

# YEARBOOK

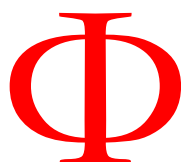
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IRISH PHILOSOPHICAL  
SOCIETY

*Special Issue*

*Humans and Other Animals*

**Fealsúnacht**



2017/18

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# Reflective Introduction

## Noel Kavanagh

This collection of articles and the conference that inspired them have, in all honesty very private and, in fact, secret beginnings. Is it *proper* to reveal these secrets, here and now, in this particular setting? Why would it not be *proper* or *appropriate*, to even regard these as *secret* by me, by us, by philosophy? Why would I regard it as in any way as inappropriate? Secret? Not proper? What does my hesitancy reveal that I could think that doing this could breach the boundaries of what would be considered as appropriate or proper, for here, for this setting?

Yet if it is then inappropriate and I do not proceed, I may be guilty of a lack of fidelity to these very fine contributions and their authors' presence here at Carlow College, St Patrick's on the 3<sup>rd</sup> and 4<sup>th</sup> of November 2017 for what was a very special IPs conference called 'Humans and Other Animals'. Fidelity because all of these participants perhaps have come to write, in many different ways, about the Animal as 'Other' not from the abstract viewpoint of the detached observer but from a moment in time when they were jarred in their world-creating subjectivity by the appearance of an animal as *Other*. If that is true, then the fidelity to them must be that I talk about what is not appropriate to talk about here; but here, in this academic setting of a journal? In a way that could be construed as personal? non-academic? Jean-Luc Marion insists that we must,

    speak of love in the same way as one must love—in the first person... thus, because one must speak of love as one must love, I will say I. And I will not be able to hide myself behind the I of the philosophers, that I who is supposed to be universal, a disengaged spectator or a transcendental subject.<sup>1</sup>

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<sup>1</sup> Jean Luc Marion, *The Erotic Phenomenon*, trans by Stephen E. Lewis, (Chicago: Chicago University Press, 2008), p.9.

Yet I am hesitant to take Marion's lead. Even as I write, I pause on the threshold of the delete button, reluctant to announce these secrets. For what? For fear of seeming a little *too* personal, somehow inappropriate for this setting? Or even the fear of seeming trivial? Perhaps somewhat disrespectful to the gravitas of the works collected here? Or could it be ultimately then one of shame? That the anticipation of the 'look' of the Other would expose a vulnerability resulting from a confession that would be deemed personal, trivial and not philosophical? In the final sense then it must be a question of who I would be for the (human) Other for expressing what the (non-human) Other was for me. It would then be a case of propriety. A fear that what I was attempting to confess would not be seen as 'properly' philosophical, 'properly' appropriate for this setting or indeed not 'proper' in any sense of the word.

At the root then would be a certain sense of shame, or the expectation that I would feel shame through the look of the (human) Other. Finally, I think the greatest sense of shame might very well be the imagined look of the (non-human) Other in the face of my anticipated shame of 'the look' of the (human) Other. Sartre had understood that 'the look' need not be instigated by the *actual* presence of an *actual* Other but that the very thought *in me* of the possible look of the Other was enough to induce the feeling of shame. For Sartre, it is therefore the proof of the existence of the ontological Other.

It is a well-worn question within a certain strand of thinking about the animal: Who am I for the Other? But perhaps the real question was always going to be who did I think I was in the Other's eyes? And this a question *after* them, after they have gone, not being able to answer the question for me, who was I for you? Given that this particular non-human animal was possibly never able to be seen to be able to respond to that question, then was it always a question directed, in the final analysis, by me, to me, for me? I might imagine then that in his mind he would see me 'wrong'. I am reminded of the last few lines of the 2003 remake of the film *Solaris* where the character Chris Kelvin reflects that he 'was haunted by the idea that I had remembered her wrong'. It comes upon me now, even as I write this that the real secret behind the secret here is that I am indeed haunted by the idea that Laddie had remembered me wrong.

And there is his name, finally, slipped out as I write and now that his name has been announced the secrets must be brought to the fore. I had, as I was writing this, determined to pull out at any time. Press the delete button for all the reasons set out. I had assured myself with the Kierkegaardian notion that I would remain undecided up until the point of decision and that to mention his name, Laddie, would be the point of no return, that writing his name would be a leap of faith.

So, here we are now at the threshold of the telling of the first secret: This has all happened because of a cat who one day, sick, bedraggled and in very poor health, caught my eye at the back of the garden, arrested me, held me hostage in a true Levinasian sense.

Almost completely feral, I spent the summer gently feeding him. It began with me leaving food at the very end of the garden on an old table. I would go back indoors and only then would he appear to eat. Then, very gradually as that August passed, I would give him a call as I went down the garden with food and he would come along the fence and down onto the table. Cautious, he wouldn't descend onto the table where the food was until he was sure that I was on my way back down the garden. But then, over a very short period of time he would let me sit with him as he ate and one day I gently reached out and rubbed his head with one finger. After that he would come and greet myself or Kate, my wife, half-way down the garden and very quickly after that we would be greeting him at the back door. All through this he remained slightly reticent about us until one day in one of those lovely Indian summer days in September that we can get here in Ireland, Kate looked around as she sat near the open back door to find him sitting next to her. He wandered around exploring the house upstairs and downstairs, assessing, sniffing through the clutter of the rooms and then jumped up on one of the chairs in the sitting room and began cleaning himself.

We called him *Laddie*, for a reason which is now lost to both Kate and I, and he was our friend. In the following years when Kate's MS progressed and she became increasingly debilitated necessitating long periods of rest, he became a significant companion to me as I spent many days and nights alone as Kate lay convalescing upstairs.

I had never really thought about the animal *philosophically* before. Yes, I had always had an intuitive question about the status of 'the animal' in an



abstract sense. I was a meat eater and always had managed to make the separation in my mind, that thing that Žižek names as the human capacity to ‘know and not know’ at the same time.

*Laddie* changed that all for me and it prompted me to philosophically explore the question of the non-human animal. I was prompted by the curiosity around the question, for me, about Laddie’s decision; he chose to step in through our back door. I found it increasingly impossible to reduce this to perhaps a simple thing of resources because he was already getting those things without coming through the door. My reading ultimately led me to approach my colleague Dr Sarah Otten to posit a new module on the Arts and Humanities programme here at Carlow College. She jumped at the idea and so began one of the most popular modules here, *Humans and Other Animals*. Year after year, the response of students to this module was extraordinary and ultimately it prompted us to towards organising and hosting this IPS conference. We knew we could have a successful conference but the overwhelming response resulting in over fifty speakers from all over the world showed that we had tapped into an issue that would now refuse to go away.

But why should I think it necessary that the idea that Laddie was the instigation of this module that inspired this conference should be a secret? Was it that the personal nature of the origin would be seen as somehow too personal and therefore partial and thus inappropriate? I had never really, quite understood that passage by Derrida in *The Gift of Death*<sup>2</sup> where he reveals the secret at the heart of the biblical story of Abraham and Isaac: That the responsibility for the singular other always comes only by somehow failing in my responsibility to the Other (in general), to all Others. It is then this sacrificing that can never be truly ever justified, in public. It is therefore something that one must remain silent on. Yet the secret always tries to get out, it bubbles up, slips out. This first secret of mine then has insisted itself upon me. This introduction was intended to be nothing spectacular, a survey of opinions, an attempt to account for the range of papers presented, and yet here I am confessing something that may then be deemed ultimately irresponsible. In *The Gift of Death* Derrida asks,

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<sup>2</sup> Jacques Derrida, *The Gift of Death*, trans. By David Wills (Chicago: University of Chicago Press, 1995), p. 71

How would you ever justify the fact that you sacrifice all the cats in the world to the cat that you feed at home every morning for years, whereas other cats die of hunger at every instant? Not to mention other people? ...There is no language, no reason, no generality or mediation to justify this ultimate responsibility, which leads me to absolute sacrifice; absolute sacrifice that is not the sacrifice of irresponsibility on the altar of responsibility, but the sacrifice of the most imperative duty (that which binds me to the other as singularity in general) in favour of another absolutely imperative duty binding me to the wholly other.<sup>3</sup>

The secret is then this, unjustifiable, irresponsible and ultimately particular; that this conference has been, for me, about Laddie and now as I write, Mini, our grand old lady cat, and Florence and Fauda, two young kittens who only recently have come into our lives. It has not been about 'all' cats or 'the animal' in general and it is this that is the secret which cannot hold itself. Unjustifiable? Personal? Is then everyone who attended at this conference and who spoke at length and graciously submitted to this journal here ultimately under false pretences? Have I done them a massive disservice?

With this secret held all the way through the conference, very shortly after Laddie passed away on the 29<sup>th</sup> November 2017. And I was inconsolable. I grieved viscerally for this being in a way that I had never done for any other being before. This grief was held in secret, in a silence that was born of shame. It is only now in retrospect that I believe it was born of two shames. Firstly, who would I be for the (human) Other for openly expressing the level of grief for the (animal) Other? It was this first fear of shame that prompted the first secret. Yes, indeed it was understandable to be 'somewhat' upset by the passing of a 'pet' but another thing entirely to be *that* upset; surely this is not about 'this' but must be about something else? Something *elsewhere*, let slip by the censor of the unconscious and so the imagined 'look' of the Other in the face of this 'inappropriate' expression of grief necessitated, in me, the secret. It simply would not be 'proper' to be that upset because to be that upset would mean that I would have loved this being in a way that I had not loved many, if any (human) others and which ought to be reserved for that which is 'human'; that love

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<sup>3</sup> Ibid.

is properly a 'human' thing. I then grieved in a sort of half-concealed silence. People who knew me were aware that he had passed but the level of grief I was experiencing was done so in secret. No compassionate leave from work was asked for or offered. How on earth could I have asked?

We overuse the word 'love' now so much that it is understood that when we say we love our cat we don't actually 'mean' to say that we love our cat. We use it in the same sense as we say we 'love' *Game of Thrones* or peanut butter. So I can say that I loved my cat but it is not 'proper' to say that I actually loved my cat. It would seem to those who would not understand that I was extending something which was strictly afforded only to humans to an animal; I cannot have actually loved my cat because love is something only human. I could say I loved my cat in the same way as I could love *Game of Thrones* but to say I *actually* loved my cat? Yet in the final analysis how can we ever say we truly, authentically, *really* loved any being except in retrospect perhaps? Then surely love is always connected intimately to loss. I know that I always *thought* I felt love for Laddie. Who does not 'think' they love when they feel that they do? Yet I am enough a philosopher to cast a certain sense of doubt in asking the classic question, what actually 'is' love? Does it *exist* in the ontological sense? Is it *something*? But the grief was overwhelming and it is perhaps the case that I have not yet come to terms with his passing even as of yet. (perhaps these confessions, here, in this setting, are an attempt?).

If there is a 'proof' of love, then it is perhaps in the loss. The authenticity of love can sometimes come with the level of loss felt. It is quite often the case that when things unravel in romantic love, we find out that the loss and sense of grief in the breakup was not as upsetting as we thought it might be. It will inevitably lead us to conclude that, *at that moment*, we did not love the person as much as we imagined we did; that the loss, being slight, was an indication that the love was too. And so I can *know* that I loved laddie because I felt his loss so. I can, then, have some kind of knowledge of what he was for me. But what was I *for him*? It is here where I become stuck.

The day before Laddie passed away, he jumped onto my chest as I lay on the couch and began pushing his head onto mine; it was his habit to do this every so often as a gesture of affection. Kate and I called them 'head snuggles'. This was always done on what seemed like a whim on his part.

But to call it a whim would do the act a disservice perhaps. Could it have been a considered expression of love? It wasn't connected to provision of resources or anything I could give him at that moment in time. It was, as was often the case with Laddie, an instance of him pausing from his life struggle to be 'with' me, a gesture of intimacy and undoubtedly, for me, a gesture of love. He had had come over, made the decision to be affectionate, at that moment rather than any other. Not unusual or unexplained then, as whim might be seen. Deliberate, momentary (a leap of faith on his part? Like all gestures of love?)

It was an instance of the Levinasian 'miracle' that he, of course, would have denied to Laddie. I could never understand fully why Levinas so adamantly refused the 'miracle' of the suspension of life's Hobbesian drive for self-preservation to 'the animal'. When he tells us that, "The being of animals is a struggle for life. A struggle for life without ethics. It is a question of might."<sup>4</sup> It is, for me, something he has denied to Laddie; Even famously denied to his own 'Bobby'. If he was able to refuse the idea that 'Bobby', who had nothing material to gain or even to give to him, didn't pause in his own 'persistence in being'<sup>5</sup> then Laddie's gesture can only be deemed by him to be within the unremitting biological striving for self-preservation. While I am capable of being 'unreasonable' in holding that the life of the other is more important to me than my own, Laddie cannot be likewise; he was not an 'unreasonable animal'<sup>6</sup>.

But Laddie's unreasonable gesture of love was not reciprocated because at that moment I was Levinas' animal. I was, in fact, the 'reasonable animal', caught up in my own absorption, selfishly engaged in catching something uttered on a TV programme so trivial that I cannot even remember the content of now. And I pushed him away. I *pushed him away*. There it is. The ultimate secret now revealed; that I am haunted by the look Laddie gave me when I refused this gesture. I am not imagining that the look was one of hurt, a gesture of love from another being who was ill, in pain. A being who understood itself as 'a being toward death' and

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<sup>4</sup> Emmanuel Levinas, "The paradox of Morality: An interview with Emmanuel Levinas" (interview conducted by Tamra Wright, Peter Hughes, Alison Ainley), trans. Andrew Benjamin and Tamra Wright, in *Provocations of Levinas: Rethinking the Other*, eds. Robert Bernasconi and David Wood (London: Routledge, 1988), p.172.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

therefore ruptured the Heideggerian/Levinasian ‘proper’ *because* he was, at that moment, the ‘unreasonable animal’ and his look confirmed that to me. Who was I for the Other at that moment? Who was I for Laddie then? This question was always going to be a question for me, though. Who was I for Laddie at that moment, *for me*? It could only possibly be a question *for me* because who I am for the Other can never be answered, in truth, by the Other in this instance. Firstly, because the question ‘who was I, for you’ could not be answered by him because it was a question asked *after* and secondly, in the face of the possibility of the abyss of understanding between us as beings, in the reluctant recognition that I may not have actually understood Laddie *from the ground of his own being* no more perhaps than I can understand any being in love, human or non-human animal. All I have then is the phenomenon of love, the gestures taken for love, the signs of that which is unrepresented here. I can never *really* know if any being loves me, all I can know are the gestures that indicate a possible, unseen love. Husserl, in *Cartesian Meditations*<sup>7</sup> understood fully that the process of empathy was not spectral possession. One can never be presented with the mind of an Other immediately; it will always be mediated, through the word or gesture; the Other is always appresented.

These phenomenon of love are all we have. What is behind it, if anything, will always remain unseen, appresented. Love is ultimately never seen *immediately*. That is true as much for human animals as it is for some non-human animals. It has always struck me that the insistence that love is something then ‘properly’ human cannot be sustained. We may not know what some beings ‘mean’ by love and it may never be possible to follow through on Heidegger’s insistence that we must at least attempt to understand the being of the animal from the ground of its own being. It may not therefore be a question of whether Laddie loved me but *how* did he love me, from the ground of his own being. All I ever had access to were the gestures he gave that I *assumed* were ones of love, or what love could possibly have meant *for him*. Perhaps, and we must hold this as possibility, however uncomfortably, that he never loved me. What could that ever mean, *for me*? That he was a being incapable of love, from the ground of his being, a being without anything that could be love? Or that he was a being for whom it was possible to love but that he *didn’t love me*.

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<sup>7</sup> E. Husserl, *Cartesian Meditations*. trans. by Dorian Cairns (The Hague, Netherlands: Martinus Nijhoff 1960).

Even more so that he did love me and ceased to before he died and that 'the look' when I refused the gesture of love was the instance where his love for me ceased? I can, of course never know whether he ceased loving me at that moment but is it not the case that our deepest hauntings are our darkest imaginings of possibility? Perhaps, at the heart of it is that I am haunted that the look signified for Laddie that he was not loved by me, that he had 'remembered me wrong'. It is the irretrievability that haunts, no forgiveness can be gained. I ask for it quite often, spoken to the silence of my thoughts when I drift to his memory, as quite often happens.

The revealing of these secrets may be, indeed, an act of love. In attesting to my love for Laddie, here, in this space, I risk the gaze of the Other that may determine all of this as improper, inappropriate and ultimately trivial. It takes all my wherewithal not to ask for your forgiveness, in advance. But I pause at the threshold of such a gesture, out of love.

# Persons and Members

Andrew Brei

**Abstract:** The problem of motivation – knowing the right thing to do, but failing to be motivated to do it – persists in ethics, a fact made very evident when we attend to non-human animals and the natural environment. One attempt to solve this problem requires us to recognize the personhood that exists in the non-human world. Another possible solution involves ignoring personhood and focusing on interdependence among members of an ecological community. Both of these solutions find support in the writings of Aldo Leopold, and together they provide effective means of bridging the gap between knowledge and action.

## 1. The Problem

‘What is ecologically correct is not necessarily ethically compelling.’ These words –written by Uta Maria Jürgens – point to a persistent problem in ethics.<sup>1</sup> The problem is that a person could know the right thing to do, but fail to be motivated to do it. This failure can be seen clearly in connection with ecological matters, as when (for example) a person continues the frequent, liberal application of hair spray, despite his knowledge that it contains several volatile organic compounds. The gap between moral knowledge and moral action has troubled philosophers for millennia, and it is particularly troubling today for those of us who are concerned with the well-being of non-human animals and of the Earth ecosystem. Many people are aware of the destructive effects that human activities can have – and yet, they are not motivated to act and make positive changes.

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<sup>1</sup> Uta Maria Jürgens, ‘Compassionate Coexistence: Personizing the Land in Leopold’s Land-Ethic’, *Journal of Evolution and Technology*, 24 (2014), 60-64 (p. 61).

In addressing this problem, Jürgens offers up an interesting view, one that combines evolution, cognitive science, and ethics. Her approach to the problem of motivation involves a focus on personhood, and she aligns her view with the Land Ethic of Aldo Leopold, the great forester, ecologist, and nature writer. My intention in this essay is not to reject Jürgens' view, though I will bring into question its effectiveness and its compatibility with Leopold's ethics. My intention is rather to reinforce Jürgens' view by advancing a view of my own. On my view, the focus on personhood is replaced by a focus on community membership. As I will demonstrate, the problem of motivation is best addressed from more than one angle.

## 2. Personizing

Jürgens suggests that the bridge between understanding and motivation involves *personizing* non-human animals, plants, and the rest of the natural world. Simply put, to personize is to recognize personhood. It is, claims Jürgens, something we humans have evolved to do naturally and automatically upon encountering another. *Person* and *personhood* are concepts that Jürgens defines in both descriptive and normative terms. In 2014 she described personhood as the possession of 'a unique set of qualities, motivations and capacities,' as well as inherent value and a right to exist in accordance with one's disposition.<sup>2</sup> In 2016, she described persons as 'unique individuals, exhibiting agency, being endowed with subjectivity, and an internal value just like humans.'<sup>3</sup> Clearly, Jürgens believes that humans are persons. Just as clearly, she believes that some non-human animals are also persons. In support of her view, and with regard to the descriptive elements—the mental capacities, the inner

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<sup>2</sup> 'Compassionate Coexistence', p. 61.

<sup>3</sup> Uta Maria Jürgens, 'An Animal—Many Persons? Animal Personhood in Face [sic] of the Modularity of Mind', *International Journal of Social Science Studies*, 4 (2016), 19-26 (p. 19).



lives—Jürgens offers much in the way of scientific support. She provides many examples of non-human animals that exhibit cognitive abilities sufficient for personhood, from jealousy in dogs to camaraderie in rats. In support of the normative elements—the possession of inherent value and of rights—Jürgens offers less support. To be fair, however, it is difficult to marshal direct empirical evidence for inherent value and rights possession. Indeed, it is not obvious to me what sort of empirical evidence one might look for along those lines. What Jürgens says is that we automatically recognize the value and sovereignty of persons, and we respond with respect and moral consideration, regardless of whether we are dealing with humans or non-human animals.

When we turn our attention to things like plants, soils, ecosystems, and landscape features—things, in other words, that do not display cognitive abilities—the story is rather different. While these would not be considered persons according to the definition that covers humans and certain non-human animals, they may nonetheless be considered persons. Says Jürgens, ‘appreciating non-human personhood is not predicated on non-humans being similar to us. We can perceive and appreciate personhood in plants.... We can become attached to a certain rock formation; we can scold our electronic equipment.’<sup>4</sup> Essentially, there are many ‘ways’ of being a person, according to Jürgens. The only requirement for personhood seems to be having ‘an existence that is inimitable and singularly precious’.<sup>5</sup> In other words, what Jürgens seems to be saying is that so long as a being (alive or not) has a way of existing that is unique to it, a way that humans can appreciate and comprehend, then that being is a person. And if a being is a person, then that being deserves our respect and compassion. It deserves to be personalized.<sup>6</sup>

Now, the recognition of another’s personhood does not generate action all by itself, automatic though it may be. Personizing brings into

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<sup>4</sup> ‘Compassionate Coexistence’, p. 62.

<sup>5</sup> Ibid.

<sup>6</sup> It may be more in keeping with Jürgens’ view to say that if a being can be personalized, it is a person. Jürgens’ reluctance (expressed in ‘Compassionate Coexistence’, p.61) to define personhood relates to her belief (expressed throughout her ‘An Animal—Many Persons?’) that the human ability to personalize *makes* persons out of non-human beings in the world around us. However, fleshing this out would take me too far afield from my present purposes. So, I leave the discussion of Jürgens’ ‘full’ view of personhood for another paper.

focus the importance and value of things, but the compassion and care that it fosters are what ultimately motivate one to act out of moral regard. Says Jürgens, ‘Ethics are a means to foster and to safeguard harmony. And both harmony and ethics ultimately rely upon the genuine and irreducible feelings of love and connectedness to beloved others.’<sup>7</sup> In other words, one is not moved by reason, knowledge, or awareness alone. One is moved by feeling. And in the case of personhood, the moral consideration we show is a product of sympathy and compassion. The recognition of personhood automatically generates feelings like care and affection, and these in turn incline one toward respectful, responsible action. Thus does Jürgens support her claim that personizing necessary for ‘enabl[ing] moral behavior toward the world as a whole’.<sup>8</sup>

In support of her call to an increased focus on personhood, Jürgens points to the works of Aldo Leopold. Leopold’s interest in and familiarity with non-human animals and their habitats enabled him to cultivate what he called an ‘ecological conscience’. Wrote Leopold, ‘We can be ethical only in relation to something we can see, feel, understand, love, or otherwise have faith in.’<sup>9</sup>

Leopold is a worthy consultant in matters of motivation. His career as a forester began with an assignment to District 3 in the southwest of New Mexico, overseeing an area that encompassed the Apache National Forest in the Arizona Territory. He would write some of his most powerful and beloved essays about the time he spent – and the insights he gained – in the American Southwest, including ‘On Top’ and ‘Thinking Like a Mountain’. When writing about the place of human individuals in the ecological community, Leopold tells us: ‘His instincts prompt him to compete for his place in that community, but his ethics prompt him also to co-operate....’<sup>10</sup> Leopold’s masterpiece ‘The Land Ethic’ includes several examples of self-interest competing with a more community-oriented outlook. And in addition to his awareness of the potential for competition between motives, Leopold was aware of the possibility of understanding failing to bring about action. His famous dictum hints at why this might

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<sup>7</sup> ‘Compassionate Coexistence’, p. 61.

<sup>8</sup> ‘Compassionate Coexistence’, p. 60.

<sup>9</sup> Aldo Leopold, *A Sand County Almanac: And Sketches Here and There* (New York: Oxford University Press, 1987), p. 214.

<sup>10</sup> *A Sand County Almanac*, pp. 203-4.

happen. He says: 'A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise.' This suggests to me that a person might have a quite sophisticated understanding of the pieces and forces in an ecosystem, but lack – for want of a better word – an aesthetic appreciation for that ecosystem. And in that kind of case, understanding the importance of each piece in the larger puzzle might not be enough to bring about moral behavior. Leopold reminds us that '[t]he evolution of a land ethic is an intellectual as well as emotional process. Conservation,' he says, 'is paved with good intentions which prove to be futile....'<sup>11</sup>

Now, Leopold did not only recognize the problems relating to moral motivation – he also offered remedies, including one illustrated by his own transformation. His *A Sand County Almanac* is a month-by-month account of his exploration and rehabilitation of an overused and barren piece of farmland. Leopold chronicles his gradually deepening appreciation for this land and its various inhabitants, and eventually finds himself acting out of care rather than duty. When reflecting on his tendency to cut down birch trees in favor of pine trees, he acknowledges that his rationale is not merely rational. 'The only conclusion I have ever reached,' Leopold admits, 'is that I love all trees, but I am in love with pine trees.'<sup>12</sup>

Jürgens knows that knowledge of nature, important as it is, does not generate ethical behavior on its own. Leopold knew this too, and that is why he rarely failed to acknowledge sentiment when writing about the connections between education and ethics. Wrote Leopold, '[n]o important change in ethics was ever accomplished without an internal change in our intellectual emphasis, loyalties, affections, and convictions.'<sup>13</sup> And while this is true, it leaves open the question 'how can this internal change be brought about?'

Leopold believed that ethics has evolved. It evolved from a system of principles that governed individual-to-individual behavior to one that governed the behavior of an individual living in a society. The next step, as Leopold envisioned it, extends moral regard to the soils, waters, plants,

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<sup>11</sup> Ibid., p. 225.

<sup>12</sup> Ibid., p. 70.

<sup>13</sup> *A Sand County Almanac*, pp. 209-10.

and animals that Leopold referred to as ‘the Land’. This third step in the ethical sequence requires humans to regard the land and all of its constituents as members of the moral community. But how can this next step in the ethical sequence be encouraged? Moral regard is not something that can be mandated. It must be felt. And this is where Jürgens’ view has much to offer. Her claim is that if we would simply attend to our personizing of the land, we would be motivated to treat it with moral regard (by virtue of the compassion the personizing would engender). Respect for the land as a whole would result from the respect we extend to individual others, be they woodchuck, tree, riverbank, or crag. And so, to the question over how to motivate moral regard and positive action relating to the natural world, Jürgens answers, ‘personize it’.

In so answering, she appears to agree with Leopold. He was happy to describe non-human animals as having states of mind, emotions, intentions, and knowledge. ‘January Thaw’, for example, is an account of five different animals and their attitudes toward the melting snow.<sup>14</sup> Leopold wrote about a mouse who ‘feels grieved about the thaw’. He asserted that a hawk ‘is well aware’ of why snow melts. He described a rabbit who has abandoned fear and an owl who has reminded the rabbit about the importance of caution. And in all of these cases, Leopold was comfortable with the notion that the January thaw *means* different things to these characters. He had no trouble personizing non-human animals. Neither did he object to personizing inanimate things – rivers, trees, coffee pots, and freight trains.<sup>15</sup> So perhaps Jürgens is correct when she suggests that Leopold ‘had a personized picture of the “land-community” in mind when he conceived of the Land Ethic’.<sup>16</sup> Perhaps personizing is, as Jürgens suggests, the ‘missing link’ that can ‘turn conceptual insights into action’.<sup>17</sup>

Perhaps.

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<sup>14</sup> The quoted passages in this paragraph come from the essay ‘January Thaw’ (*A Sand County Almanac*, p. 3).

<sup>15</sup> Leopold’s essay ‘Too Early’ is a fine display of his willingness to personize (*A Sand County Almanac*, p. 59).

<sup>16</sup> ‘Compassionate Coexistence’, p. 61.

<sup>17</sup> *Ibid.*

### 3. Problems with Personizing

But perhaps personizing is only part of the solution. My qualms regarding Jürgens' view have mainly to do with the amount of imagination and charity it requires. While it is an easy thing to recognize personhood in many non-human animals, it is not quite as easy to see it in other things – rivers or rock formations, for example. I do not doubt that some people can look at a tree and muse over its unique character – its resolve or its competitive spirit. I do doubt that all people find this so natural. Keep in mind, being a person on Jürgens' view involves being something with 'a unique set of qualities, motivations and capacities'.<sup>18</sup> It is a quality of 'unique individuals, exhibiting agency, being endowed with subjectivity, and an internal value just like humans'.<sup>19</sup> I do not object to these ways of understanding personhood, but I do wonder how readily they can be applied to much of the non-human world. Compounding my confusion, Jürgens writes, '[a]cting responsibly is contingent upon evidence that our behavior affects and is meaningful to individual others and that we are personally liable'.<sup>20</sup> My worry is that it will take more imagination than the average person is willing to muster in order to attach concepts like motivation, agency, and subjectivity to many elements of the natural world. I suppose I am placing myself in the shoes of the unmotivated when I ask, 'Where is the evidence that my actions are meaningful to rocks, flowers, or marshes?'

In addition to all of that, it is not clear that personizing is what Leopold had in mind when he addressed the third step in the evolution of ethics. True, he did his fair share of personizing of the non-human world. But when it came time to clearly articulate his ethical views, he deemphasized individuality and emphasized interconnectedness. 'All ethics so far evolved,' Leopold wrote, 'rest upon a single premise: that the individual is a member of a community of interdependent parts'.<sup>21</sup> Our moral significance is based not on our uniqueness, but rather on our membership in a community. Ultimately, the value of any part of the Earth

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<sup>18</sup> Ibid.

<sup>19</sup> 'An Animal—Many Persons?', p. 19.

<sup>20</sup> 'Compassionate Coexistence', p. 61.

<sup>21</sup> *A Sand County Almanac*, p. 203.

community – the Land, as Leopold referred to it – rests on its being an integral part of a whole. ‘In short, a land ethic changes the role of *Homo sapiens* from conqueror of the land-community to plain member and citizen of it.’<sup>22</sup>

#### 4. Depersonizing

Leopold’s focus on membership in a community and on interrelatedness recommends an approach to the problem of motivation rather different from the one Jürgens articulates. I suggest that in an attempt to encourage people to recognize the value of the non-human world, *depersonalizing* is an effective strategy. By my use of this word, I intend something quite the opposite of what Jürgens means when she discusses personizing. Depersonizing involves the deemphasizing of personhood and the downplaying of uniqueness, intention, and subjectivity. It requires us to shift our focus away from what makes a thing stand out and toward how a thing fits in. Of course, I am not suggesting that we depersonize trees, rocks, squirrels, or any other part of the non-human world. Rather, I suggest that depersonizing humans can be an effective means to respect, motivate, and act. Instead of attending to the ways in which beings express their individuality, we ought to attend to the relationships between beings in the ecosphere. We ought to be more aware of the roles that are played by the elements of the world around us. Above all, we ought to attend to our impact on the world around us.

I have a couple of reasons for thinking this. First of all, and as I mentioned above, it may be difficult for some humans to recognize the personhood of, say, a plant or a pond. And when that kind of recognition is absent, the feelings of compassion that follow from personizing will not arise. But depersonizing does not require conceiving of non-human beings as persons – it requires paying attention to the myriad connections between things. It does not mean that we focus on the ways in which beings assert themselves – it means that we understand how those beings affect us, and how we affect them. Understanding breeds care and

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<sup>22</sup> Ibid., p. 204.

compassion just as surely as the recognition of personhood does. And when personhood is not obvious, interconnectedness can be.

Secondly, there is support for depersonizing to be found in Leopold's writing. As I have already mentioned, Leopold believed that the next step in the ethical sequence will involve a change in thinking, a change that will vastly broaden the boundaries of the moral community. In order to foster this change in himself, Leopold bought a ruined piece of land and nursed it back to a state of health. He carefully observed the ways in which the ecological community operated, and he thoughtfully participated as a member of that community. Among the lessons he provided us is this: By simply paying attention to the ways in which the ecological community operates, one can develop the sort of compassion for things that motivates responsible action. Leopold spoke of this development in an essay about higher education, writing, '[t]he objective is to teach the student to see the land, to understand what he sees, and to enjoy what he understands'.<sup>23</sup> So if depersonizing requires us to experience and understand our place in the ecological community (which it does), and if experiencing and understanding can produce compassion (which they can), then depersonizing provides a reliable response to the problem of motivation (as it relates to ecological matters, anyway).

## 6. Objections and Responses

Some objections come to mind having to do with my proposal. First, I am aware that the word I have chosen – depersonize – bears a resemblance to the word 'dehumanize'. And because of the negative connotations of that word, one might suggest that I ought to choose a word other than 'depersonalize'. Well, as you will no doubt have intuited, I employ 'depersonalize' in order to contrast my view against Jürgens' view. And because she uses the word 'personalize', I use the word 'depersonalize'.<sup>24</sup> I mean nothing beyond the de-emphasis of personhood.

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<sup>23</sup> Aldo Leopold, 'The Role of Wildlife in Liberal Education', in *The River of the Mother of God*, ed. by Susan Flader and J. Baird Callicott (Madison: University of Wisconsin Press, 1992), pp. 301-305 (p. 302).

<sup>24</sup> Given my desire to draw attention away from individuality and toward membership in a community, an alternative to 'personalize' might be 'communize'. Of course, that has its own baggage.

Still, a deeper worry persists: If humans are de-personized, how can we be sure that this will raise our level of care and motivation to act regarding non-human beings rather than lower our level of care and motivation to act regarding humans? Do we not run the risk of devaluing humans along with the rest of the ecosystem? By way of a response, I should make it clear that I am not advancing a view according to which de-personizing is something a person ought to do all the time. It is something that probably applies best (if not exclusively) in matters of ecological importance. Personhood still matters, and it should be acknowledged and respected wherever it is evident. I should also make it clear, as Leopold does, that the development of ethics does not require that earlier stages are erased by later ones. When rules of conduct emerge that govern interactions between individuals and societies, the rules that apply to interactions between individuals are not necessarily nullified. And a heightened awareness of our place in the ecological community should not license antisocial, illegal, or immoral conduct regarding other people. An increased regard for non-humans should do nothing to reduce our regard for humans.

Secondly, one might object to my (and Leopold's) holistic approach. Why think it appropriate to regard a being as valuable because they are a part of an ecological community? Does this not presume that ecological wholes are the primary bearers of moral value, when our usual moral attitude is that individuals are of paramount significance? In other words, de-personizing may depend on a dubious account of moral value. In response to this, I cannot say in the present essay all that needs to be said. I can say that my present intention is to address the problem of motivation. If Leopold was correct, then awareness of the intricacies of an ecosystem can produce the kind of compassion that can motivate. And if I am correct, then de-personizing involves attending to those intricacies. I can also say that I would not be alone if I were to suggest that, for a variety of reasons, Ethical Individualism is at least as in need of support as is Ethical Holism. Given the degree to which all the members of the ecological community are linked, holism seems perfectly plausible to me... even if individualism is our usual moral attitude.

Speaking of community, another possible objection comes to mind. My belief that de-personizing can, in many instances, motivate action depends on a particular understanding of community. Specifically,



de-personizing rests on the view that humans are members of an ecological community. Leopold called that community the Land. Regardless, de-personizing depends on seeing ourselves as members of a very extensive community of beings, most of whom are non-human. But some will object, claiming that the concept *community* means a community of *persons*. They will say that being a member of a community means being a person in a community of persons. Thus, de-personizing makes no sense in any literal way, because by removing the notion of personhood we discard the notion of community. Moreover, if the sense of community on which I depend is a non-literal, metaphorical one, then does it not require much in the way of charity and imagination? And in that case, is my view not vulnerable to the very criticism I level against Jürgens' view?

