we see in humans are the human version of it. The more symbolic, more formalized system. Does that capture what you're getting at?

**KAREN** I think that's a good sketch, that's a good generalization. But I'll say the science is really surprising. Even on  
**BRADSHAW:** something like communication. They found that Khan Shilavakov, who's in Northern Arizona University has found that prairie dogs have incredibly sophisticated systems of language, where they can--

**MIKE** Of communication. All right. That's thing. That's right. Sorry to--  
**LIVERMORE:**

**KAREN** He were to argue language. And I understand what you're saying  
**BRADSHAW:**

**MIKE** This is language.  
**LIVERMORE:**

**KAREN** Yeah he would argue it's language. They can say a fox approaching quickly from the West. So they're identifying  
**BRADSHAW:** the kind of species that's coming, the kind of predator. The speed at which it's arriving, the direction from which it's coming. Which to my mind and I think cons, I think it's safe to say is much more language than just communication.

**MIKE** Because it has this characteristic of being symbolic and representational or something.  
**LIVERMORE:**

**KAREN** Exactly. When he showed up in the field one day in a yellow shirt instead of his usual shirt color, the prairie dogs  
**BRADSHAW:** commented on the yellow shirt. So it's doing something more than of the pure, primitive survival basis that we might draw that distinction on.

When I had this idea about animals practicing property, I looked at the leading ant researcher in the world. The author of the book ants exclamation mark. Is that Arizona State University and he very graciously met with me.

And I floated this idea that maybe anti-territorial behavior is really akin to property, a very rudimentary system of property. And he said you're right, absolutely. But I don't think it's rudimentary at all, I think animals have more sophisticated systems of property or territoriality than humans do. And then he explained to me why.

And so I think when we look and press on the science, some of these distinctions may fall away. But as we're in the process of understanding and integrating new scientific information and findings about what the animal capacities are and how they compare to humans.

The distinction that you draw between property and territoriality or language and communication may be helpful just to situate people and where we are today. I suspect those distinctions will become even finer over time as we learn more.

**MIKE** Right. That strikes me is right. That there are useful distinctions to make. Not necessarily that they're always  
**LIVERMORE:** going to track human versus other species. Often not. That's not where the line gets drawn.

And maybe we can think of language as a subset of communication, but maybe there's a much richer way of thinking about the world of communication, animal communication, enter-organism communication and language versus non-language is a fairly primitive way of carving up the world.

And maybe as we learn more it will become more sophisticated and the similar thing might take place with respect to territoriality and human systems of property as an example thereof and maybe ultimately will end up with a much richer understanding of our own systems and then systems that exist in nature amongst non-human organisms that accomplish similar goals.

And that's very interesting and ultimately seems like it almost necessarily would help us think about both our own systems and how we relate to each other and how we relate to the rest of the world.

**KAREN** I think that's beautifully sad.

**BRADSHAW:**

**MIKE** Yeah. Well, this has been a super fun conversation. Thanks so much for really wonderful book and for taking the  
**LIVERMORE:** time to chat with me today.

**KAREN** My pleasure. I enjoy this conversation so much. Thank you, Mike.

**BRADSHAW:**

[MUSIC PLAYING]