How Meat Changed Sex: The Law of Interspecies Intimacy After Industrial Reproduction

Abstract:

The article explores the recent history and structure of American laws criminalizing sexual contact between humans and animals. It notes that the majority of these have been enacted within the past three decades and contain language that explicitly exempts animal husbandry and veterinary medicine from prosecution. The article explores the legislative politics that produce these exemptions and exposes an underlying ambiguity: in the age of industrial reproduction, the “accepted practices” of animal husbandry can only be distinguished from bestiality through legal fiat. The article contends that the structure of the laws exempt human sexual contact with animals only when it enables the reproduction of livestock biocapital, a distinction that positions “perversion” bestialists and “normal” farmers as opposed rather than mutually constituting categories. Finally, the article reads this insight against biopolitical theorist Giorgio Agamben’s concept of “anthropogenesis” and notes that such exemptions reveal a fundamental limitation in Agamben’s theory. In place of the timeless ritualism of Agamben’s “anthropological machine,” the article argues for an account of speciation that recognize strategic gradations of pain and pleasure, the critical role of sexual violence and reproduction, and processes of trans-speciative procreation.

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On the night of March 4, 2006, while visiting a friend’s house, Alan Goats received a frightened call from his daughter. She was alone at their suburban Phoenix home and a man had knocked on the door, entered the fenced backyard, and dragged one of Goats’s lambs into a small barn in the back of the property. Goats rushed back to his residence on Catclaw Street, and there he found his neighbor of seventeen years, LeRoy Johnson, in a state of extreme intoxication, on the floor of the barn, pants undone, lying atop the lamb. An embarrassed Johnson stumbled back to his own home, where he stayed until Maricopa County sheriff’s deputies arrived to arrest him later that evening.

The situation made for sensational press. Johnson had only recently retired his position as a Deputy Chief of the Gilbert, Arizona Fire Department and was a minor political figure in the community. He was reported to have said during the confrontation with Goats, “You caught me, Alan, I tried to fuck your sheep,” an utterance mixing comic sexual impotence—he had tried but apparently failed—with the banal tragedy of alcoholic excess. And his choice of the barn seemed to quote countless dirty jokes about farm boys and livestock. The lurid scenario attracted national media attention, especially after an unabridged copy of the incident’s police report was leaked to the web. But if the citizens of Arizona were laughing at Johnson, they soon discovered they were equally the butts of the joke. Johnson would only be charged with misdemeanor offenses for disorderly conduct, trespass, and public indecency. Bestiality, many residents were surprised to learn, was not a crime in the state of Arizona. The law that once had criminalized bestiality-encompassing “infamous crimes against nature” had been amended to exclude bestiality and then, in 2001, discarded altogether. Johnson was ordered to receive counseling and to minimize his contact with animals, but the judge allowed him to keep his dog and pet turtles.

The Arizona legislature worked quickly to close the bestial loophole. Within months it had drafted and passed legislation recriminalizing bestiality. On May 26, then-Governor Janet Napolitano signed the legislation into law, officially making sex with an animal a Class 6 felony in the state of
Arizona. At first blush, the law seemed an unambiguous ban on “oral sexual contact, sexual contact or sexual intercourse with an animal.” But careful examination reveals at least one perplexing detail. The legislature had also included in Subsection C explicit exemption for veterinarians, artificial insemination technicians, or anyone else engaging in “accepted animal husbandry practices.” To understand the purpose of that subsection one must consider that artificial insemination is now a ubiquitous practice in commercial livestock breeding and that artificial insemination requires extended sexual contact among human bodies, animal genitals, and foreign objects and instruments. Arizona’s law, then, was not a blanket interdiction on sexual contact between humans and animals. Rather, Arizona’s law attempted to disaggregate illicit sexual contact (“bestiality”) from licit sexual contact (“animal husbandry” and artificial insemination), but it could not do so by describing bestiality with greater precision. Instead, it proceeded by offering a blanket exemption to all sexual contact congruent with animal husbandry and, most of all, the production of meat.

This essay attempts to think together two things that, until now, have only been thought apart: bestiality and meat production. I contend that infrastructures of meat production interweave humans and animals through reproductive governance such that we can no longer think bestiality and meat agriculture as entirely separate phenomena, if ever we could. I make this point by examining the recent history of bestiality laws in the United States, giving special emphasis to how the most recent of these statutes explicitly exempt practices that occur in the context of industrialized meat agriculture. Without such exemption, the statutory language that legally defines bestiality would proscribe many acts of animal husbandry.

Dominant cultural and scholarly discussions of human-animal sexual contact tie it to backward, primitive, and pre-modern desires emanating from communities marked by spatial remoteness and distance from capital. Yet the capital-intensification of meat agriculture has produced a range of sexual contacts between humans and animals that cannot easily be distinguished from bestiality. This fact is
evident in the proliferation of agricultural exemptions. Such exemptions unsettle the scholarly privileging of the juridical interdiction against bestiality as the primary way to understand intimate interactions between humans and animals. Conceptual reliance upon such interdictions casts human-animal intimacy as a marginal and abnormal practice that is punished, repressed, and excluded from society. Agricultural exemptions, by contrast, suggest that most sexual contact between humans and animals is entirely normalized and that an industry creating annual economic activity in the United States alone worth over $800 billion hinges on that normalization.

The normalization of these sexual contacts unfolds in a terrain marked by radically diverging fates for different kinds of animals. That companion animals are treated differently than livestock animals is not a unique insight. These categories are, in fact, largely incoherent abstractions produced by legal and cultural structures dedicated to exceptionalizing the status of meat animals. (Alan Goats’s sheep—its status as pet or livestock largely ambiguous—demonstrates, at the very least, the slipperiness of the categories). When granted coherence, these categories suggest livestock are in the grips of a set of concerns, logics, affects, and sensibilities that are deeply opposed to those that govern pets—as if pet owners were at war with meat producers over the humane treatment of animals, or had obtained a more enlightened perspective. This logic assumes that the difference between companion and meat animals is determined by the quality of affective ties to the animals ruled: some we love; others, because we do not love, we eat. This essay demonstrates, in fact, that the pivotal question is less about the quality of our affect—be it love, desire, or cold apathy—and more about the relation of animals to capital. Put differently, agricultural exemptions to bestiality laws demonstrate that the decisive difference between a bestialist and a farmer is about a difference in relation to capital not in relation to animals. We see this in the juridical articulation of what constitutes licensed sexual acts for humans—the conditions under which bodies may be licensed to entwine—
but this articulation is prefigured by a unified biopolitical apparatus that has already destined some animals for companionship and others for meat.

The larger research project from which this essay is drawn extends this insight to the history of animal breeding and broadens it from questions of juridical law to questions of agricultural practice. This move is grounded in the contention that agricultural practice should be correctly understood as fundamentally biopolitical and that agricultural practice is vital circuitry in larger biopolitical projects. The governance of animal life and death within meat agriculture was inseparably interwoven with the management of other forms of life, including human life. The underlying categories of difference that structured agriculture practice—species, breed, race, gender, sex, and sexuality, among them—interfaced with and shaped human categories of difference. In this way, the sorting of animal bodies to make meat shaped how human bodies were exposed to violence and made ready for pleasure. This insight reconsiders the space of agriculture as a space rippling with intimate interactions, some produced by human hands, others that seemed to outpace human intention.