My simple response is that I do not accept this narrow sense of community. The best reckoning of community of which I am aware involves multiple players (beings, members, parts) who interact with one another and whose actions constrain and are constrained by others' actions. Some of those players are persons. Others may not be, in any clear sense. But all are members of a community – an ecological community. The fact that the modifier *ecological* is needed here says more about human myopia (or perhaps arrogance) than it does the meanings of *commune* and *community*. So, when I speak of a community, it is the broad and inclusive sense that I have in mind.

## 8. Conclusion

Echoing Protagoras, Leopold wrote, 'Man brings all things to the test of himself, and this is notably true of lightning'.<sup>25</sup> When I read this, it strikes me how applicable the sentiment is to both Jürgens' view and to my view. Along with Jürgens, we might agree that humans have evolved to recognize and respond positively to personhood. That being the case, those who feel unmotivated by their beliefs about the value in (and of) nature would do well to notice personhood wherever it can be found. Alternately, we might agree that humans have evolved alongside countless other beings, and that together we all constitute a community. We depend upon this community, and its integrity, stability, and beauty depend to a

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<sup>25</sup> *A Sand County Almanac*, p. 8.

great extent on us. That being the case, those who feel unmotivated to extend moral regard beyond the human community ought to pay attention to the ways in which their well-being depends upon the world around them.

One can choose to focus on personhood or on membership in a community. In either case, feelings of compassion, appreciation, sympathy, camaraderie, and love for others are the likely result. Of course, there are no guarantees that competing sympathies and commitments will not intervene. But what is clear is that motivation does not follow directly from understanding. And this is why personizing and de-personizing can help bridge the gap between knowing and acting in the context of the natural environment. Together, these approaches do a far better job of addressing the problem of motivation than either could individually.

# The place of feelings in animal ethics

Jan Deckers

**Abstract:** I evaluate the role of feelings in (nonhuman) animal ethics. Firstly, I illustrate that animal ethics has been preoccupied with the search for morally relevant properties in nonhuman animals, and that many scholars have focused on sentience. Secondly, I argue that many have separated sentient vertebrates from insentient others, but that these dualistic ontologies face empirical and epistemological challenges. By engaging with these, my third objective is to develop an evolutionist ethical theory that values both the feelings of moral subjects and those of moral objects. To conclude, I outline its implications for the human use of animals for food.

## 1. Introduction

The general aim of this article is to evaluate the place of feelings in animal ethics.<sup>1</sup> When academics in the field of animal ethics think of feelings in relation to their discipline, many may think mostly about the pain and – perhaps to a lesser extent – the joy that nonhuman animals may experience in human interactions with them. This has given rise to dualistic ontologies, for example theories that separate sentient vertebrates from insentient invertebrates and other organisms. I argue that these dualisms must be questioned on empirical and epistemological grounds. Whereas I recognise that the sentience of nonhuman organisms has ontological relevance and that gradations of sentience have moral significance, I also argue that animal ethics must pay more attention to the role of the feelings of moral subjects in caring for themselves and for others (empathy). The concepts of moral subject or agent and moral object or patient are understood here to be mutually exclusive. The result is an evolutionist ethical theory that values both the feelings of moral objects and those of

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<sup>1</sup> My thoughts about this theme were developed at the annual conference of the Irish Philosophical Society in the Department of Philosophy, Carlow College, 3-4 November 2017. I would like to thank the participants at the conference and an anonymous reviewer for their helpful feedback.

moral subjects. To conclude, I provide a short outline of what this implies for the human use of animals for food.

## **2. Animal ethics and the search for morally significant properties in nonhuman animals**

It is fair to say that animal ethics has been preoccupied largely with the search for properties in animals that would make animals morally significant. Whereas recent theorists have also pointed at relational reasons why particular animals might deserve to be granted particular moral significance, the search for objective criteria that would make particular animals morally significant permeates the work of many scholars in the discipline of animal ethics.<sup>2</sup> In doing so, theorists have frequently separated some animals from others, as well as from plants and other organisms. When asked why this divide is made, scholars usually refer to some animals possessing certain capacities that are claimed not to be possessed by others. Singer, for example, argues that some animals have an interest in the avoidance of pain, and that they deserve some moral recognition because of this interest. In Singer's early work, he draws the 'prudential' line between sentient and insentient organisms 'somewhere between a shrimp and an oyster'.<sup>3</sup> Whilst Singer expressed doubt about this position in the second edition of *Animal Liberation*, he continued to regard plants as insentient, writing that 'there is no reliable evidence that plants are capable of feeling pleasure or pain', which is why he thinks that 'the belief that plants feel pain appears to be quite unjustified'.<sup>4</sup>

Another advocate in this quest for properties is Tom Regan, who has argued that some animals deserve our respect on the basis of their inherent value.<sup>5</sup> This inherent value would be based on their being subjects-of-a-life. What is contained in this property is defined as follows: 'individuals are subjects-of-a-life if they have beliefs and desires; perception, memory, and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain; preference- and welfare-interests; the ability to initiate action in pursuit of their desires

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<sup>2</sup> May op. cit.

<sup>3</sup> P. Singer, *Animal Liberation* (New York: New York Review/Random House, 1975), p 188.

<sup>4</sup> P. Singer, *Animal Liberation* (London: Jonathan Cape, 1990), second edition, p. 174, p 235.

<sup>5</sup> T. Regan, *The Case for Animal Rights* (Berkeley: University of California Press, 1983).

and goals; a psychophysical identity over time; and an individual welfare in the sense that their experiential life fares well or ill for them'.<sup>6</sup> When it comes to the question of determining which animals are such subjects, Regan is hesitant. In the first edition of *The Case for Animal Rights*, he claims that it includes 'normal mammalian animals, aged one or more'.<sup>7</sup> In a later edition, however, Regan widens the category, writing that birds are also included, that fish 'may be' included, and that 'plants and insects' are excluded.<sup>8</sup>

I have pointed out elsewhere that basing moral consideration on this concept of what it means to be a subject-of-a-life may exclude most animals as it may depend on the capacity to have thoughts about thoughts (meta-cognition), which most animals may not possess.<sup>9</sup> Whereas I am not aware that Regan ever questioned his 'subject-of-a-life' criterion and definition, in his later work his focus shifted. In 1997, he spoke of 'noncognitive criteria ... such as sentience'.<sup>10</sup> In 2004, he appeared to identify those who are and those who are not subjects-of-a-life with, respectively, those who are both in the world and aware of it and those who are 'in the world but not aware of it'.<sup>11</sup> There is no sign in his writings that he ever included invertebrates and plants within the former category. Throughout his writings, Regan seemed to be preoccupied primarily with a concern for beings who sense the effects of how human beings engage with them.

Such dualistic ontologies, where sentient organisms are separated from insentient organisms, have also been adopted in more recent times by many scholars who have followed Singer and Regan in establishing the academic discipline of animal ethics. One example is Cochrane, who draws a distinctive line between (sentient) vertebrates and (insentient) invertebrates, claiming, for example, that 'we can be reasonably sure that creatures such as amoebas and oysters lack the capacity for

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<sup>6</sup> Regan op. cit, p 243.

<sup>7</sup> Regan op. cit, p 78, p 247.

<sup>8</sup> T. Regan, *The Case for Animal Rights* (Berkeley: University of California Press, 2004), new edition, p xvi, p xl.

<sup>9</sup> See e.g.: P. Carruthers, *The Animal Issue: Moral Theory in Practice*. (Cambridge: Cambridge University Press, 1992), or J. Bermúdez, *Thinking without Words*. (Oxford: Oxford University Press, 2003).

<sup>10</sup> T. Regan, 'The Rights of Humans and Other Animals', *Ethics and Behavior*, 7, (1997): 103–111, p 110.

<sup>11</sup> T. Regan, 2004, op.cit, p xvi.

consciousness'.<sup>12</sup> Another is Palmer, who echoes Regan's early position where she takes the 'relatively conservative view' that only mammals and birds are capable of feeling pain.<sup>13</sup> Whereas she also states that 'many organisms, including some plants and amoeba[e], move away from noxious stimuli', she adds that 'it seems extremely unlikely that they feel pain'.<sup>14</sup> Whilst not quite accurate, the general picture that emerges from this is that there is significant uncertainty whether invertebrates – perhaps with the exception of cephalopods (octopuses and squid) – and plants are capable of feeling pain and, consequently, whether they ought to be granted moral consideration.<sup>15</sup>

### 3. Empirical questions and the epistemological problem

This picture must be challenged on both empirical and epistemological grounds. On empirical grounds, recent research has explored particular physiological, anatomical, and behavioural aspects of various invertebrates, where some have argued that these aspects provide evidence for sentience.

Some crustaceans, for example, release hormones when they are exposed to stimuli that might be interpreted to cause stress, some vary their avoidance behaviour in the presence of a range of aversive stimuli, and some respond in similar ways to how vertebrates respond when they are given analgesics.<sup>16</sup> For example, a noxious stimulus was applied to the antennae of prawns (*palaemon elegans*), who responded by grooming and rubbing them, and who stopped doing so after they had been treated with benzocaine, a substance that is known to have an anaesthetic property.<sup>17</sup>

A different example involves an experiment with snails, who were enticed to displace the end of a rod in order to receive electrical stimulation.<sup>18</sup> Compared to a control group, snails who received

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<sup>12</sup> A. Cochrane, *Animal Rights without Liberation. Applied Ethics and Human Obligations* (New York: Columbia University Press, 2012), p 24.

<sup>13</sup> C. Palmer, *Animal Ethics in Context* (New York: Columbia University Press, 2010), p 18.

<sup>14</sup> Palmer, *op. cit.*, p 12.

<sup>15</sup> See also e.g. G. Varner, *Personhood, Ethics, and Animal Cognition* (Oxford: Oxford University Press, 2012), p 105, p 112.

<sup>16</sup> R. Elwood, S. Barr, L. Patterson, 'Pain and Stress in Crustaceans?', *Applied Animal Behaviour Science*, 118, (2009): 128–136.

<sup>17</sup> S. Barr, P. Laming, J. Dick, et al., 'Nociception or Pain in a Decapod Crustacean?', *Animal Behaviour*, 75, (2008): 745–751.

<sup>18</sup> P. Balaban, O. Maksimova, 'Positive and Negative Brain Zones in the Snail', *European Journal of Neuroscience*, 5, (1993): 768–774.

stimulation to the parietal ganglia (nerve knots that control the gill and the osphradium, another sensory organ) decreased the frequency with which they touched the rod, whilst snails who received stimulation to the mesocerebrum (nerve knots in the middle part of the head) – which is known to fulfil a role in sexual activity – increased the frequency with which they did so. Reflecting on this experiment, Sherwin commented that, if the experiment were done on a vertebrate, many would conclude that the animals felt pain when they stimulated the parietal ganglia and that they felt pleasure when they stimulated the mesocerebrum.<sup>19</sup>

Empirical research with invertebrates has also started to affect legal positions, for example in Switzerland, which changed its law of 2008 in early 2018 to prohibit the transport of living crustaceans directly on ice or in icy water, and to prevent these animals from being boiled alive, by insisting that, where possible, they are stunned before being boiled.<sup>20</sup>

Recent work has also taken place on the question whether plants might be capable of feeling pain, heralding the start of the discipline of ‘plant neurobiology’.<sup>21</sup> Some plants have been observed to increase their production of ethylene when they are exposed to situations that might be stressful.<sup>22</sup> Interestingly, ethylene was used as an analgesic in human medicine until fairly recently, prompting the question whether some plants might increase the endogenous production of ethylene when they are in pain. I recently discovered that Andrew Smith contemplates the same question in a book wherein he argues also that I may underestimate the capacities of plants.<sup>23</sup> In a paper published in 2009, I wrote: ‘Since plants are less aware of their surroundings, it does not mean much to them to be

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<sup>19</sup> C. Sherwin, ‘Can Invertebrates Suffer? Or, how Robust is the Argument-by-Analogy?’, *Animal Welfare*, 10S (2001): 103S–118S, p 111S.

<sup>20</sup> Schweizerische Bundesrat, *Tierschutzverordnung. Änderung vom 10. Januar 2018* (Bern: Schweizerische Bundesrat, 2018), p. 574, p. 583. The amendments concern: Schweizerische Bundesrat, *Tierschutzverordnung vom 23. April 2008* (Bern: Schweizerische Bundesrat, 2008), art 23 f and art 178.

<sup>21</sup> See e.g.: F. Baluška, S. Mancuso, ‘Deep Evolutionary Origins of Neurobiology: Turning the Essence of “Neural” Upside-Down’, *Communicative and Integrative Biology*, 2 (2009): 60–65; P. Calvo, ‘The Philosophy of Plant Neurobiology: A Manifesto’, *Synthese*, 193 (2016): 1323–1343.

<sup>22</sup> Baluška and Mancuso, op. cit, p 62.

<sup>23</sup> A. Smith, *A Critique of the Moral Defense of Vegetarianism* (New York: Palgrave Macmillan, 2016), pp 16–19.

controlled by external factors'.<sup>24</sup> Smith writes that I am 'incorrect to suggest that they [plants] are passive to manipulation'.<sup>25</sup> He makes a good point, and I hasten to add that the causal inference does not work. Whereas I did not quite suggest that plants are not concerned at all by being manipulated, Smith summarises evidence suggesting that plants may have more sophisticated experiences than I had previously assumed, including the tactile and hearing senses.<sup>26</sup>

Another widely diverse range of organisms is the group of bacteria. Research has indicated that bacteria communicate with other bacteria by means of a process known as quorum sensing and that they anticipate events.<sup>27</sup> This has prompted some to suggest that bacteria may possess 'proto-consciousness or sentience'.<sup>28</sup>

The problem with these claims is that they could be challenged on epistemological grounds: how can we know what other individuals might experience? Nagel famously expressed that he wanted 'to know what it is like for a *bat* to be a bat', arguing that he could not know what it might be like to be a bat as his knowledge of others was constrained by his 'single point of view'.<sup>29</sup> Some have argued that this implies that there is an unavoidable anthropocentric bias that underlies our knowledge of other species.<sup>30</sup> This interpretation may perhaps be fostered by Nagel's contention that, in spite of each of us having a 'single point of view', 'we apply ... mentalistic ideas ... unproblematically ... to other human beings', and his claim that there are 'inter-species barriers ... to understand the experience of another species'.<sup>31</sup>

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<sup>24</sup> J. Deckers, Vegetarianism, 'Sentimental or Ethical?', *Journal of Agricultural and Environmental Ethics*, 22 (2009): 573–597, p. 588.

<sup>25</sup> Smith, op. cit, pp 19–20.

<sup>26</sup> Smith, op. cit.

<sup>27</sup> C. Waters, B. Bassler, 'Quorum Sensing: Cell-to-Cell Communication in Bacteria', *Annual Review of Cell and Developmental Biology*, 21 (2005): 319–346; J. Shapiro, 'Bacteria Are Small but Not Stupid: Cognition, Natural Genetic Engineering and Socio-Bacteriology', *Studies in History and Philosophy of Biological and Biomedical Sciences*, 38 (2007): 807–819.

<sup>28</sup> J. Reddy, C. Pereira, 'Understanding the Emergence of Microbial Consciousness: From a Perspective of the Subject–Object Model (SOM)', *Journal of Integrative Neuroscience*, (Preprint), (2017): 1–10.

<sup>29</sup> T. Nagel, *Mortal Questions* (Cambridge: Cambridge University Press, 1979), p 439, p 437.

<sup>30</sup> K. Hui, 2014. 'Moral anthropocentrism is unavoidable', *The American Journal of Bioethics*, 14, 2 (2014): 25.

<sup>31</sup> Nagel, op. cit, pp 437–438.



In a fundamental sense of what it means to know something in an experiential way, however, we know as little of the experiences of another human being as of the experiences of any other beings. Therefore, it is wrong to refer to this epistemological bias as an anthropocentric bias that would set the human species apart from other species. Rather, it is an individualistic bias that sets each one of us apart from everyone else. The problem that Nagel highlights, therefore, is not what Weisberg claims it to be, that human beings are unable to grasp ‘the point of view of a creature able to fly and echolocate’ by virtue of belonging to a kind that experiences the world in a different way from how bats experience the world.<sup>32</sup> Rather, the fundamental epistemological problem is that each one of us is unable to grasp the point of view of anyone else.

#### **4. Dualism and pansentientism**

Any animal ethic that aims to ground moral respect for animals on the basis of the ascription of sentience is therefore marred by the epistemological problem that we cannot experience someone else’s pain, which thwarts any account that claims to possess evidence for the presence of this subjective feeling, or any feeling for that matter, in others.

One response to this challenge is to deny that others feel anything. I have not seen a defence of this dualistic position. It conflicts with my conviction that there are other individuals who feel, even if I may not be able to know what they feel. This position would be catastrophic for morality as it has been argued, in my view correctly, that ethics is born, at least in part, out of heeding the experiences of others.<sup>33</sup> If others did not have any experiences, there would be no need to heed them.

Another response is to accept that some, but not all others have feelings. This dualism is the position adopted by Nagel, as well as by most scholars in animal ethics, which I have discussed in part 2. Nagel wrote that ‘if one travels too far down the phylogenetic tree, people gradually shed their faith that there is experience’.<sup>34</sup> Sociologically, this may be correct. Philosophically, it is likely that this scepticism emerges at least in part from the widely held belief that there are things that are utterly devoid

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<sup>32</sup> J. Weisberg, ‘The Hard Problem of Consciousness’, The Internet Encyclopedia of Philosophy ISSN 2161-0002. <http://www.iep.utm.edu/hard-con/>

<sup>33</sup> E. Aaltola, ‘Affective Empathy as Core Moral Agency: Psychopathy, Autism and Reason Revisited’, *Philosophical Explorations*, 17, 1 (2014): 76–92.

<sup>34</sup> Nagel, *op. cit.*, p 438.

of experience, things that Whitehead referred to as ‘vacuous actualities’.<sup>35</sup> The basic problem with this view is that it derives the claim that there are other things that lack experiences from our observations of these things, where nobody is capable of saying anything about what it is like to be another thing. In a recent publication, Nagel simply accepts this version of dualism, at least in some places, for example where he writes that ‘perhaps the natural order is not exclusively physical’.<sup>36</sup> He also writes that ‘biological evolution must be more than just a physical process’.<sup>37</sup> Thus, he remains puzzled about how, within a world of ‘dead matter’ where once nothing had a point of view, things with a point of view could emerge, somewhere along ‘the development of animal organisms’. He is also puzzled as to how ‘our mental capacities apparently depend on our physical constitution’.<sup>38</sup>

However, the acceptance of dualism is not the only solution to this inescapable epistemological limitation, highlighted by Husserl, Gadamer, and others in the phenomenological tradition.<sup>39</sup> Nagel was aware of alternatives to dualism as he also suggests that ‘mind’ may be ‘a basic aspect of nature’.<sup>40</sup> Given that I do not know anyone’s experiences apart from my own, we could follow Nagel here in questioning dualism and adopt the view that all individuals have their own experiences. This is the monistic view that Whitehead adopted: ‘apart from the experiences of subjects there is nothing, nothing, nothing, bare nothingness’.<sup>41</sup> Rather than think that there were some individuals who were radically different from himself, Whitehead thought that reality was best conceived as a collection of individuals with similar traits to what he understood himself to be: a being with experiences. It is beyond the scope of this article to provide an elaborate defence of this position. A contemporary account was developed by Griffin, who came up with the label of

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<sup>35</sup> A. Whitehead, *Process and Reality. An Essay in Cosmology* (Corrected edition by David Griffin and Donald Sherburne, New York: The Free Press, 1978), p 167.

<sup>36</sup> T. Nagel, *Mind and Cosmos: Why the Materialist Neo-Darwinian Conception of Nature is almost Certainly False* (Oxford: Oxford University Press, 2012), p 16.

<sup>37</sup> T. Nagel, “The Core of “Mind and Cosmos””, *The New York Times* (August 18, 2013).

<sup>38</sup> Nagel, op. cit; Nagel, *Mind and cosmos*, p 11, p 14.

<sup>39</sup> See e.g. E. Husserl, *Die Krisis der europäischen Wissenschaften und die transzendente Phänomenologie. Eine Einleitung in die phänomenologische Philosophie* (Dordrecht: Springer, 1962) and H.G. Gadamer, *Gesammelte Werke: Hermeneutik: Wahrheit und Methode.-1. Grundzüge einer philosophischen Hermeneutik. Bd. 1 (Vol. 1)* (Tübingen: Mohr Siebeck, 2010).

<sup>40</sup> Nagel, op. cit, p 16.

<sup>41</sup> Whitehead, op. cit, p 167.

panexperientialism to refer to this ontology.<sup>42</sup> However, I have argued that one might also refer to it as pansentientism.<sup>43</sup> This is so as I do not think that we can infer the existence of any experiential capacity unless we think of individuals possessing the capacity to experience things either positively or negatively, with the former yielding joyful and the latter painful experiences.

## **5. Gradations of sentience and the importance of the feelings of moral subjects**

If all individuals are sentient, the question must be asked how decisions should be made about who matters the most in situations where value conflicts arise. To address this challenge, it must be pointed out that pansentientism does not imply that we ought to be as concerned about harming the feelings of a subatomic particle as about harming those of an animal. While sentience per se is not morally significant (as all individuals are sentient), many scholars who have been inspired by Whitehead's ontology have argued that morally significant differences can be made by grading experiences.<sup>44</sup> Birch and Cobb, for example, have argued that we should prioritise: a/ rich experiences over poor experiences; and b/ beings with rich experiences over beings with poor experiences.<sup>45</sup>

The problem here is that, if I can only feel my own feelings, it is unclear how the sentient experiences of others could be graded. This question has two components that are morally relevant. The first is the issue of how some experiences of an individual can be called more joyful or painful compared to other experiences of that same individual. The second is the issue of how some individuals can be said to have greater capacities for enjoyment as well as for experiencing pain and suffering compared to others. I believe that animal welfare science can play a useful role in relation to both of these issues. By animal welfare science, I

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<sup>42</sup> D. Griffin, *Unsnarling the World-Knot: Consciousness, Freedom, and the Mind-Body Problem* (Berkeley: University of California Press, 1998).

<sup>43</sup> J. Deckers, *Animal (De)liberation. Should the Consumption of Animal Products Be Banned?* (London: Ubiquity Press, 2016), p 70.

<sup>44</sup> See e.g.: D. Dombrowski, *Hartshorne and the Metaphysics of Animal Rights* (Albany: State University of New York Press, 1988); J. McDaniel, *Of God and Pelicans: A Theology of Reverence for Life* (Westminster: John Knox Press, 1989).

<sup>45</sup> C. Birch, J. Cobb, *The Liberation of Life. From the Cell to the Community* (Cambridge: Cambridge University Press, 1984), second edition.

understand the science that investigates observable phenomena that are assumed to indicate how animals might feel.

If a pig is kept in close proximity to other pigs in a confined environment, I might find from a blood sample, for example, that the pig releases more cortisol compared to when the pig is kept in a less cramped environment. As I may associate the release of this biomarker with the experience of stress, I might then conclude that the pig is happier in the latter environment. Animal welfare science could also compare different pigs' experiences when they are faced with the same stimulus, or compare the response of a pig to that of a chicken in relation to a particular stimulus, where the latter releases corticosterone, rather than cortisol, to regulate stress.<sup>46</sup>

However, the fact that a pig releases more cortisol in one environment than in another, or that one pig releases more cortisol compared to another pig in the same environment, or that a pig may increase their production of cortisol whereas a chicken may not produce any corticosterone when exposed to the same stimulus, may not necessarily indicate that more pain is felt in the former situation or by the former. Different individuals may perceive the same stimulus differently, and respond differently to it. Whereas some substances, for example cortisol or corticosterone, may reasonably be held to be good biomarkers of stress, we must also bear in mind that some species do not possess either of these, but that they may use other substances to regulate stress that we may not be aware of, know the function of, or be able to measure.

In light of these challenges, some might abandon the attempt to rank the experiences of others altogether. This, I think, would push an acceptable position too far. My preferred solution is not to give up on the search for objective properties, but to recognise that I cannot strip away my subjective influence. This point is also made by Crary: 'The right conclusion to draw is not that natural-scientific discourses are bereft of objective authority but rather that they do not license us to appeal to the idea of an "Archimedean point" in thinking about what objectivity is', which is the idea that it is possible to exclude 'every quality that needs to

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<sup>46</sup> O. Iyasere, A. Beard, J. Guy, and M. Bateson, 'Elevated Levels of the Stress Hormone, Corticosterone, Cause "Pessimistic" Judgment Bias in Broiler Chickens', *Scientific Reports* 7, 1 (2017): 6860.

be understood in reference to subjectivity'.<sup>47</sup> Crary argues that literature and other works of art are also important in contributing 'to the kind of empirical understanding of human and animal life that we want in ethics'.<sup>48</sup> The careful reader will notice that these quotations use the collective 'we' where I have used the 'I' pronoun before, highlighting that we all have singular points of view. This raises the question wherefrom Crary may obtain the confidence to suggest that my feelings about what goes on in nonhuman animals correspond also to what others, in this case other moral agents, may feel about them. The issue cannot be resolved by appealing to some notion of what nonhuman animals really are, independent of my subjective feelings about them.

It is at this junction that the crucial role of the feelings of moral subjects must be foregrounded, which include both feelings towards oneself and feelings towards others. With regard to the latter, the feeling of empathy plays a particularly important role in morality. While empathy involves a cognitive component whereby the moral agent tries to imagine the feelings of another, Aaltola has argued convincingly that morality demands affective empathy.<sup>49</sup> It is not sufficient to imagine what the feelings of another might be. I also need to recognise that they matter to me.

However, the fact that something matters to me does not imply that it ought to matter to all moral agents, where only the latter is the proper object of morality. If I believe, for example, that pigs suffer more compared to mussels when they are thrown alive into boiling water and that I therefore ought to be more concerned with the suffering of the former, my vision cannot be supported by an appeal to an objective account of what pigs and mussels really feel, stripped of my subjective perceptions. Whereas we cannot really know what mussels and pigs feel, I am inclined to think that many people may nevertheless share my conviction that we ought to be more concerned about boiling a pig alive than about boiling mussels alive. This may say more about the capacities

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<sup>47</sup> A. Crary, 'Humans, Animals, Right and Wrong' in A. Crary (ed.) *Wittgenstein and the Moral Life: Essays in Honor of Cora Diamond* (Cambridge: MIT Press, 2007), 381–404, p 397, p 395.

<sup>48</sup> A. Crary, *Inside Ethics: On the Demands of Moral Thought* (Harvard: Harvard University Press, 2016), p 25.

<sup>49</sup> Aaltola, op. cit.

of moral agents to show affective empathy than about the capacities of pigs and mussels.

Animal ethics must, therefore, take our self-directed feelings and our empathic feelings towards others seriously. Ethics is born out of the conjecture that I have a number of morally significant interests, based in my self-directed feelings and my affective empathies with others, which all moral agents ought to share. Through personal reflection and deliberation with others, we can explore whether particular interests can be generalised.

## **6. The need to balance morally significant interests**

One interest that I have is an interest in avoiding actions that impose pain, suffering, and death upon others. Many have argued for the moral relevance of this interest, which is why I shall not dwell upon it here.<sup>50</sup> Another morally significant interest is speciesism, an interest in attributing greater moral significance to members of our own species. It is because of this interest that I think we ought to be more concerned about harming human beings, regardless of their capacities, than about harming nonhuman beings. I have argued elsewhere for this interest as well as for evolutionism, a generalisation of speciesism.<sup>51</sup> An evolutionist interest is an interest in attributing greater moral significance, *ceteris paribus*, to those organisms who are biologically more closely related to us compared to others. Cora Diamond was right that animals are our ‘fellow creatures’, but some animals are greater fellows than others by virtue of their closer genealogical ties with human animals.<sup>52</sup> This biological fact matters morally.

An evolutionist animal ethic recognises not only that we cannot base animal ethics on a theory of objective properties that would be free from our subjective bias, but also that our subjective feelings themselves are a legitimate basis on which to found morality. To argue the point that an account that focuses on the capacities of nonhuman animals cannot do all the moral work, even when moral agents may have a high level of agreement amongst each other about what these capacities actually are, let us contemplate the ‘my funeral’ scenario. Imagine a gathering to celebrate or mourn my death where people might choose between consuming me and consuming nonhuman animals who must first be killed in order to be

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<sup>50</sup> See e.g. Cochrane, *op. cit.*

<sup>51</sup> Deckers, *op. cit.*

<sup>52</sup> C. Diamond, ‘Eating Meat and Eating People’, *Philosophy* 53 (1978): 465–479, p 477.

consumed. Imagine that it just so happens that insufficient non-animal foods could be made available to provide adequate human nutrition and that I had foreseen this possibility, which is why, to avoid inflicting harm on other animals, I had consented to my body being eaten at the party. In spite of our lack of certainty, I also believe that many will agree that a dead human body is less capable of feeling pain than a living animal. I contend that it would still be wrong for people to eat me, as it goes against their interest in not eating human animals. Whereas I do not deny that we may also have an interest in cannibalism, I contend that the human interest in killing and consuming nonhuman animals should trump any interest in me being consumed in this situation. The example also shows that our evolutionist interest survives death in the sense that dead animals who are closely related to us should still be granted special consideration, even if this does not imply that dead animals who are more closely related to us should necessarily be granted more moral significance than living animals who are less closely related.

The basis for morality, therefore, is better sought in a multitude of feelings, rather than merely in the feeling that there is something that is troubling about inflicting pain, suffering, and death on another.

## 7. Qualified veganism

In the final section of this article, I provide a short outline of what this theory implies for the use of nonhuman animals for human food. Whilst human beings inflict harm on nonhuman animals for a wide range of reasons, most of the harm that is inflicted on other animals stems from their being used for human food. As many human beings could avoid this harm easily, the question how this harm could be justified must be debated with some urgency. In a previous work I defended qualified veganism, which is the theory that the majority of the human population ought to commit to vegan diets.<sup>53</sup> Many scholars in animal ethics have defended similar theories by arguing that we have prima facie duties to avoid inflicting pain, suffering, and death upon other animals.<sup>54</sup>

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<sup>53</sup> Deckers, op. cit.

<sup>54</sup> Unqualified veganism is defended by G. Francione, 'The Abolition of Animal Exploitation' in G. Francione, R. Garner (eds.) *The Animal Rights Debate: Abolition or Regulation?* (New York: Columbia University Press, 2010), pp 1–102. A similar position is adopted from a different theoretical framework by A. Cochrane, *Animal Rights without Liberation. Applied Ethics and Human Obligations*. (New York: Columbia University Press, 2012). The latter claims that 'livestock animals have a right not to be killed by us' (p 101).

The problem with these theories is that, in many situations, vegan diets fail to minimise the pain, suffering, and death that is inflicted upon other animals. Think, for example, of a field that is being ploughed to provide vegetables for a vegan and a carnist. Both are responsible for the animals who are destroyed in the process, but the carnist may eat fewer vegetables as he also eats sheep who have been fed completely on grassland. The latter will be responsible for fewer deaths. In addition, the sheep who are killed to feed the carnist are killed in controlled circumstances, which means that they may suffer less than the animals who are harmed by the brute force of the plough tearing through the soil. Some might follow Francione in defending the vegan diet over that of the carnist by pointing out that vegan diets are better as they inflict pain, suffering, and death accidentally, rather than intentionally.<sup>55</sup>

This raises at least two problems. The first is that many vegan diets also rely on the deliberate harming of animals, for example through the measures that are taken to control nonhuman animals who compete with human beings over plant crops. The second is that it is hard to see how the question whether or not one's pain, suffering, or death was intended might make any difference to the feelings of at least those nonhuman animals who are unable to read our intentions. This does not imply that there is no moral difference between inflicting pain, suffering, and death intentionally and doing so merely accidentally. Indeed, a theory that acknowledges the importance of intentions, even where moral objects cannot read those intentions, is a theory that already concedes to the validity of a theory that focuses on the feelings of moral subjects. Unless such a theory is adopted, it seems reckless to inflict pain, suffering, and death on countless animals where we might inflict much less of these harms on an animal who is blissfully unaware of our intentions (which may include, for example, the intention to slaughter them). In spite of these harms, I contend that vegan diets ought to be preferred in many, but not all situations.

An important reason underlying this contention is that our evolutionist interest tracks a feeling of disgust that moral agents can be expected to have, but that many may have suppressed, in relation to the

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<sup>55</sup> Francione, *op. cit.*, p 72.



consumption of body parts derived from those who are similar to us.<sup>56</sup> Whilst a full defence of qualified veganism would need to discuss the relevance of this feeling in the context of other, including competing feelings, the aim of this paper is limited to showing that qualified veganism cannot be defended successfully by appealing merely to the feelings of moral objects. Thus, I come to a conclusion that is very similar to that drawn by many scholars in animal ethics who have questioned the unrestrained human consumption of animal products, but my view is derived from a reflection upon my feelings, where some of these feelings are held to constitute morally relevant interests that are distinct from our interest in minimising the pain, suffering, and death that we inflict upon other animals through our dietary choices.

## 8. Conclusion

I started this article by showing that animal ethics has been preoccupied with the search for properties in nonhuman animals that would make them morally significant and that sentience has occupied a central place in this endeavour. On this basis, many scholars have argued for a rift between vertebrate animals and other organisms. I argued that this rift is increasingly being questioned on scientific grounds, but that the more important problem for any theory that purports to provide evidence for the presence of sentience in others is epistemological. In spite of this problem, and because of it, I argued that animal ethics should pay much greater attention to feelings. However, these are not the feelings of moral objects, but those of oneself as a moral agent. These feelings determine what it means to know, the object of epistemology, and what it means to act well, the object of ethics. The result is an evolutionist ethical theory that values both the feelings of moral subjects and those of moral objects. The urgency of debating this theory, through discussing the feelings of different moral agents, becomes apparent when we consider the increasing human use of other animals for food, where this article ended with a short outline of what this theory implies for this domain of human activity.

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<sup>56</sup> B. Mahoney, 'Vegetarianism, Moral Sentiment, and the Aesthetics of Disgust: Reconfiguring the Trajectory in the Ethics of Eating', *English Language Notes* 55 (2017): 41–51.

# Sentience, Personhood, and Property

Gary L. Francione

**Abstract:** Animal ethicists generally recognize that nonhuman animals have morally significant interests but deny that nonhumans are persons. Even if we assume that animals are not persons, the property status of animals not only precludes according their interests equal consideration but also seriously frustrates recognizing their interests beyond the level necessary to ensure their efficient exploitation. If animals are to matter morally, we must treat them as if they were persons and accord them the right not to be used exclusively as resources, at least in situations in which there is no plausible claim that it is necessary to use animals.

## I. Animals as *Quasi-Persons*

Being considered as a *person* has distinct advantages. Chief among them is protection against being used exclusively as a resource for others. We not only take seriously the treatment of persons in that we feel compelled to justify imposing pain and suffering on them, but we also respect their interest in their continued existence. We (or at least most of us) do not regard as permissible using persons as chattel slaves, non-consenting subjects of biomedical experiments, forced organ donors, or otherwise as replaceable resources—*things*—for others. We protect their interest in not being things. This protection can come in the form of a right not to be used exclusively as a replaceable resource, or, for a consequentialist who rejects moral rights, in the form of a presumption against being used exclusively as a replaceable resource—a presumption that usually turns out to provide protection that is substantially similar to what one would get from a right.

