

*University of Oregon*

## The Animal in Biopower

*Examining the Mode of Power Behind the Legal Status of Animals*

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## I. Introduction

Surrey County, Virginia. In April of 2007, police officers raided the residence of All-Pro NFL Quarterback Michael Vick, on the suspicion that the athlete, who was a registered dog-breeder, was involved in illegal dogfighting. Upon arrival, what was found was worse than any initial suspicions had anticipated. According to reports, federal officials found over 60 dogs, many dead from execution through gunshots, hanging, or electrocution (Maske, 2007). After initially insisting his innocence, Vick and his cohorts agreed to a plea bargain, in which he was found guilty, and sentenced to eighteen months in federal prison. Reportedly, the presiding Judge was swayed by the defense's argument that dogfighting was part of the "culture of Vick's upbringing."<sup>1</sup> Finally, In 2010, Vick was reinstated to the NFL, and as a testament to the athlete's repentance, in 2012, he bought a dog.<sup>2</sup>

The Michael Vick story sheds light on many aspects of the relationship humans have with animals – legally as well as ethically. It is the quintessential demonstration of a denigrated ethical ontology of life. It is not simply the fact that Vick systematically took at least 60 lives; it is the fact that he *misused* 60 *animal* lives. The story also raises significant questions about the legal status and protections of animals.

In this paper, I seek to address and problematize the legal status of animals, which regards them as property, and as resources for the ends of human beings. The main purpose of my research is to inquire into the mode of power that underlies both the legal status as well as the subjugated and exploited state of animals in general. The central argument that I advance is that the power structure which is at stake here is that of biopower, and that issues dealing with the lives of animals are biopolitical in nature. In promulgating this argument, I seek to achieve two main purposes. First, I

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<sup>1</sup> For further reference, see ESPN article "Vick faces prison time after agreeing to plead guilty." <<http://sports.espn.go.com/nfl/news/story?id=2983121>>

<sup>2</sup> See Time article "Michael Vick Admits Owning a Dog." <<http://newsfeed.time.com/2012/10/13/michael-vick-admits-owning-a-dog/>>

will assess the animal rights discourse. Here, I argue that efforts devoted to notions such as "animal liberation" are fundamentally misguided, as they are based on an insufficient model of power. Using Michel Foucault's concept of the "repressive hypothesis," I will show that the animal rights discourse is trapped in the illusion of sovereign power. Secondly I will show that the legal status of animals, and the exploitation of animals, are the results of biopower. I will also show how, drawing on Beauvoir and Oliver, the animal has become an ethical Other in the system of biopower.

## II. Examining Animal Rights

The real, significant emergence of the issue of the subjugated state of the animal – on the philosophical as well as the “mainstream” scene – was the rise of the rights-based discourse. The catalyst for this movement was, unequivocally, Peter Singer’s hugely influential book *Animal Liberation* (1975), which spurred the creation of the organization People for the Ethical Treatment of Animals (PETA) in 1980. In sum, the animal rights approach holds that some or all nonhuman animals have the *right* to the possession of their own lives and to protection of their most basic interests (such as the interest in not suffering). In this section, I will analyze the rights-based arguments of Tom Regan and Peter Singer. These represent the two most significant ethico-philosophical approaches. Regan employs a blend between Kantian deontology and utilitarianism, while Singer argues for animal rights through a more strict utilitarian model.

### *Tom Regan’s Kantian Deontology and Moral Rights*

Regan defines his approach (which he calls the “rights view”) to animal rights as “an attempt to blend certain features of utilitarianism and Kant’s theory” (Regan, 2001, 17). More specifically, Regan seeks to reconcile the indirect duties of Kantianism with the direct duties of utilitarianism. Indirect duties toward nonhuman animals, Regan explains, are those that hold that we

should treat them in a non-cruel manner because, as a result, we will treat each other better.<sup>3</sup> While this view is pragmatically beneficial – an acceptance of it would result in a better, and kinder, treatment of the animal – it is still lacking from an ethical standpoint. Specifically, it, like the anticruelty laws, fails to recognize the animal as a being in itself. It overlooks the intrinsic quality of these forms of life. Therefore, Regan appeals to the direct duties of utilitarianism. He understands this as “certain things we owe to these animals themselves, apart from how humans will be affected. On this divisive issue the rights view sides with utilitarians against Kantians: nonhuman animals are of direct moral significance; we have direct duties in their case” (Regan, 2001, 17). Operating under this premise is the view of an autonomous form of life in itself, as an intrinsic end. Utilitarianism offers a framework for how the human should relate to the animal, with the latter existing as something other than an extension of the human.<sup>4</sup>

The rights movement can, in many ways, be described as a two-pronged one. On the one hand is the philosophical aspect, wherein prominent thinkers – such as Regan, Francione, and Singer – attempt to change the current predominant mindset for people in our society, which views animals as lesser and as resources. The other aspect is the political one. Here, activists, through

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<sup>3</sup> Regan writes: “Kant emphasizes rationality as the defining characteristic of being human, and echoing St. Thomas, he objects to cruelty to animals because of the deleterious effect this has on the treatment of humans. ‘He who is cruel to animals’ Kant writes, ‘becomes hard also in his dealings with men’... Kant, it will be recalled, recognizes only indirect duties to nonhuman animals; for example, we should not threaten them cruelly not because doing so wrongs them because it can lead us to be cruel to one another.” (Regan, 2001, 12-17).