This essay asks us to consider how infrastructures of meat-making over-determine the affective terrain of our encounters with animals beyond the plate and slaughterhouse. Biopolitical systems arraign a bestiary of creatures according not only to how they can be exposed to violence, but also by how they can be opened to somatic contact. The first section of the essay explores how recent efforts to criminalize bestiality frame sexual contact with animals as categorically abusive. This rhetorical framework transformed animals from conspirators in sexual transgression to passive victims of a penetrating human lust. The second section of the essay delves into what is usually left unsaid and silent in those same debates: concerns about sexual abuse apply only to the culture figure of the “companion animal” and not to livestock. This assumption is grounded in the faith that law can easily distinguish between already distinct and self-evident categories of “bestiality” and “animal husbandry,” much as the underlying discourse depends on the coherent separation of “companion”
from “meat.” As the section details, far from reflecting an independent distinction between these two sets of categories, the laws actually produce these distinctions. In the wake of these distinctions, the logistics of meat production intersect with Foucault’s *scientia sexuallis* to codify a set of identities organized around the normalcy of the farmer and the deviance of the bestialist. The interspecies entanglement of meat-making, then, actively transforms human and non-human sexuality, where sexuality is the system that orchestrates relationships among the reproduction of life and the truth of the self. Far from Foucault’s suggestion that non-human reproduction and the *scientia sexualis* had “no real exchange, no reciprocal structuration,” we find the optimization of that non-human reproduction redefining new sexual truths and norms.  

As the essay concludes, infrastructures of meat production govern not only *what we can eat* but also *the possibilities for the social recognition of intimacy*, an insight that impels a reexamination of the stakes and contours of current biopolitical theorization around animals. In particular, the final section of the essay offers an explication and critique of Giorgio Agamben’s account of “anthropogenesis”—his theory of human speciation—as well as the relationship between anthropogenesis and the political formation Agamben names “the state of exception.” The essay notes that Agamben’s focus on thanato-politics—the exposure of the animal to wanton slaughter—as the decisive mechanism of speciation occludes the complexity and diversity of technologies of governance directed at animal bodies: the technologies that viscerally entwine, carve, and suture both animal and human flesh in the making of meat. Put one way, focus on death-making conceals the gradation of pains and pleasures harnessed in the actual governance of animals, governance that obeys the call of capital reproduction more than a ritualized expression of the political theology of the exception. But, beyond this, such an approach also hides precisely that which is not yet foreclosed by that governance—the very thing bestiality law hopes to conceal, suppress, and exclude: that despite our insistence bellows, the encounter of animal husbandry is inundated with intimate possibilities, fleshy
entanglements, and visceral connections we could still name as sex with all the ethical weight—or obligation—that call demands.

**New Laws for Old Sex**

More three and half centuries before LeRoy Johnson’s ordeal, Plymouth Colony magistrates faced a “youth about sixteen or seventeen years of age” caught *en flagrante* with a mare. It is a sad and gruesome tale that concludes with an execution echoing Damien the Regicide rather than with the ironic dénouement of Leroy Johnson—and Arizona’s—public humiliation. Thomas Granger, the youth in question, admitted under questioning to having sex with the mare, “a cowe, two goats, five sheep, 2 calves, and a turkey.” Eventually convicted of buggery, Granger entered history books as the first Anglo juvenile executed in the New England colonies. But it is not merely the centuries and the severity of punishment that separates Granger’s case from Johnson’s. While Arizona authorities limited Johnson’s access to animals in the interest of protecting vulnerable animals from abuse, Plymouth’s magistrates went to elaborate lengths to determine precisely which animals Granger had defiled. The procedure, described by William Bradford in his history of the Plymouth Plantation, took a turn towards “a very sad spectakle.” Magistrates gathered many of the animals on the basis of Granger’s confession, but they found his descriptions too vague and the sheep too numerous to separate guilty sheep from innocent sheep. Instead, legal authorities had all the possible sheep “brought before [Granger], and he declared which were they, and which were not.” The magistrates then assembled this bestial bestiary in Granger’s presence, killing each animal “before his face,” before they hanged Granger until dead. Finally, “the catle were all cast into a great & large pitte that was digged of purposs for them,” wrote Bradford, “and no use made of any part of them.” Granger’s life and death was entwined with animals, and not merely in the joined breach of the speciative constitution represented by their sex. In this exercise of juridical power, human sex
incorporated rather than excluded animals, finding animals to be indulgers rather than victims of human lust.  

By contrast, plants and animals appear only briefly in Michel Foucault’s *The History of Sexuality*. In describing how sex came into discourse in the nineteenth century, Foucault distinguished between, on the one hand, a human-centered “medicine of sex”—what he ultimately describes as the *scientia sexualis* concerned with taxonomy, normalization, and ferreting out the “truth of sex”—and, on the other hand, “a biology of reproduction” that claimed the simple mechanics of all life as its object of knowledge: that is, “the physiology of animal and plant reproduction.” While this “biology of reproduction…developed continuously according to a general scientific normativity…a medicine of sex conform[ed] to quite different rules of formation” and there “was no real exchange, no reciprocal structuration” between this knowledge about plant and animal reproduction and the truth of human sex. To the extent they could be said to interact, it was when the trans-speciative “biology of reproduction” formed a sort of alibi for the *scientia sexualis*—“a blanket guarantee under cover of which moral obstacles, economic or political options, and traditional fears could be recast in a scientific-sounding vocabulary.” Under such conditions, an exchange that breached the speciative boundary and made animal sex a concern of human sexuality, could occur only through a deviant subject and never through a normal procedure. That is, the bestialist cohered as a particularly pernicious abnormality, though an abnormality subject to the same procedures of study, categorization, and regulation as the onanist, hysteric, and homosexual all the same. From the Freudian perspective, for example, the bestialist chose a malformed sexual object remedial through therapy, while for Kraft-Ebbing the bestialist suffered from a kind of psychopathic sexual urgency that demanded police intervention. In either case, the bestialist moved from a figure defined by an act—namely, the sinful transgression against a speciative constitution—to a figure defined by malformed desire.
Within the context of the nineteenth century United States, the malformation of bestial desire took on specific meaning in relationship to different sexual geographies than those that prevailed in France of the nineteenth century. In most US jurisdictions, “Crimes against Nature” (CAN) statutes criminalized bestiality along with sodomy, fornication, and other forms of sexual transgress. CAN statutes were holdovers from Colonial-era statutes, like those used to prosecute Granger, and they, thus, tended to codify common law regulations as well as biblical injunctions. Bestiality, from this perspective, constituted a grievous breach of a ritualized speciative constitution for which marked and contaminated both parties, human and animal. Like in the Granger case, legal authorities often punished animals along with humans and, thus, treated animals not as victims of bestiality but as conspirators. Regardless, the text of the statutes rarely parsed the relevant distinctions between the difference categories of sexual transgress, and, instead, exhibited broad, vague, and florid language consistent with nineteenth century statutory construction. This breadth and ambiguity served a purpose. Prosecutorial discretion and customary enforcement meant that CAN statutes were most often used to prosecute rapes, particularly in circumstances where legal definitions of rape made such prosecutions difficult. Although prosecutions for bestiality did occur under this legal regime, they were comparatively rare and orthogonal to the function of the statutes. Moreover, CAN statutes persisted well into the twentieth century, long after the purported heteronormalization of American sexuality had been completed.