Philosophers generally associate personhood with certain cognitive characteristics beyond sentience—subjective awareness, the ability to feel, pain, distress, etc. These cognitive characteristics include humanlike self-awareness, a sense of past and future, rationality, etc. As a result, persons (at least as far as moral theory is concerned) tend always to be human, although we may not agree about whether certain humans (e.g., fetuses, those who are comatose, etc.) are persons. Nonhuman animals are

for the most part regarded as not having the cognitive characteristics that are associated with personhood and are, therefore, not considered as persons by the overwhelming number of philosophers—including those who promote the idea that nonhuman animals matter morally.

For example, Peter Singer maintains that, in order to be a person, one has to be ‘a rational and self-aware being’.<sup>1</sup> According to Singer, a utilitarian, if a being is self-aware, then there is a presumption against using that being as a replaceable resource if one subscribes to preference utilitarianism because self-aware beings see themselves ‘as existing over time’, ‘aspire to longer life’, and ‘have other non-momentary, future-directed interests’.<sup>2</sup> If a being is not self-aware, then Singer sees nothing wrong per se with using that being as a replaceable resource as long as we create another animal who will be equally happy (at least under the view that we should aim to increase the total net amount of pleasure without regard to whether we increase the pleasure of existing beings or increase the number of beings who exist).<sup>3</sup> Singer does not see most of the animals we routinely exploit as having the cognitive attributes needed to justify regarding them as persons.<sup>4</sup>

This is not to say that those ethicists who reject nonhuman personhood regard nonhumans as things without morally significant interests. For the most part, they see nonhumans as what I have called *quasi-persons* who have morally significant interests in not suffering but do

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<sup>1</sup> Peter Singer, *Practical Ethics*, 3d ed. (New York: Cambridge University Press, 2011), p. 75.

<sup>2</sup> *Ibid.*, p. 111.

<sup>3</sup> *Ibid.*, pp. 88, 104-119.

<sup>4</sup> Singer initially maintained that only nonhuman great apes are self-aware. He has more recently acknowledged that more species may be self-aware, but claims that ‘even for those nonhuman animals who are self-aware, and hence meet our definition of “person” it is still true that they are not likely to be nearly as much focused on the future as normal human beings are.’<sup>24</sup> *Practical Ethics*, p. 103. Moreover, given that he does not call for the abolition of animal exploitation or recognize veganism as a moral imperative, and given his continued promotion of and support for supposedly more ‘humane’ animal exploitation, it seems that whatever he thinks about whether other species are self-aware, he is not willing to give the benefit of the doubt with respect to the species we routinely exploit and accord them the presumption of personhood he accords to nonhuman great apes, whom he sees as members of a ‘community of equals’ with humans. *The Great Ape Project: Equality beyond Humanity*, ed. by Paola Cavalieri and Peter Singer (London: Fourth Estate, 1993) p.4.

not have interests in not being used as replaceable resources.<sup>5</sup> To take Singer again as an example, although he does not see most nonhuman animals as persons, he maintains that nonhuman animals are nevertheless entitled to equal consideration of their interests:

As long as sentient beings are conscious, they have an interest in satisfying their desires, or in experiencing as much pleasure and as little pain as possible. Sentience suffices to place a being within the sphere of equal consideration of interests, but it does not mean that the being has a personal interest in continuing to live.<sup>6</sup>

Although our conventional wisdom about nonhuman animals—what is referred to as the *animal welfare* position—may not require that we accord equal consideration to the interests of nonhumans in not suffering, sentience plays a significant role in our thinking about the moral status of animals. Most people do not think of nonhuman animals as things that have no moral significance. Although they think that it is morally acceptable for humans to use animals for human purposes, they also think that we have a moral obligation to treat animals ‘humanely’ and to not inflict ‘unnecessary’ suffering on them. They will not object to the use of dogs or cats in biomedical research as a general matter, but they will become incensed when a sports celebrity is found to have been participating in dog fighting or when someone throws a cat into a garbage can.<sup>7</sup> And their reaction is not based on animals having any cognitive characteristic other than sentience and the consequent ability of animals to feel pain and to suffer distress.

It is, therefore, accurate to say conventional wisdom ostensibly rejects the idea that animals are persons but also rejects the position that animals are merely things, and embraces some version of the view that animals are quasi-persons. This conventional moral wisdom is contained

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<sup>5</sup> Gary L. Francione, *Introduction to Animal Rights: Your Child or the Dog?* (Philadelphia: Temple University Press, 2000), pp. 100-102. The idea of a ‘quasi-person’ is similar to the idea that some beings have inherent value but less inherent value than other morally valuable beings (the former would be quasi-persons). *Ibid.*, pp. 127-129.

<sup>6</sup> *Practical Ethics*, p. 119.

<sup>7</sup> See Gary L. Francione, ‘Mary Bale, Michael Vick, and Moral Schizophrenia’, *The Abolitionist Approach to Animal Rights*, 24 October 2010, <<http://www.abolitionistapproach.com/mary-bale-michael-vick-and-moral-schizophrenia/>> [accessed 28 September 2019].

in anti-cruelty laws that exist in most legal systems. These laws are so uncontroversial that they are usually contained in criminal codes. We generally impose a criminal sanction only for behavior that is widely agreed to be morally objectionable. Cruelty to animals results in a high level of moral opprobrium.

I have frequently expressed my disagreement with the view that, in order to be considered as persons, animals must be shown to have cognitive characteristics beyond sentience. I regard that position as anthropocentric and unable to be defended without assumptions that are clearly speciesist.<sup>8</sup> I maintain that sentient nonhumans are persons. But even if we accept that nonhuman animals are not persons, and do not have a right not to be used as resources (or are not beneficiaries of a rebuttable presumption against being used as resources), and that the only morally significant interests that they have concern their suffering, those interests will almost always be heavily discounted or ignored because animals are chattel property. We will generally protect their interests only to the extent that it facilitates their efficient use as property. Equal consideration will not be possible and even serious consideration will be—at best—very difficult.

In this essay, I will defend the position that if we think animals matter morally at all—if we agree that they are not just things—then we have no choice but to treat them *as if* they were persons and accord them the right not to be used exclusively as resources, at least in all situations in which a plausible case cannot be made that animal use is necessary. The status of being a quasi-person will not work; if animals are chattel property, they will not matter morally and they will continue to be treated as things whose interests are protected more or less to the extent necessary to use them as resources. The reasons that the property status of animals virtually guarantees that animals will not matter morally are the same as those that led Jeremy Bentham, the thinker arguably most responsible for putting nonhumans on the moral map, to conclude that chattel slavery would necessarily result in enslaved humans not mattering morally. The problem is that Bentham did not see that the same analysis applies to nonhuman animals. I will explore Bentham's views in the next section.

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<sup>8</sup> See Gary L. Francione, *Animals as Persons: Essays on the Abolition of Animal Exploitation* (New York: Columbia University Press, 2008), pp. 129-147. See also Gary L. Francione and Robert Garner, *The Animal Rights Debate: Abolition or Regulation?* (New York: Columbia University Press, 2010), pp. 14-25.

## II. Bentham and the Significance of Animal Sentience

Sentience has been at the center of animal ethics for about 200 years now precisely because it has allowed us to think that we can recognize the moral significance of nonhuman animals *without* according them personhood status. Before the 19<sup>th</sup> century, animals were largely excluded from the moral and legal community because they were considered as spiritual or cognitive inferiors.<sup>9</sup> They were just things. Any moral concern about the treatment of animals was focused on the idea that being cruel to animals would incline one to be cruel or unjust to other humans. The social reformers in the late 18<sup>th</sup> and 19<sup>th</sup> centuries who were concerned about animals were not trying to get them accepted as persons who could not be used and killed; they generally agreed that nonhumans were inferior to humans and that it was morally acceptable for humans to use animals as resources. They did, however, reject the idea that animals were just things, and they believed that humans had moral obligations they owed to animals to try to minimize their suffering.

Chief among these reformers was Jeremy Bentham, who observed that animals ‘on account of their interests having been neglected by the insensibility of the ancient jurists, stand degraded into the class of *things*.’<sup>10</sup> He likened the treatment of animals to that of chattel slaves and expressed hope for the time ‘when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny.’<sup>11</sup> He noted that the French had already rejected the idea that skin color should allow humans to be enslaved and to be ‘abandoned without redress to the caprice of a tormentor’ and that:

It may come one day to be recognised, that the number of the legs, the villosity of the skin, or the termination of the *os sacrum*, are reasons

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<sup>9</sup>*Introduction to Animal Rights*, pp. 104-113. Most of us think that we should not treat humans who are cognitively impaired or disabled *as if* they were persons but that we should treat them *as* persons even if we do not think of them as having all of the attributes of personhood that we associate with that concept as it applies in the case of normally-functioning humans whom we expect to be participants in important social institutions.

<sup>10</sup> Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* in *The Works of Jeremy Bentham*, vol. 1, ed. by John Bowring (New York: Russell & Russell, 1962) p. 142.

<sup>11</sup> *Ibid.*, pp. 142-143 n.§.

equally insufficient for abandoning a sensitive being to the same fate? What else is it that should trace the insuperable line? Is it the faculty of reason, or, perhaps, the faculty of discourse? But a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, or a week, or even a month old. But suppose the case were otherwise, what would it avail? the question is not, Can they *reason*? nor, Can they *talk*? but, Can they *suffer*?<sup>12</sup>

Bentham did not claim that we should stop using animals altogether. He maintained that we had moral obligations to animals with respect to how we treated them, and that the cognitive differences between humans and nonhumans did not give us license to ignore those obligations. But he was clear that those cognitive differences mattered very much as they concerned the morality of continuing to use animals as replaceable resources. He posited that animals live in the present and are not aware of what they lose when we take their lives. They do not care *that* we use and kill them; they care only about *how* we treat them and kill them. If we kill and eat them, ‘we are the better for it, and they are never the worse. They have none of those long-protracted anticipations of future misery which we have.’<sup>13</sup> If, as Bentham believed, animals do not as a factual matter have an interest in continuing to live, and death is not a harm for them, then our killing animals would not per se raise a moral problem as long as we took seriously their interests in not suffering when they are reared and killed. Singer’s view here is similar to Bentham’s.<sup>14</sup>

Bentham did not challenge the status of animals as property; we could continue to own, use, and kill animals. He did, however, challenge the status of humans as property in that he rejected human slavery. The usual reason offered for Bentham’s rejection of slavery has to do with ‘the wealth and power of nations’ in that ‘[a] free man produces more than a slave.’<sup>15</sup> If slavery were abolished, slave owners would lose property, but the slave owners’ unhappiness would be outweighed by the increase in aggregate happiness as a result of the greater abundance that would come

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<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> *The Animal Rights Debate*, pp. 10-14.

<sup>15</sup> Jeremy Bentham, *Principles of the Civil Code*, in *The Works of Jeremy Bentham*, p. 345.

from the efforts of free laborers and the resulting increase in public welfare.

But Bentham had other reasons for rejecting slavery. Slaves were economic commodities who could be bought and sold and whose children were born into slavery. Where slavery is a matter of ‘*perpetuity*’, or unlimited duration, ‘it weakens, it enervates, it renders more or less precarious the most prudent precautions for the mitigation of authority. Unlimited power, in this sense, can with difficulty be limited in any other.’<sup>16</sup> He argued that this sort of perpetual arrangement made the unlimited power of the slave owner practically impossible for the slave to resist. Even if there are laws that purport to regulate slavery, ‘their most flagrant infractions only will be punished, whilst the ordinary course of domestic rigour will mock all tribunals.’<sup>17</sup> He observed that ‘the evil inherent in the nature of slavery’ is ‘the impossibility of subjecting the authority of a master over his slaves to legal restraint, and of preventing the abuse of his power, if he be disposed to abuse it.’<sup>18</sup> The slave is the property of the master. The master may easily push the exploitation of the slaves to considerable levels of abuse and the slaves can only with great difficulty protect themselves, so the only way to survive is to submit. Chattel slavery resulted in humans being ‘abandoned without redress to the caprice of a tormentor.’<sup>19</sup>

Bentham argued that it ‘might be possible’ to have a form of slavery where ‘the sum of good . . . would be nearly equal to that of evil’ if slavery were limited and a slave owner could only own one slave. He added:

But things are not thus arranged. As soon as slavery is established, it becomes the lot of the greatest number. A master counts his slaves as his flocks, by hundreds, by thousands, by tens of thousands. . . . If the evil of slavery were not great, its extent alone would suffice to make it considerable.<sup>20</sup>

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<sup>16</sup> Ibid., p. 344.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Bentham, *Principles of Morals and Legislation*, pp. 142-143 n.§.

<sup>20</sup> Bentham, *Principles of the Civil Code*, pp. 344-345.



So although Bentham thought slavery was economically inefficient (slaves will produce less than will free persons), he also recognized that chattel slavery effectively made any meaningful regulation of slavery impossible. The law would punish only the worst violations, and the routine abuses that were necessarily part of the exercise of the slave owner's rights over slave property would go unpunished. He saw that the institution of chattel slavery required that masters have power that is not only difficult to regulate but that may be abused if the master so chooses, and that the institution of slavery, once established, would inevitably become one that involved large numbers of enslaved humans.

It is difficult to avoid the conclusion that Bentham also recognized that chattel slavery involved a *structural* defect: it made impossible the application of the egalitarian principle that 'each to count for one and none for more than one'. That is, the interests of slaves would *necessarily* be discounted relative to the interests of slave owners by their status as chattel slaves. That discounting was inherent in the property relationship that involved some humans being property owned by others. Indeed, the institution of slavery *cannot* exist if the interests of slaves and those of slave owners are given equal weight.

Bentham's recognition that, for both theoretical and practical reasons, chattel slavery could not be regulated beyond prohibiting 'flagrant infractions' seems indisputable. But just as chattel slavery made it impossible to take human interests seriously, the status of animals as property makes taking animal interests seriously similarly impossible.

The relationship between property owners and their animal property involves every bit as much control and power as in the case of human slavery. Bentham did not seem to appreciate that questions about animal ethics are asked about beings most of whom are domesticated and who exist exclusively as resources for human use. In many ways, asking moral questions about animals is more peculiar than asking moral questions about slaves, who are humans who have been assigned the status of property but only as a contingent matter. The status of domesticated animals as property is inherent to what those animals *are*. Moreover, in the case of chattel slavery, most people were not slave owners and did not participate directly in chattel slavery. In the case of animals, those of us who are not vegan participate directly in institutional animal exploitation. The farmer may own the animal, but ultimately, ownership passes to the consumer who purchases the body part or animal product. In most

contexts, the owner of the actual live animal is acting to satisfy the demand of consumers. Animal ownership is a societal matter.

As I have argued elsewhere, because animals are property, the law will do little more than ensure that the owners of animals protect animal interests to the extent necessary to exploit those animals in an efficient way and do not inflict purely *gratuitous* suffering on them.<sup>21</sup> Although there are some exceptions, the law for the most part assumes that the owners of animal property are rational and will not damage their property wantonly, and the courts (either by statute or by interpretation) look to the customs and norms of the institutions that use animals to determine what level of welfare satisfies the requirement for ‘humane’ treatment. Institutional users, in effect, determine the level of required care. We say that we object to imposing ‘unnecessary’ suffering on animals but, because animals are property and because of the importance of human property rights, we do not question whether particular animal uses are necessary; we look only to see whether the suffering being imposed is necessary to achieve those uses in a more or less efficient way. And although the law will prohibit gratuitous harm, or what Bentham would call ‘flagrant infractions’, it is often difficult to enforce even this minimal level of protection. In many ways, the regulation of animal use is far more difficult than the regulation of slavery was.

The status of animals as property makes the egalitarian principle impossible to apply even if we wanted to apply it. Interspecies comparisons are virtually impossible to make as a practical matter. The problem is exacerbated by the property status of animals as it acts as a blinder that blocks our perception of animal interests as similar. And even if we were to judge animal interests as similar in particular situations, the property status of animals would provide a reason to treat those interests dissimilarly—depriving humans of the ability to use property and to participate in animal use is assumed to involve significant human suffering. Humans are right holders and one of the most important rights is the right to own and use property. Nonhumans are property. *They* are owned by *us*. Their interests will always count for less than our interests. In the case of human slavery, as noted above, laws that protected human slaves did not give any sort of meaningful rights to slaves because the property rights of

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<sup>21</sup> See, e.g., Gary L. Francione, *Animals, Property, and the Law* (Philadelphia: Temple University Press, 1995); *The Animal Rights Debate*, pp. 25-61; *Animals as Persons*, pp. 25-128.

the slave owners almost always trumped any protection slaves had. But that is the way it had to be if we were to have an institution of chattel slavery. The law must operate in a similar fashion where animals are concerned if we are to have an institution of animal property.

Why did Bentham not see the parallels between human slavery and the status of animals as property? There are three reasons that are at least plausible.

First, it is likely that Bentham could not have taken seriously the option of not using animals at all for human purposes. It was commonly thought at the time that not eating meat was not a plausible option for people who lived in less gentle climates. And veganism as a practice was not really recognized before the 20th century. Lewis Gompertz, who founded the English Society for the Prevention of Cruelty to Animals in 1824, apparently was a vegan and he was regarded as so peculiar for his rejection of all animal use that he was expelled from the Society. It is quite likely that Bentham never seriously considered not using animals at all as a realistic option.

Second, as we saw above, Bentham did not think that nonhumans were self-aware, so they, unlike slaves, did not care if we used them. They had no interest in liberty; they had no interest in living per se. They would not, like slaves, benefit from being 'freed'. Indeed, as domesticated animals, the concept of being freed did not even make sense. Given Bentham's view of animal cognition, he believed that they did not know what they lost when we killed them. They simply cared about having a pleasant life and a relatively painless death. It is not surprising, therefore, that Bentham thought that using and killing animals per se was not morally objectionable and that it was not necessary to eradicate the institution of animal property.

Third, Bentham maintained that if slavery were done on a very limited basis so that there were only one slave to one master, it might be the case that slavery would not be a disadvantage to the slave. But he recognized that slavery as an institution would become 'the lot of the greatest number' and the slave owner would count his slaves 'as his flocks'. Although Bentham analogized slavery to the keeping of animal flocks, it is also plausible that Bentham thought that it was possible for the owner of animals—even many animals—to have a relationship with their animal property that involved more mutual benefit if the interests of the animals were given greater protection. Bentham could not have predicted that, by

the later part of the 20th century, animal agriculture would, as the result of the emergence and spread of intensive agriculture (or ‘factory farming’), become ‘the lot of the greatest number’ in a way that no slave owner could ever even have imagined.

In any event, what Bentham proposed—that animals not be persons but that their interests in not suffering be taken seriously—has not worked. Our regulation of animal use has exhibited *all* of the problems that led Bentham to reject the idea that human slavery could be regulated. Despite 200 years of the animal welfare ethic and of our general social acceptance that animals matter morally, we are exploiting more animals now, and in more horrific ways, than in the past. Despite moral and legal norms that are ostensibly intended to provide animals significant and meaningful protection, they still ‘stand degraded into the class of *things*’ and have been ‘abandoned without redress to the caprice of a tormentor’—us.

### III. The Problem of Property: Regulating Property Use

Bentham may be excused for not appreciating how the property status of animals would effectively render impossible the recognition of the interests of animals as being morally significant. It is, however, bewildering that modern animal ethicists have largely ignored the property problem or, to the extent that they have discussed it, they have done so in a way that indicates their failure to understand or appreciate the problem. Like Bentham, these ethicists do not appear to understand the implications of asking ethical questions about beings most of whom only exist exclusively as resources for humans. Unlike Bentham, however, these ethicists have had the benefit of being able to observe that the animal welfare approach has been a dismal failure. Singer, who is Bentham’s modern proponent, does not even really consider the property issue and promotes all sorts of animal welfare campaigns, which indicates that he does not appreciate how property status effectively ensures that welfare standards will provide very little protection to animals.

Several animal ethicists have criticized my theory because they claim that, although animals are property, property use may be regulated and we can do a better job of protecting animal interests through regulation. These critics point to the fact that the regulation of property is pervasive as an indication that property status is not a serious obstacle to improving

animal treatment. For example, Tony Milligan maintains that my position ‘radically underestimates the flexibility or open texture of the concept of property. If, for example, I own a historic building I cannot do whatever I want with it.’<sup>22</sup> Milligan maintains that my position assumes ‘[a]n absolute conception of property ownership’.<sup>23</sup> Alasdair Cochrane maintains that ‘things are much more complicated than Francione suggests’ and states as an example that, although he has a right of property ownership in his land, ‘I sometimes have to let government officials onto my land, I cannot sell cans of beer to children playing outside my house, and I cannot burn down my listed cottage on a whim.’<sup>24</sup> Cochrane argues:

[W]hen we adopt a more subtle understanding of property than the one adopted by Francione, we can see that not all forms of ownership necessarily harm animals. Once it is understood that property is a fragmented concept, we can see that it is perfectly possible to own animals—and own them to use them for our entertainment—but also to respect them.<sup>25</sup>

Although Milligan and Cochrane are critical of much animal use, they argue that some animal use may still be morally acceptable even if animals remain as property because that use can be regulated, and, therefore, my position—if animals are to matter morally, they must have a fundamental moral right not to be property—is wrong. For example, Cochrane maintains that we can use animals for milk and eggs ‘provided that they have a good quality of life.’<sup>26</sup>

These critics inexplicably ignore that I *explicitly* disclaim any ‘absolute conception of property.’ In fact, I wrote an entire book about this topic and used some of the very same examples that they offer to claim that I do not recognize ‘the flexibility’ of the concept of property or that I lack a sufficiently ‘subtle’ understanding of the concept of property:

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<sup>22</sup> Tony Milligan, *Animal Ethics: The Basics* (London and New York: Routledge, 2015) pp. 131.

<sup>23</sup> *Ibid.*, p. 132.

<sup>24</sup> Alasdair Cochrane, *Animal Rights Without Liberation: Applied Ethics and Human Obligations* (New York: Columbia University Press, 2012), p. 150. Cochrane maintains that animals are not harmed by being owned because most animals have no interest in liberty. I disagree in several respects with Cochrane on that point but my discussion of him here is only with respect to his criticism of my position on property regulation.

<sup>25</sup> *Ibid.*, p. 152.

<sup>26</sup> *Ibid.*, p. 89.

[A]lthough we talk about ‘absolute’ property or ‘absolute’ ownership, no such thing really exists. All property is subject to restrictions on its use. . . . A person who owns a building designated a historic landmark may be restricted from changing the building, or federal or state environmental laws may have an impact on what can and cannot be done with one’s land.<sup>27</sup>

Any claim that I promote an ‘absolute conception of property’ or do not recognize that property use is regulated is simply and seriously false. I have *never* claimed that we do not regulate the use of animal property or invoked any notion of the absolute ownership of animals (or anything else); I have argued that, because animals are economic commodities, regulation is set more or less at the level that facilitates the efficient use of animal property.

Milligan claims, in criticizing my view that animals are things as far as the law is concerned, that ‘the constraints to which property is subject can be based on various considerations, including the fact that the property in question is *not* merely a thing but a sentient being of some sort.’<sup>28</sup> This ignores that I am very clear that the law *does* recognize that animals are sentient property and seeks to protect animal interests. The problem is that, as a general matter, the default position of the law is to protect those interests only to the extent that it facilitates using the animal as a resource for humans. Animal welfare laws do little more than require rational behavior on the part of property owners, and many animal welfare reforms actually increase production efficiency. My work offers numerous examples—both historical and contemporary—that demonstrate how the property status of animals limits animal welfare protection both as a matter of the jurisprudence of property rights and because of the economic realities of what property is.<sup>29</sup>

For the most part, the regulations of property to which Milligan and Cochrane refer occur in order to protect other *persons*, whose interests are protected by respect-based rights. For example, when we regulate what can be done with a historical building, we balance the interests of the owner of the property against the interests of other human persons who have an interest in the heritage represented by the building. To the extent

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<sup>27</sup> *Animals, Property, and the Law*, p. 43; See *ibid.*, pp. 42-46.

<sup>28</sup> *Animal Ethics*, p. 132.

<sup>29</sup> See, e.g., *Animals, Property, and the Law*; *The Animal Rights Debate*, pp. 25-61.

that we restrict what can be done with the historical building, we restrict the property owner for the benefit of these other human persons—not for the benefit of the property. Putting aside that a restriction on selling alcohol to minors applies not just to landowners but to everyone and is not properly characterized as a property restriction, to the extent that we apply this prohibition to someone who wants to use their property to sell alcohol to minors, we regulate for the benefit of those other human persons—parents who do not want their minor children to consume alcohol and the children themselves, whom we think may not yet understand what is in their best interests.

The claim that property rights can accommodate regulating animal use significantly beyond the level of efficient exploitation can mean only one of two things. It can mean that the law can regulate for the benefit of the property itself. That is, the interests of the property owner can be balanced against the interests of the sentient property and we can regulate for the benefit of the property even when such regulation adversely impacts the interests of the owner of animal property. Such regulation would involve a recognition of an obligation that is owed directly to the property. Is that scenario possible? Yes, it is possible. But it would be a *most* difficult thing to have happen, particularly in a culture in which most people consume animals and where animals are chattel property that are bought and sold like shirts or books or cars.

Despite the considerable opposition to human chattel slavery, the rights of slave owners almost always prevailed against the interests of the slaves because the institution of slavery *required* that the slave lose in any conflict with the slave owner substantially all of the time. The same thing is true where animal use is concerned. In order for the institution of animal property to exist, there must be a strong concept of property rights in animals. Regulation for the benefit of the property undermines the very institution of animal property. When the interests of animals, which are regarded as property, are balanced against the interests of persons who are holders of rights and, in particular, property rights, the property must lose substantially all of the time or the property is no longer property. This is one reason why Bentham opposed the institution of slavery in perpetuity in which one owns the slave for the lifetime of the slave and owns the progeny of the slave. In that situation, regulation becomes extremely difficult and the law will almost always protect property owners. Bentham maintained that, although one could imagine systems of slavery that were

different and more protective of slave interests, the economic reality of slaves as chattel property would make such alternative arrangements practically impossible. Milligan argues that the flexibility of property should invite us to consider that certain forms of slavery gave greater standing to slaves and allowed for claims of sanctuary and for manumission after a certain number of years.<sup>30</sup> In addition to the fact that alternative forms of ownership would not be applicable as a practical matter in the context of nonhuman animals, any form of slavery gives enormous power to slave owners to value the fundamental interests of their slaves as this is necessary to have any institution of slavery. Milligan is simply invoking the anthropocentric fantasy of supposedly more benign animal ownership.

Alternatively, the claim that regulation can provide significantly greater protection may mean that the law is capable of regulating the use of animal property in significant ways to benefit other humans who care about animals. That is, we can think of humans who are concerned about animal welfare as analogous to humans who are concerned about historic buildings or about providing alcoholic beverages to minors. We can regard their concerns as having greater weight than the interests of property owners and, accordingly, regulate property rights. Is this possible? Of course it is. Most welfare 'reforms' start with animal welfare charities identifying practices that form the focus of campaigns that are supported by people who are concerned about animals. The problem is that the economic status of animals as property will severely limit any increased protection. Indeed, these campaigns generally focus on practices that are economically vulnerable. Obviously, there is a disincentive for governments to impose regulations that make animal products significantly more expensive to produce as this will affect demand and

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<sup>30</sup> See *Animal Ethics*, p. 132. Milligan notes that my argument for abolition leads to the 'extinction' of domesticated animals whereas slaves were liberated. See *ibid.*, pp. 132-133. Milligan does not appear to appreciate that a chattel slave is just a human with a legal disability. Remove that disability and the human is no longer a slave and goes on with life. Removing the status as property of an animal leaves us with a being of another species who has been bred to be perpetually vulnerable and servile. Most animal ethicists ignore the problem of domestication and its connection with the issues raised by property status. I discuss domestication below.



make both producers and consumers unhappy. This problem is exacerbated by the existence of multinational markets where changes in the laws of one country can result in competitive disadvantages harming the more regulated producers. To date, welfare reforms have been very minor to say the least.

Consider that Britain is known as a ‘nation of animal lovers.’ It is clear that many Britons are offended by what they perceive as cruelty to animals. Political theorist Robert Garner, who is critical of my position on animals as property, argues that although animals are chattel property in both the United States and Great Britain, the latter is far more solicitous of animal welfare and this shows that property status can be moderated to accommodate animal interests.<sup>31</sup> Although Britain has *some* better animal welfare standards than does the United States, any improvements are minor.<sup>32</sup> Indeed, Garner states that although there have been ‘gradual erosions of factory farming’ in Britain, ‘the fundamentals remain despite much disquiet.’<sup>33</sup> He also notes that although the process of slaughter has been regulated to ensure that suffering at the time of death should be minimal, ‘these regulations are regularly broken. . . .In general, problems occur because animal welfare often takes second place to cost-cutting.’<sup>34</sup>

A good example of the ineffectiveness of regulation because of the property status of animals is found in the twelve-year long campaign to ‘abolish’ the battery cage for hens in the European Union—a move widely acclaimed by animal advocates as indicative of how welfare concerns can trump property interests. A 1999 Directive required that battery cages for laying hens be replaced with ‘enriched cages’, barn or ‘cage-free’ systems, or ‘free-range’ systems by 2012. This was an instance where regulation actually resulted in adding costs to production so it went beyond regulation limited only by economic efficiency (although the campaign was based not only on animal welfare but also on the concern that

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<sup>31</sup> See Robert Garner, ‘Animal Welfare: A Political Defense’, *Journal of Animal Law and Ethics* 1,1: (2006) 161-174 (pp. 170-171).

<sup>32</sup> *The Animal Rights Debate*, pp. 42-45.

<sup>33</sup> Robert Garner, *Animals, Politics and Morality*, 2d ed. (Manchester: Manchester University Press, 2004), p. 118.

<sup>34</sup> *Ibid.*, p. 112.

conventional battery eggs were unhealthy). Singer gave the measure high praise when it came into effect on January 1, 2012.<sup>35</sup>

Putting aside that there is still egg production within the EU that is not in compliance with the Directive, and putting aside that ‘cage-free’ and ‘free-range’ systems still involve a great deal of suffering on the part of the animals, all of whom end up dead (as do all the male chicks who are killed upon hatching), most European producers chose to use the ‘enriched cage’ because it involved a very small increase in cost. This cost increase could be more than offset given that higher prices could be charged without significantly impacting demand in light of the relative inelasticity of demand for eggs. Even the most moderate animal welfare organizations now acknowledge that the enriched cage does not improve animal welfare in any significant way.<sup>36</sup>

We can also see the emergence of the market in supposedly ‘higher welfare’ animal products as an extra-legal effort to accommodate the interests of humans who are upset about animal cruelty. That is, some producers, as a business matter and not as a result of legal regulation, sell meat, dairy, and eggs that are supposedly more ‘humanely’ produced. These products are often considerably more expensive than conventional products. Putting aside that there have been a number of exposés of supposedly ‘higher welfare’ products,<sup>37</sup> the most stringent of these standards would, even if implemented faithfully, reduce *some* suffering, and there can be no doubt that the most ‘humanely’ produced products involve treatment that would, were humans involved, constitute torture. As I mentioned above, Cochrane maintains that we can use animals for milk and eggs ‘provided that they have a good quality of life.’ If Cochrane maintains that the *most* ‘humanely’ produced milk or eggs come from animals who have had a ‘good quality of life’, then I certainly disagree. In

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<sup>35</sup> Peter Singer, ‘Europe’s Ethical Eggs’, *CNN Global Public Square*, 12 January 2012, <<http://globalpublicsquare.blogs.cnn.com/2012/01/12/singer-europes-ethical-eggs/>> [accessed 28 September 2019].

<sup>36</sup> *The Animal Rights Debate*, pp. 42-44.

<sup>37</sup> There have been a considerable number of cases, both in the United Kingdom and the United States of supposedly ‘higher welfare’ facilities being as bad as or worse than conventional facilities. See, e.g., Hillside Animal Sanctuary, *RSPCA Freedom Food Pig Farm July 2013*, <<https://www.youtube.com/watch?v=RzwXtvu39Js>> [accessed 28 September 2019]; David Dayen, ‘Whole Foods “Free-Range” Chicken Supplier Said to Actually Run Factory Farm’, *The Intercept*, 15 September 2017, <<https://theintercept.com/2017/09/15/whole-foods-free-range-chicken-animal-rights/>> [accessed 28 September 2019].

any event, while these standards are higher than those required under law, they do not result in significant welfare improvement. Therefore, even if the higher standards of these niche markets were imposed as a general matter through law, which is highly unlikely, animals would still be suffering horribly in terms of pain and distress. The failure of what I call the 'happy exploitation' market is compelling evidence that animal welfare standards cannot as a practical matter provide significantly greater protection for animals.

So yes, property use is regulated; there is no 'absolute' ownership. And the law does protect animal interests arising from the sentience of animal property but generally not beyond, or not much beyond, the extent necessary to ensure the efficient use of animals as human resources. It costs money to protect animal interests. Putting aside whether it would be morally permissible to use and kill animals for human purposes even if those animals had reasonably pleasant lives and relatively painless deaths, the cost of using animals under those circumstances would make it prohibitive to do so. If someone cares enough about animals that they are willing to pay \$100 per pound for beef raised 'humanely' (assuming it were possible to raise and kill animals in a situation in which there would be no pain or distress and assuming the beef would be as cheap as \$100 in those circumstances), they probably would choose not to eat the beef at all.

Would it be possible for us to regulate animal use so that we did not eat any meat but consumed only eggs and milk from animals who were property but treated very well and were eventually 'freed' through some system of animal manumission? Yes, in theory. But putting aside whether there would still be harm to animals in such a situation and whether such harm could be morally justified (issues I will address more below), and putting aside that the various issues that would be incidental to any such system, such as whether such a restriction on animal use would involve a taking of property and how the system would work as a practical matter, animal ethics ought to be based on something other than fantastical musings about systems of property that have never existed and that would magically resist 'abandoning' the sentient property 'to the caprice of a tormentor' or becoming the 'lot of the greatest number'.

Finally, some theorists see the fact that many human owners love and value their 'pets' as some indication that my views on the property status of animals are mistaken. This conclusion, however, is further indication that these ethicists do not understand the property problem.

For example, Cochrane offers pet ownership as an example of why I am wrong to claim that, because animals are property, they will necessarily be treated as economic commodities. Cochrane claims that although ‘most people regard pet keepers as the owners of their animals’ many pet keepers do not treat their animals merely as economic commodities.<sup>38</sup>

What “most people” think in this situation is irrelevant. Pet keepers *are* the owners of their animals as far as the law is concerned. As property owners, they may accord their pet a high value and treat the animal as a loved and cherished member of their family, or they may accord their pet a low value and decide that they do not care very much for the animal. Their choice of valuation is their right as a property owner. As long as they provide minimal food, water, and shelter to the animal, they may treat the animal pretty much as they choose, and my long experience as a lawyer has shown me just how minimal a standard the law will accept. Owners cannot inflict physical harm on the animal gratuitously but they may inflict physical harm incidental to a purpose of use. For example, physical force/punishment may be used to train a dog to be a guard dog. An owner may apply physical force/punishment to a dog who jumps on visitors. And owners can choose to value their pet’s life at zero and take the dog, cat, or other animal to a veterinarian to be killed, or to a shelter where the animal will be killed if another home is not found.