<sup>4</sup> Regan does, however, identify certain shortcomings with the utilitarian view, thus necessitating an infusion of Kantianism. This is that Kantianism, unlike utilitarianism, recognizes duty in a manner that sustains the *individual* of the animal. Regan states that “utilitarians believe that duty is determined by the comparative value of consequences... Kant and his followers take a decidedly different view; what is right depends not on the consequences but on the appropriate, respectful treatment of the individual” (Regan, 2001, 17). Essentially, Regan is rejecting the utilitarian maxim that the action that brings the greatest amount of happiness for the greatest number should be taken. Under this view, hypothetically, taking the life of one cat would be morally justified for the utilitarian *if* the consequence of the action would bring increased happiness for at least 51% of subjects affected by the act. While hypotheticals serve the purpose of illustrating the very rough strokes of the debate, Regan’s critique becomes more poignant when situated under a more real example. The question now becomes: if taking the life of 10,000 cows each year feeds 100,000 people, is that action morally justified? The problem with utilitarianism is that in certain instances, such as this, valuing life becomes a numbers game. We judge based on some mathematical formula. And under this framework, life loses its intrinsic value. The animal is perpetuated as a resource. Kantian deontology, however, purports certain indirect duties which, according to Regan, makes up for utilitarianism’s shortcomings. Specifically, it promulgates that there are certain acts which simply should not be carried out (such as killing and torturing), because the animal should be treated as an end in itself, with inherent value.

organized and unorganized attempts work within, and outside, the political system in order to demonstrate and uncover ills which befall animals as a result of the status quo. And like any movement, progress is slow and very hard-fought. Just as LGBT, gender equality, and environmental movements, the animal rights movement is fragmented and divided as to which approach is the more effective one. And just as it is at odds over which political approach is to be favored, the animal rights movement is divided over which philosophical foundation it should stand on. Another approach is offered by Peter Singer.

### *Peter Singer's Utilitarianism*

For Singer, the task is to *extend* rights recognized in today's society to nonhuman animals.<sup>5</sup> This delineation, of extending rights and privileges, is significant. At issue in any rights-based movement is the question of where the rights are based. On the one hand, there are so called "new rights," meaning that what is sought is not recognized in any shape or form in society, hence requiring a creation of a new formulation of rights. On the other hand, the rights that are pursued may exist in some capacity, while being withheld from some groups. As such, the issue then becomes to fight for the inclusion of these groups into this formulation of the right. Consequently, it is this latter view which Singer espouses. The premises for his inquiry, then, are that the rights which are withheld from animals *do exist* in society, and that they *can* be extended.

Singer defines his utilitarian approach for conceiving of these rights when he writes:

The basic principle of equality, I shall argue, is equality of consideration, and equal consideration for different beings...The capacity for suffering [citing Bentham] and enjoying things is a prerequisite for having interests at all, a condition that must be satisfied before we can speak of interests in any meaningful way...If a being suffers, there can be no moral justification for refusing to take that suffering into consideration. (Singer, 1976, 76-77)

Essentially, Singer presents a utilitarian argument based in the concept of the maximization of interest satisfaction. It is important to note that he is not making a deontological claim about how humans should treat animals. Rather, he argues that beings that suffer must be *considered*. In other

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<sup>5</sup> Singer, 1976, 74

words, Singer's promulgation is that the interests of the animal must be factored into the equation. The utilitarian aspect here is apparent; Singer is delineating another factor which must be considered in determining whether an act is morally justifiable. To return to my previous hypothetical about taking the life of 10,000 cows to feed 100,000 people, the "Singer corollary" would factor in the pain and suffering of the cows, as well as their interests as suffering beings. While this unequivocally raises the bar by substantial proportions, Singer's utilitarian position should not, on a *prima facie* level at least, be understood as saying that taking the life of a nonhuman being is *always* morally wrong, by itself.

Similar to the utilitarian claims made by Regan, Singer also asserts that at the core of the rights movement is resistance to the view that the animal is not an intrinsic end in itself. And while this view is, unsurprisingly, contested, the view that the human is such an end in itself seems to be rather unchallenged. Significantly, Singer attempts to challenge precisely this idea, as he writes:

The truth is that the appeal to the intrinsic dignity of human beings appears to solve the egalitarian's problems only as long as it goes unchallenged. Once we ask *why* it should be that all humans - including infants, mental defectives, psychopaths, Hitler, Stalin, and the rest - have some kind of dignity or worth that no elephant, pig, or chimpanzee can ever achieve, we see that this question is as difficult to answer. (Singer, 1976, 80)

Singer's move here is very significant, and it demonstrates a difference between his and Regan's approaches. One could, as Regan, purport that animals, just as humans, are intrinsic ends in themselves, and as such is entitled to the rights and privileges that come with this. Or one could, as Singer does, go one step further. His question is, essentially: "why are we, as human beings, so special?" Singer's argument is that, just as whites have been unjustifiably placed above blacks, and as men have perched themselves above women, and just as heterosexuals have pronounced themselves as the dominant sexual preference, so too has the human elevated itself above all other species and accordingly, wielded its self-given power above all others. Singer's charge against speciesism is precisely this – to show that the human's oppression of the animal is identical to

racism, sexism, and homophobia. And similar to these identified oppressions, any initial attempt to subvert the unethical status quo will be resisted, appear unorthodox, and require action.