As a result of these complexities, bestiality emerged as a major concern not among urban-focused criminologists and sexologists—that is, among the American inheritors of Foucault’s scientia sexualis—but, quite to the contrary, among rural social reformers concerned with the pernicious effects of spatial isolation on family life and social reproduction. In particular, social reformers talked, usually obliquely, about bestiality as one unsavory outcome of rural living caused by constrained sexual choices and too much exposure to animal reproduction—a kind of “situational”
trans-speciative sex usually practiced by unmarried young men without romantic hopes. At the same
time, these rural social reformers also exhibited a very “real exchange” with the “biology of
reproduction” in discussing this and other rural sexual dysfunctions. Well versed in the effects of
selective breeding from interactions with animal reproduction in the context of meat agriculture, and
styling themselves as agriculturalists, rural social reformers considered malformed desire as both a
consequence and a cause of adverse breeding selection among rural populations. This adverse
selection, in turn, cohered around turn-of-the-century discussions of “rural degeneracy” that linked
the poverty and isolation of life to perversity. Furthermore, these reformers argued that this
perversity that was remedial through modern technologies and practices that “annihilated” the
spatial and temporal divides between hinterlands and metropolis.

These “agrarian futurist” reformers left an enormous footprint on popular depictions of
both rural sexuality and bestial desire in American culture. Nonmetropolitan sexuality retains an
anachronistic quality in popular culture. Agrarian futurism presents idealized rural family life as the
natural organization of reproduction both before and after sexual modernity—how families and
sexuality “used to be” and “must become again.” (That such families are said to persist in the
present ironically renders this trans-historical norm as both outdated anachronism and messianic
outcome.) At the same time, non-heterosexual desire beyond the city is also vexed in popular
discourse: queer rural bodies are bodies that choose to stay behind, and, thus, avail themselves of a set
of choices that can lead only to failure. In J. Jack Halberstam’s reading of Brandon Tina, queer rural
desire is all the more queer because it rejects the possible fulfillments of sexual pluralism coinciding
with consumer choice and global capital formations in metropolitan spaces, what Halberstam calls
“metronormativity.” In a similar vein, sex with animals is seen as emanating from rural, remote, and
under-developed spaces, both domestic and global, where individuals lack access to the
infrastructures of sexual and consumer choice that characterize life in the metropole.
Regardless, intimacy with the non-human is central to the articulation of non-metropolitan perverse desire in broader popular culture. Take, for example, in the film *Deliverance*, the conflation of sodomy and bestial desire encapsulated by the iconic directive that the victim of same-sex anal rape should “squeal like a pig.” Was the victim merely an erotic substitute for the rapist’s real object of desire, a substitution the rapist hoped to effect through the directive to imitate its squeal?

Alternatively, in the genre making “farmhouse horror” film *Texas Chainsaw Massacre*, a bestial taint informs the interior of the home of the monstrous necrotic rural family. Living animals, as well as animal carcasses, skins, bones, and heads, populate the house. The family has literalized the domestication of animals and, in the process, rendered itself incapable of distinguishing between humans and animals for the purposes of both intimacy and food. Finally, we might take the more recent lurid fascination by the Western press with aerial photography taken from US drones purportedly documenting ISIS fighters engaged in sex with donkeys and goats. In all these cases, an imaginary bestial thread runs from domestic rural patriarchies to foreign rural patriarchies. The traces of bestial desire emerge from all spaces that are perceived to be remote from and oppositional to a metropolitan capitalist order.9

If bestiality is perceived to be the residue of pre-modern sexuality, the prohibition against the sexual act is often presumed to be similarly ancient. In fact, in the United States, the overwhelming majority of statutes criminalizing sexual contact between humans and animals were passed since the 1970s, with 10 passing into law in the past decade alone, and it is this recent history of criminalization that concerns us. At mid-century, CAN statutes still criminalized sexual contact between humans and animals. Two waves of retrenchment disrupted this status quo. The first broke around the American Law Institute's influential Model Penal Code (1962) and the second around the Supreme Court's decision in *Lawrence v. Texas* (2003).10 The Model Penal Code, an effort by the American Bar Association to modernize and systematize state penal codes, spurred legislative
reforms in dozens of states, beginning with Illinois in 1962, that removed prohibitions against CAN and sodomy. Deeming such laws as barbaric and archaic, many legislatures removed the laws without recognizing the “double-duty” the statutes performed: that is, the statutes criminalized both same-sex and interspecies sexual contact. Similarly, the courts evacuated statutes proscribing sodomy and CAN laws in accordance with the Supreme Court’s holding in Lawrence that the laws violated the Constitution’s guarantee of equal protection. A handful of states—Montana, for example—capitalized on the encompassing breadth of sodomy statutes to argue that only those portions of the law that prohibited consensual human activity ran afoul of the Court’s holding, and, thus, salvaged the laws by preserving the prohibition on bestiality and “forced sodomy,” defined statutorily as non-consensual oral or anal sexual contact. In total, only ten states had laws criminalizing bestiality continuously in effect from 1960 to 2014 and several of these states “modernized” their statutes to be consistent with the rhetorical shift I describe later in the paper.

In the wake of both waves of retrenchment, efforts to recriminalize human-animal sex followed. Over three decades, these efforts were generally successful: by 2014, 40 states have statutes criminalizing bestiality, with criminalization efforts underway in several more, including Ohio and New Jersey. Nevertheless, the efforts were uneven and proceeded in fits and starts, usually linked to sensational, gruesome, and highly publicized incidents. In some states, legislators did not realize that bestiality had been legalized by sodomy reforms in the 1970s and were surprised, after high profile bestiality cases, to learn that human perpetrators could only be tried for misdemeanor cruelty to animals and public indecency offenses. In other cases, the Humane Society of the United States (HSUS) and the American Society for the Prevention of Cruelty to Animals (ASPCA) actively brought the issue to the attention of legislators.

Advocates for recriminalization endeavored to frame the problem not as the violation of sexual taboo, or speciative constitution, but as the sexual abuse of animals, or as one influential
A criminological study deemed it “interspecies sexual assault.” This framework recast animals as victims rather than conspirators and underscored the inability of animals to offer consent. “There is no consensual sex with an animal,” explained Sheila Rilenge, executive director of the Missouri Alliance for Animal Abuse Legislation, in support of a 2000 Missouri statute that ultimately failed. “They are unable to speak out loud about this abuse.” To deepen the emotional weight of this argument, advocates emphasized the somatic vulnerability of animals and the wounds they sustained from sexual contact with humans. In 2001, for example, Deborah Clark of the National Federation of Humane Societies recounted in testimony to the Maine State Legislature “stories of cats destroyed by internal organ damage and of dogs and cows damaged by human sexual abuse.” Veterinarian Dana Bridges offered similar images of animals with internal bleeding to the Washington State Legislature in 2006. “Their bodies are not made to engage in this kind of activity,” explained Katherine McGowan of the Humane Society of Missouri in 2000. Ann Church, then HSUS senior director of government affairs, encapsulated this rhetorical framework in 1999 when she stated, “The only people who would oppose a law against sexual abuse are those who are abusing the animals.”