To say that, because some owners will accord a higher value to their animal property, those animals are not economic commodities is simply wrong, and is analogous to saying that, because some people really like their car and provide care for their car that goes beyond what is necessary to get it through its annual inspection, their car is not an economic commodity. In any event, the way some people treat pets is not an exception to the position that, because animals are property, they will be treated as economic commodities; it is an illustration of the right of property owners to value their property. Some of my critics, such as Cass Sunstein<sup>39</sup> and Hilary Bok,<sup>40</sup> claim that, as long as humans who own pets treat them well, there is nothing wrong with owning them, and that owning

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<sup>38</sup> *Animal Rights Without Liberation*, p. 150.

<sup>39</sup> See Cass Sunstein, ‘Slaughterhouse Jive,’ *New Republic* 40 (29 January 2001) (reviewing *Introduction to Animal Rights*).

<sup>40</sup> Hilary Bok discusses my position on pets in ‘Keeping Pets’, in *The Oxford Handbook of Animal Ethics*, ed. by Tom L. Beauchamp and R.G. Frey (New York: Oxford University Press, 2011), pp. 769-795.

animals does not in any way interfere with efforts to change laws so that people are required to accord better treatment to pets. That is, these critics claim that it is not the status of pets as property that harms them; it is the treatment that is permitted by that status that is harmful. But this ignores that the status of animals as property necessarily allows for higher and lower valuations, and being property makes animals constantly vulnerable to harm and to death. If animals are property, then someone—their owner—has the right to value their interests and their very life. We may accord a high value to our dogs, cats, and other pets but, as property owners, we have the *right* to change our valuation and to accord a much lower valuation to them.

To the extent that the claim is that the law could, at least in theory, require that we treat all animals we use in the way that caring owners treat their pets, such claim ignores that we have not succeeded—indeed, we have failed miserably—in getting everyone to be caring owners of their pets. It is not clear why anyone thinks that we can do better with animals exploited for other purposes, particularly given the economics of property regulation. Moreover, there is a question as to whether it is accurate to say that the *most* caring pet owners respect all of the interests of their animals, or only that they respect those interests to the extent that doing so fits more or less within their chosen lifestyles as human owners. For example, I doubt whether the most loving dog owner who lives in a large city without any sort of garden can be said to respect the fundamental interests of the animal.<sup>41</sup> And if the law were able to require all animal owners to fully respect the interests of their animals, such a state of affairs would result in a situation in which the animals were no longer chattel property (or at least not the property of their individual owners). It would be similar to saying that the government could not only regulate the ownership of a historic building and limit renovations or require certain types of renovations, but that it could prohibit the owner from using the building as a habitation altogether as a matter of heritage protection. That would, in effect, be a taking of property for which compensation could be claimed. Finally, these sorts of claims, and the position that the problems of animal use can be addressed in a satisfactory way by regulating our

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<sup>41</sup> I say this as someone who lived with rescued dogs in New York City and moved to a more rural place in large part because of a recognition that New York was a terrible place for our dogs to live.

ownership of animal property and restricting certain uses of animals, ignore the problems raised by domestication, which I address below.

#### IV. The Problem of Property: Domestication

One of my critics, Katherine Wayne, like Sue Donaldson and Will Kymlicka in their book, *Zoopolis: A Political Theory of Animal Rights*, rejects my position that we are morally obligated to abolish all animal use and promotes the position that we should include animals as co-citizens in our community.<sup>42</sup> Wayne claims to recognize that there is a problem with property status. She states: 'I agree with Francione's claim that all animals must be regarded as having the right not to be treated as property just in the same way humans have that right.'<sup>43</sup> But that does not mean that she rejects all animal use. She rejects 'mere use' because it 'is indeed incompatible with recognising their intrinsic value, thus precluding the possibility of acceptable use.'<sup>44</sup> By 'mere use,' Wayne, quoting Tom Regan, is referring to viewing "animals as *our resources*, here for *us*—to be eaten, or surgically manipulated, or exploited for sport or money."<sup>45</sup> Wayne claims that we 'must be committed to prohibiting (almost) all forms of slaughter, whether or not the slaughter is preceded by some arrangement that is beneficial to the animal(s).'<sup>46</sup> She claims, however, that we may still use animals for labor, and for animal products that do not involve slaughter. She proposes that we can use animals in situations in which we would use disabled humans with whom we had a reciprocal and caring relationship. If the mere use of animals is the result their being property, 'removing or discounting that property status should allow for permissible use'.<sup>47</sup>

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<sup>42</sup> Katherine Wayne, 'Permissible Use and Interdependence: Against Principled Veganism', *Journal of Applied Philosophy*, 30/2 (2013), 160-175. Wayne is clear that she embraces the framework proposed in Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (New York: Oxford University Press, 2011).

<sup>43</sup> 'Permissible Use and Interdependence', p. 163.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*, p. 170. The use of 'almost' is puzzling given that she also says 'raising animals for slaughter will always be impermissible.' *Ibid.* It would be odd if she was referring to killing that was in the interest of the animal because we would not think of that as 'slaughter' and would, instead, think of it as 'euthanasia'. In any event, she does not identify instances of 'slaughter' that she would permit.

<sup>47</sup> *Ibid.*, p. 162.

She argues that the reason why I object to all animal use is that ‘it seems that what is truly at issue for him is domestic animals’ dependence on humans—and mere dependence does not clearly operate as a sufficient condition for appeal to the no-use principle.’<sup>48</sup> Picking up on the criticism by Donaldson and Kymlicka of my position on domestication,<sup>49</sup> she claims that my rejection of domestication is ‘ableist’ and ‘speciesist’. It is supposedly ‘ableist’ because, according to her, my critique of domestication apparently contributes ‘to the continuing marginalisation of individuals with disabilities.’<sup>50</sup> It is supposedly ‘speciesist’ because I maintain that, although we ought to care for the domesticated animals who are here now, we should not bring more into existence. My position is also speciesist according to Wayne because, by denying that some use of animals is not only morally acceptable but is actually morally desirable from the animals’ point of view, I would deny to nonhumans opportunities for satisfaction that come from mutually cooperative relationships that I would recognize in the case of humans.

Wayne is wrong to say that my objection to animal use is based only on my objection to domestication. As I will discuss further below, my objection to what she regards as ‘acceptable use’ fits squarely with my theory about property. Having said that, it is important to discuss domestication at least briefly. Although we use non-domesticated animals as human resources, most of the animals we exploit are domesticated. They have been bred to be servile and dependent so that we can use and kill them more easily. Any consideration of regulating or abolishing the status of animals as property has to take into account whether domestication itself can be justified. Most animal ethicists do not recognize this issue much less discuss it.

Wayne argues that my rejecting domestication is analogous to devaluing disabled humans or stigmatizing dependence in human relationships. Wayne provides a series of ‘thought experiments’ that she claims illustrate ‘arguably relevant parallels to idealised (but not implausible) relationships between nonhuman and human animals.’<sup>51</sup> Wayne claims that, if there are cases where a human is dependent on other humans and it is desirable for that dependent human to be seen as a

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<sup>48</sup> *Ibid.*, p. 163.

<sup>49</sup> *Zoopolis*, pp. 82-85.

<sup>50</sup> ‘Permissible Use and Interdependence’, p. 161.

<sup>51</sup> *Ibid.*, p. 164.

resource, then seeing nonhumans who are dependent as resources in similar situations should also be acceptable.

The first thought experiment involves running a group home for adults with moderate to severe cognitive difficulties who would otherwise perish or have poor lives but for living in this group arrangement. Wayne argues that it would not be exploitative or disrespectful to request or expect the residents of the home to contribute to chores involving the upkeep and management of the home where no resident who declines will be punished in any way and where their care will continue despite their not contributing. Indeed, our regarding these residents as ‘beings that may be *taken from* is necessary for their full inclusion within that cooperative community.’<sup>52</sup>

The second thought experiment involves the group home in the first thought experiment except that the disabled residents ‘frequently draw a very small amount of blood from themselves with a virtually painless prick of a needle.’<sup>53</sup> The residents, who store this blood in vials, need to do this blood-removal activity, and under the right circumstances, or they will become ill. It turns out that this blood, after being drawn, has special properties in that it is nutritious, can be used in cooking, and is useful as a skin moisturizer. The residents do not mind if their caretakers take some of this blood and consume it for these nutritional, culinary, and esthetic purposes. Wayne thinks that this example demonstrates a situation where a dependent person is seen as a resource but where no exploitation is involved. Wayne criticizes my claim that milk is as morally objectionable as meat because she claims that I fail to understand that meat is ‘*essentially* exploitative’ whereas milk (like the taking of the vials of blood) is not essentially exploitative.<sup>54</sup>

The third thought experiment involves the residents having accelerated hair growth and their hair, which needs to be cut, can be packaged and sold to be used for wigs and hair extensions with the proceeds being used to help to support and enrich the community in various ways, and to expand it. Wayne sees this as morally permissible and morally desirable because it allows the residents to participate in a cooperative community and both caretakers and residents will benefit from the arrangement.

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<sup>52</sup> Ibid., p. 166.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid., p. 167.



Wayne then offers two scenarios to show “why we ought to understand relationships of use as the precondition for diverse and cooperative communities.”<sup>55</sup> The first scenario involves a child who suffers a brain injury in a car crash but still wants to (and is still able to some degree to) engage in the household tasks that the child did before the accident. The second involves a caretaker in the group home who suffers a stroke but who wants to continue performing some of the tasks the caretaker formerly did. Wayne claims that, although the child and the worker are now more vulnerable because of cognitive impairment, it would be ‘malevolent and disrespectful’ to not encourage these contributions.<sup>56</sup> This shows that taking from a vulnerable human can be a good thing. In all of these examples, Wayne claims that if these uses of disabled persons were prohibited on the ground that the uses involved exploitation, it is not clear how such prohibition would restore justice or wellbeing to those who are then unable to contribute to communities that care for them.

Wayne presents these various thought experiments that she offers to show that the ‘use of dependent and vulnerable beings can be permissible and even desirable’ but concludes that she is

currently unequipped to attempt a detailed exploration of how the claims herein can help us begin to sort out the varying degrees of acceptability of human use of animals, but out of respect for the practical urgency of these issues, will offer some brief preliminary thoughts regarding how we might go about distinguishing between morally appropriate and inappropriate forms of use.<sup>57</sup>

Putting aside that, if the author of thought experiments is not able to articulate a use for their application, it will hardly support a charge of ‘ableism’ or ‘speciesism’ against those with a different position, Wayne’s claim that her analysis does not equip her to say anything particularly useful about animal use is rather curious. We have created real world problems of almost unfathomable proportions by our exploitation of animals. There is certainly a ‘practical urgency’, as she recognizes, but we do not throw light on our understanding of the problem or draw nearer

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<sup>55</sup> *Ibid.*, p. 169.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*, p. 170.

to solutions by using thought experiments about possible worlds of humans with alien-like characteristics. Wayne fails to understand that the problem is not just the use of animals; it is the *deliberate creation* of vulnerable beings for that use and for our benefit. The only way her thought experiments could shed any light on this problem is if we were deliberately creating disabled humans for our benefit. That would be problematic on a number of levels and Wayne certainly does not appear to be proposing it. But then, her thought experiments are not useful to help us understand the matter of animal use.

As mentioned above, Wayne rejects the killing animals for food, surgically manipulating them, and exploiting them for sport or money. But as ‘imposing some expectations’ on dependent humans is permissible and often desirable, the same analysis may apply to animals.<sup>58</sup> She gives the example of ‘encouraging laying behaviour from hens in non-harmful ways, with the intention of collecting, consuming, and possibly selling their eggs’ as ‘perfectly acceptable on the part of those caring for the hens.’<sup>59</sup> She claims that there is nothing wrong with ‘imposition’ of this behavior on the chickens because ‘healthy and productive relationships’ require that the dependent party respond to the needs and desires of the caretaking party.<sup>60</sup> We can also assume that Wayne must think that milk is morally acceptable given that she uses my claim that milk is as morally objectionable as meat to show my supposed ‘failure to recognise the differential degrees of injustice and harm realised in the respective idealised scenarios of consuming the products or the flesh of a being.’<sup>61</sup> Given her discussion about cutting and selling the hair of the group home members, it appears as though she would see the use of animal hair, such as wool, as morally acceptable.

Wayne’s ‘argument’ is nothing but a declaration that humans who are dependent on other humans are relevantly similar to domesticated nonhumans. She seems to think that dependence is all pretty much the same. It isn’t. Or, at least, Wayne does not establish that it is. I am dependent on my partner for emotional support. But my situation is very different from that of a severely disabled person who is dependent on their caretaker for survival, although I recognize that where humans are

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<sup>58</sup> Ibid., p. 171.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid., p. 167.

involved, we may be talking about degrees of dependence in most instances. However, *any* human dependence is *qualitatively* different from the dependence of beings of another species whom we have, in essence, created through selective breeding and other manipulation to be completely and perpetually dependent on us and to have no independence whatsoever. We have bred them to be our resources and to have those qualities that facilitate their use as our resources. As Anna Charlton and I have noted with respect to nonhuman animals:

They remain perpetually in a netherworld of vulnerability, dependent on us for everything that is of relevance to them. We have bred them to be compliant and servile, and to have characteristics that are pleasing to us, even though many of those characteristics are harmful to the animals involved. We might make them happy in one sense, but the relationship can never be ‘natural’ or ‘normal’. They do not belong in our world, irrespective of how well we treat them. This is more or less true of all domesticated non-humans. They are perpetually dependent on us. We control their lives forever. They truly are ‘animal slaves’. Some of us might be benevolent masters, but we really can’t be anything more than that.<sup>62</sup>

In the case of humans, ‘dependence either operates on the basis of choice, or it reflects social decisions to care for more vulnerable members of society who are bound together and protected by the complex aspects of a social contract.’<sup>63</sup>

Moreover, as mentioned in the preceding quote, we often select for characteristics that are positively harmful to animals. For example, certain dogs and cats are bred to have an appearance that adversely affects their health and inbreeding generally results in inheritable diseases and disorders. Wayne cannot provide a limiting principle consistent with her ‘disability’ position that would permit not allowing these animals to continue to reproduce unless she wants to say that we can justify not allowing humans with particular physical disabilities to reproduce. Indeed, she cannot provide a limiting principle given her views on ableism and

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<sup>62</sup>Gary L. Francione and Anna E. Charlton, ‘The Case Against Pets’, *AEON*, 8 September 2016, <<https://aeon.co/essays/why-keeping-a-pet-is-fundamentally-unethical>> [accessed 28 September 2019].

<sup>63</sup> *Ibid.*

speciesism that would allow us to limit the reproduction of domesticated animals as a general matter.

In the thought experiments that Wayne offers, the sorts of uses that she proposes would be scrutinized to ensure that the participation by the disabled human was consented to by that human. Such an inquiry in the nonhuman context is simply not possible. Wayne maintains that we may impose behaviors on animals to encourage them to contribute to what Wayne views as the cooperative enterprise that allows for morally justifiable animal use. But the fact that an animal can be made to do something, or does something on her own initiative but does so in the context of being a domesticated animal, does not mean that the animal consents to the arrangement and any invocation of animal consent would require support and discussion. Wayne's argument is similar to Peter Singer's argument that a dog who humps a human's leg is indicating that there is a 'mutually satisfying' sexual encounter to which the animal consents.<sup>64</sup>

In any event, what we would allow or encourage in the context of disabled humans tells us *nothing* about a practice of continuing to produce domesticated nonhumans who are necessarily and invariably dependent on their human owners for every aspect of their lives, and where the normal safeguards to protect the vulnerable party are not present because they have no application in that context. The dependency of a domesticated nonhuman is qualitatively different from the dependency of a disabled human. Wayne's approach is simply another attempt to impose our will on animals through analogies and frameworks that are transparently laden with myriad anthropocentric assumptions, such as that animals can be used as resources so that they can be members of some supposedly cooperative community. Who asked *them*? Moreover, she trivializes both human disability and animal use.

We invest a great deal of resources into trying to prevent human dependency in most contexts. We invest a great deal of resources into helping humans who are dependent to be as independent as possible. The fact that we seek to prevent this sort of complete dependency and to enable independence does not mean that we value dependent humans less; it does mean, however, that we do not see perpetual and complete

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<sup>64</sup> Peter Singer, 'Heavy Petting', *Nerve* 2001, <<https://www.utilitarian.net/singer/by/2001----.htm>> [accessed 28 September 2019].

dependency as inherently valuable in the human context. It is speciesist to view matters differently in a nonhuman context.

Wayne is right to say that I do not believe that we can morally justify domestication, but she is wrong to think that I need the argument about domestication to think that ‘use’, as opposed to ‘mere use’, is problematic given my position on property. That is, I reject Wayne’s implicit claim that use, as opposed to mere use, can be accommodated within my property theory. Wayne, like Cochrane and Milligan, fails to acknowledge, much less to address, my concern that the property status of animals allows owners to value animal interests. Even if animal use is restricted to use that is not mere use, the property status of animals would mean that animals used (but not merely used) would still have—or be at risk of having—their fundamental interests undervalued or ignored. Wayne’s argument rests on a failure to understand the problems presented by the property status of animals.

Although Wayne claims to endorse my position that animals ought to have the right not to be used as property, it is difficult to understand how what Wayne is proposing is anything other than a restriction on, or regulation of, property rights. Humans will no longer have the right to use animals for certain lethal purposes but they will be permitted to use them for other, supposedly non-harmful purposes. The status of animals as property would be ‘remov[ed]’ for certain uses, or ‘discount[ed]’ so as to allow certain uses. The responses to Milligan and Cochrane are relevant here—the property status of animals makes regulating for the benefit of property, or regulating to accommodate the interests of concerned humans, extremely difficult at best. Moreover, Wayne endorses animal welfare measures to protect the interests of animals used in the supposedly non-harmful contexts and criticizes me because my rejection of animal welfare ‘arguably presents no hope or guidance for those who wish to improve the current system.’<sup>65</sup> Wayne does not address my position that, because animals are property, the ‘current system’ cannot be changed, and that the standards of animal welfare will, given the reality of markets (including regional and global markets), be set at that level that will not go beyond, or significantly beyond, what is required to use the animal in an economically efficient manner.

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<sup>65</sup> ‘Permissible Use and Interdependence’, p. 173 n.6.

Wayne assumes that regulating animal use so that it involves only use and not mere use would involve a recognition of the inherent value of animals. She apparently bases this position on the view that we recognize the inherent value of disabled humans whom we use. But again, Wayne assumes that disabled humans and domesticated nonhumans are the same simply because they are both dependent. She fails to see that, putting aside other differences in that dependence, we recognize the inherent value of disabled humans because we accord them respect-based rights. Wayne never even engages my argument that, because animals are property, they do not have—and cannot have—respect-based rights. Therefore, the fact that we may protect some of their interests does not in any way mean that we recognize their inherent value. Indeed, even in situations in which regulation goes beyond what is necessary for efficient exploitation, such regulation reflects more a reaction to *human* concerns about animal welfare, and does not reflect any recognition of inherent value. To the extent that Wayne is envisaging a situation in which animals are not property but where we could still use them, she does not tell us what that situation would look like, or how it could possibly be free of interference by humans that would clearly be objectionable in situations concerning disabled or dependent humans.

Wayne is also wrong to claim that the uses to which she refers involve acceptable use and not mere use. Wayne does not provide us with any examples of taking labor from animals apart from bringing dogs into nursing homes. It is true that some dogs appear to enjoy ‘jobs’. But it is also true that dogs used as guide dogs or for law enforcement purposes have lives that can be viewed as less than enjoyable for the dog. Indeed, these dogs must be psychologically and physically suited to their ‘work’ and they have to be socialized to perform their requested tasks despite suffering the stress that many experience. Dogs used as ‘guard dogs’ or cats used to keep mice out of small grocery stores do not have good lives. Indeed, these uses are often targets of humane societies. In any event, we cannot analogize most animal ‘workers’ to the disabled humans in Wayne’s thought experiment for one very clear and decisive reason: the humans in her examples have the option not to provide any labor and they will suffer no punishment. What they do is what they choose to do and they can choose not to do any labor and not suffer any penalty. Domesticated animals who have been trained to do particular things are simply not similarly situated.

More unequivocally problematic is Wayne's claims that eggs produced in 'non-harmful ways' are acceptable. The problem is that such eggs do not and cannot exist. If the hens were obtained from an industrialized hatchery, the male chicks were ground up alive or suffocated upon hatching. Even if the hens have not been obtained from a hatchery, and even if we could sex the eggs before the chicks were born and the males could be destroyed in the shell (a technology that is apparently in the process of being developed) the hens have been selectively bred to lay between 250-300 eggs per year; undomesticated chickens living in their natural habitat lay between 10-20 eggs per year. This unnatural production is harmful to the chicken. Egg production starts to decline after about two years of age, but the chicken can live for up to a decade (an undomesticated chicken can live for 30 years).

If Wayne is proposing that we have an obligation not to kill hens who are no longer productive, and care for them as members of our community who can no longer contribute eggs, I am compelled to wonder if Wayne has any idea whatsoever how many egg-laying chickens exist in the cycle at any one time. There are many millions. We have not even worked out providing disabled access to public transportation for humans who are otherwise able to work but Wayne apparently thinks that we can address retirement for laying hens. She would also have to propose that we stop breeding the hens who currently exist because those hens are *necessarily* harmed by the way in which they have been bred to be egg-laying machines. She would have to propose that we try to engineer birds whose egg production more closely approximates what the hens would produce in an undomesticated, natural state. In short, there are, at present, no eggs that do not involve harm to the hens even if we don't factor in domestication issues. Perhaps Wayne could argue that it may be morally acceptable to eat eggs from hens who have been rescued but she certainly cannot argue that we ought to continue to breed *those* hens and then claim that using their products is analogous to taking some of the miraculous blood from the disabled humans in the group home. And given that Wayne sees no relevant distinction between disabled and dependent humans and domesticated nonhumans, it is not clear how we could prohibit these hens from continuing to breed given that most of us think that humans with physical disabilities should not be prohibited from reproduction even if we know that a particular physical characteristic is likely to be passed on.

With respect to milk, cows have to be impregnated regularly to keep giving milk. They are usually inseminated through the agency of a human arm that inserts the bull semen while the cow is restrained. The male babies are usually sold off to be veal calves. The female babies are removed and put into dairy production. Separation of mother and baby causes great distress. Just as the modern laying hen has been bred to produce large quantities of eggs and this has an adverse effect on the health of the hen, the modern dairy cow has been bred to produce much greater quantities of milk and this increased production takes its toll on the cow. Although cows can live up to thirty years, they are usually slaughtered when they are five or six years of age after only about three years of being a producing member of the herd. Even if we change all this and make the system more 'humane,' and do not kill the male calves or the cows after they are 'spent', the production of milk will still involve harm. As in the case of laying hens and eggs, Wayne would have to propose breeding cows that did not produce the greater quantities of milk and preventing the cows who are producing in a more unnatural way from reproducing. She would also have to figure out what to do with male calves and with the considerable bovine population we would have in the sort of hypothetical situation that she appears to be envisaging. Any thought experiment that posits an analogy between dairy production and the removal of a small amount of miraculous blood from humans where that removal benefits those humans, and where those humans have not been bred for this blood, fails at its inception.

It appears to be the case that Wayne had wool in mind when she talked about the cutting and selling of the hair of the disabled residents as I assume she wasn't thinking of either leather or fur, which necessarily involve killing animals. In any event, wool produced under the most 'humane' of circumstances, and where the sheep would never be slaughtered (as they are eventually presently), would involve shearing prey animals who are terrified if not left alone. Sheep resist this under any circumstance and even the most careful shearer will nick or cut the sheep in the process of shearing. Wool is not analogous to the hair example, which involved the residents not minding at all that their hair was cut and determining when their hair would be cut.

## V. Equal Consideration, Moral Significance, and Personhood



If animals are property, then we cannot accord equal consideration to animal interests. The whole point of the institution of property is to create a relationship of ownership where the owner has the right to value the property. Even if that relationship could be regulated in a way that it never has been, and that proved impossible where human chattel slavery was concerned, we cannot talk meaningfully about according equal consideration to the interests of a being who exists to be used exclusively as a resource. The interests of an animal, even if perceived as similar, will be discounted and *any* discount obviates equal consideration.

I maintain that any sentient being is sufficiently self-aware so as to have a morally significant interest in continuing to live, and that sentience is sufficient for personhood.<sup>66</sup> But even if we assume, contrary to my position, that sentient beings only have interests in not suffering pain or distress and do not have an interest in continued existence, then the property status of animals not only precludes us from according those interests equal consideration, but it precludes us, as a practical matter, from according significantly greater concern to their interests in not suffering. That is, if they are not persons and remain as property, they will become 'degraded into the class of *things*', as Bentham described. Even if we were to improve animal welfare standards, it is simply folly to maintain that there will not be significant animal suffering if animals remain property that we can use exclusively as resources.

So what is the solution? If we believe that animals have morally significant interests, then, even if we do not believe that animals are self-aware and have an interest in continuing to live and only have interests in not suffering, we have no choice but to treat animals *as if* they were persons and not use them as replaceable resources *at least* in situations in which there is no compulsion or necessity involved in the use. Why am I proposing necessity as a limiting principle? There are two reasons.

First, where there is no necessity or compulsion, then the use of animals as resources, and the consequent infliction of pain or suffering on them, represents an acknowledgement that animals are really just things. The need for a determination of necessity reflects our conventional thinking about animal ethics. When we do identify a form of animal exploitation that we agree is unnecessary, we do not argue that it can be made to be acceptable if we impose less pain and suffering. For example,

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<sup>66</sup> See n. 8.

most people object to blood sports such as dog fighting and bull fighting. It is very rare for people to argue that these activities would be acceptable if they were regulated better to be more 'humane'. As a general matter, we do not argue that forms of animal exploitation that we consider to be frivolous in that they involve no plausible claim of necessity can be morally acceptable as long as they are performed in a more 'humane' way.

Second, it leaves open whether we can use animals as resources in situations in which there is something that can plausibly be characterized as a necessity. As someone who embraces a rights approach, I would maintain that one cannot ever justify the use of a sentient nonhuman exclusively as a resource for humans although genuine compulsion may excuse or mitigate culpability in the same way it may when compulsion may necessitate harming an innocent human. Consequentialists may see using animals as resources as morally justifiable and even morally required if there is compulsion given that consequentialists appear as a general matter to maintain that animals matter less morally than do humans because of the supposed cognitive superiority of humans. But as the property status of animals makes the equal consideration of interests impossible at least as a practical matter, consequentialists should reject the use of animals at least in any situation in which animal use cannot plausibly be characterized as compelled. Unfortunately, few, if any, consequentialists recognize this limitation.

In a remarkable essay published in 1971, novelist Brigid Brophy pointed out the lack of necessity of most animal use:

As a matter of surprising and illuminating fact, among all the painful and slaughterous practices which humans inflict on animals of other species, it is only vivisection which involves a moral dilemma at all.

Buying a sealskin coat doesn't represent a choice between evils. It is a simple choice of evil. (The choice is human; the evil is to seals.)<sup>67</sup>

But we need to confront the elephant in the pantry. The primary reason that we have active, animated, and sometimes heated debates about animal ethics is not because of sealskin coats or even fox hunting or bull fighting. The real problem is that most of us eat animals. We eat their bodies and we eat products derived from their bodies, such as dairy or eggs. We do this several times every day and much of our life is centered around events

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<sup>67</sup> Brigid Brophy, 'In Pursuit of a Fantasy', in *Animals, Men and Morals: An Enquiry into the Maltreatment of Non-Humans*, ed. by Stanley and Roslind Godlovitch, and John Harris (London: Victor Gollancz Ltd., 1971), 125-145 (p. 125).

at which we consume animal foods. If we recognized consuming animal foods as unnecessary and stopped that consumption because it was morally unjustifiable, we would also stop using animals for clothing, entertainment, and other unnecessary purposes.

We kill about 70 billion land animals and an estimated one trillion sea animals every year for food. Even if some of the sea animals are not sentient (there is some doubt as to whether mollusks are sentient), the land animals, fishes and most other aquatic animals we use for food are unquestionably sentient. Many animals are raised in intensive conditions that are nothing short of horrific and constitute torture on a second-by-second basis. Even those who are raised in supposedly more ‘humane’ circumstances suffer a great deal of distress throughout and at the end of their lives. And it is not just a matter of meat. Dairy and eggs—however ‘humanely’ produced—involve significant suffering. And all animals, whether used for meat, dairy, or eggs, are subjected to great terror and distress at the abattoir.

Is *any* of this suffering and death necessary? Is there *any* compulsion involved? The short answer is: no. As Brophy remarked in 1971: ‘Neither can anyone pretend that, in a confrontation between humans and the calves they propose to convert into roast veal, there is any question of Them Or Us.’<sup>68</sup> It is absolutely clear that we do not need meat or other animal products to be healthy.<sup>69</sup> Indeed, governmental bodies, professional organizations, and mainstream health care professionals all over the world take the position that animal products are not necessary for human health and that a sensible vegan diet can provide for optimal health. Some are going further and claiming that animal products are detrimental to human health. We do not, however, have to settle the debate about whether it is *more* healthy to live on a diet of fruits, vegetables, grains, nuts, and seeds. The point is that a vegan diet is certainly no *less* healthy than a diet of decomposing flesh, cow secretions, and chicken ova. And that is the *only* point relevant to the issue of necessity. In addition, it is also clear that animal agriculture is the most significant source of

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<sup>68</sup> Ibid.

<sup>69</sup> Gary L. Francione and Anna Charlton, ‘Ringling Bros. Circus Shutdown is a Distraction from the Real Issue: Eating Animals’, *The Conversation*, 2 February 2017, <<https://theconversation.com/ringling-bros-circus-shutdown-is-a-distraction-from-the-real-issue-eating-animals-71541>> [accessed 28 September 2019].

greenhouse gases, and that going vegan is the single most important thing anyone can do to affect climate change.<sup>70</sup>

The best justification we have for inflicting suffering and death on animals is that we think that they taste good; we derive pleasure from eating them. Eating animals and animal products is a tradition—we have been doing it for a long time. How is palate pleasure any different from the pleasure that some people derive from participating in various blood sports to which most people object? *There is no difference.* Fox hunting, badger baiting, and dog fighting are all traditions. Indeed, almost every practice to which we object—whether involving animals or humans—involves a tradition valued by someone.<sup>71</sup> Patriarchy is a tradition that has existed for a very, very long time. But the fact that something has been happening for a long time says nothing about its moral status. And if it is not necessary to consume animal products, then we cannot justify imposing *any* amount of suffering on animals used for food.

It is a significant failure of modern animal ethics that theorists do not understand that it makes little sense to think that we can take seriously the interests of beings we have brought into existence to be used and killed exclusively as our resources. They do not seem to appreciate that, if animals are property, thinking of them as ‘quasi-persons’ cannot stop them from being treated as things any more than categorizing human slaves as ‘persons’ who were also property stopped us from treating them as things.

We should care for domesticated nonhuman animals who are presently in existence but we should stop bringing more into existence because their status as property structurally limits consideration of their interests and assures that their interests will not receive equal consideration. Moreover, even if the institution of animal property were somehow changed in some way that has yet to be explained coherently by anyone, the perpetuation of domestication would still raise serious moral issues.

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<sup>70</sup> Damian Carrington, ‘Avoiding Meat and Dairy is “Single Biggest Way” to Reduce Your Impact on Earth’, *The Guardian*, 31 May 2018, <<https://www.theguardian.com/environment/2018/may/31/avoiding-meat-and-dairy-is-single-biggest-way-to-reduce-your-impact-on-earth>> [accessed 28 September 2019].

<sup>71</sup> Gary Francione, ‘It’s Time to Reconsider the Meaning of “Animal Welfare”’, *Open Democracy*, 7 January 2018 <<https://www.opendemocracy.net/en/transformation/it-s-time-to-reconsider-meaning-of-animal-welfare/>> [accessed 28 September 2019].

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This essay is dedicated to our dear nonhuman friend, George, who was, without doubt, a person in the fullest sense of the word.

# Animal Psychology and Free Agency

Jon Garthoff

**Abstract:** In this essay I contend many nonhuman animals possess freedom in the most basic sense, in that they have a capacity for understanding and a causally efficacious non-algorithmic psychology. I also contend they lack freedom in another important sense, in that they lack critical capacities and so cannot engage in self-regulation. In elaborating and motivating these claims I discuss the distinction between moral and non-moral responsibility, contending many nonhuman animals possess the latter but not the former. I conclude by suggesting no threat to human or animal freedom grounded in deterministic laws of nature has yet been clearly articulated.

## 1. Introduction

In this essay I approach familiar philosophical topics in an unfamiliar way. The familiar topics are freedom and responsibility. The unfamiliar way is by focusing attention on nonhuman animals, including especially the most psychologically sophisticated of these. I believe attending carefully to the capacities of these animals – both what they have in common with us, and what they do not – can help illuminate and reorient discussion of these traditional topics.

More specifically I contend that many of these animals possess free agency in the most basic sense, a sense that entails they possess a non-algorithmic psychology that is causally efficacious. But I also contend that they lack freedom in another important sense, which we might call the freedom of self-regulation – or more generally, of self-fashioning. Regardless of whether these contentions are correct, moreover, there is

value in reflecting on animal psychology to illustrate and explicate the distinction between these two important types of freedom.

Corresponding to this distinction between freedom of will in the most basic sense and the freedom of self-regulation is a distinction between having responsibilities of any kind and having specifically moral responsibilities.<sup>1</sup> Here too it is illuminating to consider the most sophisticated nonhuman animals; and in this case we have more to draw on, since we have actual practices of holding these animals non-morally responsible.<sup>2</sup>

These respective distinctions are not novel. The two types of freedom that I discuss are, at least broadly speaking, often understood to be rival conceptions of what freedom of the will consists in. My suggestion is that *both* are constituents of human freedom, and further that we can improve our understanding of each by thinking carefully about organisms that possess one but not the other. Two types of responsibility are also sometimes noted, though this is typically done only in the context of interpersonal relations, with the implicit supposition that only human beings have responsibilities of any kind.<sup>3</sup> I think this supposition is mistaken, and that careful reflection on the most sophisticated nonhuman animals also illuminates the distinction between moral responsibility and non-moral responsibility by exposing that these two types of responsibility are grounded in different psychological capacities.

## 2. Two Types of Freedom

The philosophical literature on freedom of will, both historical and contemporary, is voluminous. The sheer size of this literature makes it difficult to characterize succinctly. With that caveat in mind, I hazard to

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<sup>1</sup> I operate with a narrow conception of morality, according to which it pertains only to beings with moral obligations. For more on this conception of morality see Jon Garthoff, 'The Priority and Posteriority of Right', *Theoria*, 81.3 (2015), 222-248.

<sup>2</sup> For extensive development of this claim see Jon Garthoff, 'Animal Punishment and the Conditions of Responsibility', *Philosophical Papers*, forthcoming 2019.

<sup>3</sup> See, for example, Susan Wolf, 'Responsibility, Moral and Otherwise', *Inquiry*, 58.2 (2015), 127-142.

observe that there are two leading families of conceptions of freedom of will.

According to the first family of conceptions, which I take to be both most prominent in the history of philosophy and closest to the core of what freedom of will consists in, free agency is (at least in part) constitutively a kind of causal power.<sup>4</sup> More specifically it is a psychological capacity to cause physiological events – namely, behaviors – which involves a capacity for understanding and is not algorithmically determined by the conjunction of prior psychological condition, immediate sensory stimulus, and internal physiological functioning.

According to the second family of conceptions of freedom, which are at least arguably most prominent in the philosophical literature today, freedom is constitutively a kind of higher-order attitude.<sup>5</sup> More specifically it is a capacity to represent first-order desires, intentions, or willings, and then to subject these to explicit assessment.