### *The Repressive Hypothesis*

While the rights-based approach to alleviating the adverse conditions of animals does identify certain fundamental evils – namely, it sheds light on many of the heinous and unethical practices which the legal status as property condones – the characterization of “the problem” is, at its core, misconceived. More specifically, the rights activists have predicated their conception of the situation of the animal on a power model which is oversimplified. One example of this is found with Regan. It is important to make one point demonstrably clear at the outset: there is, naturally, nothing at fault with Regan and the rights-movement’s attempts at ending the exploitative use of animals in agricultural, scientific, and sport practices. These are all measures that ought to be taken, if the animal is to be recognized as a sentient and intrinsically valuable being. What is wrong, however, with the aforementioned approach, is that it confuses the manifestations of a larger problem with a necessary or, for some, a sufficient condition for righting the wrongs which befall animals. The rights-based movement is, in short, trapped in a “repressive hypothesis.”

This term, introduced by Michel Foucault in *The History of Sexuality, Volume 1*, was initially directed toward society’s treatment of sexuality. Here, Foucault writes:

We are informed that if repression has indeed been the fundamental link between power, knowledge, and sexuality since the classical age, it stands to reason that we will not be able to free ourselves from it except at a considerable cost: nothing less than a transgression of laws, a lifting of prohibitions, an irruption of speech, a reinstating of pleasure within reality, and a whole new economy in the mechanisms of power will be required...But there may be another reason that makes it so gratifying for us to define the relationship between sex and power in terms of repression: something that one might call the speaker’s benefit. If sex is repressed, that is, condemned to prohibition, nonexistence, and silence, then the mere fact that one is speaking about it has the appearance of a deliberate transgression. (Foucault, 1990, 5-6)

Here, Foucault critiques the notion of repression. He argues that there is a misconception at issue here with the perception of a subjugated sexuality. Namely, he critiques the view that sexuality is repressed by a sovereign power. This is, essentially, a “top-down” view of power, with a dominant

sovereign forcing itself on the subjected. Importantly, Foucault is not dismissing *all* types of sovereign power; rather, he claims that it is a falsity to attribute it to every instance of perceived repression. Along this vein, Foucault's critique also extends to efforts of "liberation." The reason for this is simple: if the view of a sovereign power is false, there is no one to resist. One cannot, in the case of sexuality, achieve liberation, precisely because the reason why sexuality is so fraught and problematic cannot be attributed to some dominant force pressing down on it and actively subjugating it.

The significance of the repressive hypothesis is that it inhibits accurate problematization. In other words, the mischaracterization of power as sovereign, coupled with the perceived solution of transgression as the means to liberation obstructs any attempt at actually identifying the nature of the problem. For Foucault, the upshot of the repressive hypothesis was, more importantly than not being able to arrive at the "right" answers, that the right *questions* were never asked. As Foucault writes, "the question I would like to pose [in respect to sexuality] is not, Why are we repressed? But rather, Why do we say, with so much passion and resentment against our most recent past, against our present, and against ourselves, that we are repressed?" (Foucault, 1978, 8-9). Crucially, without an adequate problematization, and understanding of the adversity at hand, and a correct conception of the power structure which is operating in the current situation, there is little hope that any concrete effort can be undertaken to wrong the ills which are at stake.

The fundamental failure of the rights-based movement, and its overarching discourse, is that it is predicated on a model of sovereign power, which is a misconception. This model, and conception of power, inevitably hinders an adequate problematization of the true cause of the exploitative state of animals. In other words, the rights-based philosophical approach, led by Regan and Singer, are stuck in a repressive hypothesis. The illusion which they find themselves in is that by acts of mere transgression, the system of repression will be subverted, and the animal will be



liberated<sup>6</sup>. Suffice it to say, however, that their efforts to create any substantial and long-lasting change – in the legal and institutional regard of animals, and in the overall mindset of people in society – have not gone far enough. The advanced reforms all take place within a system that limits their reach. The right-based movements and its activists are merely fighting a ghost; they are protesting and rallying an oppressive figure which does not exist. Thus, rather than accomplishing anything which resembles “animal rights,” Regan and Singer’s approaches, and their movement’s activists, are Quixotic – they are merely fighting windmills. However, the true problematization; the roots of the subjugated and exploited state of the animal, still persists.