This rhetorical framework naturalized a number of assumptions that cast animals as sexless, penetrated, and lacking desire. It conflated two distinct concepts to render all sex with animals necessarily and categorically abusive: (1) An operational legal assumption of consent as affirmative speech and (2) the subjective experience of violation and pain that characterizes sex as abusive. Once conflated, this construction meant that non-abusive sex with animals was impossible, even in a case where an animal experienced the sex as pleasurable and positive. This framing seamlessly slipped from arguing that sex with animals should be treated as if it was abusive to the position that sex animals was experientially categorically abusive. As a corollary to this assumption advocates suggested that, like children, animals were sexless “innocents,” an assumption that also confused speech, of which
animals are not capable, with desire, of which animals certainly are. Once confused with an inability to speak, this inability to express pleasure denied animals a desiring interior, even as it ironically predicated the harm of sexual contact, in part, on traumatic experiences that were interior and psychological. Animals could feel and express pain but they could neither feel nor express desire. To the extent that harm from sex was exterior or somatic, it was coded as penetrative. This assumption foreclosed the possibility that sex with animals could entail an animal penetrating a human, an odd assumption given that two of the highly publicized and sensational cases of bestiality that led directly to statutory changes—the Flagler, Florida case of 2008 and the Enumclaw, Washington case of 2005—both involved animals penetrating humans.¹⁸

Such assumptions were resonant with a moral panic that ascribed hyperbolic harms, frequency, and consequences to sexual contact between humans and animals. This discourse was unable to conceptualize benign sexual contact between humans and animals. More importantly, this discourse typically connected sexual contact with animals to sexual assault and sexual violence against humans. Bestialists were “sexual predators” and “perverted souls.”¹⁹ “Every serial killer that anyone can recall has been an animal abuser as well,” claimed Florida State Senator Nan Rich.²⁰ A Lake County, Indiana detective warned the Indiana Legislature that bestialists “don’t just stick to animals.”²¹ As sensationally, in 2001, the Director of the Maine Animal Control Association told the State Legislature that although he had only six documented cases of sexual contact between humans and animals in the last year, “50% of sexual offenders admitted to having previous sexual intercourse with an animal” and that “one ‘zoo’ Internet site . . . claims 46,000 visits a day.” He did not elaborate on the source of the latter claim, but he attributed the former assertion to a “Missouri study.”²² Similarly, King County, Washington prosecutor Dan Satterberg made the astounding claim that 96% of all juvenile sex offenders “started off abusing the family pet.”²³ My point here is not to deny any potential links between the abuse of animals and the abuse of humans. Rather, it is to note that
criminalization advocates flattened a diverse range of human-animals sexual contact to fit one particular narrative that portrayed animals exclusively as victims of penetrating human desire. Furthermore, if not properly contained, _any_ sexual contact between humans and animals formed a vortex of perverse and violent behavior.

Satterberg’s “96%” claim exemplified this flattening approach and a close reading of the underlying source of Satterberg’s claim is instructive. Satterberg was indirectly referencing a 2002 study frequently circulated by the Humane Society of America, but he badly misstated the study’s conclusions. To begin with, rather than demonstrating that sexual offenders against humans were almost universally bestialists—a transparently absurd claim—the study actually only showed that a small sample of incarcerated self-reported bestialists also self-reported sexual assault of humans. In particular, the study found that, among a sample of juveniles who admitted to sexual contact with animals, “96% admitted to sex offenses against humans and reported more offenses against humans than other sex offenders their same age and race.” The study administered a series of anonymous questionnaires to a group of 381 incarcerated juvenile males. Of those 381 boys, 184 “essentially . . . admit[ted] to some form of sexual assault on a person.” Of the 24 of the 381 boys that admitted to sexual contact with an animal, 23 also admitted to sexual assault of a person, the origin of the 96% claim. Based on survey reports, the study also concluded both that sexual contact with animals “may be a sign of severe family dysfunction and abuse.” In other words, rather than confessed sexual contact with animals _leading to human sexual abuse_, the study concluded that while it was highly coincident with human sexual assault, it was also likely the product of _previous abuse_. Given the broader literature that notes that most perpetrators of abuse have previously been the victims of abuse, the study only seemed to demonstrate that, among its very small sample of incarcerated juvenile males, sexual contact with animals and sexual assault of humans were both the _result of_ previous abuse. Perhaps more disruptive still to the narrative advanced by advocates of
criminalization was the underlying data about the kinds of sexual contact to which the 24 boys admitted. Only 10 boys admitted to inserting their penises into an animal’s genitals, while 6 inserted a finger and 2 inserted an object. The modal form of sexual contact was non-penetrative, with 14 boys admitting to rubbing their genitals against an animal’s body. Finally, 4 boys admitted to performing oral sex on an animal. To be clear, all of these forms of sexual contact have the potential to cause animals pain and discomfort and, thus, could be abusive. But the data did not support the assumption that any sexual contact would be necessarily penetrative and somatically damaging to the animal. Far from it, the study suggested that sexual contact with animals encompassed a wide variety of acts, only some of which were penetrative and none of which offered any insight into whether the sex was damaging to the animals, somatically or psychologically.24

The Agricultural Exception

Given the loaded terms of the discourse, sensational stories of animal sexual abuse, and the ostensive absence of any organized lobby opposing recriminalization, one would expect the proposed statutes to move rapidly through legislatures. Yet, even in the grips of moral panics that might have otherwise lubricated legislative passage, criminalization faced unexpected obstacles. Bestiality was taboo enough that, even though generally supportive of recriminalization, few legislators had interest having their names attached to the legislation. The Pennsylvania legislature failed to reenact a bestiality law for five years after removing a provision in a 1995 overhaul of the state’s “deviate sexual conduct” statute. When pressed to explain the delay, then counsel to the State Senate’s Judiciary Committee, Gregg Warner explained that legislators “weren’t eager to introduce this legislation and have their name associated with this issue.”25 Similar problems dogged Rich’s efforts to recriminalize bestiality in Florida between 2008 and 2011, efforts that capsized in three successive sessions because, as one State Representative put it, legislators “just don’t like to discuss
sex and animals,” or, as another put it, “It is yucky.”

When the ASPCA approached Illinois delegates in 2001 with recriminalization legislation, it found most legislators were “too embarrassed” to even sponsor the bill. Bill Black, the representative who eventually introduced the bill, explained that he only did so because the ASPCA had a “basic right” to express their concern through law. “I’m certainly no expert in bestiality,” he reassured the *Champaign News Gazette*. “I’ve certainly never witnessed it. It isn’t a burning issue with me.”

When the Pennsylvania legislature did act, one legislative staffer told the *Philadelphia Inquirer* that it did so in a shroud of silence: “The legislators feel the less said about this, the better.” For good measure, the staffer “asked not to be identified.”