The first of these families of conceptions is associated with incompatibilism, the doctrine that freedom of will is incompatible with deterministic laws of nature. I comment on the dispute between compatibilists and incompatibilists below in Section 8. For now, I observe only that the conception of freedom as constitutively a causal power is often thought to be incompatible with deterministic laws of nature because the existence of such laws of nature is thought to preclude our wills from having the necessary causal powers. From this broad thought come many varieties of libertarianism, the view that we have freedom of will even though this is not compatible with deterministic laws of nature.

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<sup>4</sup> This feature of action is especially emphasized by ‘agent-causal’ theorists. What I have in mind is not this specific hypothesis, however, but instead the more commonsensical notion that agents cause events in the world; this is compatible with free agency having non-causal elements constitutively. Prominent examples of agent-causal theorists include Roderick M. Chisholm, ‘Freedom and Action’, in *Freedom and Determinism*, ed. Keith Lehrer (New York: Random House Publishing, 1966), pp.11-40; Randolph Clarke, ‘Toward a Credible Agent-Causal Account of Free Will’, *Noûs* 27.2 (1993), 191-203; and Timothy O’Connor, ‘Why Agent Causation?’, *Philosophical Topics*, 24.2 (1996), 143-158.

<sup>5</sup> Prominent exemplars of this position include Harry Frankfurt, ‘Freedom of the Will and the Concept of a Person’, *The Journal of Philosophy*, 68.1 (1971), and John Martin Fischer, *The Metaphysics of Free Will* (Oxford, England: Blackwell Publishers, 1994). A Kantian version of this position is found in Christine Korsgaard, ‘Morality as Freedom’, in *Creating the Kingdom of Ends*, (Cambridge, Massachusetts: Harvard University Press, 1996), pp.159-187.



Also from this broad thought come many varieties of so-called ‘hard determinism’, which denies the existence of human freedom.<sup>6</sup>

The second family of conceptions of free agency is associated with compatibilism, the doctrine that freedom of will is compatible with deterministic laws of nature. The broad thought here often is that having (or lacking) a higher-order attitude of the kind the conception claims is characteristic of freedom – desiring to desire to perform an action, perhaps, or endorsing one’s intention to perform that action – is separable from whether this attitude arises non-algorithmically.<sup>7</sup>

### 3. Perception and Judgment

It is time for a detour through animal psychology, as having a better understanding of psychological capacities is crucial to evaluating both (i) whether and why nonhuman animals might possess free agency and (ii) whether or how deterministic laws of nature might pose a threat to human freedom. In this section I distinguish perception from judgment, and then in the following section I distinguish judgment from critical reason.

Perception is probably the most primitive representational capacity.<sup>8</sup> It is representational because it involves functional attribution of and reference to reality.<sup>9</sup> It is also sensory, for it is constitutively

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<sup>6</sup> For an example of hard determinism, see Derk Pereboom, *Living Without Free Will*, (Cambridge, England: Cambridge University Press, 2001). For an example of libertarianism see E.J. Coffman, ‘Incompatibilist Commitment and Moral Self-Knowledge’, *Philosophical Issues*, 26.1 (2016), 78-98. The agent-causal theorists cited in footnote 4 above also defend libertarian accounts of the human will.

<sup>7</sup> For examples of compatibilism see Harry Frankfurt, ‘Alternate Possibilities and Moral Responsibility’, *The Journal of Philosophy*, 66.23 (1969), 829-839, 5-20; Gary Watson, ‘Free Agency’, *The Journal of Philosophy*, 72.8 (1975), 205-220; and Daniel Dennett, *Elbow Room: The Varieties of Free Will Worth Wanting*, (Cambridge, Massachusetts: The MIT Press, 1984).

<sup>8</sup> Tyler Burge, *Origins of Objectivity*, (Oxford, England: Oxford University Press, 2010) provides an extremely sophisticated account of perception that vindicates this claim.

<sup>9</sup> See Burge, *Origins*, 379-396. There are sophisticated rival accounts of perception according to which it is not constitutively representational; for examples see M.G.F. Martin, ‘The Transparency of Experience’, *Mind and Language*, 17.4 (2002), 376-425, and Mark Kalderon, ‘Color Illusion’, *Noûs* 45.5 (1993), 751-775. The default view is that

mediated by capacities for sensory registration, where this is functional processing of information functionally connected to behavior.<sup>10</sup> Visual perception, to use the most salient example, is constitutively mediated by capacities to sense light. The basic norm for assessing the functional success of perceptual capacities is accuracy. A perceptual state is accurate if the way it represents the world (*large body ahead and to the left*, say) is the way the world actually is (there is a large body ahead and to the left from the perceiver's perspective). We also assess perceptual capacities in terms of further norms derived from this basic norm, such as excellence or reliability in representing accurately.<sup>11</sup>

While we do not at present have a complete theory of perception, we do have significant elements of such a theory. In particular, we already have mathematized principles that describe how many perceptual states form from a small number of input variables, notably including prior psychological state, stimulus at the surface of the perceiver's body, and internal physiological functioning of the perceiver. These principles are empirically well grounded. That we have such principles gives us good reason to hypothesize that these factors, with perhaps a few additions, algorithmically determine the perceptual states an entity forms.

Nothing about this hypothesis grounded in the success of modern perceptual psychology, moreover, disrupts the understanding of perception we derive from careful reflection on this phenomenon independent of this scientific work. In the near future an empirically grounded fully algorithmic account of how perceptual states form may emerge. And if this occurs, it need involve no great philosophical surprise. It has long been noted there is an element of passivity in perception. Perceptual states are not subject to volitional control, and more generally they are in some way less 'our own doing' than are certain other psychological states, such as beliefs or propositional intentions. These reflections jibe with the scientific account currently under construction

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perception is representational, however, and is in my view given decisive defense by Burge.

<sup>10</sup> See Burge, *Origins*, 376-378. For more on the idea of function, see Burge, *Origins*, 292-308; and for helpful earlier discussion see Larry Wright, 'Functions', *The Philosophical Review*, 82.2 (1973), 139-168.

<sup>11</sup> See Burge, *Origins*, Chapter 8.

according to which perception is governed by algorithmic natural laws, hence is not free in the sense articulated by the first family of conceptions.

These reflections and findings about perception contrast with judgment. If we were to discover that belief and other judgment-entailing attitudes form algorithmically, where the inputs into the algorithm are exhausted by the believer's prior psychological state, stimulus at the surface of the believer's body, and internal physiological functioning of the believer's body, puzzles would abound.<sup>12</sup> The crux of the matter here is that we have no developed understanding of judgment that fails to attribute reasons-response to a judger. Beliefs and other judgments are constitutively rational, in that they stand poised to support inferences in those who have them, also in that they may be produced through such rational inferences. According to our best understanding, what distinguishes inferences (also judgments more generally) from merely causal or functional psychological processes is that they involve response to reasons, which is to say that they involve functional sensitivity to rational or logical relations. If a psychological state were to be produced algorithmically from factors such as those listed above, however, then it would be unclear how it could be correct to characterize that state as reasons-responsive judgment.<sup>13</sup>

This is why I think our working hypothesis should be that any entity with a capacity for judgment is capable of free agency in the first sense. There are good reasons, furthermore, to think many nonhuman animals have such a capacity for judgment. This view is initially plausible because it is natural to attribute beliefs to some animals, including but not limited to elephants, apes, and dolphins; and we have no developed understanding of belief as anything other than an exercise of judgment. This view is also supported by successful theories, in both common sense and cognitive ethology, that explain animal behaviors in part in terms of

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<sup>12</sup> I take propositional attitudes as paradigms of judgment-involving psychological states. If there are non-propositional judgments, they likely are constituted by a sophisticated form of imagistic cognition. For discussion of the boundary between propositional thought and less sophisticated representational capacities, see Elisabeth Camp, 'Thinking with Maps', *Philosophical Perspectives*, 21.1 (2007), 145-172. See also Burge, *Origins*, 537-551.

<sup>13</sup> This is one reason it can be misleading to treat deductive inference as the central paradigm of rational judgment, since many forms of deductive inference can be modeled with digital algorithms. A further, even more important reason is that most actual inferences performed by humans and other animals are abductive rather than deductive.

beliefs and propositional intentions that underlie them. One important domain here is problem-solving, in cases where this is not plausibly understood to be the result of mere conditioned associations. When animals are capable of such understanding-mediated problem-solving, we have reason to attribute a capacity for inference to them.<sup>14</sup> But given the observations just made about inference, this means we also have reason to attribute to them a capacity for judgment and reasons-response, hence also for free agency.

It is worth dwelling on the fact that we have nothing resembling an algorithmic theory of belief-formation or an algorithmic theory of the production of behavior on the basis of beliefs. Neither common sense nor cognitive ethology involves anything of the sort. This is an important contrast with the theory of perception.

Some may think it is a mere accident of our position in the development of intellectual history that we are approaching an algorithmic theory of perception-formation but nowhere near to an algorithmic theory of judgment-formation. I cannot prove that view is incorrect, but the difference in our reflective understandings of the two capacities – even before empirical theories of perception became sophisticated in the latter half of the 20<sup>th</sup> century – should give us pause about endorsing it. The folly of attempting to predict future developments in science should also serve as caution against the hubris of this supposition.<sup>15</sup> If the state of the art of scientific theory, the best philosophical reflection, and ordinary practice all fail to provide any strong support for a view, then confidence in that view (however widespread it may be) is likely misplaced.

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<sup>14</sup> To say an instance of problem-solving is ‘understanding-mediated’ entails that the mental process involves more than mere preservation of accuracy; I am grateful to Yannig Luthra for fruitful conversations about these and related issues. For more about animal inference and its basis in problem-solving, see Collin Allen, ‘Transitive Inference in Animals: Reasoning or Conditioned Associations?’, in *Rational Animals?* eds. Susan Hurley and Matthew Nudds, (Oxford, England: Oxford University Press, 2006), pp. 175-186; and see also Susan Hurley, ‘Making Sense of Animals’, in *Rational Animals?* eds. Susan Hurley and Matthew Nudds, (Oxford, England: Oxford University Press, 2006), pp. 139-172. For an excellent general account of animal psychology in relation to ethics and the philosophy of mind, see Gary Varner, *Personhood, Ethics, and Animal Cognition* (Oxford, England: Oxford University Press, 2012).

<sup>15</sup> For cautionary advice to this effect see Tyler Burge, ‘A Century of Deflation and a Moment About Self-Knowledge’, *Proceedings and Addresses of the American Philosophical Association*, 73.2 (1999), 25-46.

The salutary intellectual desire to unify and to understand, moreover, also helps explain the perennial appeal of the view that an algorithmic account of judgment will eventually emerge, despite the lack of evidence for this hypothesis. If belief and other judgments could be understood algorithmically, then they would be less mysterious, as we would have a more complete account of their sources and causes. The gap between perception and belief would be reduced, providing progress toward a unified account of mental representation. But many have erred in working with this supposition. In the 17<sup>th</sup> and 18<sup>th</sup> centuries, there were various efforts to understand mental processes by analogy with physical ones, in the wake of the grand scientific accomplishments of Galileo and especially Newton.<sup>16</sup> These models did not lead to major advancements in empirical psychology. More recently behaviorists and their rear-guard apologists have sought to understand judgment in this way. Their models are now rightly regarded as refuted or defunct.<sup>17</sup>

#### 4. Judgment and Critical Reason

Let me now turn to another important distinction among psychological capacities, that between judgment and critical reason. As was briefly explained in the previous section, judgment is constitutively a capacity for reasons-response. It is crucial to note, however, that this does not entail that judgment constitutively involves *representation* of reasons. Judgment paradigmatically involves attitudes toward propositions, since propositional representations are of a form suitable for supporting (or being supported by) an inference; and inference again provides a paradigm of reasons-response. In order to move functionally from one judgment to another on the basis of a rational or logical relationship between them, however, a judger need not represent that rational or logical relationship

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<sup>16</sup> For an important example of what I have in mind here, see Jeremy Bentham, *The Principles of Morals and Legislation* (New York, New York: Prometheus Books, 1988). This work was originally published in 1781.

<sup>17</sup> Prominent examples of behaviorism include Edward Thorndike, *Animal Intelligence* (London, England: Macmillan Publishers, 1911); B.F. Skinner, *The Behavior of Organisms* (New York, New York: Appleton-Century Company, 1938); and Jerzy Konorski, *Conditioned Reflexes and Neuron Organization* (Cambridge, England: Cambridge University Press, 1948).

itself. Nor need a judger have the capacity to represent beliefs (or other judgments) as such, in order to have these states.<sup>18</sup>

It may help, in appreciating this point, to consider the analogous claims about perception. When we attribute a perceptual state to a frog, we hardly need attribute to it the ability to have representations as of perceptual states. We need only attribute to it certain perceptual attributes (or ‘percepts’) that it uses to form representations, attributes such as *body*, *danger*, and *edible*. In this case it is evident that being able to be in a particular type of representational state is one thing, and being able to represent that type of representational state is something else.<sup>19</sup>

Less appreciated, but no less significant, is that the same point holds in the case of belief and other judgments. When we attribute a belief to an ape, we need not attribute to it the concept *belief*, and so we need not attribute to it an ability to have beliefs about beliefs (or beliefs about other thoughts and judgments). Apes may perhaps have beliefs about beliefs; that is a matter of current research, and I take no stand on the matter here.<sup>20</sup> But to attribute beliefs to an ape, we need not attribute to it any such capacity for metarepresentation.<sup>21</sup> Similarly if we hypothesize that an elephant or wolf has a capacity for belief, we need not be in any way committed to the animal being able to represent beliefs.<sup>22</sup>

Even if an animal has a capacity to represent beliefs, moreover, that does not entail a capacity to reflect on or critically evaluate those beliefs. Reflective and critical activity requires not only representing beliefs

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<sup>18</sup> For more on this point see Burge, *Origins*, Chapter 6.

<sup>19</sup> Notwithstanding the efforts of those who have argued otherwise, notably including Peter Strawson, *Individuals: An Essay in Descriptive Metaphysics* (London, England: Routledge Publishing, 1990 [reprint, originally published 1959])

<sup>20</sup> For an account of disputes about ape metarepresentation, see Simon Fitzpatrick, ‘The Primate Mindreading Controversy’, in *The Philosophy of Animal Minds*, ed. Robert Lurz (Cambridge, England: Cambridge University Press, 2009), pp.224-246.

<sup>21</sup> This capacity, or closely related ones, are sometimes referred to as ‘theory of mind’ or as ‘mindreading’. I think the first label misleads, since no capacity to formulate a theory is presupposed by the capacity to represent mental states. I eschew the latter because it fancifully relates this sophisticated but ordinary mental capacity to psychic powers that do not exist.

<sup>22</sup> It is very difficult to test for metarepresentation experimentally. This is because behavior and sensory registration are not psychological ideas, and so animals that appear to represent others as thinking or seeing may only be representing them as behaving in a way that is (non-psychologically) sensitive to (possibly distal) things in their environment.

but also attributing beliefs to oneself. This is difficult to test for in non-linguistic animals. Studies that investigate ape metarepresentation normally examine whether subject animals attribute beliefs to other animals.

Representing beliefs does not entail, moreover, possession of the concepts *reason* or *justification*. Possessing these concepts lies close to the heart of what critical reason is.<sup>23</sup> Once an entity attributes beliefs and other judgments to itself and assesses these, a new range of mental phenomena is enabled.<sup>24</sup>

With critical reason come other important capacities, including the ability to formulate theories and to understand morality. For present purposes what is most important is that critical reason brings with it the type of freedom associated with the second family of conceptions articulated above. Mere second-order desire does not require critical reason; metarepresentation could suffice to enable higher-order attitudes, provided the believer attributes beliefs to themselves. But the sort of higher-order attitude emphasized in discussions of freedom does require critical reason. This is regulation of lower-order attitudes by higher-order attitudes, where these higher-order attitudes are (at least sometimes) the result of critical evaluation of one's own (lower-order) attitudes. This is thought to be a type of freedom because it involves new ways of changing or eliminating lower-order attitudes. It is furthermore thought to be a type of freedom because it establishes distance between these attitudes and the self to which these attitudes are attributed, since the self is understood as able to regulate and change itself. This critical distance in turn enables and encourages vastly enhanced abilities to imagine or conceive possibilities for oneself, far beyond what non-reflective and non-critically rational animals can do.

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<sup>23</sup> On critical reason, see Patricia Kitcher, 'Two Normative Roles for Self-Consciousness', in *The Missing Link in Cognition: Origins of Self-Reflective Consciousness*, eds. Herbert S. Terrace and Janet Metcalfe (Oxford, England: Oxford University Press, 2005), pp.174-187. For a even more detailed account, see Tyler Burge, 'Self and Self-Understanding', in *Cognition Through Understanding* (Oxford, England: Oxford University Press, 2011), pp.140-226.

<sup>24</sup> There may be additional constitutive conditions for possessing critical reason, such as a long memory or a far range of anticipation.

## 5. Why These Distinctions Have Been Overlooked

In the next section I return to why these two distinctions among psychological capacities, which are made perspicuous by careful attention to nonhuman animals, are important for better understanding the nature of human freedom. Following that, I connect this discussion to the topic of responsibility. And finally, I discuss the relation between freedom and determinism with an eye to whether or how the latter threatens the former. But first, in this section, I comment briefly on why the import of these distinctions for human freedom has at times been denied or overlooked.

One reason is that, until recently, there has been a strong tendency to overintellectualize many mental capacities. Great figures of the 20<sup>th</sup> century argued that belief (or even perception) is not possible without metarepresentation. In part through Burge's leadership, there is growing understanding that these views are mistaken. The core error behind them, as Burge compellingly diagnoses and elaborates, is the thought that the individuation conditions for representational states – what makes each the state it is, as opposed to some other – must themselves be represented by those who bear them.<sup>25</sup> The motivating worry is that a thinker must be able to discriminate a representational state from other representational states that have different content. But as Burge explains, such discrimination abilities are not required for representational psychology; and more generally the individuation conditions for representational states are not exhausted by facts about the individuals who bear them.<sup>26</sup> The errors Burge corrects were prominent in the Neo-Kantian theories of mind developed by Peter Strawson and Gareth Evans.<sup>27</sup> They were also found in the Neo-Humean theory of mind developed by Donald Davidson.<sup>28</sup> Few figures have been as influential as these in recent philosophy of mind.

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<sup>25</sup> See Burge, *Origins*, Chapters 6 and 7.

<sup>26</sup> This is a major theme running throughout *Origins of Objectivity*. It places Burge's work in a vital tradition that emphasizes the priority of the *de re* to the *de dicto*. Other exemplary texts are Keith Donnellan, 'Reference and Definite Descriptions', *The Philosophical Review*, 75.3 (1966), 281-304; Saul Kripke, *Naming and Necessity* (Cambridge, Massachusetts: Harvard University Press, 1980 [reprint, originally published 1972]); and Hilary Putnam, 'The Meaning of "Meaning"', *Minnesota Studies in the Philosophy of Science*, 7 (1975), 131-193.

<sup>27</sup> See Strawson, *Individuals*, and Gareth Evans, *The Varieties of Reference*, ed. John McDowell (Oxford, England: Oxford University Press, 1982).

<sup>28</sup> See Donald Davidson, 'Rational Animals', *Dialectica*, 36.4 (1982), 317-328.



Even as these theorists overintellectualized belief and perception, however, some of them did so in part because they appreciated that belief is not well understood as a merely causal and functional state. A rival approach – behaviorism and versions of functionalism hewing closely to a behaviorist spirit – was less prone to overintellectualize psychological states. But this is only because this approach was hostile to intellectualization entirely, and often dogmatically so. In extreme forms its proponents recommended abandoning theories that explain phenomena in terms of mental states. In less extreme forms its proponents issued an enormous promissory note, to the effect that some future theory will reduce mental states to behaviors, or more plausibly to some other material and physiological states.<sup>29</sup> I follow Burge in thinking that these mistakes are even more distorting of the nature of mind than is the overintellectualization in the Neo-Kantian tradition. I also follow Burge in charging this approach with distorting science, since it supposes materialist reductionist frames in philosophy of mind are the most scientifically respectable, when in fact these frames have no strong grounding in either empirical science or philosophical reflection.

## 6. Two Types of Responsibility

In this section I explain how the claims about freedom thus far articulated and advanced fit with claims we ought to endorse about responsibility and its connection to freedom. More specifically I hypothesize that any animal with a capacity for judgment can be held responsible for its actions, while possession of critical reason is needed for an entity to have specifically moral responsibilities.

The latter claim is more familiar, and likely less controversial. Entities only have moral obligations, and are only appropriately criticized for having done moral wrongs, if they have the ability to understand basic questions of morality. Important examples of these questions include ‘Is

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<sup>29</sup> Daniel Dennett, *Consciousness Explained* (Boston, Massachusetts: Little, Brown, and Company, 1991) is an example of what I have in mind here.

this action justified?', 'How ought I to live?', and 'What sort of a person should I become?' An entity can understand these questions only if it can engage in explicit justification, if it can engage in reasoning about reasoning.<sup>30</sup> Morally responsible beings need to be able not only to form beliefs and intentions in response to reasons, but also to then assess whether the reasons in question in fact justify those beliefs or intentions. Thus they need metarepresentational concepts like *belief* and *intention*, also normative concepts like *reason* and *justification*, and they further must be able to apply these concepts to themselves.

Possession of these capacities and concepts, however, is what critical reason consists in. Representing reasons as such, attributing mental states and rationales to both oneself and others, and having long ranges of memory and anticipation enable a thinker to both entertain and address moral questions. These abilities also make possible broad projects of self-improvement, which is why self-regulation and self-fashioning are appropriately prominent in moral discourse.<sup>31</sup>

Note further that 'knowing right from wrong' is often used as a test to determine whether an entity is fit for moral – or legal – appraisal.<sup>32</sup> Knowing right from wrong also involves critical reason, since this demands thinking about reasons and justifications. In particular mere judgment does not suffice, for judgment does not entail possession of concepts like *right* and *wrong*. Note also the salience of apology, excuse, and justification in relations among morally accountable beings. Whether we or other persons we interact with have done wrong, and if so how and what should happen as a consequence, are hugely significant in the lives of critically rational beings. So far as we aware, no nonhuman animal concerns itself with these matters.<sup>33</sup> It is difficult to overstate the significance of this. In my view reflecting on its significance suffices to

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<sup>30</sup> This is a theme of Kitcher, 'Two Normative Roles'; Burge, 'Self and Self-Understanding'; and Christine Korsgaard, *Fellow Creatures: Our Obligations to the Other Animals* (Oxford, England: Oxford University Press, 2018).

<sup>31</sup> This feature of morality is reflected in the influential Socratic dictum 'Know Thyself'.

<sup>32</sup> Moral and legal norms are grounded in the same psychological capacity, critical reason.

<sup>33</sup> I think it is extremely unlikely that the most psychologically sophisticated terrestrial animals, apes and elephants, possess critical reason. It is more speculative to rule out dolphins, since their form of life is so different from our own. For defense of the view that on Earth only human beings are critically rational, see Burge, 'A Century of Deflation'.

regard as misguided recent attempts to include nonhuman animals within the ambit of ‘moral beings’.<sup>34</sup>

That said it is also crucially important, in my view, to distinguish nonhuman animals capable of responsibility from those that are not. This is not the distinction between possessing moral status and lacking it; any conscious being has moral status, but consciousness does not suffice for an animal to be appropriately held responsible.<sup>35</sup> In my view this difference pertains, rather, to whether an animal is susceptible to instruction.

Let me explain. To have a genuine practice of responsibility, it is not necessary to view entities held responsible as morally responsible. This is motivated with the observation that we have practices of punishing the most psychologically sophisticated animals, also toddlers, even though these beings lack developed capacities of critical reason. Punishment, at least inasmuch as it is something apart from behavioral conditioning, is intelligible only in a context of holding responsible. What makes an entity a candidate for punishment, or more generally for being held responsible, is the possibility of a connection between the rationale for holding it responsible and its capacity to learn to respond to that rationale. This connection makes applicable responsibility-entailing notions, notably including desert. If there is something an animal can learn (to treat being indoors as a reason not to defecate, for example) which is also a reason for instructing it (so that it will not defecate indoors), then it may be held responsible for defecating indoors. This connection can obtain only for animals capable of responding to reasons, which is to say only for animals with a capacity for judgment. These entities, and not others, can learn to better respond to reasons, and so can be instructed. Success is achieved when the animal incorporates sensitivity to those reasons into its

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<sup>34</sup> A version of this view is defended by Franz De Waal, ‘Morally Evolved’, in *Primates and Philosophers: How Morality Evolved*, eds. Josiah Ober and Stephen Macedo (Princeton, New Jersey: Princeton University Press, 2006), pp.1-80. A more philosophically sophisticated version is defended in Mark Rowlands, *Can Animals Be Moral?* (Oxford, England: Oxford University Press, 2012). On this issue I concur with the opposing view of Christine Korsgaard, ‘Morality and the Distinctiveness of Human Action’, in *Primates and Philosophers: How Morality Evolved*, eds. Josiah Ober and Stephen Macedo (Princeton, New Jersey: Princeton University Press, 2006), pp.98-119.

<sup>35</sup> For more on minimal conditions for possessing moral status, see Jon Garthoff, ‘Meriting Concern and Meriting Respect’, *Journal of Ethics and Social Philosophy*, 5.2 (2010), 1-29.

inferences, and again this mode of representational thought is possible even if the animal has no ability to represent reasons as such.<sup>36</sup>

The notion of instruction as learning to improve reasons-response contrasts with mere behavioral conditioning, which uses only associative learning mechanisms, rather than inferential ones. It also contrasts with education, which constitutively involves learning to better appreciate justifications. This can be done only by critically rational beings, as only these beings understand justifications. This is why education is the characteristic mode of learning only for beings capable of moral responsibility.

Many balk at these conclusions. I think reluctance to attribute any kind of responsibility to nonhuman animals' traces in part from the fact that the distinction in human affairs between moral and nonmoral responsibility does not mainly pertain to the distinction between judgment and critical reason. Critically rational beings have non-moral responsibilities, since these beings possess judgment. When these beings have non-moral responsibilities, however, they also assess their satisfaction of these responsibilities critically, and they hold each other responsible in ways that make use of their critical capacities. Thus apology, excuse, and justification are prominent in the discourse of human responsibility, even where specifically moral responsibilities are not at stake or in question. An athlete in a team sport may appropriately apologize or offer excuse to their teammates for their performance, for example, even if neither they nor anyone else thinks they were morally obligated to perform better or to train so that they were more excellent performers or more likely to perform better.

But we should not be misled by this into thinking that appropriately holding an entity responsible in general requires that the entity be capable of critical thought. Any being with a psychological capacity to respond to reasons has a psychological capacity to improve its response to reasons; and any being that can improve its response to reasons can come to respond better to a rationale for holding it responsible.

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<sup>36</sup> For much more detailed discussion of these claims, see Garthoff, 'Animal Punishment'. For allied observations see also Jon Garthoff, 'Decomposing Legal Personhood', *Journal of Business Ethics*, 154.4 (2018), 967-974.

There is thus reinforcement on these matters between different sources of understanding: our ordinary and scientific practice of attributing beliefs and other reasons-responsive states to some but not all nonhuman animals, on one hand, and our ordinary practices of punishing some but not all nonhuman animals, on another. There is a strong correlation between these two groups: all and only the most sophisticated nonhuman animals are attributed beliefs and are regarded as intractable or punishable. (Roughly speaking these are the mammals and the birds, though there may be exceptions in both directions.) I hypothesize that this is due to an explanatory connection: it is appropriate that this correlation exists, since my proposal is that the same capacity – judgment – underlies both the capacity to have beliefs and the capacity to be appropriately held responsible.<sup>37</sup>

The main conclusion of this section dovetails with the view that many nonhuman animals are capable of free agency in the sense associated with the first family of conceptions of freedom. It is because judgment is constitutively free, and responsibility is possible only in a judging being, that freedom and responsibility are most basically connected. This conclusion jibes with the thought that there is a deep connection between freedom and responsibility, such that free agency makes responsibility possible. It places the threshold for freedom and responsibility lower than what many others would think, however, since it acknowledges that many nonhuman animals are capable of judgment and reasons-response.

On the view that emerges, however, free agency as such is not associated with morality. Having moral responsibilities is grounded in critical reason, not in judgment in general. But since the view holds that there is an important notion of freedom appropriately associated with critical reason – the sense that is associated with the second family of conceptions – it agrees there is an important notion of freedom appropriately associated with morality. This is the freedom of self-regulation, or more generally of self-fashioning.

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<sup>37</sup> Again these points about responsibility are developed and defended more extensively in Garthoff, ‘Animal Punishment’.

## 7. Relations Between the Two Types of Freedom

Thus far I have sketched two families of conceptions of freedom, conceptions that are typically presented as rival accounts of human freedom. I have suggested against this that one is indeed characteristic of human freedom, but that this is not the most central type of freedom; also that the other, which is the core type of freedom, is possessed by many nonhuman animals lacking critical or reflective reasoning capacities. In this section I briefly discuss the relationship between these two types of freedom. I further point out some potentially surprising features of the view of freedom that emerges from these reflections.

When I distinguished judgment from critical reason, I noted but did not dwell on the fact that while judgment is constitutive of critical reason, the converse does not hold. Reason can be critical only if it is reason: to evaluate a judgment, to put the point differently, is to engage in judgment. This asymmetry between judgment and critical reason further supports the view that these two capacities form a developmental sequence, both phylogenetically and ontogenetically. There was a time when it was characteristic of the ancestors of our species to possess judgment but not to possess critical reason. There was also a time in the past of each human person when they possessed judgment but not critical reason.

I have suggested further that understanding-mediated non-algorithmic causally efficacious psychology is grounded in judgment, whereas self-regulation through higher-order attitudes is grounded in critical reason. The asymmetrical constitution and developmental relations between judgment and critical reason therefore support asymmetrical constitution and developmental relations between these two types of freedom. Freedom as non-algorithmic psychology emerges first as a being develops the capacity to respond to reasons. Only later can freedom as self-regulation emerge, as a being develops the yet more sophisticated capacity to critically evaluate judgments and inferences, including most especially its own.

Those familiar with the philosophical literature on freedom of will may find this result surprising. This result may surprise because the first family of conceptions, which emphasizes causally efficacious non-algorithmic psychology, is associated with libertarianism, which in turn is

often viewed as the most full-throated sort of freedom. Freedom as self-regulation through higher-order attitudes is associated with compatibilism, which in turn is often viewed as a more deflated understanding of freedom. It may seem surprising that the type of freedom associated with compatibilism is presented here as grounded in a more sophisticated psychological capacity than the type associated with libertarianism.

The dissolution of this surprise arises from the fact that the view of freedom presented here is not at all deflationary. Freedom of self-regulation is only a type of freedom, in my view, because it entails the freedom of responding to reasons through a non-algorithmic psychology.

It may appear the view articulated here is a form of libertarianism, hence also incompatibilism; and by some definitions it is. But in the following section I present the final major component of the essay, by attempting to better discern whether a threat to freedom arises from deterministic laws of nature. To speak frankly I do not understand what this threat consists in, notwithstanding its influence in both the history of philosophy and contemporary philosophy. Regardless of whether the letter of the view articulated here is libertarian, its spirit seems to me to be compatibilist.

## 8. Freedom and Determinism

I think it is important, when assessing whether there is a threat to freedom arising from deterministic laws of nature, to attend to the sciences within which the deterministic laws occur. This is not standardly done, instead a generic notion of deterministic laws of nature is more typically deployed.<sup>38</sup> One problem with this is that it can obscure the distinction between mere determination and genuine relations of grounding, constitution, or metaphysical dependence. Another is that working with a generic notion of deterministic laws risks obscuring sources of understanding, since this generic notion is a philosophical innovation that does not derive directly from any empirical science.

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<sup>38</sup> The account of laws of nature in Peter Van Inwagen's influential work has, in my view, contributed greatly to this confusion. See Peter Van Inwagen, *An Essay on Free Will* (Oxford, England: Oxford University Press, 1983).

Historically speaking, the problem of freedom and determinism became felt strongly with the rise of modern physics, since for the first time human intellect uncovered deterministic laws of nature.<sup>39</sup> Deterministic laws and excision of teleology – hallmarks of the New Science – were widely viewed as what distinguishes modern science from less successful modes of intellectual inquiry. The Enlightenment was bookended by Spinoza and Kant, figures who (each in their own way) suspected empirical psychology would yield deterministic laws. I think all these views are mistaken. I also think these views were excusable before modern biology and psychology became established and successful.

Nowadays I do not think these views are excusable. Modern psychology is a successful empirical science, despite the fact that it does not normally deal in deterministic explanations; perceptual psychology is exceptional in approaching an understanding of its subject matter in terms of deterministic laws. Bearing that fact about empirical psychology in mind, and with respect for the great thinkers (past and present) motivated by a perceived threat to freedom arising from deterministic laws of nature uncovered by modern science, let me briefly explain my mystification about these threats.

As far as I can discern, there are two broad threats to the possibility of human freedom that are taken to derive from deterministic laws of nature. The first we may call the ‘backward-looking’ problem. This is the idea that our current psychological states, including the beliefs and intentions that shape our putatively free actions, are not up to us because they are determined by past states of the universe. The other is the ‘forward-looking’ problem. This is the concern that our decisions about what to do have no effect on the course of the world, since future states of the world are independently determined by past states of the universe conjoined with deterministic laws of nature.

The forward-looking problem has been addressed by Burge, in the course of his discussion of mental causation.<sup>40</sup> Burge notes that the point

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<sup>39</sup> The modern problem of freedom and determinism was of course prefigured by concerns about divine foreknowledge among the Scholastics, also by questions about natural determination taken up by ancient Stoics and Epicureans.

<sup>40</sup> See Tyler Burge, ‘Mind-Body Causation and Explanatory Practice’, in *Foundations of Mind* (Oxford, England: Oxford University Press, 2007 [essay originally published 1993]), pp.344-362. See also Tyler Burge, ‘Postscript to “Mind-Body Causation and Explanatory



of positing mental causes is to explain the relation between psychological states and (later) physical or physiological states, also that this explanation does not compete with independently running explanations of these later physical or physiological states in terms of antecedent physical or physiological states. To think otherwise is to think that mental states cause physical states by contributing ‘oomph’ to these independently operating physical causes. But this is incorrect. There are correspondences between mental causes and simultaneous physical causes, but these causes do not interact in the way this worry would have us think.

The advocate of mental causes, moreover, has a crucial case to press against those who think all efficient causation is physical or physiological: such a view fails to explain all of nature, since it omits relations between psychology and the physical.<sup>41</sup> We know these mental-physical relations exist because (i) they are crucial in successful common sense explanations, (ii) sensible ordinary practices presuppose them, (iii) they are crucial in explanations in cognitive ethology, and (iv) they are not undermined by careful reflection on ordinary experience.

The backward-looking problem rests, so far as I can see, on one of three things: a highly speculative view about what future empirical psychology will discover, a materialist reductionist view not strongly supported by modern science, or a misconstrual of the nature of mere determination. The first option holds of those who think that future empirically grounded accounts of belief and other judgment-entailing states will include deterministic laws describing how they form. As indicated earlier, this is speculation about future science, not anything that emerges naturally from what we now know or understand about nature.

The latter two options acknowledge that we have no good reason to suppose there are deterministic formation principles for beliefs and other judgments. They note, however, that the availability of deterministic laws governing the physical or physiological would entail that past physical states of the universe determine all other states of the universe.<sup>42</sup> They

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Practice”, in *Foundations of Mind* (Oxford, England: Oxford University Press, 2007), pp.363-382.

