Position Paper

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*Before the Law* by Cary Wolfe

Cary Wolfe, in his book *Before the Law*, dissects various philosophical views on animals. One issue that he spends some time on, relates to a legal counterclaim, that we hear sometimes regarding animal cases for expanded rights. It goes: ‘no responsibility, no rights’ or ‘no duties, no rights’ to paraphrase. This idea of reciprocation, that the subject must be able to return the hospitality, for instance, seems to be embedded in legal theory.

I found this interesting because of the many cases I’ve read of alligators or bears being sought out, for attacking or killing a human who wandered into the swamps or forests. In most cases, the state seeks out the very individual animal who committed the “crime.” So, we do, as a society, hold animals accountable and responsible for their actions, but we don’t extend protections, which seems to be the flip side of that coin.

To invert the argument, if animals must be responsible actors and have duties in order to enjoy protection, then what do we make of the thousands of individuals in the U.S. who act irresponsibly and carry out no duties for society? Are the homeless, the unemployed or criminally-minded then degraded to the status of animals because they do not carry out duties or responsibilities? Or what of the 50% of the population that doesn’t vote? Are infants or the disabled or the elderly animals? Inverting these arguments never seems to hold up.

There are, of course, many inconsistencies in theory versus practice, which Wolfe spends a great deal of time on. For instance, though we talk incessantly about perfectionism, we clearly don’t act or award incremental rights based on those findings. The only mention of perfectionism actually making it into law, is when Wolfe talks of the Spanish Parliament giving “human” rights to Great Apes. Although certainly a welcome move, he rightly points out how problematic this is, because it essentially awards protection for species who can come close to emulating humans—still entirely anthropocentric.

The title in itself is evocative. Before the law, could relate to the status of humans before laws were created, but it could also mean, we stand before the law, as a living being. If we look at the former for a moment, it is fascinating to think about say the advent of time (sometimes concept of time is used as a distinction between humans and animals, that is, animals are eternally in the present supposedly) or indigenous peoples for instance.

Regarding time, or so it goes, there is reflection, considering of the past and future, that we posit, animals are incapable of. It’s worth pausing here for a moment. Aside from the question of whether this is arbitrary or not, we also frequently have authors stating what animals are or are not capable of, or, what they are thinking. But no human is inside of an animals’ head, so this is worth a critical look. Regardless, this ability for self reflection, or acting in “response” instead of “reaction to” is supposedly a difference. A critical differerence? A true difference? We don’t know.

Regarding the indigenous, there’s no question that their rights have been trampled. But, it’s worth looking at the layers. Many indigenous tribes lived in a state of nature. They didn’t speak the colonizer’s language; much of their day was likely taken up fulfilling basic needs like food, shelter, warmth, water, etc. in a subsistence manner. With no formal schooling, I’m sure the colonialists who came upon them, questioned many perfectionist qualities in the same way we now do for animals.

Yet, by virtue of being human, in this current moment at least, the indigenous are in the category of “let die” whereas animals reside in a “make die” category. Again, this is in no way meant to minimize their suffering; it’s understood that many indigenous tribes were wiped off the face of the earth or put in reservations where the limitation in land spelled demise for them. I point this out because Wolfe spends a great deal of time talking about what it really means to be human. Are we becoming less human? Can an animal become more human? Does Biology reaffirm the taxonomy between humans and animals?

Some say it’s language. But it’s clear that animals ranging from cats to birds exhibit unique vocalizations that are interpreted and have meaning. So, many of the distinctions don’t hold up. Wolfe takes us into the world of the octopus, which actually made me wonder if humans might come out on the bottom if we truly embraced perfectionism. Wolfe also mentions elephants who stop to investigate the bones of fallen elephants, which seems to show mourning, reflection and curiosity. Since pigs, rats, elephants, dolphins, primates, etc. almost across the board lead terrible lives under human domination, it’s obvious that intelligence is not our criterion.

To step outside of philosophy for a moment, the explanation could be very simple. Animals stand in the way of humans doing exactly what we would like to do. That is, animals compete for the things we want. Animals stand in the way of us satisfying our feeding urge, and desire to control, takeover, be in power and consume. Animals stand in the way of our property rights; their habitat must be taken by realtors and home buyers; their oceans must be chopped into blocks; their wetlands filled. I see this more in terms of competition and freedom (we want a free hand) and less in terms of complicated philosophy.

Wolfe looks at the other end of the spectrum as well (that is, an unfree hand)—extending protections to all life. Since insects, in particular, have many complex characteristics (some are master builders, for instance), it is logical to discuss this. In the case of paper wasps, a #2 to the queen has already been designated in case the queen meets her demise, showing organization. The queen will also slyly winter in the drapes of a house and wait for the return of spring, showing some understanding of time and survival strategies. But it is the impracticality of this approach (we step into the grass and kill an insect unknowingly) that causes most to abandon it. Importantly, it’s not that it isn’t philosophically defensible.

Since so few of these books discuss animals directly, I wanted to briefly talk about the deer I see in my backyard to make a point about time and memory and learning. For some days, I saw the mother deer showing her two teenagers where and how to forage. Do eat this plant; don’t eat that one; avoid the road. A few days later, I saw the teenagers return without their mother and follow the instructions. As philosophers fill complicated books with verbiage, it’s worth considering, isn’t this an example of memory, learning and at least a minimal understanding of time?

We don’t know the potential of animals. Scientists have discovered remarkable things, but most of that has been in the wild. If you take an animal and stunt its development by enslaving it; putting it in a cage; removing its peers and family and social structure; or closing it up in a factory farm where the only stimulus is food meant to fatten it up (exercise is limited because it burns calories which is money) then you say, ‘oh, look they’re just automata, a faceless herd, they don’t know anything,’ then you might be right. All of the learning stimuli has been removed; add to that, their lives are extremely short in labs and CAFOs. Once they reach full weight, they are killed.

 My overall feeling after reading this book is that we really have two societies. On the one hand, we have people who find it life-affirming, fulfilling and even exciting, to dominate, consume and kill. On the other hand, we have those who find it life-affirming, fulfilling and even exciting to experience a diversity of wild life and to even bond with the other. Sadly, the former is in control and shares massive government, university and corporate support. Their views are grounded in the human versus animal distinction. And our world is becoming simpler (biologically) due to extinction, less interesting, more synthetic, more chemical and more technological as a result. It is a world that involves stamping URLs onto life.