One is tempted to take these disavowals at face value. But it’s worth considering that, despite the alleged silence from embarrassed legislators, other politicians were talking loudly about the menace of bestial desire, particularly in the context of debates about the constitutionality of sodomy statutes and, later, bans on same-sex marriage. Justice Antonin Scalia, for example, claimed in his dissent in *Lawrence* that the same compelling state interest that permitted the state to proscribe “fornication, bigamy, adultery, adult incest, bestiality, and obscenity” also permitted laws against consensual sodomy. Similarly, Rick Santorum, in the aftermath of *Lawrence*, drew more direct parallels between same-sex marriages and bestiality: “It’s not, you know, man on child, man on dog, or whatever the case may be.”

And conservatives denounced efforts to remove sodomy restrictions from the Military Uniform Code of Justice as promoting bestiality. As Michel Foucault noted about the purported “silence” around the sexuality of children in nineteenth century France, silence is never the absence of discourse but, rather, a kind of discourse. And just as one might document the centrality of children’s sexuality by examining the architecture of silence designed to contain it, we can discover, in the strategic architecture of silence about bestiality, another salient concern: meat production. We might, for example, take seriously the joke an editorial in the *Kansas City Star*
played to explain a failed law in 2001: “That darned Man-Horsey-Love lobby must be stronger than we thought.” What if such a lobby actually existed? Whose interests might it represent?

Missouri’s path to recriminalization is instructive. Missouri legislators Catherine Hanaway and Kate Hollingsworth proposed legislation in three successive sessions, 2000, 2001, and 2002. When the law never made it out of the Senate Criminal Law Committee in 2001 and 2002, Hanaway fumed that it made Missouri “look like some kind of backward hillbilly state.”

The source of opposition? The *St. Louis Post-Dispatch* reported that the powerful chair of the Senate Criminal Law Committee, Morris Westfall, had killed the bill in both sessions because he feared that it would allow animal rights activists to interfere with livestock breeding. In particular, Westfall, a cattle farmer, worried that the law would be used to prosecute veterinarians and farmers who collected bull semen and artificial inseminated cows.

To understand Westfall’s concern, one must consider the evolving context of meat agriculture in the United States. Capital-intensification in animal feeding, slaughter, and meat distribution, famously explored in William Cronin’s *Nature’s Metropolis*, also extended to livestock breeding. Some of this capital-intensification took the form of genetic governance through directed breeding, the culling of “inferior” stock, and the disaggregation of breeding and feeding operations in the Corn Belt beginning in the late nineteenth century. But, by the second half of the twentieth century, meat farming also increasingly involved the mechanization of animal reproduction through technologies of artificial insemination. For animals that were reproductive-capital poor (cows), artificial insemination emerged as a common practice in decades after World War II. By contrast, artificial insemination was not widely practice in swine husbandry until the 1990s, largely owing to considerably lower costs associated with hog breeding and the relative expense of artificial insemination. The term artificial insemination is clinical and detached, and it conceals in its sanitized syntax the wide range of visceral contacts between humans and livestock necessary to effectively
manage reproduction: the harvest of semen from male animals using manual human stimulation, mechanical vaginas, and electrical prostrate stimulators; the insertion of human hands into cow rectums to ease the entry of the breeding gun into the bovine cervix; and the wide variety of practices associated with arousing sows during artificial insemination, including the use of hog pheromones, the stroking of utters, fisting, and breeding technicians sitting on the backs of sows to “simulate” the weight of the boar—a cluster of practices sometimes referred to as the Danish 5-point method.  

The Missouri law proscribed “sexual conduct with an animal” where sexual conduct encompassed contact both (1) between an animal’s genitals and a person’s body or genitals and (2) a person’s genitals and an animal’s body or genitals. From this perspective, the basic practices of animal husbandry described above would clearly and unambiguously contravene the statutory definition of bestiality. To be fair, Hanaway had anticipated this objection and, by the second bill, had included an additional provision to exempt “accepted animal husbandry, farming and ranching practices or generally accepted veterinary medical practices.” For unclear reasons, this exemption did not appease Westfall, and the bill failed to clear the Senate Committee until 2002 when he no longer chaired the committee.  

Nevertheless, showdowns between cattlemen and criminalization advocates were evident in other legislative battles. In Tennessee, for example, the Nashville Banner reported that a 1997 recriminalization bill faced opposition from veterinarians “who feared they might be arrested for artificially inseminating animals.” The bill’s authors added language to clarify that proscribed conduct included only acts with “the purpose of sexual arousal or sexual gratification.” This language earned the endorsement of the Tennessee Farm Bureau, but the bill never became law. When Tennessee did recriminalize bestiality in 2007 it did so with language identical to the Missouri law: “Nothing in this section may be considered to prohibit accepted animal husbandry practices or
accepted veterinary medical practices.” Similarly, in Nebraska, journalists struggled to account for why a law proposed by the HSUS failed to find traction, until anonymous legislators explained that their colleagues “wondered whether activities ranging from artificial insemination to pulling calves might not get people in trouble.”

These fragmented, off-the-record, and silent objections by legislators acting on behalf of commercial livestock breeders hint at what the larger evolving architecture of bestiality statutes makes explicit. In the last quarter century, nearly identical exemptions found their way into the final versions of nearly every recriminalization statute (Table 1). Of eighteen states since 1990 that have recriminalized human-animal sexual contact, sixteen states exempted practices occurring in the context of animal husbandry and veterinary medicine, usually in language identical to the language used in the Missouri statute. In addition, Ohio has an active recriminalization campaign with proposed statutory exemptions for animal husbandry. With exemptions included, recriminalization often received the explicit and vocal support of the agricultural lobby. Indeed, in Washington State,

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the Farm Bureau and animal rights organization allied to provide major lobbying support for the legislation. Such a legislative alliance would seem to clearly cleave sexual contact with animals into two camps: bestial sexual abuse against companion animals and aseptic, desireless “animal husbandry” in agricultural contexts.

In fact, many of the laws in question, in the name of exempting animal husbandry, tend to actually complicate the divisibility of those terms. For example, South Dakota’s prohibition was enacted in 2003 and encompasses three subsections in Chapter 22-22 “Sexual Offenses” of the South Dakota Penal Code. Its structure and language is characteristic of the laws in the fourteen other states and is worth examining in detail:

22-22-42. Bestiality--Acts constituting--Commission a felony. No person, for the purpose of that person's sexual gratification, may:

(1) Engage in a sexual act with an animal; or
(2) Coerce any other person to engage in a sexual act with an animal; or
(3) Use any part of the person's body or an object to sexually stimulate an animal; or
(4) Videotape a person engaging in a sexual act with an animal; or
(5) Kill or physically abuse an animal.

Any person who violates any provision of this section is guilty of the crime of bestiality. Bestiality is a Class 6 felony. However, if the person has been previously convicted of a sex crime pursuant to § 22-24B-1, any subsequent violation of this section is a Class 5 felony.

22-22-43. Sexual act with an animal defined--Proof. For the purposes of § 22-22-42, the term, sexual act with an animal, means any act between a person and an animal involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other. A sexual act with an animal may be proved without evidence of penetration.

22-22-44. Provisions of § 22-22-42 not applicable to accepted practices. The provisions of § 22-22-42 do not apply to or prohibit normal, ordinary, or accepted practices involved in animal husbandry, artificial insemination, or veterinary medicine.