<sup>41</sup> A prominent example of the view targeted here is defended in Jaegwon Kim, *Mind in a Physical World* (Cambridge, Massachusetts: The MIT Press, 1999).

<sup>42</sup> A caveat should be added here about indeterminism in quantum mechanics, but for the sake of argument I overlook this, to give the putative threat of determinism its best

note further that it is plausible to maintain that psychological states in general are globally determined by physical and physiological states.<sup>43</sup> But this in turn entails that the past physical and physiological states of the universe determine present psychological states, including states like belief that are not known to be governed by any deterministic psychological laws.

Inasmuch as this is the threat posed to freedom by determinism, it consists simply in the conjunction of two claims, neither of which on its own evokes a perceived threat to freedom. The first is the fact of determinism at the level of the physical and physiological. Though we do not know whether these domains are in fact governed by deterministic laws of nature, for the sake of argument I grant here that they are. No threat to freedom lies in the mere fact of determinism at this level, however, since determinism at this level makes no mention of psychology. This is a contrast with deterministic laws of psychology, which could constitute a threat to freedom; but again we have little reason to suppose any such laws exist, given what we know about belief and other judgment-entailing psychological states.

The second is a plausible claim about the relation between mind and body, namely that facts about the former are globally determined by facts about the latter. This sort of determination is not, however, a relation of grounding or metaphysical dependence. This means it could be that the psychological is determined by the physical in virtue of the nature of the psychological, rather than in virtue of the nature of the physical. This determination relation could also obtain in virtue of the relationship of each to some third domain.

This is only a brief discussion of a complex subject, not one meant to lay these concerns to rest. But I would close by noting the global determination of the psychological by the physical and physiological does

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available scenario. Similarly, it bears mention that we do not presently have a reductive solution to the ‘body-body’ problem (the relation between the bodies of organisms and the bodies discussed in theoretical physics), but I do not emphasize that here.

<sup>43</sup> It is worth noting that this global determination claim – which is plausible, and I suspect is true – is far from certain. This claim is not entailed by uncontroversial scientific findings. I do not question it here only because I aim to give the threat of determinism its best hearing. It bears mention that local determination of psychological states by physical or physiological states at the time is implausible and easily refuted.

not by itself evoke worries about freedom. This global determination thesis is widely endorsed by theorists with various views about freedom. Even if there is a threat to freedom that consists merely in the plausibility of this global determination thesis, moreover, this is not the traditional issue of freedom and determinism. The global determination thesis is independent from the truth or falsity of determinism at the level of the physical or physiological, and it is plausible independent from any hypotheses about determinism obtaining at that level. Thus it remains obscure how backward-looking considerations constitute a threat to human free agency.

The mere fact that a problem is not one thing (determinism at the level of the physical) and is not another thing (global determination of the psychological by the physical) is compatible with the problem's consisting in the conjunction of those two things. In this case I am at a loss, however, about what exactly the problem is. In unpacking the concern I find, on reflection, that all of the work appears to be done by the global determination thesis, and none seems to be done by any determinism that modern science gives us reason to suspect might be true.<sup>44</sup>

The global determination thesis – whether in its most plausible guise of mere determination or in the more speculative guise of materialist reduction – is furthermore neither a backward-looking nor a forward-looking concern. It is panchronic. Thus it seems not to capture either of the two intuitive threats many feel determinism poses to freedom in humans and other animals. Nor does it seem, on its own, to elicit a sense that an important threat to freedom looms.

## 9. Conclusion

In this essay I have distinguished two types of free agency. Using distinctions from the philosophy of mind often not marked with care, together with reflection on animal psychology not normally done at all, I have argued that one of these types of freedom is grounded in the capacity of judgment and the other is grounded in critical reason. I further distinguished two types of responsibilities, moral and non-moral, and

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<sup>44</sup> Note that, to the extent this is correct, the problem of freedom of will is simply a special case of the mind-body problem.

noted how the latter is grounded in judgment while the former is grounded in critical reason.

This reinforces and develops in new ways the widespread view that responsibility is possible only in entities that possess free agency. The claim about freedom (and its psychological grounding) and the claim about responsibility (and its psychological grounding) also reinforce each other. This is because there is correlation between those animals we attribute beliefs to (in both common sense and scientific explanations) and those animals we have practices of punishing or otherwise holding responsible. This correlation should bolster our confidence in each of these claims.

I noted also that since critical reason entails judgment but the converse does not hold, these claims support a developmental sequence through which the two types of freedom (and their corresponding types of responsibility) are acquired. This developmental sequence occurred in human evolution, and it recurs in the development of each human organism that reaches full psychological maturity.

I noted further that this developmental sequence entails the freedom of self-regulation is a more advanced capacity than the freedom of non-algorithmic psychology, also that this view may surprise since the former type of freedom is associated with compatibilism while the latter type of freedom is associated with libertarianism. But since on the view propounded here the freedom of self-regulation is not deflationary, this surprise is no objection to this view.

I ended by raising more general questions about freedom and determinism, both to make more plausible the main claims of the essay and to suggest that the precise threat to freedom posed by deterministic laws of nature remains obscure. The view articulated here is classed as libertarian by many contemporary taxonomies, but its spirit is compatibilist, since it postulates that the existence of human freedom – and in some cases, animal freedom – is compatible with any deterministic laws of nature that modern science gives us reason to think exist. On the basis of these reflections I conclude that we should be fairly confident in the existence of free agency not only in humans, but also in the most sophisticated of the nonhuman animals.

# ‘Games, Fair-Play, and a Sporting Chance: A Conceptual Analysis of ‘Blood-Sport’

Rebekah Humphreys

**Abstract:** The killing of Cecil the lion in 2015 by a trophy hunter sparked a global debate regarding the killing of lions for ‘sport’. While many were outraged by Cecil’s killing, Cecil was just one of the millions of animals that have been used in the sports-shooting industry. Cecil’s killing brings with it the question of whether so-called ‘blood sports’ (whether these involve killing big game or smaller animals) are actually ‘sports’ at all, in the ordinary sense. As such, this paper aims to provide an analysis of blood-sport as a concept. The objective will be to examine whether blood-sports are games and to analyse to what extent, if any, blood-sports can be called ‘sports’ properly. Such an analysis will be presented through employing a generalised notion of sport and through a discussion of fair-play. *Pace* S. P. Morris (2014) who argues that hunting which incorporates a fair-chase code is a game and a sport, this current paper concludes that it is doubtful that blood-sport is a game, and that even if one assumes that it is a game, it cannot be classed as sport, and further that any fair-chase code undermines itself in the context of so-called ‘blood-sports’.

## (1) INTRODUCTION

A heightening of consciousness with regards to the hunting of large wild animals for sport was sparked by the killing and beheading of much loved Cecil the lion.<sup>1</sup> People all over the world were shocked, and the killing received great attention in a range of media. Such attention made many

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<sup>1</sup> See Adam Vaughan, ‘Killing of Cecil the lion prompts calls for EU ban on importing lion trophies’, 27 July 2015, *The Guardian*, available [www.theguardian.com](http://www.theguardian.com) (accessed 29 Aug. 2017).

people aware that trophy hunting is far from in the past, and in fact, such hunting is just a small part of the worldwide practice known as ‘blood-sport’. Blood-sport includes not only trophy hunting, but also the hunting of any animal classed as ‘game’, whether those animals are large, wild animals or smaller animals (such as pheasants and partridges). Indeed, it is thought that over 50 million game-birds are mass-reared every year for the sports-shooting industry,<sup>2</sup> and that many of these birds are subject to the conditions of the factory farm (conditions which involve severe confinement, barren cages, and little freedom for the birds to protect themselves against thermal conditions.<sup>3</sup> Investigations show that such treatment of game-birds is not unusual, despite the outlawing in the UK of the use of barren cages.<sup>4</sup> Such considerations could prompt an ethical analysis of blood-sport, but it is not the purpose of this paper to provide such an analysis (discussions of the ethics of blood-sport can be found elsewhere<sup>5</sup>).

Rather the aim of this paper is related to the assumption that hunting and shooting animals for pleasure and leisure can be called

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<sup>2</sup> Figures presented by Animal Aid, extrapolated from Game and Wildlife Conservation Trust data (see Animal Aid, *Election 2015 Briefing: The ‘Gamebird’ Shooting Industry* (Kent: Animal Aid, 2015a), available at <http://www.animalaid.org.uk/images/pdf/briefing/ShootingBrief.pdf> (accessed 25 Aug. 2017); Animal Aid, ‘Exposed! Disturbing New Undercover Film of Partridges and Pheasants Used by Shooting Industry for Egg Production’ (Kent: Animal Aid, 2015b), available at [www.animalaid.org.uk/h/n/NEWS/news\\_shooting](http://www.animalaid.org.uk/h/n/NEWS/news_shooting) (accessed 26 Aug. 2017); and Animal Aid, ‘The Trouble with Shooting’ (Kent: Animal Aid, 2010), available at <http://www.animalaid.org.uk/images/pdf/booklets/troubleshooting.pdf> (accessed 25 Aug. 2017).

<sup>3</sup> Farm Animal Welfare Council (FAWC), *Opinion on the Welfare of Game Birds* (London: FAWC, 2008); and Animal Aid, op.cit., 2015a and 2015b.

<sup>4</sup> Department for Environment, Food and Rural Affairs (DEFRA), *Code of Practice for the Welfare of Gamebirds Reared for Shooting Purposes* (London: DEFRA, 2009), particularly section 6.11.

<sup>5</sup> See, for example, Rebekah Humphreys, ‘Game Birds: The Ethics of Shooting Birds for Sport’, *Sport, Ethics and Philosophy: Journal of the British Philosophy of Sport Association*, 4 (1), 2010, 52-65; Rebekah Humphreys, ‘The Argument from Existence, Blood-Sports, and ‘Sport-Slaves’’, *Journal of Agricultural and Environmental Ethics*, 27 (2), 2014, 331-345; Jordan Curnutt, ‘How to Argue For and Against Sport Hunting’, *Journal of Social Philosophy*, 27 (2), 2006, 65-89; Victoria Davion, ‘Caring for Nature: An Ecofeminist’s View of Rolston on Eating, Hunting and Genetics’, in *Nature, Value, Duty: Life on Earth with Holmes Rolston, III*, ed. by Christopher J. Preston and Wayne Ouderkirk (The Netherlands: Springer, 2007), pp.167-181; and Henry Salt, ed., *Killing for Sport: Essays by Various Writers*, Preface by Bernard Shaw (London: G. Bell and Sons, 1915).

‘sport’.<sup>6</sup> Indeed, for the sake of arguments concerning the ethics of blood-sport, the author has made such an assumption in previous papers for such activities are generally classed as ‘sports’. However, unlike clay shooting (see below), it is not clear that game-shooting is a sporting discipline, and this paper aims to address issues arising from an examination of the extent (if any) to which blood-sport activities can be properly called ‘sports’. That said the British Association for Shooting and Conservation maintains that game-shooting is a sport, and defines ‘sporting shooting’ as including ‘wildfowling, game, and rough shooting, [and] deer stalking’.<sup>7</sup> But it is worth bearing in mind that the BASC aims to protect ‘shooting sports’<sup>8</sup> and has a vested interest in emphasising that game-birding *is* a sport. Indeed, in the light of the controversial nature of killing animals as a pastime, or for leisure and / or pleasure, calling this activity ‘sport’ could be said to create and maintain an image of game-shooting (or shooting animals for leisure more generally) as a worthwhile or at least respectable pursuit. In examining the extent to which hunting and killing animals considered as game is a ‘sport’, this paper will shed light on whether such an image of shooting animals for leisure is an accurate portrayal of the nature of that activity. For the purposes of application and because of the sheer numbers of birds used in the sports-shooting industry, this paper focuses on a discussion of game-birding (shooting birds for sport), but its findings are applicable to all so-called ‘blood-sports’.

## **(2) SPORTS, GAMES AND AN INTRODUCTION TO FAIR-PLAY ISSUES**

The example of game-birding raises issues regarding the nature and norms of sport. ‘What is the nature of sport?’ is a difficult question, and there may not be one definitive answer. But this is not to say that we cannot

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<sup>6</sup> Hunters may engage in hunting for a number of reasons. However, this paper will focus on the form of hunting in which people participate primarily for the purpose of sport (that is, where using the dead animals for food is not the primary reason for the hunt, although the animals may be utilised as such).

<sup>7</sup> BASC, <http://basc.org.uk> (Wrexham: BASC, 2015a), accessed 29 Aug. 2017; and BASC, ‘Codes of Practice’ (Wrexham: BASC, 2015b), available at <http://basc.org.uk/cop> (accessed 31 Jun. 2018).

<sup>8</sup> BASC, *Code of Good Shooting Practice* (Wrexham: BASC, 2012), available at <https://basc.org.uk> (accessed 2 Jul. 2018), p.5.

agree about what sport is in general or agree on some of the norms of sport. A sport is probably an activity that is organised, governed by rules, involves an element of competitive and skilful physical activity, and is an activity taken part in for leisure, competition or exercise. That sport may be defined as such is indicated in Jan Boxill's claim regarding an ideal definition of sport: 'Sport in its paradigmatic forms is a freely chosen, voluntary activity that is rule governed and requires bodily excellence, which is highlighted in competition'.<sup>9</sup>

Whilst one can recognise that this list of criteria (sport as organised, rule-governed, competitive, and involving physical skill, and as partaken for leisure, competition, or exercise) is debatable and not exhaustive, the aim here is not to provide a strict or fixed definition of sport but rather to consider whether game-birding satisfies a kind of generalised or unspecialised notion of the nature of sport; a notion which draws on the norms of sport and which can be linked to the activity of game-birding.

Of course, from the perspective of the humans involved, shooting animals may satisfy these criteria. For example, with regards to sports having to involve competition, hunters may compete against each other for the highest number of birds shot, although this raises the issue that such a competitive aim is hardly part and parcel of the shared activity, and there is no mention of such a competitive aim within the rules laid out in the

BASC's codes of practice.<sup>10</sup> If there is such a competitive element, then it would arise merely when individual players decide to introduce another element into their activity (in order to add interest, perhaps); it is certainly not a necessary or an established part of the activity. Further, there is no official count of the dead birds, nor any official prizes for who wins, and unlike clay shooting, there are no levels of competition, and there is no official competitive aim. So, the claim that game-birding has a genuine competitive element is dubious.

With regards to sport being a rule-governed activity, sport is commonly thought of as a gaming activity, and rules play a key role in the

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<sup>9</sup> Jan Boxill, 'The Ethics of Competition', in *Sports Ethics: An Anthology*, ed. by Jan Boxill (Oxford: Blackwell, 2003a), pp.107-115 (p.109).

<sup>10</sup> For the BASC's codes of practice see BASC, 2015b, *ibid.*



characterisation of games. Bernard Suits, well known for his characterisation of games, argues that an activity could be classified as a ‘game’ insofar as it may be seen as embedding certain necessary and sufficient elements:

To play a game is to engage in activity directed towards bringing about a specific state of affairs, using only means permitted by specific rules, where the means permitted by the rules are more limited in scope than they would be in the absence of the rules, and where the sole reason for accepting such limitation is to make possible such activity.<sup>11</sup>

For Suits, games then are characterised by the following conditions: (1) engagement in activity which is directed towards a specific goal using specified rules—that goal is to be determined prior to the activity (what Suits calls a ‘pre-lusory’ goal);<sup>12</sup> (2) the means permitted by these specific rules are more limited or inefficient<sup>13</sup> than they would be without the rules (relatedly, Suits claims that taking part in a game is the ‘voluntary attempt to overcome unnecessary obstacles’);<sup>14</sup> and (3) the person engaging in the activity accepts the rules as rules which make that activity possible.

With regards to criterion (1), sports-shooting is directed towards a specific goal using specific rules;<sup>15</sup> that goal, as S. P. Morris plausibly claims, most obviously being dead animals and less obviously being ‘the process of hunting’,<sup>16</sup> the latter which I take to mean the activity leading up to the attempted kill, which would include stalking the animals. But while the activity of game-birding and blood-sports more generally are

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<sup>11</sup> Bernard Suits, ‘What Is a Game?’, *Philosophy of Science*, 34 (2), 1967, 148-156 (p.148).

<sup>12</sup> Bernard Suits, *The Grasshopper: Games, Life and Utopia*, third edn. (Ontario, New York, and London: Broadview Press, 2014 [1978]), p.38.

<sup>13</sup> Suits, 1967, op.cit., pp. 148-49

<sup>14</sup> Suits, 2014, op.cit., p. 43.

<sup>15</sup> In the UK, such rules laid are out in the BASC’s codes of practice, with overarching rules being written in *Code of Good Shooting Practice* (2012, op.cit.).

<sup>16</sup> S. P. Morris, ‘Challenging the Value of Hunting: Fair Chase, Game Playing, and Intrinsic Value’, *Environmental Ethics*, 35 (3), 2013, 295-311 (p.301).

beset by certain rules, whether those rules are gaming ones is still open to question.

In respect of (2) it is not clear that the means used in order to pursue the most obvious goal is purposely inefficient. Indeed, the *Respect for Quarry* code of practice emphasises that subjects participating in the activity of shooting animals for sport should ensure that they shoot within their range and never beyond it.<sup>17</sup> That said, perhaps shooting a bird which is flying very low would be considered as too easy a shot, or participants may consider it unfair to shoot it. But these latter considerations are not part of the sport itself (shooting a bird which is flying too low is not disallowed or termed ‘unfair’ in the codes of practice). However, Morris claims that condition (2) is satisfied via fair-chase rules, ‘where those rules prescribe less efficient means instead of more efficient means’.<sup>18</sup> To illuminate the fair-chase code in the context of sports-shooting, Morris refers to José Ortega y Gasset’s claim that ‘As the weapon became more... effective, man imposed more... limitations on himself as the animal’s rival in order to leave it free to practice its wily defenses, in order to avoid making the prey and hunter excessively unequal’.<sup>19</sup>

However, the relationship between hunter and hunted may indeed be classed as ‘excessively unequal’; more will be said about this below, and further discussion will be reserved for another section (in particular, see Section 5 for a discussion of whether sport requires the consent of all participants). It is sufficient to say here that while some sports-shooting enthusiasts may attempt to implement an element of fair-play, it is not clear that such an element is a constitutive part of the supposed game (at least not in the UK), but perhaps more importantly that there is a sense in which it seems illusionary to suppose that a level ‘playing’ field can be created between a side that does not know they are part of game and which is no match against the barrel of a gun, and a side which possesses means not possessed by their ‘opponents’, and which pursues a game with the aim to kill, unbeknownst to its ‘opponents’ (an aim which is held—and capable of being held—by one side only). If the latter is true, then any fair-

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<sup>17</sup> BASC, ‘Respect for Quarry’ (Wrexham: BASC, 2010), available at <http://basc.org.uk/cop> (accessed 1 Sept. 2017).

<sup>18</sup> Morris, 2013, op.cit., p.303.

<sup>19</sup> José Ortega y Gasset, *Meditations on Hunting* (Belgrade: Wilderness Adventures Press, 1995), p.59, cited by Morris, *ibid.*, p.302.

chase code undermines itself, irrespective of the use of inefficient means, for the very idea of a fair-chase code with regards to hunting appears incoherent. Moreover, although game-shooting may well involve an element of making the task more difficult than it needs to be in order to practise one's shot, it is not clear that game-birding enthusiasts are *required* to use inefficient means to kill their target, rather than efficient ones.

With regards to the less obvious goal of sports-shooting, that being the process of the hunt, many of the animal targets will remain concealed throughout part of the process. But in relation to game-birding, the birds are often 'flushed' into shooting range, either by the use of dogs or by human 'beaters' who scare the animals from their concealed place. Once within the target range, the animals do not have a fair chance, and may well be like sitting ducks. This is particularly relevant to hunting big game. Contrary to some perceptions (such as the perception that big game are stalked across vast tracts of land) animal welfare groups claim that lions are often captive-bred for the purpose of being 'hunted' for sport. Indeed, what has become known as 'canned hunting' involves captive-bred lions being taken to a designated, fenced-off area, in relatively open terrain before being shot by trophy hunters. The Humane Society of the United States claims that '[c]aptive hunts, also known as 'canned hunts,' are the very opposite of fair chase. Shooters at captive hunts pay to kill animals—even endangered species—trapped behind fences'.<sup>20</sup> The term 'canned hunting' certainly points to the idea that the animals are easy targets. As Patrick Barkham writes, 'The easy slaughter of animals in fenced areas is called 'canned hunting', perhaps because it's rather like shooting fish in a barrel'.<sup>21</sup> Overall, although some hunters may well make the process of hunting more inefficient than it could be, it is far from clear that such inefficiency is a necessary part of shooting for sport; rather, such inefficiency may well be something that the individual hunters themselves value, rather than something that is typical of shooting-sports generally.

It is noteworthy that making the means to the kill less efficient than it could be means that (even when there are some participants who have an excellent shot) there are bound to be some participants who

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<sup>20</sup> HSUS, 'Captive Hunts' (Washington, DC: HSUS, 2015), available at [www.humanesociety.org/issues/captive\\_hunts](http://www.humanesociety.org/issues/captive_hunts) (accessed 29 Aug. 2015).

<sup>21</sup> Patrick Barkham, 'Canned hunting: the lions bred for slaughter', *The Guardian*, 3 June 2013, available at [www.theguardian.com](http://www.theguardian.com) (accessed 29 Aug. 2017).

merely injure the target animals, resulting in unnecessary suffering for those animals. This casts further doubt on the claim that the 'game' is a fair one: animals lose not only when they face skilled shooters (they lose their lives, and quickly), but they also lose when faced with less skilled ones (for example, by being injured, or dying a slow or painful death). As such, even if one assumes that the means used are less efficient than they could be, the use of inefficient means in sport-shooting (even in what Morris calls 'fair-chase hunting', according to which 'the idea is to maintain some semblance of balance in the... relationship between hunters and the hunted')<sup>22</sup> does not appear to be conducive to creating a level playing field for all the 'players', animals included, and thus fair-play does not so far appear compatible with the 'game'.

It is also open to doubt as to whether the activity of sports-shooting fulfils criterion (3), which states that the person engaging in the activity accepts the rules as rules which make that activity possible. The person engaging in the activity of game-birding may well accept the rules of that activity as rules which make that activity possible, but only in the sense that following such rules is part of the health and safety aspect of the game, rather than constitutive of the game itself. Indeed, the codes of sports-shooting in the UK (as laid out in the *Code of Good Shooting Practice* and the other codes devised by the BASC) look nothing like rules of a game. The 'Five Golden Rules' relate primarily to the safe conduct of participants and to conservation,<sup>23</sup> not to what one might call 'playing the game'. That said, Morris argues that shooting for sport does fulfil condition (3) insofar as that activity can be classed as 'fair-chase hunting'; 'the strongest indication that the hunt has been made into a game is the adoption of a fair-chase ethic. In fact, the very purpose of adopting a fair-chase ethic is to make a game of the hunt'.<sup>24</sup> However, as said above, there is a contention regarding whether fair-play can or does constitute an element of the activity of shooting animals for sport; a contention to which the author will return.

Suffice it to say here that even if one accepts for argument's sake that game-birding can indeed be classed as a game, it does not follow that

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<sup>22</sup> S. P. Morris, 'The Sport Status of Hunting', *International Journal of Applied Philosophy*, 28 (2), 2014, 391-407 (p.394).

<sup>23</sup> BASC, 2012, op.cit.

<sup>24</sup> S. P. Morris, 2013, op.cit, p.304.

it is a sport, for while it is generally accepted that all sports are games, not all games are sports. Besides, insofar as taking part in a game is, in Suits's words, the 'voluntary attempt to overcome unnecessary obstacles'<sup>25</sup> then it remains even more unlikely that blood-sports can be classed as games because the 'players' on one side of the game are certainly not voluntary participants, as will be discussed in what follows (Sections 4 and 5, below)

### **(3) SPORT AND BLOODSPORTS**

Suits provides direction on whether a game can be classed as a sport by presenting necessary and sufficient conditions the fulfillment of which make a game a sport.<sup>26</sup> For the sake of brevity, the author refers to the work of Mike McNamee who concisely outlines these conditions as follows: '(1) That the game be a game of skill; (2) That the skill be physical; (3) That the game have a wide following; (4) That the following achieve a wide level of stability'.<sup>27</sup> The first two conditions form part of the definition of sport mentioned at the beginning of this paper; a definition which admittedly is not precise, but which nevertheless outlines the general features of sport. The second two conditions appear to be ones which are quite exclusive in the sense that were they accepted as necessary then some lesser known activities currently classed as sports would no longer be classed as such. Consider, for example, Aerial skiing, a free-style skiing activity which is now an Olympic sport, but which has relatively few followers. Or one could consider the example given by McNamee himself: bog-snorkeling. Whilst noting that, as McNamee claims,<sup>28</sup> conditions (3) and (4) are quite vague, many would be quick to claim that bog-snorkeling falls short in terms of fulfilling these conditions due to its lesser popularity (and perhaps because it is a relatively new activity) compared with many other sports. On the other hand, bog snorkelers could argue otherwise:

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<sup>25</sup> Bernard Suits, 2014 [1978], op.cit., p.43.

<sup>26</sup> Bernard Suits, 'The Elements of Sport', in *The Philosophy of Sport: A Collection of Original Essays*, ed. Robert G. Osterhoudt (Springfield, IL USA: Charles C Thomas Publishers, 1973), pp.48-64.

<sup>27</sup> Mike McNamee, *Sports, Virtues and Vice* (London and New York: Routledge, 2008), p.15.

<sup>28</sup> Ibid., p.15.

One can imagine bog snorkeling enthusiasts arguing that the rules of the activity have been laid down for a given number of years. Its World Championships include over one hundred participants... Its spectators attend in significant numbers... All these simple criticisms seem legitimate objections to the idea of a once-and-for-all crystallising of the essence of sport in any way, not merely the manner in which Suits has.<sup>29</sup>

But even if one goes some way with Suits and accepts for argument's sake that his proposed conditions for what constitute a game are at least necessary ones (notwithstanding arguments claiming that they constitute neither necessary nor sufficient conditions)<sup>30</sup> and that game-birding fulfils these necessary conditions, and even if one further accepts some of Suit's proposals regarding the conditions necessary for games to count as sports, it is far from clear that these conditions alone sufficiently express that which constitutes a sporting activity. Nor do they capture one of the central norms of sports, that which is related to the idea of a sporting chance (discussion of which will be reserved for following section).

Overall, while conditions (1) and (2) are generally accepted as necessary conditions for sport, it is reasonable to reject (3) and (4) as necessary. Besides, as indicated in the above quotation, McNamee argues that the concept of sport is not fixed, but open to revision over time and in the light of new circumstances.<sup>31</sup> That said, he plausibly also recognises that 'there must be a limit to the range of revisions possible for the social activity to retain its referent: sport'.<sup>32</sup> Certainly, in order for the term 'sport' to have a referent, there must be some resemblances between those activities we commonly class as sport; resemblances which allow us to recognise those activities as sporting ones. Such resemblances point to the norms of sport, one of which is fair-play (to which the author will now turn).

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<sup>29</sup> Ibid., pp.15-16.

<sup>30</sup> See Jonathan Ellis, 'On the Concept of a Game', *Philosophical Investigations*, 34 (4), 2011, 381-392.

<sup>31</sup> McNamee, op.cit., p.16.

<sup>32</sup> Ibid., p.17.

#### **(4) BLOODSPORTS AND FAIR-PLAY**

Returning to the aforementioned generalised notion of sport (sport as an activity that is [organised](#), rule-governed, involves an element of competition and [physical skill](#), and is an activity taken part in for leisure, competition or exercise), it has been stated that it is arguable whether there is any competition involved in game-shooting, and that the rules of game-shooting look nothing like rules of a game but more like health and safety rules and rules related to conservation (particularly countryside management). Further, there are animals involved in this activity and, unlike a ball or hockey stick, the animals are sentient beings that have no doubt been forced into the 'game'. As such, it could be questioned as to whether so-called 'blood sports' are actually 'sports' at all, in the ordinary sense, since the animals involved could not be said to be involved in an activity for leisure, competition or exercise. Of course, to say this is, in some sense, to speak from the position of the animals reared and killed for 'sport'. But thinking about their position is important, for one should also think about the principles and norms that apply in sports, because these often play a role in our being able to say what makes certain activities sporting ones.

Indeed, we usually think it is important in sport to take into consideration the interests of those involved. This seems of fundamental importance to a conception of sport, otherwise it would be difficult to distinguish between, say, competitive murderous activities pursued for leisure or exercise and competitive non-murderous activities pursued for the same reasons. In examining what makes an activity a sporting or an unsporting activity then one probably needs to examine the values or norms that are characteristic of sports activities. This concern is a normative one, rather than a descriptive one. Indeed, it seems that answers to questions about the nature of sport and sporting (or unsporting) activities will tend to contain not just a descriptive element but an evaluative element too. So in trying to capture what makes an activity sporting (or unsporting), one would usually have to refer to certain norms or values, not just give a descriptive account of the physical and mental skills of the participants in that activity. Now, although it is far from clear that game-shooting fulfils descriptive criteria for what makes an activity a

sport, even if one assumes that it does, can this activity be seen as one in which those involved exercise certain values or follow certain norms that are commonly thought to be characteristic of sporting (rather than unsporting) activities?

One norm that is generally agreed to be fundamental to sport is that of fair-play. Without fair-play, activities that we call 'sports' may include those according to which it would be justifiable to play to win at all costs to the other participants. Indeed, Robert Butcher and Angela Schneider argue that 'the notion of fair play has its grounding in the very logic of sport itself'.<sup>33</sup> That said there are competing notions of fair-play: fair-play as linked to certain virtuous behaviour; fair-play as 'fair contest'; and fair-play as respect for the rules of the game and implicitly contractually agreeing to those rules, so that, for example, breaking the rules is unfair since one has already agreed to compete in a way which adheres to those rules and not breaking those rules is part of what it means to participate in the game.<sup>34</sup> Relatedly, Jan Boxill claims that 'In playing the game one agrees to abide by the rules, recognizing both their importance and their essential fairness'.<sup>35</sup> Accepting that there may be a lack of consensus with respect to what constitutes fair-play in sport, it certainly seems to mean more than merely following the rules of the game. Fair-play is often linked with behaviours, characteristics or virtues that should be promoted, or ways in which the game should be played. We could also think of fair-play in sport as involving something like a level playing field, where no person has an unfair advantage or where each person has a like ability to compete. This notion of fair-play seems to be much like the idea of a sporting chance.

Again, I am not here attempting to outline a strict definition of fair-play, but to consider general features of the norm; two of which appear to play a role in specific definitions. These are: (1) the idea of a sporting chance (according to which each player has a reasonable chance of winning, and the means used to succeed are equally balanced between

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<sup>33</sup> Robert Butcher and Angela Schneider, 'Fair Play as Respect for the Game', in *Sports Ethics: An Anthology*, ed. by Jan Boxill (Oxford: Blackwell, 2003), pp.153-171 (p.154).

<sup>34</sup> *Ibid.*, pp.153-171.

<sup>35</sup> Jan Boxill, 'Introduction: The Moral Significance of Sport', in *Sports Ethics: An Anthology*, ed. by Jan Boxill (Oxford: Blackwell, 2003b), pp. 1-12 (p.10).



each player, so that, for example, were the author to play Javelin with the reader, both the author and reader would have a Javelin (means) and both the author and the reader would have a fair chance of winning or succeeding); and (2) the idea of players entering either an implicit or explicit agreement regarding the rules of the game or at least voluntarily entering into the game (the latter which is meant to imply at least an implicit agreement to the rules). Both these ideas appear to be central to more specific definitions of fair-play in sport. If blood-sport activities fail to incorporate these ideas into practice, then it is reasonable to say that the norm of fair-play, as central to sporting activities, appears missing from the practice of blood-sport. And if so then 'blood-sport' is not a sporting practice. The author now turns to a discussion of fair-play in terms of a sporting chance and voluntary agreement to the game (in the context of blood-sports).

## **(5) VOLUNTARY AGREEMENT AND A SPORTING-CHANCE**

For fair-play in sport it seems reasonable to suppose that those involved in a sporting activity must be willing or voluntary participants (and thus agree to the rules), and this requires (at the very least) that they know that they are in the game. In relation to blood-sport, John Alan Cohan states

[T]he activity pits a human... against a wild animal that is incapable of 'consenting' to the 'game,' rather than a human being against another human being. Even if there were 'rules' that constitute hunting, animals do not have the capability of comprehending the rules, and hence they cannot be said to be 'participants' in any real sense. The hunted animal does not 'understand' or 'agree' to any sort of participation in the enterprise, or to make an effort to 'win' in the engagement. Hunted animals do not 'choose' to engage in the activity; they are not voluntary participants.<sup>36</sup>

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<sup>36</sup> John Alan Cohan, 'Is Hunting a "Sport"?', *International Journal of Applied Philosophy*, 17 (2), 2003, 291-326 (p.309).

In respect of game-shooting, the birds certainly do not willingly or even voluntarily partake in the pastime. So, there is no sense in which they could be said to be entering into a contract regarding the rules of the game. Only the hunter (only one side) knows that he / she is in the game (if it can even be classed as such).

Of course, participants may say that amongst the *human* players there *is* fair-play in the sense of agreeing to and abiding by the rules. Each human player has implicitly or explicitly made such an agreement. But, as said in a previous section, one can reasonably doubt whether these rules are gaming ones, as well as doubt whether they aim to foster an element of fair-play. And if the rules are not gaming ones, then it is not surprising that they do not foster fair-play, for the very notion of fair-play appears to be at least intimately tied to the notion of playing a game. Further, if the activity of sports-shooting is not a game, then there is no sense in which one could say it is a sport. It is worth noting again here that there appears to be little or at least no formal competition involved in game-shooting, and this applies to sport-shooting more generally. In the light of these considerations, the idea that game-shooting is not a sport is certainly plausible.

Cohan lends further support to the claim that so-called sports-shooting does not involve competition, arguing the following:

If hunting is a sport, it would have to be a competitive sport, for the activity involves a competitive engagement of some kind, with two or more ‘players’—the hunter and the hunted subject. There is a particular structure to agonistic sports. Such sports are literally constituted by rules that are established by the inventors of the game, and are agreed upon by players who voluntarily play the game... The players compete against each other according to these rules until the winner is declared and the game ends. The players are supposed to be competitively matched so as to allow for a fair game. There are rules against

attacking the bodily integrity of the other players... [T]hese elements are absent in the activity of hunting.<sup>37</sup>

Cohan here draws on the idea of a sporting chance but, in relation to such an idea, blood-sport enthusiasts might claim that there are unwritten rules of the game that aim to foster an element of fair-play at least between the hunters so that each hunter is on a level playing field. Some may say that this is satisfactory for fair-play, since the birds are not players; the players are the human participants. However, even if we suppose that there are such unwritten rules and that the humans only are the real players, this is not a reason for supposing that sporting ethics should only apply to the humans involved, not to the birds, since, unlike inanimate objects in a game, birds are fatally harmed through hunting. Indeed, their deaths are actively sought. They certainly appear to get the raw end of the deal in the game, whether or not the hunters consider the birds to be players.

However, contrary to what some game-shooting enthusiasts may argue, surely the game, if it is one, *is* (as Cohan argues) between the hunted and hunter? (This would have to be true for enthusiasts who claim to endorse a fair-chase code, implying as it does *fairness between those chasing and those being chased*). In other words, the game is between the armed and unarmed. And this is deeply problematic if we are concerned about promoting fairness, for the birds are not really given anything like a sporting chance but instead are distinctly disadvantaged.