The only way to accurately problematize the ills which animals face in today’s society and in the manifestation of the property-based legal status is to change the very premise upon which the method of inquiry is predicated. What is needed, in place of the faulty premise of subjugation at the hand of sovereign power, is best stated by Foucault when he writes:

The object, in short, is to define the regime of power-knowledge-pleasure that sustains the discourse on human sexuality in our parts of the world. The central issue, then (at least in the first instance) is not to determine whether one says yes or no to sex, whether one formulates prohibitions or permissions...but to account for the fact that it is spoken about, to discover who does the speaking, the positions and viewpoints from which they speak. (Foucault, 1990, 11)

Foucault’s problematization about the fraught nature of sexuality in society can be directly extrapolated into problematizing the condition of animals. To apply Foucault’s own language, the object is not to define the repressed state of the animal at the hand of the sovereign repressive system of power as power-knowledge-*repression-liberation*. Rather, what is needed, is to excavate the subject-position which shapes the life of animals. The issue is an ethical one; it is one of voice, and finding who speaks for whom in the ethical economy. This is, furthermore, at issue when Foucault writes about “speaking” in the passage above.

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<sup>6</sup> This is made abundantly clear, for example, by the strategies employed by PETA. Their pursuit for “animal liberation” has, over the years, included several highly publicized public protests, such as breaking into laborites which perform animal testing, naked protests in public places against furs, and gore marches at fashion shows (reference: UPI news, “Top 10 PETA protests of the decade.” <[http://www.upi.com/News\\_Photos/Entertainment/Top-10-PETA-protests-of-the-decade/2624/7/](http://www.upi.com/News_Photos/Entertainment/Top-10-PETA-protests-of-the-decade/2624/7/)>).

A very important question to be asked as to how we understand the animal is – as Foucault asked about sexuality – *what* there is to gain in constantly conceiving the problem as one resulting from a top-down sovereign power model, and what is our investment in repeatedly framing the issue in this way? The answer is, that in promulgating the "repressed state" of the animal as the product of sovereign power, we, as The Human, re-affirm our position as the speaking subject. In speaking of the repressed animal, *we* speak for *it*. We confirm – to ourselves as well as to our surroundings – that the human is he who wields: who writes the laws, purports the cause, and even, who fights for animal rights. Through perpetuating the repressive hypothesis, and the myth of sovereign power, we mask what is hidden for us when we talk about animals. Namely the correct mode of power which is operating, and which underlies the exploitation of the animal.

### III. Biopower

#### *Understanding Biopower and Biopolitics*

Even though the legal status of animals does not represent a top-down sovereign power model, it would be a mistake to confuse this claim with a view of a power-less state of affairs. Power is everywhere: power is inescapable. The fundamental failure of the animal rights discourse is not that it fails to recognize the existence of power, but rather that it is unable to identify the specific mode of power which operates adversely against animals. What is most compelling about Foucault's repressive hypothesis, and in shedding light on the myth that power is doxically understood only as sovereign, is precisely that it opens up possibilities for these different forms of power to be recognized. The challenge for correctly problematizing, and indeed, understanding the true nature of the legal classification of animals as property is to find the specific form of power which is at stake for animals in our society. I argue that the mode of power at play here is biopower, and that the evils that befall animals in our society is a biopolitical issue.

While biopower is not a new concept, and even though the understanding of it has changed throughout two centuries, the notion of biopower was reframed, respecified, and re-conceptualized by Michel Foucault. In *The History of Sexuality, Volume 1* he writes:

During the classical period, there was a rapid development of various disciplines – universities, secondary schools, barracks, workshops; there was also the emergence, in the field of political practices and economic observation, of the problems of birthrate, longevity, public health housing, and migration. Hence there was an explosion of numerous and diverse techniques for achieving the subjugation of bodies and the control of populations, marking the beginning of an era of 'biopower.' (Foucault, 1990, 140)

Rudimentarily, biopower can be understood as the power and the control over populations.

Significantly, it differs substantially from sovereign power. The latter is understood as the rule of subjects,<sup>7</sup> with a sovereign entity possessing, in a top-down structure, the power of life and death.

Biopower, on the other hand, has as its site of power (meaning what the power is imposed on) *populations* and masses. And where sovereign power has the power to *command* life and death,

biopower is the power to *foster* and *regulate* life and death. The most complicated aspect of biopower is identifying its agent: there is no proverbial King who wields and rules. Rather,

biopower is an institutionalized system of power. It is generated through the system that is set up and operates without the direct command of a dominant entity.<sup>8</sup> Thus, the agent is more correctly understood as the state, experts in various fields, networks which hold information, and different elements of the bureaucracies.

For Foucault, biopower is the form of power that is at stake in human sexuality. His identification of the history of sexual regulation, through religious and psychoanalytic institutions,

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<sup>7</sup> "Subjects," here is understood as citizens in a monarchal system of governance, i.e., as the King's subjects.