Although the law initially defines in § 22-22-42 the offense as one limited to acts committed for “the purpose of . . . sexual gratification,” this caveat, in fact, invests acts of animal husbandry with “the purpose of . . . sexual gratification.” Sexual gratification is undefined within the law. § 22-22-43’s
articulation of proof requires no evidence of intent and only applies the term “sex act” used in § 22-22-42-1 and § 22-22-42-3, a hardly surprising fact given that offenses requiring proof of purpose are more difficult to prosecute and § 22-22-44 exempts the only instances of sexual contact with animals the legislature might want to preserve. If we follow the conventional principle of statutory construction eschewing surplusage, we can reason, then, that the South Dakota legislature intended § 22-22-44 to exempt acts that are not encompassed by the caveat that opens § 22-22-42: in other words, that “normal, ordinary, or accepted practices involved in animal husbandry, artificial insemination, or veterinary medicine” could involve “purposes of … sexual gratification,” because, otherwise, § 22-22-44 would be redundant and unnecessary. Rather than describing animal husbandry as absent sexual gratification, careful reading of South Dakota’s law actually has the opposite effect: it assumes that the presence or absence of lust alone—an issue of fact open to legal proof—is not an adequate or even desirable means to distinguish animal husbandry from bestiality. The distinction between bestiality and animal husbandry articulated here comes exclusively from the sovereign’s right to create an exception and not from the “nature” of the act itself.43

Given this, what should make of this odd coupling between the farm bureaus and animal rights organizations in the context of bestiality criminalization? As the major lobbying force for American agribusinesses, Farm Bureaus are typically at loggerheads with animal rights organizations on a number of issues related to meat production, including animal cruelty statutes, bans on farrowing crates, and regulations of confinement feeding operations. Regardless of whether or not this alliance is simply opportunistic—as it likely is for both parties—its effect has been to establish a juridical divide between livestock animals and companion animals in terms of how those animals are opened to or made available for sexual contact. That is, while sexual contact with animals is categorically forbidden for the estimated one-hundred and sixty million companion animals that live in the United States, agricultural exemptions explicitly permit sexual contact for the more nine billion meat
animals slaughtered each year, provided it is sexual contact that is likely to produce more life that can be killed.

It is this last point that is most crucial. If we take the Humane Society at its word that a prohibition on sexual contact with animals prevents the sexual abuse of animals, how do these laws define the sexual abuse of animals? Sexual abuse is not defined by the act alone, since the same act can be criminal in one context and merely agricultural in the other. Nor is it defined by the absence of consent, since meat animals are as incapable of legal consent as family pets. Nor is it defined by the local presence of lust, desire, or perverse intent on the part of perpetrator, since some laws openly concede that such intents may feasibly be present in the spaces of animal husbandry or congruent with an act of husbandry. Nor, indeed, is it defined by the animal’s subjective experience of pain and violation, since injury, pain, and even death is commonplace in animal breeding, and swine and cattle are as cognitively capable of pain and trauma as cats and dogs. Instead, sexual abuse is defined exclusively by the non-relationship of the sexual act to the reproduction of more life for death. This is a kind of revival of the logic of sodomy laws, but turned on its side: sodomy was understood as any form of non-procreative sexual contact, and this interdiction makes allowances for a kind of procreative sexual contact, but one that no longer conceives of procreation as confined rigidly by the boundaries of species. This is procreation above and beyond the boundary of species. If fornication and sodomy laws sought to restrict licensed sexual contact to only those between the wife and husband, these laws, read correctly, produce a new marital pair: animal and husband. Just as the original marital pair ostensibly reproduced qualified human life, the marital pair of animal husbandry reproduces only flesh for consumption.

Such exemptions produce the figure of the animal husband—or farmer—and the breeding animals as normal and sanctioned identities within a meaty economy of flesh and pleasure. By contrast, the perverse figure of the bestialist is marked for ruinous debility as one kind of “sex
offender” and targeted with extreme forms of state violence.44 Bestial desire, in turn, occupies the structural position of the abject and inassimilable that Lee Edelman designates as queer: a sexual contact that swears off any hope of reproduction; indeed, that grasps at reproduction that appears, like LeRoy Johnson, to be doomed to failure because of the wall of speciative difference.45 But what certifies bestiality’s queerness is a definitional cleavage defined by conformity to the processes of biocapital reproduction. The bestialist, the farmer, and the livestock animal are coherent subjects of law only within the context of the system of industrial meat that has emerged in the past half century. And rather than figures of opposition, the bestialist and meat farmer are situated as mutually constituting categories, figures who are distinguished not by their sometimes functionally identical relations to animals, but, in fact, by their relations to biocapital reproduction.

**Scars**

We should reevaluate, then, the assumption, advanced through discourses of animal sexual abuse, that the law now finally recognizes an enlightened sensibility about animals. Within bestiality law, as this assumption suggest, has the animal truly moved from its pre-modern role as conspirator in an interspecies sexual transgression to its current position as a vulnerable victim of sexual abuse? Two gestures are conjoined to this claimed enlightenment: the uncovering of innocent animal nature, never apparently recognized by ancient laws, and the consequent covering of the animal’s body in the protective robe of the law. Given humanity’s appetites, this robe looks a shabby thing. In fact, this move, in the name of an enlightened protection of innocence, was nothing but the residue of a ubiquitous and intensifying governance of animal bodies, configured to recognize both those animals we license for intimacy (without sex) and those animals we open to sex (if it reproduces saleable flesh). The exception consumes the rule. And just as the exception consumes the rule, in
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bellowing that we will protect the animal’s innocence, we ready ourselves to consume the animal’s body.

In 2007, Robinson Devor produced a lyrical and strange film called *Zoo*—part documentary and part reenactment—about the 2005 death of Kenneth Pinyan. As the film recounts, Pinyan lived a double-life. During the week, he worked as an engineer at Boeing, lived in a luxury condominium in downtown Seattle, and talked with his friends and coworkers about reconciling with his estranged ex-wife, with whom he had fathered a son. But Pinyan spent his weekends on a farm in rural Enumclaw, Washington. There he socialized, under the pseudonym Mr. Hands, with a group of men who self-identified as zoophiles, and he engaged in receptive anal intercourse with horses housed on the farm, one of whom, Strut, Pinyan owned. In July of 2005, Pinyan died from a perforated colon after a weekend on the farm. Pinyan’s death brought intense national media attention and police scrutiny for his circle of zoophile friends. Because Washington state had no statutes criminalizing animal-human sex and prosecutors could find no evidence that the horses were subject to criminal abuse, exposure of the “bestiality farm,” as the national media dubbed it, resulted only in one conviction for misdemeanor criminal trespass. After the incident, Enumclaw state senator Mary Roach introduced legislation to criminalize human-animal sex, legislation that exempted animal husbandry and veterinarians. The film features an interview with Roach in which she likens animals to children, noting that neither can consent and both are “innocent.”