That which Morris refers to as ‘fair-chase ethics’ deserves discussion again here, for his presentation of such an ethic is resonant of the notion of a sporting chance:

[T]he idea is to maintain some semblance of balance in the predator-prey relationship between hunters and the hunted. Hunters have at their disposal a vast array of machinery capable of generating tremendous inequalities in this regard. With all the best equipment at work the predator-prey balance can be significantly compromised in favor of the former... but the

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<sup>37</sup> Cohan, *ibid.*, p.304.

expressed intent of fair-chase is to prevent this inequality from becoming excessive.<sup>38</sup>

For Morris, the method by which such imbalances in equality can be prevented involves ‘the deliberate rejection of more efficient means in favor of less efficient’<sup>39</sup> (and, as we have seen, such a rejection serves to satisfy one of Suit’s conditions for a game). But, while individual sports-shooting enthusiasts may well attempt to use less efficient means to achieve their goal, this hardly can be said to create anything close to a balance between the hunter and the hunted, even when one assumes that the hunted are wild animals (and thereby well habituated to their territory), stalked over a vast tract of land, much less animals which are captive-bred for the purpose of shooting-sports and are more often than not confined to a certain area for the propose of being shot (preventing them from having an opportunity to properly escape) and are often lured or ‘flushed’ into the open. Furthermore, no animal is even capable of using the same means as the human participants by taking up arms; no animal is even aware of the apparent game (let alone aware of the supposed rules of the ‘game’); and no animal has a sporting chance against the bullet of a gun (if they do survive they are either shot at close range soon afterwards, or they may manage to crawl away, in which case they probably face a lingering death).

The relationship is drastically unequal, and this is true whether or not the animals used for sports are wild or captive-bred and is so even assuming that the hunter employs inefficient means. Further, as said in a previous section, it is reasonable to assume that the use of such means could well result in animals being merely maimed, thereby causing more suffering than necessary, but if hunting were to somehow incorporate something called a ‘fair-chase *ethic*’ then surely it would require that animals be killed quickly and painlessly, and one of the best ways to ensure this would be to promote efficient rather than inefficient means. Besides, in the UK at least, the codes of practice regarding sports-shooting are at least strongly suggestive of efficiency, rather than inefficiency, with regards to shooting animals. Moreover, it is not insignificant that it makes no sense

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<sup>38</sup> S. P. Morris, 2014, op.cit., pp.394-95.

<sup>39</sup> Ibid., p.395.

to say that the animal could ‘win’ the ‘game’. And if they cannot win, it makes little sense to say that they have a sporting chance.

In respect of commercial game-shooting, the playing field is clearly in favour of the hunter. This is particularly true with regards to intensively reared game-birds, but also applies to game-birds reared by less intensive methods. Between the period of their release and the hunt, such birds will have to adapt quickly to their environment. But many will take time to respond to their surroundings and to build the strength to have any real chance of fleeing from the hunter. By the time of the hunt, it is likely that such birds will be more vulnerable than wild game-birds. (Most birds which are hunted for the purpose of sport have been commercially reared for that very purpose, so the concerns just outlined relate to the majority of birds used for sport.) That said the Game Farmers’ Association states that ‘[g]ood game farming ensures that these birds... are strong, fit and ready for the natural environment in which they will live’,<sup>40</sup> and DEFRA lays out welfare requirements regarding game-birds.<sup>41</sup> Yet it is far from clear that such requirements are sufficiently enforced (as suggested in the introduction), and for this reason it is not obvious that those involved in the rearing and releasing of game-birds are rearing birds that will be well adapted for release into the countryside or that will have anything like a sporting chance.

## **(6) CONCLUSIONS**

This brings the author back to whether game-shooting is a sport, for not only is it questionable whether there is a game going on, not least because only the hunters know they are in a game, but the activity fails to embody (and appears incapable of coherently embodying) the norm of fair-play (as bound to the notions of a sporting chance and voluntary agreement to the game) that is of fundamental importance to sport. Moreover, in relation to Suits’s claim that taking part in a game is the ‘voluntary attempt to

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<sup>40</sup> Game Farmers’ Association (GFA), [www.gfa.org.uk](http://www.gfa.org.uk) (Wokingham, UK, 2008), accessed 29 Aug. 2017.

<sup>41</sup> DEFRA, *Code of Practice for the Welfare of Gamebirds Reared for Shooting Purposes* (London: DEFRA, 2009).

overcome unnecessary obstacles', it is clear that, for the hunted, their part in the 'game' is not such an attempt.

But even if one assumes that blood-sport is a game and that it fulfils Suit's conditions for a game, it does not follow that it is a sport. It is reasonable to accept two of Suit's conditions for sport as necessary ones, those being that it is a game of skill and that the skill is physical, and one might also be able to accept that blood-sport fulfils these conditions, but only in relation to one side of the 'game' (the other side has no awareness that they are in a game, let alone an awareness of the rules, so it makes no sense to say that they could become 'skilled at the game'). Human participants may claim here that the rules apply to them alone. But the game, if there is one, is surely between the hunter and hunted, and if so then the conditions need to be applicable to the hunted too. In any case, the aforementioned conditions fail to capture what makes an activity a sporting one, and so do not appear sufficient for sport.

If we return to the definition of sport mentioned at the beginning of this paper (sport as [organised](#), rule-governed, involving an element of [competitive](#) and skilful [physical activity](#), and as an activity taken part in for leisure, competition or exercise), then calling game-birding 'sport' becomes even more problematic, for if there is a game going on, then it is between the humans and the animals, yet the animals involved do not willingly partake in the pastime and nor could they be said to be involved in an activity for leisure, competition or exercise. And because one side of the game is unaware that they are 'players', there cannot be genuine competition between the sides, still less fair competition. But even with regards to the human players only, the 'sport' still lacks any real competitive element.

That being said, although conditions (1) and (2) laid out by Suits may well be generally accepted as necessary conditions for sport, and the above definition might too be accepted, such conditions and such a definition do not seem sufficient without at least incorporating some sense of fair-play. The notions of a sporting chance and of agreement to the rules both seem central to fair-play as one of the norms of sport. Relatedly, for Morris, the fair-chase code acts as an essential rule for forms of hunting that can be considered 'sport' (fair-chase hunting specifically). Some blood-sports may well promote a fair-chase code and may consider

that this code reflects the notion of a sporting chance or the norm of fair-play as embodied in their practice. But if so, the code is (at the least) violated as there is no element of fairness involved in the chase: humans and animals do not 'play' on anything like a level playing field. But more than this, the code undermines itself, for fair-play between the players is impossible in context of shooting animals for sport, where one side is incapable of even being aware of the game, or of using the same means as the other side. Of course, blood-sport enthusiasts could attempt to employ less efficient means in relation to killing animals, but the idea of a sporting chance is still missing from the 'game' itself despite such employment. As is the idea that players agree to the rules of the game or to be in the game. And so the fair-chase code appears redundant and impossible to implement. Such conclusions apply to not only game-birding, but to blood-sports more generally. The author realises that there may not be one definition of sport. Nevertheless, game-birding does not conform to our general ideas about the nature of sport, norms of sport, and sport ethics. As such, game-shooting and blood-sports generally, cannot properly be called 'sports'.

# Mirror Reflections as Agents of Connectedness

Susanne Karr

**Abstract;** A notoriously selfish fictional character is representing our society. Its lack of soul shows in the absence of a mirror reflection. From here we begin trying to regain this reflection, by suggesting to strengthen our awareness of life in its variety. In a holistic world-view, supported by research on animal cognition, there are more agents than humans, more manifestations of life on earth, more possibilities for connections and reflections. We will examine positions supporting that goal, describing an evolving narrative of relationality. The contexts of research are found in philosophy of mind, psychology and European and Amazonian mythology.

## 1) Introduction

*‘The Spirit of Truth and the Spirit of Justice are one.’ Simone Weil*

As the conference’s setting was close to Halloween season, it seemed like a perfect fit to start with an eerie encounter, introducing the creepy fictional character of the vampire.<sup>1</sup> Itself being neither human nor non-human animal, notoriously frightful. When it looks into a mirror, there will be no reflection. This phenomenon has been known in folklore and

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<sup>1</sup>I would like to emphasize that I explicitly distance myself from Kant's anti-Semitic use of the vampire image. Furthermore, no special devaluation of Desmodontinae is intended in the use of vampire connotations. In my analogy I refer to the vampire representation in media culture.



literature as characteristic for vampires and is explained by their lack of soul. Without soul there is no substantial content to be reflected. Understanding soul as the instrument to reach out to other beings and their feelings, lacking soul means absence of empathy. In this way, the vampire might serve as a model of comparison of our society's attitude towards non-human beings.<sup>2</sup>

Self-centredness and absence of soul might well describe the attitude of homo sapiens sapiens, or more generally speaking, of our anthropocentric culture. It illustrates the mindset that society bears towards non-human animals – a greedy position, a live-taking position, in need to get life energy out of sources outside ourselves. Exactly like the vampire.

This is mostly happening without a glimpse of a guilty conscience. Seemingly, humans have the right to use everything as material, even other living beings. Without hesitation, also human beings are exploited.

The vampire is undead, retrieving energy by stealing blood, life-force, from others. Its perspective is purely selfish. And even though it is trying to stay alive while sucking others' energy, it is failing to gain the authentic element of being alive, often also referred to as the secret of life itself: the soul. The vampire is lacking soul, therefore lacking a reflection, the possibility to see life in its magnificent variety.<sup>3</sup>

In this context, we, human beings, will try to look for possibilities to find a reflection of ourselves again, in the mirror. We want to come back into our human lives, recognizing other than human living beings as a

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<sup>2</sup>Sam George concluded her talk on the history of vampire reflection, held at The Centre for Victorian Studies at Royal Holloway University, London, in October 2017, by the suggestion that the vampire, in refusing to show a likeness of its own, perpetually mirrors modern culture. <<http://www.opengravesopenminds.com/events/event-bram-stoker-and-the-history-of-the-vampires-reflection/>> [accessed 24 April 2019].

<sup>3</sup>cf. M. M. Carlson, 'What Stoker Saw: An Introduction to the History of the Literary Vampire' *Folklore Forum*, 10 (2) 1977, 26-32 <<https://scholarworks.iu.edu/dspace/handle/2022/1630>> [accessed 27 April 2019].

completion of ourselves. So, we will no longer need to be living vampire lives.

If we get involved, we reflect and will be reflected, finding inspiring facets in the mirror-reflection of other living beings, in which we come close to ourselves.

## **2) Mirror – we look into it and see nothing**

*‘Animals do not exist to serve human ends: animals are not servants or slaves of human beings, but have their own moral significance, their own subjective existence, which must be respected.’*

*Sue Donaldson, Will Kymlicka*

The mirror is and long has been a powerful symbol. Mirrors are dealt with in mythology, fairy tales, ghost stories, in narrations of literature, psychology and psychoanalysis and, ever more prominently, in neuroscience. Mirror’s magic lies in its properties of reflection. But it is not only a tool for vanity. A very important association to the mirror appears in the neurological sphere.

Unlike in the Narcissus-mythos, the mirror in this context becomes the symbol of a relational tool. Scientists have, since Giacomo Rizzolatti and his team at Parma university began their research in the 1990s, continued to explore the activity of mirror neurons. The discovery of the mirror-neurons introduced the function of these cells: they show the capacity of our mind to simultaneously take part in an observed action. They are activated when we ourselves perform a certain action, as well as when we observe some other person doing it. ‘Only a thin line separates one’s own mental life from one’s representation of another’s.’, explains Susan

Hurley.<sup>4</sup> There might even exist a possibility to access a worldwide network of sensations through a connection enabled by activity of mirror neurons. As it seems, there has to be a strong connection between agency and empathy. And the boundary between merely watching and doing something becomes blurred.

The impact of the discovery is constantly evolving and is entailing serious consequences. Psychology and philosophy are directly affected scientific areas. Inês Hipólito explains their principle of operation as follows: ‘A common functional mechanism mediates our ability to share the meaning of the actions, intentions, feelings and emotions with others, allowing self-identification and connection with others. Social identification, empathy, and we-ness, seems to be the foundation of our development and self.’<sup>5</sup>

This enlightens the position of need we are actually in when dissociating from other living beings. Psychology has long stated that interspecies relations are important for many reasons. For children, especially, the connection to a nonhuman living being can be essential to form a worldview that expands beyond anthropocentrism.<sup>6</sup> Similarly to the integration of the Copernican revolution, when humans had learned to accept that the world is not the centre of existence – the human centred attitude could now again open up to a larger universe and its endless possibilities to relate. Watching a non-human animal, or being friends with an animal, exemplifies other than human positions of being a subject. Observing and experiencing situations with an animal shows how he or she is author of their life: living their story, so to speak, demonstrating their own will, being the agent of their own life. The awareness of this agency is a crucial moment for connection. It is like discovering that there is somebody, not something inside the animal appearance. Somebody with

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<sup>4</sup>Susan Hurley, ‘The Shared Circuits Model: How Control, Mirroring and Simulation Can Enable Imitation, Deliberation and Mind-reading’ *Behavioral and Brain Sciences* 31,1 (2008) 1-22 <<https://doi.org/10.1017/S0140525X07003123>> [accessed 24 April 2019].

<sup>5</sup>Inês Hipólito, ‘A Philosophical Approach to Embodied Cognition through Mirror Neuron System’, *Cognitive Systems Research*, (2015) <[https://www.researchgate.net/publication/279987331\\_A\\_Philosophical\\_Approach\\_to\\_Embodied\\_Cognition\\_through\\_Mirror\\_Neuron\\_System](https://www.researchgate.net/publication/279987331_A_Philosophical_Approach_to_Embodied_Cognition_through_Mirror_Neuron_System), [http://ceur-ws.org/Vol-1283/paper\\_15.pdf](http://ceur-ws.org/Vol-1283/paper_15.pdf)> [accessed 24 April 2019].

<sup>6</sup>cf. Ernst Olbrich, Carola Otterstedt (ed.), ‘Menschen brauchen Tiere. Grundlagen und Praxis der tiergestützten Pädagogik und Therapie’ (‘Humans need animals. Basics and practice of animal-supported education and therapy’) (Stuttgart: Kosmos Verlag, 2003).

an agency, carrying the secret of being alive, which can be described as 'having a soul'.

To free ourselves from our vampire-position we will, in order to retrieve our souls, have to acknowledge the souls of others, human and non-human persons. Our future reflection might be surprising in its colours and habitus. But it will feed our souls that starve from lack of connection to non-human animals. It will help to find answers to the heavily depressing mechanisms of turning living beings into things.

### **3) Wild Self/ Animals as representatives of 'our storied wild selves'**

*'The Great Divides of animal/human, nature/culture, organic/technical, and wild/domestic flatten into mundane differences – the kinds that have consequences and demand respect and response – rather than rising to sublime and final ends.'*

*Donna Haraway*

Relationships with animals are crucial in keeping our inner wild self. They seem to remind us that deep down in our hearts, we still maintain a feeling of connection to life in its various, untamed forms. Humankind's admiration of ferocious hunters in the animal world, like lions and eagles, is present to this day in symbols and emblems, in heraldry and regalia. Humans' fascination with non-human animals can be observed throughout human history. Animals' portrayals have appeared in artefacts as old as 35000 years, in pictures and sculptures.<sup>7</sup>

A somewhat distorted expression of admiration might be the ongoing popularity of safaris. While, for this time, neglecting the serious impacts on ecology that follow urban living humans' desire for witnessing wildlife,

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<sup>7</sup>An impressive example of a human-animal hybrid creature is the lion figurine found in the Lonetal in Germany, whose origin is dated back 35.000 to 40.000 years ago. See also <<http://www.loewenmensch.de/index.html>>.

it is clearly a sign for the inspirational power of the untamed, free roaming living being. The safari seems to represent something like a short time return to paradise, referred to without biblical connotations, meaning simply a paradise before the destructive human impact, also known as ‘anthropocene’. ‘Modern Tourists have been tempted to travel to Africa to encounter the unindustrialized primordial landscapes and beings of their fantasies. In addition, safari tourism imaginaries such as “The Garden of Eden” and the Garden of Africa are subjected to glocal circulation, moving between the local and the global.’<sup>8</sup>

Also, modern artists have taken a deep interest in animals, animal representation seem to be everywhere. Only think of Louise Bourgeois’ great spider sculptures or Rosemarie Trockel’s and Carsten Höller’s ‘House for Pigs and Humans’ which caused discussions during and after the 1997 Documenta in Kassel, because it redistributed traditional hierarchies.<sup>9</sup> Pigs stole the show, so to speak, as they were the real agents in the installation. An even more explicit challenge for human exceptionality is the contemporary work of interspecies’ art collective CMUK, introducing creative collaboration of two African Grey parrots, Clara and Karl, and the human artists Ute Hörner and Mathias Antlfinger. The setting itself is questioning the human position as the only creative living being. With creativity, we come back to considerations concerning soul. In 2017, Hörner/Antlfinger cooperated with the Free University of Tbilisi in a ‘Speculative History of Specimens’ of their natural history

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<sup>8</sup>Rachel Ben-David, ‘Hunting the wild other to become a Man: Wildlife Tourism and the Modern Identity Crisis in Israeli Safaris to East Africa’, in: *Living Beings: Perspectives on Interspecies Engagements*, ed. by Penelope Dransart, (London, New York: Bloomsbury Academic, 2013) 125-145 (p. 125).

<sup>9</sup>Louise Bourgeois, *The Nest*, 1994 steel, San Francisco Museum of Modern Art, San Francisco

<<https://www.sfmoma.org/artwork/98.193.A-E/>> [accessed 24 April 2019].

Louise Bourgeois *Spider*. 1996, bronze cast with silver nitrate patina, National Gallery of Art, Washington D.C. Sculpture Garden. Washington D.C.

<<https://www.nga.gov/collection/art-object-page.105617.html>> [accessed 24 April 2019].

Rosemarie Trockel, Carsten Höller, *Haus für Schweine und Menschen*

<[www.documenta.de/de/retrospective/documenta\\_x](http://www.documenta.de/de/retrospective/documenta_x)> [accessed 24 April 2019].

collection. The project traced biographies of taxidermied animals and highlighted surprisingly detailed storylines. Their approach was seeking dialogue with the animals through meditative tools.

Because animals generally cannot speak for themselves, creating empathy for the animal subjects – radically adopting their point of view – is one option. Similarly, to human individuals, whose voices were ignored or suppressed by historians of their time. But what if non-human animals could speak to us after all.<sup>10</sup>

Animals' appearances inspire paintings, photography and sculpture. While there are many reasons to be sad about their often predominantly 'representative' presence, and it is necessary to take sides with the corporeal animals, it also shows the high-ranking validity of animals as symbols. They speak to our heart, we could say. The admiration might well reflect our own love for freedom. Donna Haraway refers to this when she is writing about meetings with other people walking their dogs in the off-leash park in Santa Cruz. Especially when the dogs resemble, in their outer appearance, wolves, people seem to be proud to *have*, at least a semi-wild dog. They pronounce their dog's closeness to a wild wolf as if this notion of being wild referred to something mystical and sacred, as if the physical and emotional closeness to such a *wild beast* would upgrade and upvalue their own personalities. She describes these dogs as manifestations of these peoples' 'storied wild selves'<sup>11</sup>, the wolf's resistance to domestication reminding us of essential issues of life: Independence, elegance, character.

The idea of the untamed self appears in various contexts, and I would like to focus on the phenomenological aspects of this idea, referring to experiences made by an embodied, living, individual subject. 'An embodied communication is more like a dance than a word', writes Donna Haraway<sup>12</sup>. The encounter with non-human animals enables the direct experience of being alive, which satisfies the longing for the wild self. The

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<sup>10</sup>Ute Hörner, Mathias Antlfinger, *Five Conversations with Taxidermied Animals*' Exhibition catalogue. (Tbilisi: TAVIDAN, Center for Contemporary Art, 2017).

<sup>11</sup>Donna Haraway, *When Species Meet* (Minneapolis: University of Minnesota Press 2008), p. 36.

<sup>12</sup>*ibid.* p. 26.

absence, indeed the renunciability, of verbal communication can reveal traits that are invisible and suppressed in the purely human environment. Such an encounter shows itself as a sensual experience in which one's own physical and mental perceptions are taken seriously as the phenomena from which the world forms itself for the subject. Simon James refers to this in an account of walking with his dog, Lucy, who is part of the public in which the walk is taking place: 'Indeed this entire stretch of field is part of Lucy's walk; her presence (or potential presence) is integral to my perceiving the field as the thing it is.'<sup>13</sup> The actual material conditions play a part in experience, as do the mental and spiritual processes. The assertion that the world and its phenomena are always only available as a representation and that they have always been wrested from direct access is rejected. On the other hand, an upgrading of the subjectively experienced as relevant to knowledge is demanded.

Here I allow myself a short digression: It is not self-evident that we can access all our experiences from earlier times in our biographies. Psychological research refers to this phenomenon in different ways, from the classical concept of repression in psychoanalysis to the concept split-off personalities in modern trauma theories, which devote themselves to dissociation disorders. For different reasons, some of the experiences can be locked away and exist only as ghosts of their own. One of the reasons for this is what psychology describes by the term 'dissociation'.<sup>14</sup> Many of us are disconnected, or even dissociated from our own experiences as a consequence of an early-set distrust in ourselves, put forward and enforced by the norms of society. 'Dissociation is psychologically and emotionally disconnecting from the truth of our experience.'<sup>15</sup>

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<sup>13</sup>Simon P. James, 'Phenomenology and the Problem of Animal Minds' *Environmental Values* 18 (2009) 33-49 <<http://www.whpress.co.uk/EV/EV1802.html>> [accessed 24 April 2019].

<sup>14</sup>cf. Van der Kolk, Bessel, Fislser, Rita 'Dissociation and the Fragmentary Nature of Traumatic memories: Overview and Explanatory Study', in *Journal of Traumatic Stress*, 8, 4, (1995) 505-525 <<https://onlinelibrary.wiley.com/doi/abs/10.1002/jts.2490080402>> [accessed 27 April 2019].

<sup>15</sup>Melanie Joy, *Why We Love Dogs, Eat Pigs and Wear Cows: An Introduction to Carnism*. (Newburyport: Conari Press 2010) p.140.

An illustration of what I mean may be shown by imagining the following situation: a child refuses to eat meat in order to save the animal's life. A study about early moral decision-making showed that for children aged 6-10 reasons to become vegetarian were related more to moral motivation, like the value of life, than personal motivation like taste.<sup>16</sup> While there is growing acceptance of innovative and healthy food choices, there are still many families in which children's refusal to cause the death of an animal through food choice is commented by statements like 'But this is what animals are made for' or 'But it is normal to eat meat', or worse even 'It is necessary for you to grow and stay healthy.' So for the child there seems to be no alternative. This situation of inner contradiction, where, essentially, the child is told that his or her feelings – in this case, empathy for the animal – are wrong – may play a crucial part in starting a career in self-doubt and, as a consequence, as a person who needs guidance to know what's wrong and right. 'Dissociation is psychologically and emotionally disconnecting from the truth of our experience.'<sup>17</sup> Such a dynamic presets the psyche for dissociated behaviour, diminishes independence, and favours the willingness to let oneself be governed later on, by an authority, which can be represented as parents, teachers, or, more abstract societal norms.<sup>18</sup>

The authoritative insistence to know better forcefully diminishes children's innate ambition to trust their own perceptions and emotions. Negation of empathy plays a big role in alienation from one's own inner life. To be part of a culture that propagates the use of animals as normal and necessary is a challenge for those members of society that do not agree with this attitude and who do not wish to be part of acts of violence inflicted on other sentient beings. 'Dissociation prevents us from connecting the dots between what we're doing and what we might actually be feeling. Dissociation essentially renders us powerless to make choices

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<sup>16</sup>Karen M., Harris Hussar, Paul 'Children Who Choose not to Eat Meat: A Study of Early Moral Decision-making', *Social Development*, 19, 3 (2010) 627-641  
<<https://psychsource.bps.org.uk/details/journalArticle/3122051/Children-Who-Choose-Not-to-Eat-Meat-A-Study-of-Early-Moral-Decisionx2010making.html> >  
[accessed 27 April 2019].

<sup>17</sup>Melanie Joy, *Dogs, Pigs, Cows*, p. 140.

<sup>18</sup>Although there are situations where an obvious danger may be prohibited by telling a child what to do, as in the case of not allowing it to eat a poisonous berry, for example, the acceptance of such a regulation does not imply transgression of the child's integrity and empathy as the implication of eating meat does.



that reflect what we truly feel.”<sup>19</sup> In order to empower ourselves and make use of our rights to have our own subjective experiences, it is necessary to emancipate from prefabricated ‘normality’ and own our decisions regarding relations – be they in the human or in the non-human sphere.

#### 4) Experience/Phenomenology: Our own perceptions

*‘We can think the world only after experiencing it.’*

*Maurice Merleau-Ponty*

Experiences are binding us to the world and its events. I refer to them as a practice, generating a ‘subjective reality’, as it is perceived before intellectual interpretation. This is the opposite of an idea in which everything happens to us from the outside and in which we are the passive objects of powers that act beyond our influence. Experience is, indeed, actively engaged in the world rather than the reaction to an outside world that we have to passively accept. Even though there is no ‘pure sensation’ and no ‘pure impression’, because we react in relation to former experiences – and there is no ‘objective reality’, this is still the primary only access we have to the world. And we will have to work with what we have at our disposal.

The inner wild self is containing the hidden treasures of experiences from which we create our perspective, from where we enter the world. Perception cannot provide us with certainties like geometry can, but with presences. This is crucial. Only things we can perceive become existent

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<sup>19</sup>Melanie Joy, *Dogs, Pigs Cows*, p. 141.

for us<sup>20</sup> even if the perception is not clear and distinct<sup>21</sup>. On the contrary, also the small unnamed parts of perceptions<sup>22</sup> make up elements of our world as it shows up for us. And they do not have to be scientifically categorized to be influential. As Alva Noë describes it: ‘To acknowledge that presence is achieved and that it is achieved in full understanding of its manifest fragility is really to give up the idea that the world shows up as a remote object of contemplation. Perception is a transaction. It is the sharing of a situation with what you perceive.’<sup>23</sup> Perception depends on a bodily vessel, on material instruments, on corporeal existence.

‘Movement, sound and rhythm are all anterior to symbolic verbal communication’<sup>24</sup> writes Anna Gibbs, and, I like to add, the peripheral, the atmospheric<sup>25</sup>, will become part of the information and be taken for real. Already when two beings meet, there is some kind of exchange happening.<sup>26</sup>

In relations with non-human animals, we perceive, and we are being perceived: A communication unobstructed by the distance of language and its abstractions. This moment is lending presence to me, making me a reality which I wouldn’t have without this perception.

A reflection of myself that is created through this special encounter. In the mirror-reflection of other living beings we can find the inspiring facets in

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<sup>20</sup>cf. Maurice Merleau-Ponty, *Das Primat der Wahrnehmung und seine philosophischen Konsequenzen*, (Berlin: Suhrkamp 2003), author’s translation.

<sup>21</sup>cf. Leibniz’ critique of the Cartesian definition of insight being ‘clare et distincte’, in G. W. Leibniz ‘Meditations on Knowledge, Truth and Ideas’, *Earlymoderntexts* (2017) <<http://www.earlymoderntexts.com/assets/pdfs/leibniz1684.pdf>>.

<sup>22</sup>cf. Leibniz’ ‘petites perceptions’, in G. W. Leibniz, *The Principles of Philosophy* known as *Monadology* *Earlymoderntexts* (2017) <http://www.earlymoderntexts.com/assets/pdfs/leibniz1714b.pdf>.

<sup>23</sup>Alva Noë: *Varieties of Presence* (Boston: Harvard University Press 2012), p. 3.

<sup>24</sup>Anna Gibbs, ‘After Affect. Sympathy, Synchrony and Mimetic Communication’, in *The Affect Theory Reader*, ed. by Melissa Gregg and Gregory J. Seigworth (Durham: Duke University Press 2010) pp. 186–205 (p.199)

<sup>25</sup>cf. Hermann Schmitz, *Der Leib, der Raum und die Gefühle (The body, the space and the feelings)*. (Bielefeld: Aisthesis 2009)

<sup>26</sup>This idea can be traced down from Merleau-Ponty who borrows it from Husserl’s explanation of the phenomenon.

which we come close to ourselves. To let go of the possibilities of reflections through non-human beings seems like an inestimable loss.

Our experience of the world would shrivel to a narrow human scale. But the relations between humans and non-human animals are changing. Referring to Anat Pick's concept of creaturely poetics, the beauty of relations and living beings is derived from their vulnerability. Borrowing from Simone Weil, she writes: 'If fragility and finitude possess a special kind of beauty, this concept of beauty is already inherently ethical. It implies a sort of sacred recognition of life's value as material and temporal.'<sup>27</sup> And becoming witness of each other's vulnerability, we will also become empowered to relational experience.

## 5) Changing perspectives

### Human and animal persons

*'And I wonder if, in the dark night of the sea, the octopus dreams of me.'*

*N. Scott Momaday*

A story told in the famous novel *The Ancient Child* by N. Scott Momaday describes an unlikely encounter of a human and a non-human:

Once in the early morning I walked along the beach. The tide was out, and there were pools in the sand. Then I saw something in one of the pools, under a large piece of driftwood. It was an octopus, small, motionless, only partly submerged, and it seemed to be dead. It filled me with curiosity, for I had never seen such an unlikely creature before. I stood over it and studied it, for a long time. It did not move. It was supple and stark in the water, the

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<sup>27</sup>Anat Pick, *Creaturely Poetics. Animality and Vulnerability in Literature and Film* (New York: Columbia University Press, 2011) p. 3.

colour of bone, and I was afraid to touch it. Then I picked up a stick and probed at it. Suddenly it blushed pink and blue and violet and began to writhe about. This stiff reaction, total and grotesque, alarmed me, for everything about it seemed to describe some profound agony. It took hold of the stick and clung to it. I carried it away to the surf and laid it down. I supposed, I think, that it would go off at once into the depth, but no, it settled again and lay still. I wanted to think that it might have been dealing with me, that in its alien ocean mind it might have been struggling to take my presence into account, that I had touched its deep, essential life and it should never lose the impression I had made upon it. It was still there when I came away, and it had not moved, except that it rocked very gently to and fro in the water. And I wonder What does it mean, after all these years, I still dream of the octopus? It may be that I saved his life.<sup>28</sup>

Momaday describes moments of connection. Also, in animistic traditions, there is no doubt that communication takes shape in different ways and languages. Viveiros de Castro, whose approach is part of the ‘ontological turn’, a paradigm shift in anthropology and philosophy, emphasizes different conceptions of cosmogony and relationality in his work. One of the main tasks, in order to achieve more widespread and comprehensive cosmogonies is formulated by Viveiros’ prompting us to decolonize thinking.<sup>29</sup> It is necessary to give up the eurocentric, colonialist, anthropocentric position of superiority. It is no longer adequate – as if it could ever have been! – to make observations from the point of view of a person traveling into ‘primitive horizons’. To break free from the mindcuffs of Western rationalist thinking and in the pursuit of inspiration, we can turn to different narratives.

The stories of the Brazilian Arawaté, e.g., are populated by beings/entities characterised by a melange of human and non-human qualities. They exist side by side in a shared, non-hierarchical communication space. Before

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<sup>28</sup> N. Scott Momaday, *The Ancient Child* (New York: Harper Perennial 1990), p.56f.

<sup>29</sup> cf. Eduardo Viveiros de Castro, ‘Perspektiventausch’, in: *Animismus, Revisionen der Moderne*, ed. by I. Albers, and A. Franke (Zürich: Diaphanes 2012) 72–93.

entering the corporeal life on earth, they choose their outfits, either human or non-human. The origin of all of them is what we, traditionally, would call 'human', having a soul, intentions, emotions and intrinsic value. According to this concept of personal choice, the reason animals prefer living as animals instead of humans is explained by the more exciting lifestyle of animals. As they have tested both life forms, they can compare. Animal's life seems to be more interesting and playful. Dress and adornment in the human world changes to colourful plumage and distinctive fur of an animal person. This could be seen as anthropomorphism. The problem of anthropomorphism can never be fully evaded. Lori Gruen writes: 'We might tell stories about trees and rivers and wetlands, but it is always us telling the story; we create the narratives.'<sup>30</sup> But in this mindset this attitude is not understood an obstacle, since the concept shows that value is not dependent on human or non-human appearance. There is no questioning of the status of a subject and having a soul. The notion that there is an active decision to appear in animal or human form concedes agency to the choosing subject, whether it be human or animal. And the action of preferring one choice over the other shows subjectivity as well as intentionality – qualities of agency that are relied to being a person.

In this conception, it is beyond question that every one of them is conceived to be a person. Soulful beings come in all shapes and sizes, not only human ones. A relatable entity can have various appearances. The way we can relate to each other, beyond species, is therefore the ability of living beings to address the soul of other living beings. Each one of them carries their own power of agency.

Such a concept seems more logical than the idea of a fixed barrier between human and non-human animals. If we follow the reasoning of evolutionary development and we try to go back in time, there must at some point exist a foremother belonging to the animal sphere. In a mirror of ancestry, similar to a time-machine, we could see reflections of beings neither human nor animal – in a mirror reflecting pictures from a mythical time long gone. In the mythical animal body of our ancestor lies the power

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<sup>30</sup> Lori Gruen: *Entangled Empathy. An Alternative Ethic for Our Relationships with Animals*, (New York: Lantern Books, 2015), p 73.

of giving life to multifarious beings shaping different sizes, appearances, colours, furs and feathers, and different genders. From this vision originates appreciation of the living world as a whole, not only selected parts. From the insight that our ancestors are to be found in the non-human realm, there could be developed a radical solidarity with the members of this common shared history, quite contrarily to the dichotomy of humans versus animals. To recognize the common ancestor could be a powerful symbol for the connecting power between all living beings. But even if we had no common history from which we can draw, it does not mean that we are in any way entitled to exploit and abuse other living beings.

A holistic, relational attitude, gained from phenomenological experience, will lead towards a lifestyle that sees living beings as witnessing each other's life, establishing subjectivity through relation. Following Emanuel Levinas<sup>31</sup>, we find each other in mutual communication and responsibility, as soon as we meet another living being. Extending Levinas' idea of responsibility, which so convincingly includes response-ability, as Jacques Derrida and Donna Haraway point out, to non-human animals. Empathy can be used as a mode of communication. It can be conveyed on an experiential bodily level when atmospheres and feelings of other living beings are perceived and received. Sensual impressions open up space for resonance and receptivity. Perception thus becomes a transcendent act in which one reaches beyond oneself and into the world. As relational beings we are entangled into the lives of those who we meet, regardless of them being human or nonhuman.

## 6) Shape-shifting: Coyote and other tricksters

*'Coyote is about a world that is active in terms that are not particularly under human control, but it is not about the human, on the one side, and the natural, on the other.'*

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<sup>31</sup>cf. Emmanuel Lévinas: 'Die Verantwortung für den Anderen (Responsibility for the other)' in: *Ethik und Unendliches. Gespräche mit Philippe Nemo*. (Vienna: Passagen 1996).