<sup>8</sup> The difference between sovereign power and biopower is further specified by Lemke, who writes: "Foucault undertakes an analytical and historical delimitation of various mechanisms of power while contrasting sovereign power with "biopower." According to him, the former is characterized by power relations operating in the form of "deduction": as deprivation of goods, products, and services. The unique character of this technology of power consists in the fact that it could in extreme cases also dispose of the lives of the subjects. Although this sovereign "right of life and death" only existed in a rudimentary form and with considerable qualification, it nevertheless symbolized the extreme point of a form of power that essentially operated as a right to seizure. In Foucault's reading, this ancient right over death has undergone a profound transformation since the 17th century. More and more it is complemented by a new form of power that seeks to administer, secure, develop, and foster life" (Lemke, 2011, 35).

shows that there was a strict sense of normalcy developed around sexuality, which controlled the people. Furthermore, this "rule by norm" grew so strong that it replaced the role of the sovereign. Foucault wrote that "another consequence of this development of bio-power was the growing importance assumed by the action of the norm, at the expense of the juridical system of the law" (Foucault, 1978, 144). Crucially, while these norms may have been initially established by sovereign entities, their pervasiveness and proliferation occurred without them.

While biopolitics and biopower are not separate concepts – rather, the two are cognate expressions of the same mode of power – there are some constructive points to draw from this discussion.<sup>9</sup> In his article "From Biopower to Biopolitics," for instance, Maurizio Lazzarato promulgates the idea that biopolitics can be understood as the conditions of possibility for biopower. He writes that, for Foucault, "biopolitics is the form of government taken by a *new dynamic of forces* that, in conjunction, express power relations that the classical world could not have known...Biopolitics is the strategic coordination of these power relations in order to extract a surplus of power from living beings" (Lazzarato, 2006, 14-6). Essentially, Lazzarato's understanding of biopolitics is precisely this coordination of power relations, which are *bodies* in the political: the sphere of the polis. These relations can take many forms, such as man-woman, master-student, doctor-patient, and, undoubtedly, human-animal. In the biopolitical system, it is these types of relations of populations that are subjects of regulation.

Furthermore, Lazzarato writes that "Biopower coordinates and targets a power that does not properly belong to it, that comes from the 'outside.' *Biopower is always born of something other than itself*" (Lazzarato, 2006, 16). In sum, biopolitics is what, through establishing power relations, creates and identifies the populations which are the site of biopower. It is biopolitics that establishes these "powers" that are generated outside of it. Through its establishing of these coordinated power

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<sup>9</sup> Arguably, a distinction between biopower and biopolitics is rather irrelevant; many hold the view the two terms are in fact cognate. This camp would argue that given that the government and the state - the *political*, is in many instances the executing agent in biopower, an attempted separation between "power" and "politics" is beside the point, and rather moot.

relations, which are essential for biopower to exist, biopolitics, then, is rightfully understood as a condition for the possibility of biopower. Lazzarato is significant due to his specification of the established power relation in biopower/biopolitics. These are undoubtedly necessary, and need to be highlighted. It is also important to note that there are any number of relation within this power model; this is something the animal rights discourse does not account for. In conclusion, the significant aspect of this discussion is not to find some arbitrary line between what some label "biopower" and others call "biopolitics," but rather to recognize that this mode of power is rooted in the strategic coordination of power relations, and that this comes not from a top-down sovereign model of power. The true "source" of power at stake when speaking of animals is much more pluralistic and complicated. Before this is located, however, it is crucial to show how the agent of power moved from the sovereign to something else entirely.

#### *Power Over the Animal - From Sovereign Power to Biopower*

In his lecture series *Society Must be Defended*, Foucault explains this shift in the mode of power. He writes:

The new nondisciplinary power is applied not to man-as-body but to the living man, to man-as-living-being; ultimately, if you like, to man-as-species. To be more specific...the new technology that is being established is addressed to a multiplicity of men, not to the extent that they are nothing more than their individual bodies, but to the extent that they form, on the contrary, a global mass that is affected by overall processes characteristic of birth, death, production, illness, and so on... We have a second seizure of power that is not individualizing but, if you like, massifying, that is directed not at man-as-body but at man-as-species. (Foucault, 2003, 242-3)

Importantly, one of the crucial differences between sovereign power and biopower is that while the former was directed toward the individual, in terms of the sovereign executing, through command and violence, power over the individual, biopower, as stated, operates on the mass, or the population. The mechanisms of biopower create a mass, an aggregated entity, that is controlled through regulation, so that what was once the power over life and death has now become the power to *foster* life and to let die. Furthermore, it is clear by this passage that biopower as a concept can be

extended to animals. Foucault chose to speak of the seizure of power which is directed not at persons, humans, or man as the human. Rather, Foucault states that biopower is directed at man-as-*species*. Significantly, this specification, and the recognition of the human as a biopolitical entity which is one of many species, allows us to read Foucault's biopower as something that is directed at non-human species as well. This relation to life and species brings the human into proximity with our merely "animal" others. It shows that man is but one of many species. With this said, however, the analysis of animals in biopower requires yet another step.