Given this familiar declaration of animal innocence, what should we make of the haunting series of scenes that conclude the film? In those scenes, a horse rescuer, Jenny Edwards, and Pinyan’s brother journey to the Enumclaw farm to take possession of Pinyan’s stallion, Strut, and, thus, to settle his estate. Strut is being cared for by James Tate, a man Edwards correctly assumes is a member of the zoophile circle and who she deems “creepy,” like a “child molester.” As she is attempting to load Strut into her horse carrier, a mini-pony trots onto the farm and begins
unceremoniously to fellate the stallion. Edwards is disturbed by this unexpected sex, perhaps as much as she is disturbed by Tate’s continued proximity to Strut. She reasons that members of the zoophile circle might attempt to surreptitiously adopt the virile beast and, thus, to continue to make use of his sex. With these troubling thoughts on her mind, she takes immediate action to geld Strut.

The film reenacts the gelding. Strut is given general anesthetic. His genitals are washed. He is suspended by a pulley and rail system and hauled onto an operating table. On the table he lays, his legs splayed, his body slack and visually indistinguishable from a corpse. A plastic tube is inserted into his throat and attached to a respirator. In this state of suspended inanimation, a veterinarian wields a scalpel and removes his testicles. Sutures are affixed to the wound, and all that will remain of this part of Strut’s sex is a scar. This contact with Strut’s genitals is, of course, fully legal. If done to a human, this contact would be reckoned as a grievous and profound form of sexual violence. But Washington does not yet have a law criminalizing contact with a stallion’s genitals, and the law that it would eventually have makes specific allowances for precisely this kind of contact.

Images from the gelding in Robinson Devore’s *Zoo* (2007)
Again: What does it mean here for Strut to be innocent? Far from innocent, this castration suggests that Strut has been corrupted by bestial desire. To restore this innocence, then, it is necessary to close his body to all sex, and not merely through a juridical interdiction, but, indeed, through a surgical intervention. This surgical intervention is entirely common for all animals, companion and meat alike. Male meat animals are uniformly castrated at a young age to ensure docility and meat quality. Similarly, according to the Humane Society of the United States, 83% of all dogs and 91% of all cats are spayed and neutered. Indeed, only a tiny fraction of both companion and meat animals are opened to sex and made sexual laborers, although the nation’s 9 million female dairy cattle are, of course, continuously pregnant. The Humane Society of the United States, the leading critics of animal sexual abuse, is also one of the most vocal advocates of systematic spaying and neutering of dogs and cats. The closing of a body to sex not only falls outside the category “sexual abuse”; it is reconceptualized as kindness to animals.

With this in mind, we might turn to recent scholarly and popular attention that has attempted to rupture the interdicted space of the slaughterhouse and, thus, to reveal the horrors within. Within
the animal turn and biopolitical theory alike, the industrial slaughterhouse, with its efficient reduction and “rendering” of life to pure commodity, has functioned as dreadful synecdoche for the excesses of bio-power. There is a dawning recognition that this incredible thanato-political organization could, with minimal changes, be reconfigured to consume human lives just as easily—indeed, that it may already have begun to do so. To be sure, technologies of death-making are being optimized within the spaces of the slaughterhouses, and, the speciative difference that excludes humans from violence is only a contingent, biopolitical effect and hardly timeless and universal. It is with that in mind that many scholars have begun to study the process of speciation within the frame of biopolitical theory: that is, how the articulation of speciative difference has been consubstantial with the development of biopolitical capacity. Much of this work has derived its critical valence from Giorgio Agamben’s influential work in the Homo Sacer series and The Open. With that in mind, I turn to examine whether Agamben’s theory of speciation is adequate to explain agricultural exemptions within bestiality laws. To Agamben’s primary concern with the thanato-political power to annihilate life, I wish to add the power to open the body to sex. My contention is that such a perspective might reveal critical points of intimate entanglement that exist prior to the foregone conclusion of the animal’s death in the slaughterhouse.

The seemingly simple process of disaggregating the human from the animal in Western thought, according to Agamben, actually proceeded through an “inclusive exclusion” or a “division of division” that “passe[d] first of all within man.” Agamben notes that the separation of human from animal always depends upon a prior distinction between life (l’animale) from non-life (l’inanimato). The included term (animal) of the first distinction (life versus non-life) functions as the excluded term of the secondary distinction (human versus animal). The secondary distinction, in turn, founders on humans being something more than simply biological. Yet, by dint of the first inclusion, the human must also necessarily be biological. “Anthropogenesis,” the articulation of the human,
requires also the articulation of something that is animal within the human. The animal within the human is the exceptional part: the part of the human that can be excluded as merely its base substance, or “bare life.” Rather than firmly and decisively establishing the human as itself—coincident with itself—this “anthropological machine” suspends humans within a “zone of indeterminacy” in which humans may not yet be themselves because they retain their animality, the very biology that grounds their initial inclusion as living.49 Bar life as a product of the anthropological machine, Agamben argues, is coincident with what the “the state of exception” of Homo Sacer produces as the “originary political substance” of contemporary biopolitics.50 The animal is the included-excluded and, thus, the substantive term upon which biopolitical operations are founded.

What are we to make of the anthropological machine in light of the juridical interdiction against sex with animals described above? A facile reading of bestiality laws might lead us to the conclusion that they are part and parcel of anthropogenesis. Agamben names the divisions cut by the anthropological machine as “caesura,” the forced pauses or breaks of poetry, and perhaps this juridical interdiction cuts a bestial caesura to divide humans from animals along their sex. The juridical interdiction against interspecies sex, after all, operates according to a similar “division of division.” For the interdiction to exist at all, a biological commensality must exist that, in turn, permits sexual contact: a distinction between things closed to sex (the inanimate) and things open to sex (animals). It is only this latter category—things opened to the possibility of sex—that the bestial caesura cleaves. The bestial caesura makes a second division between humans and animals. This division proceeds according to a line of reasoning familiar to Agamben from Heidegger’s declaration that animals are “poor in world”: animals have voice but not language.51 They respond to environmental stimuli without being able to separate themselves from it and to take stock of a world beyond the immediate and sensual that captures their attention and entrances them. Animals can express—chirp, grunt, growl, and bellow—but this expression lacks a structure of signification that
describes a world, and, thus, their expression exhibits what in *Idea of Prose* Agamben named the “innocence of language.”

Advocates for the bestial caesura set on one side humans that, in speaking, can consent to sex and, on the other side, animals incapable of speaking and, thus, that cannot consent to sex. To see this as a “a division of division” we would note that the included term of the first division once again acts as the excluded term of the second division, establishing animals as creatures opened to the possibility of sex but forever closed to sex for want of a language capable of signifying sex’s meaning.

The legal treatment of animals in such an analysis bears close resemblance to the legal treatment of children and the cognitively impaired. Legal systems deny children the ability to consent to sex according to reasoning that parallels Heidegger’s description of animals as “poor in world.” Age of consent laws in the United States define children as lacking the cognitive ability to adequately gauge the meaning and consequences of sex. They may be able to “voice” consent—that is, to physically vocalize the word “yes”—but they are deemed to lack the abilities to judge the significance of whatever it is to which they are agreeing. The law, here and elsewhere, takes the position that consent is never merely voice, but an underlying awareness of what vocalization signifies. And, indeed, Agamben’s analysis in *Infancy and History* depends upon a similar move, albeit one that inverts the traditional privileging of signification over expression.

