

***Before the Law: Humans and Other Animals in a
Biopolitical Frame***

Cary Wolfe

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In his 2009 *PMLA* article on the state of animal studies in the humanities, Cary Wolfe argued that this burgeoning field has potential to be more than yet another object within a cultural studies paradigm. Animal studies can, instead, lead the way to a firmly posthumanist method for dealing with pressing questions, an approach that destabilizes not only 'our' views on the animal, but also the very 'we' from which we speak about what we call 'the animal'. Although Wolfe acknowledges the admirable intentions of philosophers who support 'animal rights', such as Peter Singer and Tom Regan, Wolfe is troubled by the way this "extend[s] (without questioning) an already constituted model of human subjectivity, who possess our kind of personhood in diminished form."¹ For Wolfe, animal rights philosophies do not push the animal question far enough, so that any effort to extend a normative concept of personhood with inalienable rights to a nonhuman animal merely appeases our guilty conscience. Thus, while we may grant immunity to animals such as pets or animals that we believe are close to us on an evolutionary scale, we let billions of other animals die on factory farms.

Whereas Wolfe's 2009 tome *What is Posthumanism?* was composed of several largely independent chapters, and, according to its critics, was belied by its title, *Before the Law* is less a book than a 100-page essay, composed of seven interlocking sections. Each section builds tightly on the previous one to argue that animal studies can contribute a distinctly posthumanist perspective to biopolitical thought. In arguing for a particular way of seeing the evolution of biopolitical thought, the book also productively and subtly critiques the arguments and positions of heavy hitting theorists and philosophers of biopolitics, including Giorgio Agamben, Roberto Esposito, Martin Heidegger, Peter Sloterdijk, and Judith Butler.

1 Cary Wolfe, "Human All Too Human: 'Animal Studies' and the Humanities," *PMLA* 124 (2009): 572.

For those unfamiliar with recent conversations in animal studies and posthumanism, these 100 pages are sure to be slow reading. Wolfe's style is dense, as anyone who has read his prior work can testify. He reads and critiques carefully and respectfully, expending a lot of energy on key passages from primary sources. For those readers who *have* read his previous work, however, many arguments will seem familiar, and this makes the book much easier to move through. Although some of these arguments are reframed in terms of biopolitical philosophy (as we should expect from the title), Wolfe remains committed to demonstrating the weakness of animal rights theories, especially in the first two sections. Readers of *What is Posthumanism?* will recognize his treatment of Martha Nussbaum's 'capabilities' approach and Cora Diamond's emphasis on human and animals' 'shared vulnerability'. In addition to these theorists, Wolfe admires Judith Butler's recent project *Precarious Lives*. Yet, despite Butler's gestures toward nonhuman animals as grievable lives, Wolfe concludes that Butler's approach relies too heavily on a "reciprocity model," in which *agency* remains the key component.

Sections III-V of *Before the Law* test the pragmatic value of Agamben, Foucault, and Esposito's thought against historical and contemporary examples. Wolfe's ability to show the limitations of abstract philosophical positions to aid pragmatic decision-making is one of the major strengths of his text. For instance, Wolfe argues that Agamben's presentation of the sovereign and *homo sacer* as symmetrical figures limits his project, agreeing with Dominic La Capra that Agamben's position at the end of *The Open* offers us an 'empty utopianism'.² In another useful example, Wolfe tests—and finds wanting—Esposito's claim that we should regard all life as having equal value and thus deserving of protection. According to Wolfe, Esposito's position is mistaken from a theoretical standpoint; it founds itself on a neo-Catholic vitalism. More importantly, it fails to help guide ethico-political decision-making. Even if we accept a neo-vitalist principle of life, Esposito's position re-raises questions previously asked of deep ecology movements. Should we let certain forms of life live that would wipe out the human race? Does smallpox have a 'right to be'? Even if we answer "yes," we have to recognize that those forms of life with enough resources would preserve themselves from extinction and thus be incurred by the less fortunate. Therefore, Esposito's life philosophy still leaves us with a crucial question for which it cannot account: who deserves to live?