### *The Animal Other*

In inquiring into animals as a *population*, and whether the specific mode of power which subjects them is indeed biopower, we must first establish whether animals constitute a part of a biopolitical power relation. Foucault significantly outlines a model for determining this when he writes:

A power relationship... can only be articulated on the basis of two elements that are indispensable if it is really to be a power relation: that the 'other' (the one over whom power is exercised) must be recognized and maintained to the very end as a subject who acts; and that, faced with a relationship of power, a whole field of responses, reactions, effects, and possible inventions may open up. (Foucault, 2003, 275)

Consequently, in order to examine *if* animals truly constitute an object of power, and if they are a part of a power relation in a system of biopower, we must establish that animals constitute an other who is maintained as a subject.

At the outset, the *type* of other at stake here must be clarified. Importantly, I am not pursuing an other in the Levinasian and Derridian sense.<sup>10</sup> Rather, my conception of the animal Other is that which is excluded and outside the established realm of normalcy, and that for who's subject-position is fundamentally discarded and neglected. It is an Other which is precisely *constructed* through exclusion – it is defined by its *exclusion from the norm*. Specifically, it is an ethical Other along the lines of Simone Beauvoir's conception. In *The Second Sex*, she writes:

"Thus humanity is male and man defines woman not in herself but as relative to him; she is not regarded as an autonomous being... and she is simply what man decrees, thus she is called "the sex," by which is meant that she appears essentially to the male as a sexual being. For him she is sex – absolute sex, no less. She is defined and differentiated with reference to man and he not in reference to her; she is the incidental, the inessential as opposed to the essential. He is the Subject, he is the Absolute – she is the Other."  
(Beauvoir, 1956, 15).

The animal Other shares many of the characteristics of Beauvoir's Other, the woman. Like the woman, the animal is not autonomous. In fact, the conception of what is "animal" is entirely derivative. The animal is the animal by what the human is not.<sup>11</sup> Like the woman, the animal is what the human subject decrees it to be. Its ontological status as *animal* is constructed, determined, and imposed. The animal is, furthermore, defined with reference to the human. It is defined through the negation and opposition of the defining features for the human. Consequently, the animal is not essential, but rather, what the subject, the human, is not. In short, the animal is an Other, in the true sense of the word.

Drawing on Beauvoir's work in *The Second Sex*, the contemporary philosopher Kelly Oliver demonstrates how animals can be understood as an Other defined through exclusion. In her piece "Its Our Fault," Oliver writes:

While *The Second Sex* begins by describing the ideological injustices done to women and also all female animals, the central argument of the book is grounded on an absolute abyss between women and other female animals. Man separates himself from other animals with his ability to project himself into the future and thereby transcend our animality. In order to become man's equal, woman must do the same. De Beauvoir argues that there is no 'natural hierarchy between man and woman'... She insists that 'they [biological considerations] are insufficient for setting up a hierarchy of the sexes; they fail to explain why woman is the Other'...Biological destiny does, however, determine the animal as the generic Other for the human. (Oliver, 2009, 162)

This passage from Oliver's project with De Beauvoir raises significant points about the ethical status of animals in our society. Specifically, Oliver shows that the separating feature, and the factor that denigrates the animal in our ethical economy, is that it is not human: that it is *different*. All living creatures are defined by and through the human through the single ethical subject-position in

the ethical economy. The human is the dominant, and the *normal*. And in this view, what is not human – that is, the animal – becomes juxtaposed *from* the human rather than being an equal alongside it. The animal is the animal precisely because it is not human, and because it is not like *us*.

The property-based legal status of the animal, moreover, epitomizes this ethical "othering." The fact of the matter is that the law, and its history, is tainted with pervasive "subject-other" relations. While the law is purported as the avenue for democracy, and as an institution that protects and includes, the fact of the matter is that the law is highly exclusionary. The law is traditionally a homogenous institution, and this homogeneity cuts across several different sectors – such as race, class, gender. As such, the law is not the bastion of "protection for all," albeit advertised and promulgated as such. Rather, the law is a successful tool for maintaining an unequal status quo. It is where subject exercises its dominance over the object, through legal writs and laws. The law has not failed us. Rather, it has been highly successful in maintaining an unequal status quo, and in perpetuating exploitation and resourcing of life. Illustratively, the law has, throughout the history of this nation, legitimized several practices which we find unethical today, such as coverture, racial segregation, and Japanese internment. Regarding animals as property, as a means toward human ends, clearly is another instance of the unequal nature of the laws.

What all these instances of adverse, but once legal, practices have in common is that the laws were written from one subject-position. Women and racial minorities both represent minorities whose perspective was excluded from the creation of the law, and as such, the measures that were in place to "protect" them ultimately fell short, largely due to the fact that as groups viewed as objects rather than subjects, they were unable to speak for themselves. In light of this, what is currently happening to animals is nothing new. They are one of our contemporary others, and one of our current objects. Thus, as long as the current ethical economy from which the law derives fails to



account for a plurality of subject-positions, our laws will continuously work in favor of the dominant subject-position.