Agamben defines the lamentable move from infancy into history as one of a movement from a pure language of expression to a bounded language of instrumental signification. Humans, unlike any other animal, must learn to speak, and, in doing so, must accept the limited historical vocabulary of signification. They must learn to forget voice without signification—to speak using only the words that history has given them as instruments. This is a loss of potentiality for Agamben, insofar as it forecloses the infinite variations of expression in favor of a finite set of words. Poetry exists as one place where humans can again speak innocently in a pure language, just as babies babble, birds chirp, and lions roar. The juridical
interdiction against interspecies sex, premised as it is on animal’s innocent expression, confines humans to language. That which is human in the human is the ability to signify, and that which is animal in humans—what we must learn to forget to enter history—is innocent expression. This is what Agamben means when he says that the caesura “passes first within man.” In announcing the animal as innocent, advocates of the bestial caesura cleave within the human an innocent animal from a signifying human.

It is precisely here that the “timeless” ontotheology of Agamben’s analysis begins to wear thin. This bestial caesura, after all, effects a strategic third cut. Of creatures opened to sex but closed to language (all animals), some creatures remain opened to sex (meat animals) and some creatures the law closes to sex through the juridical interdiction (companion animals). In both cases, the animals lack language but retain voice, and their categorical innocence cannot justify distinct treatment. Indeed, to the contrary, animal innocence cuts in precisely opposed ways depending on the strategic location of the animal already within the biopolitical apparatus. For companion animals, innocence proves the abuse of sex: that the companion animal cannot speak is the proof that sexual contact must be abusive—that it must produce pain, harm, and damage. In lieu of the companion animal’s inability to signify, the law signifies for it and generates the conditions under which violence against it can be reckoned as grievous—or grievable—events. To do otherwise would be to sever the intimate sutures that bind us to our companion animals. Without the grief of loss, our attachment to companion animals would mean nothing, and it is precisely the affective valence of our relationships that requires their innocence to close them to sex. Rather than identifying what is animal in human as innocence of language, the juridical interdiction here identifies what is human in animals as a capacity to receive an intimacy that can be abused. But this looks nothing like the “humanization of an animal” as Agamben describes it: “the man-ape, the enfant sauvage or Homo Ferus, but also and above all the slave, the barbarian, and the foreigner, as figures of an animal in human form.” The animal’s
innocence of language, rather, closes the companion animal to sex and levies a demand that the unspeakable abuse of animals be recoded and recorded as grievous injury—injury that speaks in spite of the innocence of the injured. The law produces not a bestial caesura, dividing human from animal, but a bestial scar that both separates and sutures: the traceable line of a violent separation that connects divisible flesh while, at once, marking historical difference.

But the innocence of the meat animal’s voice is precisely what justifies its availability for a violence that carries no meaning, including, but hardly limited to, the violence allowed by agricultural exemptions. It is because the cow’s bellow signifies nothing (more than a bellow) that the destruction of a cow cannot be recognized as a grievable event, just as the cow’s bellow signifies neither pain nor pleasure when it is artificially inseminated. Rather than an innocence of language proving the act to be abusive, the innocence of language proves the violence of the act to be meaningless and disconnected from history: a mere trifle identical to millions of other bellows precisely like it. Cows, in such a state, are orphans to history. They cannot speak to a past or a future. They are incapable of appearing as anything but already “massified” flesh destined for annihilation or, in Judith Butler’s evocative phrasing about the unmournable in a different context, they are

lives [that] are already negated. But they have a strange way of remaining animated and so must be negated again (and again). They cannot be mourned because they are always already lost or, rather, never “were,” and they must be killed, since they seem to live on, stubbornly, in this state of deadness.56

What would it mean to reckon with the past of this flesh? It will not do to say that the meat animal, though it is positioned on the precipice of annihilation in the industrial slaughterhouse, is merely bare life as Agamben defined it in *Homo Sacer*: life that can be killed but never sacrificed. The condition revealed by agricultural exemptions is more complicated than this and requires strategic gradations of pleasure and pain not allowed by this formulation. These are gradations, indeed, that
are foreclosed by a myopic focus on the grisly end meat animals face in the slaughterhouse, a focus that rewrites the history of the animal as always already destined to die. As bestiality laws make clear, meat animals are life opened to sex, but life that cannot be raped—flesh that can be touched but that cannot be violated. It is life enfleshed, vulnerable, fragile, and exposed. It is life that can neither express preference nor register pain within the circuits of pleasure and reproduction that govern it.

If our relationship to companion animals can be understood as a scar, our relationship to meat animals must be understood as a wound that never closes. It is a wound where flesh occasionally presses flesh, but a wound that continually breaks open and where the scar never seems to form. What kind of ethics might form a suture? Sutures require that we press flesh and bind it tightly. A vast reproductive economy of meat, entwining fleshes of multiple species, produces both agricultural exemptions and silence about those exemptions. It is this underlying reproductive economy that begs for critique precisely because it is the space in which humans and meat animals are still entangled and viscerally bound as life not yet irrevocable marked for annihilation. If livestock are orphans to history, it is only because humans have abandoned them to such. We might, then, reevaluate a politics of revealing the horrors of the slaughterhouse as entirely insufficient to the task set before it. Perhaps we must begin to ask a different question than “How can we end this slaughter?” Rather, we must insistently ask, “What care do owe these children of humanity?” I do not mean a saccharine politics that reproduces humanity’s patriarchal domination of animals: that we owe animals the patronage a parent owes a dependent. I mean something more literal. Rather than reckoning only with animal death, a death already constituted as ungrievable by the terms of our encounter with it, abject and massified, I contend we must struggle with the multispecies entanglement that reproduces so much life, if only life to die. We must reckon first with an entanglement that propels animals into life.

2 Arizona Revised Statutes, § 13-1411.


6 Michel Foucault, 55.


12 Those states are Georgia (§ 16-6-6), Idaho (§ 18-6605), Louisiana (§ 89), Massachusetts (§ 34), Michigan (§ 750.158), Mississippi (§ 97-29-59), North Carolina (§ 14-177), Oklahoma (Section 886), Rhode Island (§ 11-10-1), and South Carolina (§ 16-15-120).

13 See Ohio HB289, 2011 Legislative Session and New Jersey A3012, 2014 Legislative Session.


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31 Michel Foucault, 27.
41 In fact, a 1977 bill made “indecency with an animal” a criminal misdemeanor with exceptions granted for “medical and health purposes” that might extend to husbandry. Presumably, the HSUS was either unaware of the statute or wanted legislation that made sexual contact with an animal a felony. Fred Knapp, *Ibid*. See Nebraska Criminal Code § 28-1010.
49 Agamben, *The Open*, 37.


55 Agamben, *The Open*, 37.

56 Carol J. Adams, “The War on Compassion” in *The Feminist Care Tradition in Animal Ethics: A Reader*, eds. Carol J. Adams and Josephine Donovan (New York: Columbia University Press, 2007) and Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (New York: Verso, 2006), 33. Butler is writing in the context of violence against *human* lives that are not normatively recognized as livable and not, properly speaking, on violence against *non-human animals*. However, as Cary Wolfe notes, there is no internal warrant to Butler’s argument that would exclude *non-human animals* from this politics of mourning. See Wolfe, 18.