In the last third of the book (sections VI-VIII), Wolfe draws on Derrida to reframe his primary argument that humans and animals share *two* kinds of finitude. The first type is our shared embodied physical vulnerability. The second

2 Cary Wolfe, *Before the Law: Humans and Other Animals in a Biopolitical Frame* (Chicago: University of Chicago Press, 2012), 25.

type, as he writes in *What is Posthumanism*, is “the finitude we experience in our subjection to a radical ahuman technicity or mechanicity of language.”³ Section VI gives an account of Derrida’s critique of Lacan’s claim that animals can *react*, but not *respond*. Lacan argues that even though animals can pretend, they cannot pretend to pretend. For Lacan, pretending corresponds to reaction, whereas response requires the capacity lie by telling the truth. Derrida argues in *Animal that Therefore I Am*, however, that it is impossible to distinguish between “pretending” and “pretending to pretend,” even in the case of human beings. On this basis, Derrida rejects the distinction Lacan wishes to preserve between animal ‘code’ and human language. Wolfe then uses current scientific research from primatologist Barbara King, psychologist Gordon Burghardt, and philosopher of mind Alvan Noë, as well as the systems theory of Maturana and Varela, to claim that the capacity for response results from an organism’s complex interactions with its environment, rather than an essential ability. Like his tendency to test theories against historical examples, his use of empirical observations on animal response strengthens his argument. For example, in order to show that he has not simply replaced anthropomorphism with ‘vertebratism’, Wolfe cites what he calls the ‘scandal of the cephalopods’, in which cephalopods demonstrate that “the capacity to respond should not be linked to generic biological markers such as membership in a particular species or phylum.”⁴ Accordingly, Wolfe takes seriously Derrida’s recommendation in “Eating Well” that this way of viewing animals “should allow us to take into account scientific knowledge about the complexity of ‘animal languages’ . . .”).⁵

In section (VII), potentially the most interesting and controversial section in the book, Wolfe returns to Heidegger’s characterization of the animal as “having a world in the mode of not having” laid out in *Fundamental Concept of Metaphysics*. Wolfe suggests that this definition is perhaps the closest we have gotten to defining both human and nonhuman *Dasein*, whereby *Dasein* is reserved for those beings constituted as ‘whos’ formed by a prosthetic relation to a ‘what’. Wolfe argues that *some* nonhuman animals possess this type of relation, which we usually only attribute to human being. In pragmatic terms, this means that we have to consider *to whom* existence matters and in what way. Wolfe writes, “Is there not a qualitative difference between the chimpanzees used in biomedical research, the flea on her skin, and the cage she lives in—and a difference that matters more...to the chimpanzees than to the flies or the cage? I think there is.”⁶ In light of this difference, he points out that to ask whether or not existence *matters* to a given

3 Cary Wolfe, *What is Posthumanism* (Minneapolis: University of Minnesota Press, 2010), 88.

4 Wolfe, *Before the Law*, 72.

5 Ibid, 89.

6 Wolfe, *Before the Law*, 83.

entity is not anthropocentrism, but an honest confrontation of differentiation among beings.

I see this assertion of *mattering* to be Wolfe's most important claim in the wake of object-oriented ontology. While OOO shares with animal studies the task of combatting anthropocentrism, the former *flattens* distinctions among objects (a wide-net category including things, animals, people, institutions, etc.), rather than "thickening and deepening...our description of the worlds and networks we share...and their qualitative dimensions."⁷ Wolfe's passage contrasts with 'flat ontology', which he explicitly engages with in a characteristically long footnote. While the book is only 100 pages long, it is supplemented by extended, but crucial footnotes that probably could have made it into the main text. At the very least, the footnotes serve as a meta-conversation between Wolfe's main argument and recent theory and philosophy. One particular footnote not only answers a major objection one might take to his argument—does this only apply to carbon based life forms?—but provides the most succinct criteria for determining whether or not a given entity qualifies as a 'who' and not just a 'what':

The relevant question, which I cannot explore in detail here, would be the mode of embodiment in relation to recursive developmental change that allows not just requisite plasticity in the organism's individual ontogeny, but also, and therefore, its ability to enter into an essentially prosthetic relation to the external technicities of code, semiosis, archive, and so on.⁸

How we are to know whether or not an individual possess a significant degree of plasticity and a relation to external technicities seems to be deferred to empirical, scientific inquiry or is left for the reader to wonder. According to Wolfe, however, no matter how we choose, we cannot choose all at once in a grand gesture of acceptance. Further, our one guarantee in our decision is that *we will have been wrong*.⁹ But we must choose. Who is this we? Human beings. Why us? Because, as Wolfe argues, human and nonhuman fates are intertwined: all of us are potential animals before the law.

Although many questions remain to be answered, this work is an impressive attempt to show how our theories of nonhuman animals can and do have a significant, pragmatic, and immanent effect on how we treat ourselves and the nonhuman. Wolfe's book should be read as an important step in his career-long

7 Ibid., 83.

8 Ibid., n131.

9 Ibid., 103.

trajectory and as a crucial argument for the relevance of animal studies in our contemporary theoretical milieu.

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