Consequently, recalling Foucault's "criteria" for biopolitical power relations, the relationship between humans and animals unequivocally fits the bill. Namely, the legal status which maintains the animal as property - as a means to the ends of the human - above all recognizes and maintains the animal as a subject who acts. Through the law, the animal becomes an other; placed on the periphery of the ethical economy which is constructed from the subject-position of the human. The law maintains this status quo, and perpetuates the othering of the animal.

Undoubtedly, however, a population, as a social body, also covers species. More specifically, rather than being a political or even a strictly legal entity, animals are a social body – a population which is being regulated and controlled.<sup>12</sup> Regardless of whether one conceptualizes the animal as an object that has been excluded in the ethical economy as an Other, or as an ethical subject who is simply the recipient of power, what stands true is that the property-based legal status of animals is

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<sup>12</sup> It is fruitful here to question the very divide between “humans” and “animals.” Derrida, in *The Animal That Therefore I Am*, raises a significant question as to the boundary between the human and the animal. Quite simply, Derrida questions the very occurrence of it. He writes: "The animal, what a word! The animal is a word, it is an appellation that men have instituted, a name they have given themselves the right and the authority to give to another living creature... I won't take it upon myself for a single moment to contest that thesis, nor the rupture or abyss between this 'I-we' and what we *call* animals. To suppose that I, or anyone else for that matter, could ignore that rupture, indeed that abyss, would mean first of all blinding oneself to so much contrary evidence; and, as far as my own modest case is concerned, it would mean forgetting all the signs that I have sought to give, tirelessly, of my attention to difference, to differences, to heterogeneities and abyssal ruptures as against the homogenous and the continuous. I have thus never believed in some homogenous continuity between what calls *itself* man and what *he* calls the animal" (Derrida, 2002, 392-8). Derrida continues in an interview titled "Jacques Derrida and The Question of The Animal." Here, he asserts: " I avoid speaking generally about animals. For me, there are not 'animals.' When one says 'animals,' one has already started to not understand anything, and has started to enclose the animal into a cage. There are considerable differences between different types of animals. There is no reason why we should group into one category monkeys, bees, snakes, dogs, horses, anthropoids and microbes. These are radically different organisms of life, and to say 'animal,' and put them all into one category – both the monkey and the and – is a very violent gesture. To put all living things that aren't human into one category is, first of all, a stupid gesture – theoretically ridiculous – and partakes in the very real violence that humans exercise towards animals." < <[www.youtube.com/watch?v=Ry49Jr0TFjk](http://www.youtube.com/watch?v=Ry49Jr0TFjk)>

The main question at the core of this passage is, "*why* are we, as men/humans, so *different* from the animal?" Derrida is voicing concerns over these two seemingly static and unchanging categories, and their arbitrariness. Namely, in a world full of difference, and a multitude of species and "animals," what is so different about the human, that it is placed in its own category? While it may well be the case –and it is difficult to argue otherwise – that species have biological differences, which are substantial, what is so significant is that out of the multitude, one is separated from them (the human), and *all others* are collapsed into one homogenous category<sup>12</sup>. Importantly, Derrida, through this critique of the human/animal binary, opens up the possibility of recognizing difference without collapsing it. Rather than viewing the world as humans/animals, we can observe a pluralism of species – of forms of life – without exerting dominance or superiority over it, and without limiting it. Derrida invites us to recognize this difference for what it is.

the manifestation of a highly pernicious form of power - biopower. In this mode of power, animals are regulated as a population; practices such as animal trading, testing in laboratories, slaughter for meat and clothing, and the captivation of animals in zoos should not be understood as forms of subjugation by the human subject. Rather, these practices represent *regulation*, which is operated through institutions.

### *The Animal in Biopower*

The animal - as *pluralistic forms of life* - has been made into a population, a mass, that is controlled and regulated for the purposes of *extracting* (going back to Lazzarato's formulation). In other words, the animal has become a resource which, through regulation and control, can be used as a means to the ends of the human. This state of biopower which is exercised over animals is, furthermore, legitimized through normalization. We, as humans, are brought into a system wherein the cogwheels of biopower are already churning. The aforementioned practices, albeit unethical, are already present in the society that raises us. From school excursions to zoos, to the serving of meat to children, the view of the animal as a lesser and as a resource is perpetuated and goes unquestioned.

I want to stress that this "machine" of biopower, namely, that which repeatedly and without fail maintains these exploitative practices, is *automatic* rather than an "manual" and "non-automatic" process. In other words, these practices of regulation, and the perpetuating of biopower, are not always conscious efforts to assert the human subject as superior to the animal. Rather, the process is passive - it is so firmly ingrained in our society and consciousness that it has become like a clock that, once wound up, ticks on its own. This process is further discussed by Kelly Oliver. She writes:

Derrida's latest work on *the animal* also has a hyperbolic pedagogical dimension, particularly in relation to multiplying sexual differences. One of the central arguments of *The Animal* is that the concept or name *animal* is an abomination, a 'chimera,' because it defines all living creatures in relation to man: animals are those creatures that are not human. In doing so, it erases vast, even infinite, differences between species and

individuals. The concept *animal* operates as the negation of 'man,' so that the negation of that negation – we are not mere animals – quickly leads to the notion that human beings are superior to animals. (Oliver, 2009, 140)

This passage from Oliver's project with Derrida raises significant points about the ethical status of the animal in our society. She shows that the animal has become the negation of the human. The latter constructs these notion of the animal – specifically, all other species than itself - and the concept of animality, and separates these from itself. What is regarded and defined as human, then, is what *is not* animal. It is crucial to note that the human is in fact dependent on the animal for its identity. The self-understanding as human qua human hinges on the way it has constructed, separated, and ultimately negated what it sees as not itself – the animal. The human is the dominant, and the *normal*. And in this view, what is not human – that is, the animal – becomes juxtaposed *from* The Human rather than being an equal alongside it. The animal is the animal precisely because it is not human, and because it is not like *us*.

This demarcation, and this distancing, is what legitimizes the violence and mistreatment toward this ethical lesser. In fact, it is this act, the separation of man from animal, that is the *origin* of violence, and an act of *fundamental* violence. Like racism and sexism, there is more to the violent acts than simply their outcome. For underlying them, one finds a demarcation – an explication of difference. It is this pronouncement that is the origin of violence. Consequently, in the case of the animal, it is the construction of its identity by the human that is the fundamental violence; thus it is not sufficient to evaluate the crimes committed to the animal by the legal status or by the practices that befall the animal under it in isolation. These are but manifestations of the deeper violence, which is the construction of the animal identity, and the animal object.

A similar point is made by Giorgio Agamben, through his concept of the "Anthropological Machine." In his book *The Open*, Agamben writes that:

All evidence suggests that this [language as the difference between man and animal] is only a shadow cast by language, a presupposition of speaking man, by which we always obtain only an animalization of man...or a humanization of the animal...Insofar as the

production of man through the opposition man/animal, human/inhuman, is at stake here, the machine necessarily functions by means of an exclusion (which is also always already a capturing) and an inclusion (which is always already an exclusion).  
(Agamben, 2002, 36-7)

For Agamben, it is through the anthropological machine that we construct our human identity.

Through it, we animalize certain practices at the same time as we humanize others. For Agamben then, it is not language (or thought or reason) that "separates" humans from animals: there are no a priori categories for distinguishing the two. Rather, what separates us – or rather creates the appearance of a separation – is the constant working of the machine. We demarcate what is human by showing that it is *not animal*, and we distance animals from us by showing that they are *not like us*.<sup>13</sup>

The significance of these discussions on the animalizing process, and of Agamben's anthropological machine, is that they show how the population of "animal" is created. In other words, it points to the roots of the power relationship which is the condition of biopower. Importantly, however, one must keep in mind that the aim of this project is not to demonstrate how to put an end to biopower, or how to "dissolve" the construction of "animal" as a population which is regulated under biopower. Rather, what analyzing the legal status of animals as biopower allows us to do is to understand the true complexities of the issue. By identifying the true mode of power which is at issue, and by correctly problematizing the issue, we can redirect how we handle it. More specifically, by staying away from the repressive hypothesis and the illusion of sovereign power, we can put an end to efforts of "animal liberation," which, while having achieved certain victories, in the long-run are fundamentally toothless and rather misguided.

## V. Conclusion

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<sup>13</sup> An example of the machine at work is how we use "animal" as an epithet for practices and behaviors which we deem to be wrong, and that we want to see done away with. Saying that someone is "acting like a beast," or "eating like an animal," are instances of precisely this. We signal what is human – what is appropriate, normal, and fitting – from what is *not animal*.

The aim of this paper has been to problematize the legal status of animals, which regards them as property. In my first chapter, I advanced the argument that the animal rights discourse, by being trapped in Foucault's repressive hypothesis, inhibits accurate problematization of the adverse conditions of animals. More specifically, by implicitly and overtly conceiving of the operating power-structure as a top-down sovereign power, the rights-based discourse is caught in an incorrect framework, wherein efforts toward "liberation" and "salvation" are directed toward an agent of power that does not exist. As such, as long as the animal rights discourse's efforts remain within this model of power, they will not be able to characterize the true nature of the problems that animals face, and consequently, their efforts will not go far enough.

In the second chapter, I advanced the argument that rather than being subjected to sovereign power, animals are part of a biopolitical power relation with humans. In this system of biopower, animals are regulated and managed as a population. This regulation is what perpetuates the cultivation of animals as resources. Significantly, it is this system of biopower that creates the Othering of animals – the process by which the population of animals is created, and maintained as an ethical lesser which can be exploited. Significantly, the category of "animal" is created by humans, and from the human subject-position which neglects and excludes the position of the animal. The power-structure behind this is fragmented. In other words, there is no one agent of power. Rather, the biopower is a *system* – it exists both within and outside the state, and it is perpetuated through the people, and their societal norms and practices. The system of biopower which exploits animals is, in short, an automatic machine.

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