*There is a communication between what we would call 'nature' and 'culture', but in a world where 'coyote' is a relevant category, 'nature' and 'culture' are not the relevant categories. Coyote disturbs nature/culture ontologies.'*

Donna Haraway

Changing perspectives, from human to non-human animal, proves enrichment of perception. It is not without good reason that wise characters often have the ability to shape-shift – like Coyote, the trickster of many native American stories, who can take the appearance of a man with moustache, a raven, a fish or a cat – probably many more. Coyote is a mysterious creature, can be helpful, playful and friendly, but is often provocative and even deceitful. As a trickster figure he is at the point between worlds, moderating change, one who challenges traditional belief systems. He is a notorious border-crosser, living in the intermediate realm between nature and culture:

Coyote can transform himself, can speak, often speaks confusingly, almost as if he were following the fool's motto: If you cannot convince them, confuse them! In key scenes he provokes the others or sets a trap for them. Because he is unpredictable, he initiates and forces new behaviours. He is regarded as a cultural accelerator, but not in the tradition of a culture/nature dichotomy, because he always moves in a world that is not subject to purely human categories.<sup>32</sup>

Coyote is about a world that is active in terms that are not particularly under human control, but it is not about the human, on the one side, and the natural, on the other. There is a communication between what we would call 'nature' and 'culture', but in a world where 'coyote' is a relevant category, 'nature' and 'culture' are not the relevant categories. Coyote disturbs nature/culture ontologies. Coyote stands between the categories and is at home in many worlds, always different and yet always himself. His trickster qualities make him a welcome companion to philosophies that turn away from the rationalistic-dark end-time view of history. The trickster as a threshold being dominates the ability to change perspective

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<sup>32</sup> Susanne Karr, *Verbundenheit Zum wechselseitigen Bezogensein von Menschen und Tieren*. (Berlin: neofelis 2015) p.140, author's translation.

and is therefore in direct contact with the possibility of the 'new'. By shifting, reinterpreting concepts and contexts, situations are pushed into a different light. 'New' is always to be understood as a new composition, a new possibility, a new form of appearance.

When we use the notion of shape-shifting as a metaphor for communication, we are practising a change of perspective.

Thus, an absent subject can also be brought into the communication process as a representative. In an open communication it is not predictable which results and which subjects it leaves behind. The loops of movement that accompany an encounter, the touch, gaze and merging of the participants create new worlds. In the change of form, the position of the other is made available in a transformation. In an animistic view, perspectives are shifted and the forces of other beings are made accessible. Their power of action supports the subject even after his return to his usual position. Exchange is understood as a transition into one another. Paradoxically, this exchange requires the ability to change on the one hand, and the stability of a subject on the other.<sup>33</sup>

The mental, psychological and physical states of other sentient beings can be represented in one's own imagination. In the exchange of perspectives, the mirror neurons can be regarded as those mediators who bring about the transitions of beings and the change of form on the physiological level. By trying to take on the perspective of the other person, their condition can resonate in its own resonance. No longer, being human or being animal or being white or black or female or male is determinant<sup>34</sup>. We have to de-colonize our minds, meaning – in addition to discarding the old reactionary ideas of white, male supremacy – we also have to get rid of the

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<sup>33</sup> ibd., p.56/57, author's translation.

<sup>34</sup>cf. Björn Freter, 'Embracing a Decolonial Epistemological Approach in African Higher Education' (in cooperation with Yvette P. Franklin), in: *The South African Epistemic Decolonial Turn: A Global Perspective*, ed. by Siseko H. Kumalo (UKZN, Pietermaritzburg, to be published in 2019.)



dogma of human superiority. Learning to change perspectives means then, becoming the other being. The realization of the other – be it human or nonhuman – as having reflective and resonant qualities, makes it available for communication. An object turns out to be a subject. And the anthropocentric frontier dissolves.

At this point, we retrieve our mirror reflection. The picture is rich with diversity of qualities. It is not a fixed expression which ties us into a singular way of being. Rather than reflecting a state, it reflects a being in becoming. It opens up into the wealth of uncountable possibilities to experience world.

# Human-Animal Difference ‘Reloaded’: The Oikological Anthropology

Agostino Cera

## ABSTRACT

The topic here exposed – an original approach to human-animal difference – is part of a larger project: a *Philosophy of Technology in the Nominative Case* (TECNOM), grounded on the concept of *Neoenvironmentality*. TECNOM moves from an *Oikological Anthropology* (whose theoretical core is the idea of *Anthropic Perimeter*), which addresses the difference between man and animal (i.e. human and animal condition) on the basis of the relationship they establish with their respective *oikos* (i.e. vital space). Such a relationship is itself based on a *Pathosophy* or *Pathic Presupposition*.

Index. *Historical-theoretical background* of the Oikological Anthropology (§ 1). *Basic assumptions* of this anthropology (§ 2), i.e. *Anthropic Perimeter* (2.1) and *Pathic Presupposition* (2.2). Brief presentation of TECNOM (§ 3.). *Glossary* (§ 4).

## PREMISE

The topic I will briefly investigate in this paper – namely, an original approach to the question of human-animal difference – is part of a research activity lasting several years which culminated in a proposal for a *philosophical anthropology of technology*, i.e. a ‘*Philosophy of Technology in the Nominative Case*’ (TECNOM)<sup>1</sup>, grounded on the concept of

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<sup>1</sup> As a consequence of the brevity of this exposition, I mention here the most significant (and the most recent) traces of my research activity as natural *pendant* and necessary integration of the present paper. For this purpose see: Agostino Cera, ‘Elementi di antropologia oikologica’, in *Evoluzione e adeguamento. Biologia umana e creazione tecnologica. Narrazioni interdisciplinari*, ed. by V. Rasini (Milano: Meltemi, 2018), pp. 229–50; Id., *Der Mensch zwischen kosmologischer Differenz und Neo-Umweltlichkeit. Über die Möglichkeit einer philosophischen Anthropologie heute* (Nordhausen: Verlag Traugott Bautz, 2018), pp. 131–79;

*Neoenvironmentality*. Insofar as *TECNOM* interprets technology as epochal phenomenon (that is, as the current “subject of history”<sup>2</sup>), it aims to represent a *countermovement* – in the Nietzschean sense of the word – to that ‘ontophobic’ approach, which characterizes the current mainstream in the philosophy of technology<sup>3</sup>.

Concretely, *TECNOM* moves from an *Oikological Anthropology* that addresses the difference between human being and animal outside of any neo-essentialist temptation, namely by characterizing both human and animal condition on the basis of the particular relationship they establish with their respective *Lebensraum* (vital space). That is to say, with their *oikos*. Such a relationship is itself based on a *Pathosophy* or *Pathic Presupposition*, namely on those *fundamental moods* (*Grundstimmungen*) that refer each specific living being (human being or animal) to its respective *findingness* (*Befindlichkeit*)<sup>4</sup>. Such an anthropological hypothesis finds its basic assumption in the idea of *Anthropic Perimeter*.

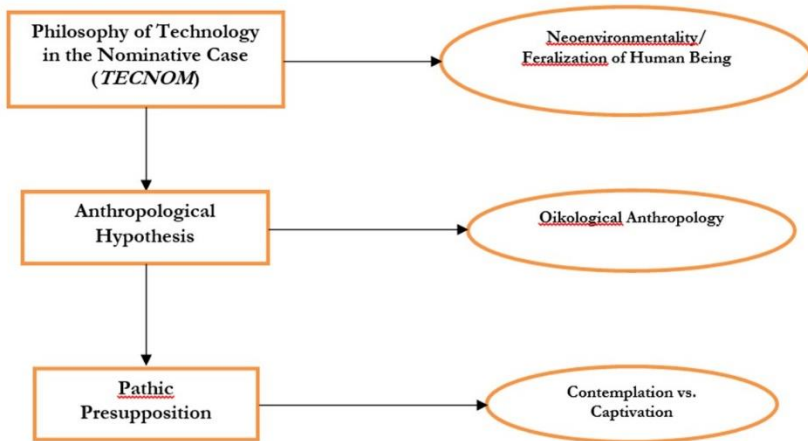
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Id., ‘The Technocene or Technology as (Neo)environment’, *Techné: Research in Philosophy and Technology*, 22, 2/3 (2017), 243–81 (DOI: 10.5840/techne201710472); Id., ‘Posthuman Pathicity: The Neoenvironment’, in *Posthuman. Consciousness and Pathic Engagement*, ed. by M. Maldonato and P. A. Masullo (Brighton/Portland/Toronto: Sussex Academic Press, 2017), pp. 169–97.

<sup>2</sup> Günther Anders, *Die Antiquiertheit des Menschen 2. Über die Zerstörung des Lebens im Zeitalter der dritten industriellen Revolution* (Beck: München, 2002), p. 9 and 271–98.

<sup>3</sup> With “ontophobic” I refer to the so-called postphenomenological approach in the philosophy of technology. Such an approach refuses any ontological assumption to the question of technology, since considers it as potentially deterministic and/or essentialist. On this topic see Don Ihde, *Postphenomenology: Essays in the Postmodern Context* (Evanston: Northwestern University Press, 1993); Hans Achterhuis (Ed.), *American Philosophy of Technology: The Empirical Turn*, trans. by R. P. Crease (Bloomington: Indiana University Press, 2001); Robert Rosenberger, Peter-Paul Verbeek (Eds.), *Postphenomenological Investigations: Essays on Human-Technology Relations*, (Lanham/Boulder/New York/London: Lexington Books, 2015).

<sup>4</sup> Obviously, the source of inspiration for those ideas is: Martin Heidegger, *Being and Time*, trans. by J. Macquarrie and E. Robinson (Oxford: Basil Blackwell, 1985), pp. 172–82 (§§ 29–30).



My argument will proceed as follows. I will start by describing the *historical-theoretical background* within which the Oikological Anthropology takes place (§ 1). Then I will explain the basic assumptions of this anthropological hypothesis (§ 2), that is the *Anthropic Perimeter* (2.1) and the *Pathic Presupposition* (2.2). Finally I will synthetically present the idea of *TECNOM* (§ 3.). In order to facilitate the understanding of all the neologisms and unusual formulations of my argument, I have included a *glossary* at the end of this paper (§ 4).

However, before beginning *two clarifications* are necessary.

1) The first one is the preliminary reply to a ‘natural’ objection to my argument. The objection sounds: ‘there is no necessary connection between animality and so-called environmentality’. With reference to this critique I must clarify that I am not stating such an equation, since my paper does not intend to propose an ontology of animality. On the contrary, the notions of ‘animal’ and ‘animality’ as used here are seen essentially as cultural constructs. Or better, as *anthropological projections*. As a consequence, even where the hypothesis of animal environmentality turned out to be a mere ‘human transfer’, what would really matter for my argument is the capability of such a transfer/projection to *establish a criterion of recognisability for man*, namely its capability to mark a boundary beyond which man would fail to recognize himself as such. Therefore, the connection between environmentality and animality functions only as a necessary term of comparison to indicate that an ‘environmentalized man’ – namely, a human being inhibited in its worldhood, and this is exactly the

type of human produced by technology as neo-environment – would be unrecognisable to the man himself.

2) The oikological approach to the human-animal difference puts itself up as a potential alternative to the current prevailing approach in the philosophy of animality, which – in my opinion, at least – moves from a dangerous *confusion between difference and hierarchy*, namely from an occurred inability to distinguish between *phenomenological difference* and *ontological hierarchy*. The main outcome of this confusion/inability – due to moral(istic) rather than theoretical reasons – is the systematic censorship against any attempt to show or highlight a phenomenological diversity between the human condition and the animal one. Such a censorship equates *ipso facto* those attempts with an updated version of the traditional anthropocentrism. On the contrary, the Oikological Anthropology, here briefly laid out, aims to recover *the right distinction between difference and hierarchy* and thus, hopefully, to witness the philosophical value of a strictly phenomenological approach<sup>5</sup>.

#### 1. HISTORICAL-THEORETICAL BACKGROUND: THE MÄNGELWESEN

The historical-theoretical background of my anthropological hypothesis is the *anthropological-turn* (*anthropologische Wende*) that took place in the German philosophy during the last century. This turn marked the transition of philosophy to an *anthropological modernity*. In the first decades of the 20<sup>th</sup> century the German *milieu* proved to be the ideal breeding ground for the *renaissance* of the philosophical anthropology understood as a real ‘*Denkansatz*’ (*line of thought*), namely no longer as a mere *sub-discipline* of the philosophy<sup>6</sup>. The beginning of this *renaissance* occurred in 1928, the *annus mirabilis* of the philosophical anthropology. As is well known, in this year Max Scheler published *Die Stellung des Menschen im Kosmos*<sup>7</sup>, i.e. the *manifesto* of his anthropological-philosophical project and in the same year Helmuth Plessner published *Die Stufen des Organischen und Der Mensch*, his

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<sup>5</sup> An example of a philosophy of animality based on the phenomenological (oikological) distinction between human and animal condition can be found in Giorgio Agamben, *The Open: Man and Animal*, trans. K. Attell (Stanford: Stanford University Press, 2004). Another oikological approach – though different from the one argued for in this paper – can be found in Hans Rainer Sepp, ‘Ort und Ethos vom Leib her. Grundfragen einer phänomenologischen Oikologie’, *AUC Interpretationes. Studia Philosophica Europeana*, 1 (2011), pp. 217–41.

<sup>6</sup> See Joachim Fischer, *Philosophische Anthropologie. Eine Denkerichtung des 20. Jahrhunderts* (Freiburg/München: Alber, 2008).

<sup>7</sup> Max Scheler, *The Human Place in the Cosmos*, trans. M. Frings (Evanston: Northwestern University Press, 2009).

masterpiece<sup>8</sup>. In 1940 Arnold Gehlen's *magnum opus* – *Der Mensch*<sup>9</sup> – completed the foundation of this new philosophical building. Despite this *Denkansatz* cannot be considered as a school, it presents some common basic features. First of all an epochal evidence, namely the fact that the *redde rationem* of the entire modernity placed at its centre the anthropological question. As a result, the philosophy must (re)consider the *human being as a unitary phenomenon* (I am making reference, for example, to Scheler's idea of *Allmensch* and to Dilthey's idea of *der ganze Mensch*)<sup>10</sup>, while accepting the consumption of any hinterwordly paradigm and opening up to the progress of sciences. Concretely, this approach recovered an anthropological *topos* whose tracks could be found throughout the whole history of philosophy, starting from Plato's *Protagoras*<sup>11</sup>. It is the idea of man as *Mängelwesen* (deficient being), which became the key formula of Gehlen's 'elementary anthropology'. This anthropological *topos* expresses the definitive transition to an 'anthropological modernity', namely the acknowledgment of *the human phenomenon as 'ens somaticus'* (bodily entity). The image of the human being finally lies outside any dualism; he is no longer a 'cogital'<sup>12</sup>, as he is entirely planted in his somatic framework, which, in turn, has ceased to be *Körper* (*res extensa*) and has become *Leib*. *Soma* (body) no longer means *sema*

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<sup>8</sup> Helmuth Plessner, *Levels of Organic Life and the Human: An Introduction to Philosophical Anthropology*, trans. by M. Hyatt (New York: Fordham University Press, 2019).

<sup>9</sup> Arnold Gehlen, *Man, His Nature and Place in the World*, trans. C. McMillan and K. Pillemer (New York: Columbia University Press, 1988).

<sup>10</sup> For Scheler's *Allmensch* (allman) see Scheler, *The Human Place in the Cosmos*. For Dilthey's *der ganze Mensch* (total/integral man) see Hans-Ulrich Lessing, 'Der ganze Mensch. Grundzüge von Diltheys philosophischer Anthropologie', in *Philosophische Anthropologie Ursprünge und Aufgaben*, A. Neschke and H. R. Sepp (Eds), (Nordhausen: Verlag Traugott Bautz, 2008), pp. 37-51.

<sup>11</sup> See Plato, 'Protagoras', in *Complete Works*, ed. by J. M. Cooper (Indianapolis/Cambridge: Hackett 1997), pp. 746–90 (pp. 756–57; 320d-322a). Further examples of this anthropological *topos* are: Gregory of Nyssa's *De hominis opificio* (379) and Giovanni Pico della Mirandola's *De hominis dignitate* (1496), right up to Nietzsche's definition of the human being as "*the still undetermined animal*" in the aphorism 62 of *Beyond Good and Evil* (1886). However, as is well known, the modern recovery of this traditional *topos* dates back to Johann Gottfried Herder – in particular to his 'Treatise on the Origin of Language' (1772), in *Philosophical Writings*, ed. by M. N. Forster (Cambridge: Cambridge University Press, 2002), pp. 67-164. As said, Herder's formula of *Mängelwesen* became the theoretical core of Gehlen's anthropology.

<sup>12</sup> Friedrich Nietzsche, 'On the Uses and Disadvantages of History for Life', in *Untimely Meditations*, trans. by D. Breazeale (Cambridge: Cambridge University Press, 1997), pp. 57–123 (p. 119). The neologism *cogital* is Nietzsche's genial update (i.e. modern translation) of the classical anthropological formula '*animal rationale*'.

(tomb)<sup>13</sup>. The overcoming of anthropological dualism also means the setting aside of the *superiority* of man established *a priori* by theological and/or metaphysical statements. In its place we have now the *a posteriori* (i.e., in a comparative analysis with other living forms) ascertainment of man's indisputable *Besonderheit* (peculiarity). In its turn, this *Besonderheit* is based on the acknowledgment of a 'biological negativity'. In fact, of a *Mangel* (deficiency).

A list of some paradigmatic formulae of this revolution during the past century shows that the idea of *Mängelwesen* can legitimately represent the underlying principle of the *anthropological turn* in philosophy. In fact, the various 'Ascetic of Life' or 'The One Who Can Say No' (Scheler), 'Eccentric Positionality' or '*homo absconditus*' (Plessner), 'Creature of Distance' (Heidegger), 'Being of Discipline' (Gehlen), '*animal symbolicum*' (Cassirer)... express (each in its own way) the fundamental '*ungroundability of man*'<sup>14</sup> or – as Nietzsche affirmed – that human being is '*the still undetermined animal*'<sup>15</sup>.

## 2. TOWARD AN OIKOLOGICAL ANTHROPOLOGY

### 2.1 BEYOND HUMAN ESSENCE: THE ANTHROPIC PERIMETER

Accordingly with this historical-theoretical background, the premise of my anthropological hypothesis consists of the epochal awareness that the 'essence (*ousia, substantia*) of human being' can no longer be predicated. This awareness, however, does not imply that one must give up identifying some set of elements that can characterise human being properly. Or better, some set of elements through which man can realize his self-recognition and his consequent distinction from the other living beings. This awareness 'only' means that I am stating here as constitutive need and character of identity of the human being (i.e. *as anthropological constant*) *its capability to recognize itself as such*. In this regard, definitions such as 'human essence' or 'human nature' are replaced here by that of *Anthropic Perimeter*. Anthropic Perimeter equates to the set of conditions (*worldhood, ek-staticity*

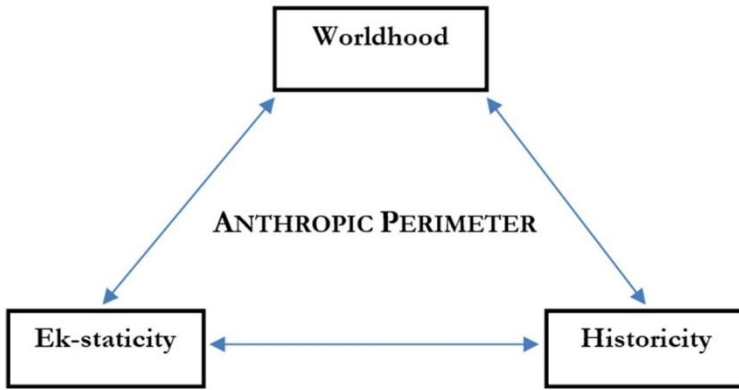
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<sup>13</sup> On this classical formulation of the anthropological dualism, see Plato, 'Cratylus' in *Complete Works*, pp. 101–56 (p. 119; 400c).

<sup>14</sup> Helmuth Plessner, 'Macht und menschliche Natur. Ein Versuch zur Anthropologie der geschichtlichen Weltansicht', in *Gesammelte Schriften V*, ed. by G. Dux et al. (Frankfurt am Main: Suhrkamp, 1981), pp. 135–234 (pp. 160–65).

<sup>15</sup> Friedrich Nietzsche, *Beyond Good and Evil: Prelude to a Philosophy of the Future*, trans. by R.-P. Horstmann and J. Norman (Cambridge: Cambridge University Press, 2002), p. 56.

and *historicity*) which define the limits of *conditio humana*, i.e. which define the *oikological horizon within which human being is able to recognize itself as such*.



Within this new anthropological paradigm the human being is no longer conceived as substance, but as function, or rather as *term of relation*. The human phenomenon can be understood and interpreted only in a *topological, oiko-logical* context, namely it is defined on the basis of the particular relationship it establishes with its own place (*topos*), i.e. vital space (*oikos*). Man's authenticity is all about his unique way of placing himself. It is no coincidence, then, that the *incipit* of the *renaissance* of philosophical anthropology in the last century is the question asked by Max Scheler about the 'Place (*Stellung*) of Man in the Cosmos'. Or rather that the key concept of Helmuth Plessner's *Philosophical Anthropology* is 'Eccentric *Positionality* (*Positionalität*)'.

With the transition from the anthropological substance (essence) to the anthropological function (relation) – that is, from *natura hominis* to *conditio humana* –, man's way of being emerges as a perimeter. In other words: man's peculiarity corresponds to the special way in which he *is within* (*in-sistere*) the framework (*Umgebung*) that surrounds him. Just because he appears to be lacking in that biological endowment which would allow him to be immediately integrated into a specific part of the natural world, his 'being-within' (*in-sistere*) his own vital space is always already a 'being at a distance'. This *in-sistere* always and already corresponds to an *ex-sistere*. Man's *Dasein* is therefore *ek-sistence* and this *ek-staticity* emerges as his distinguishing feature, or *the first element of the Anthropic Perimeter*.

Compared to that of other living beings, man's *position* is *peculiar* (*Sonderstellung*) in that it is characterized as a *positioning*, since he himself contributes in a decisive way to the building of his own *oikos*. Due to his



lacking biological endowment, the deficient being is bound by nature to mould his own *vital space*. Only in this way, can the initial setting or *milieu* (*Umgebung*)<sup>16</sup> become *world*. Lacking in *materia* given *a priori*, ‘tributary of a non-existent reality and which it is up to him to realize’ (so Günther Anders)<sup>17</sup>, the human being is *naturaliter* obliged to shape his own oikological niche in order to make it inhabitable, that is, to *compensate*<sup>18</sup> its initial condition of strangeness, of non-belonging. This further distinguishing human feature (i.e. the obliged compensation of its original ek-staticity) is here called *worldhood*, by reference to Jakob von Uexküll’s *Umweltlebre*<sup>19</sup> – in particular, in its re-interpretation given by Gehlen and Heidegger<sup>20</sup> – and its distinction between man and animal, where the former emerges as a ‘worldly being’ (*Weltwesen*) because he has a world (*Welt* – i.e. a not ready-made vital space/*oikos*), and the latter as an ‘environmental being’ (*Umweltwesen*) because he has an environment (*Umwelt* – i.e. a ready-made vital space/*oikos*). *The worldhood represents the second element and the barycentre of the Anthropic Perimeter*. Given this

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<sup>16</sup> ‘The “milieu” (*Umgebung*) is the set of those elements in a vital space, connected to each other by the laws of nature, the space in which we observe the organism [...] “environment” (*Umwelt*) is the set of those conditions contained in the whole complex of a milieu which allow a certain organism to survive thanks to its specific organisation [...] the concept of environment so defined is difficult to apply to man [...] we cannot point to a specific environment or a *milieu* to which he could be assigned in the sense of the preceding definition’ (Gehlen, *Man*, pp. 79–80).

<sup>17</sup> Günther Anders, ‘Une interprétation de l’a posteriori’, *Recherches philosophiques*, 4 (1935), 65–80 (p. 69). Also available at <http://1libertaire.free.fr/GAnders03.html>. Very recently the original German texts of Anders’ first philosophical anthropology – until now thought lost – has been published. See Günther Anders, *Die Weltfremdheit des Menschen. Schriften zur philosophischen Anthropologie*, ed. by Ch. Dries and H. Gätjens (München: Beck, 2018).

<sup>18</sup> I refer here to the of ‘compensation’ (*Kompensation*), a further key concept in the *renaissance* of the philosophical anthropology. On this topic see Odo Marquard, ‘Kompensation’, in J. Ritter (Ed.), *Historisches Wörterbuch der Philosophie Band IV* (Basel/Stuttgart: Schwabe, 1976), pp. 912–18; Id., ‘Homo compensator. Zur anthropologische Karriere eines metaphysischen Begriffs’, in *Philosophie des Stattdessen* (Stuttgart: Reclam, 2000), pp. 11–29.

<sup>19</sup> See Jakob von Uexküll, *Umwelt und Innenwelt der Tiere*, zweite vermehrte und verbesserte Auflage (Berlin/Heidelberg: Springer, 1921) and Jakob von Uexküll (1934), ‘A Foray into the World of Animals and Humans’, in *A Foray into the World of Animals and Humans. With a Theory of Meaning*, trans. J. D. O’Neil (Minneapolis/London: University of Minnesota Press, 2010), pp. 41–135. On von Uexküll’s *Umweltlebre* (and, more generally, on his philosophy) see Carlo Brentari, *The Discovery of the Umwelt between Biosemiotics and Theoretical Biology* (Heidelberg/New York/London: Springer, 2015).

<sup>20</sup> See Gehlen, *Man* and Martin Heidegger, *The Fundamental Concepts of Metaphysics. World, Finitude, Solitude*, trans. W. McNeill and N. Walker (Bloomington and Indianapolis: Indiana University Press, 1995).

assumption, it is possible to agree with Heidegger when he affirms that the fundamental peculiarity of man is his 'world-forming' (*weltbildend*) capability<sup>21</sup>. Being world-forming, he is naturally a technological/cultural being. Anthropogenesis and technogenesis are synonyms.

However, it needs to be made clear that the concept of world used here cannot be restricted to a physical-biological framework. As man's oikological niche/vital space, world also includes all those elements that constitute the so-called 'cultural sphere'. This means that world has a plurality of dimensions which is precluded to the animal's environment. 'By the opening of a world' – so writes Heidegger – 'all things gain their lingering and hastening, their distance and proximity, their breadth and their limits'<sup>22</sup>. Like a metronome, the world establishes and measures the rhythm of human *ek-sistere*. Each specific world shaped by human beings corresponds to that particular type of framework we call 'epoch'. As a consequence man's worldhood involves *ipso facto* his *historicity*, that is *the third element of the Anthropic Perimeter*. The salient trait of the *koinonia* (indissoluble link) between man and world is the *Geschehen* of *Geschichte*, namely the historical happening/event (*Ereignis*) in its authenticity. Therefore, only insofar as man is also an historical being, he can reveal himself as a worldly and not merely as an environmental being.

On the contrary, *animal's oikological niche is 'environment'*, that is – as said – a ready-made vital space, i.e. a natural mould with which it corresponds completely and immediately. In the case of the animal, the environment expresses itself as absolute self-giveness. As Günther Anders states, 'the animal does not come into the world but its world comes with it'. The 'animal's demand and the environment's supply coincide'. Therefore, the environment emerges as 'a *materia* given *a priori*'<sup>23</sup>. This means that the animal is not able to experience any *Umgebung*, namely that original framework functioning as an indeterminate background for its concrete vital space. The peculiarity of the animal consists in its *environmentality*, in its being '*poor in world*' (*weltarm*) as Heidegger affirms<sup>24</sup>.

As a result, the difference between world and environment cannot be considered a simple difference of extension, rather a *dimensional difference*. The animal's *Bauplan* (structure plan) enables it to insert itself immediately

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<sup>21</sup> Ibid., pp. 274–366.

<sup>22</sup> Martin Heidegger, 'The Origin of the Work of Art', in *Off the Beaten Track*, trans. J. Young and K. Haynes (Cambridge: Cambridge University Press, 2002), pp. 1–56 (p. 23).

<sup>23</sup> Anders, 'Une interprétation de l'a posteriori', pp. 65–66

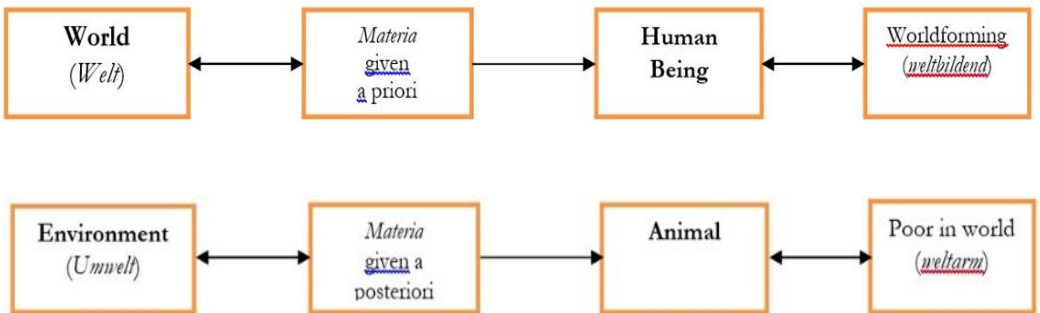
<sup>24</sup> Heidegger, *The Fundamental Concepts of Metaphysics*, pp. 186–267.

into a specific oikological niche, where the animal is fully absorbed until it disappears. In the perfect mixture of *Merkwelt* (perception world) and *Wirkwelt* (effect world), the vital circle of the animal expresses itself in a circuit-like modality. The animal and its oikological niche form an inseparable unity, i.e., an individual or even a monad<sup>25</sup>.

From this consideration follows a structural diversity concerning human and animal *adaptive performances*. *The animal is apt insofar as it is adapted*, its adaptation being *energeiai*, i.e. *in actu*. That is to say, from the very beginning it is ready for its *oikos*. On the contrary, *man is apt insofar as he is adaptable*, his adaptation expresses itself *dynamei*, i.e. *in potentia*. That is to say, through his technological-demiurgic ability, he is able to compensate the initial distance (ek-staticity) between himself and his own setting.

**HUMAN BEING = WORLDLY BEING**

**ANIMAL = ENVIRONMENTAL BEING**



**2.2 OIKOLOGY AS PATHOSOPHY: THE PATHIC PRESUPPOSITION**

Following Heidegger’s suggestion in *The Fundamental Concepts of Metaphysics* (but also Viktor von Weizsäcker’s work on ‘pathic’<sup>26</sup>), I state both man’s worldhood and animal’s environmentality with a *Pathic Presupposition*,

<sup>25</sup> With reference to animal Uexküll writes: ‘everything a subject perceives belongs to its *perception world* (*Merkwelt*), and everything it produces, to its *effect world* (*Wirkwelt*). These two worlds, of perception and production of effects, form one closed unit, the *environment* (*Umwelt*)’. Uexküll, ‘A Foray into the World of Animals and Humans’, p. 42.

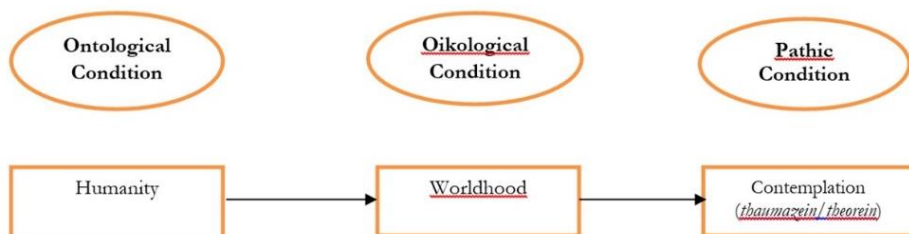
<sup>26</sup> From 1930 von Weizsäcker introduced the term “pathisch” to describe the antilogical character of life *tout court*. On this basis, he developed a theory of the affections, grounded on the so-called “pathisches Pentagramm”: *Können* (be able to), *Wollen* (will), *Müssen* (must), *Dürfen* (be allowed to), and *Sollen* (have to). The specific human feature compared to other living beings is *Sollen* (moral obligation). See Viktor von Weizsäcker, *Gesammelte Schriften 10. Pathosophie*, ed by P. Achilles *et al.* (Frankfurt am Main: Suhrkamp, 2005).

namely those *fundamental moods* (*Grundstimmungen*) that refer each of them to their respective findingness (*Befindlichkeit*). Given that the Anthropic Perimeter has its barycentre in worldhood, the latter, in turn, possesses a *pathic rootedness*. In a formula: the *pathos*, the *affectio*, represents the benchmark of the ontological condition of a specific living being.

In the case of the animal, such a pathos corresponds to the *captivation* (*Benommenheit*), i.e. the ‘absorption (*Eingenommenheit*) in itself<sup>27</sup> which upholds its (con)fusion with its respective vital space. Captivation is structurally circular: it falls back on itself, so the fundamental animal pathos corresponds to *apatheia* (absence of pathos), namely to a sensitivity incapable of self-perception. In order to confirm this pathically-founded phenomenological difference of condition (which, as said, doesn’t mean ontological hierarchy) between man and animal, Heidegger affirms: ‘As far as the animal is concerned we cannot say that beings are closed off from it. Beings could only be closed off if there were some possibility of disclosure at all [...] the captivation of the animal places the animal essentially outside of the possibility that beings could be either disclosed to it or closed off from it<sup>28</sup>’.

On the contrary, man possesses a totally explicit findingness because his self-awareness achieves a complete evidence. His particular *Grundstimmung* enables him to transcend his own within-the-world rootedness, i.e. to perceive that unreachable background (the *Umgebung*) which is the condition of possibility for every world, and so also to experience the world itself as such. This basic mood is *thaumazein*, namely that uncanny/unhomely original pathos, which confirms man’s congenital worldstrangeness (ek-staticity) and which later becomes the well-known *theorein* (contemplation, *Betrachtung*), when it is ordered by *logos*.

#### HUMANITAS, ANIMALITAS



<sup>27</sup> Heidegger, *The Fundamental Concepts of Metaphysics*, pp. 236–57.

<sup>28</sup> *Ibid.*, pp. 247–48.



### 3. *TECNOM* OR TECHNOLOGY AS NEO-ENVIRONMENT

As affirmed in the premise of this paper, the Oikological Anthropology is part of a larger project: a *Philosophy of Technology in the Nominative Case (TECNOM)*, grounded on the concept of *Neoenvironmentality*. Given that *TECNOM* interprets technology as the current ‘subject of history’, in this hermeneutical context the term ‘technology’ does not indicate the sum of single technologies, rather it outlines the worldview that has made them possible and that manifests itself as epochal phenomenon. That is to say, as the synthesis between *disenchantment (Entzauberung)* and *rationalization (Rationalisierung)*, under the imperative of *makeability (Machbarkeit)*<sup>29</sup>. Moving from the ascertainment that ‘there is no common denominator between the *technique* of today and that of yesterday’<sup>30</sup>, Jacques Ellul gives us an effective description of what he defines ‘the technical system’. He writes: ‘having become a *universum* of means and media, technology is in fact the environment (*milieu*) of man’<sup>31</sup>, i.e. the current framework in which he has to live. And as environment it requires nothing but adaptation. Just as the natural environment does for the animal.

As we have seen, the anthropological hypothesis here exposed characterizes man as a worldly being (on the basis of the Anthropic Perimeter), insofar as he is able to compensate the initial distance between himself and his own vital space. In other words, he is able to feel that original pathos (*thaumazein/theorein*), which allows him to experience the cosmological difference between his own *oikos*/vital space (world) and the indeterminate background/framework (*Umgebung*) that corresponds to the condition of possibility of every world. The worldhood – i.e. the barycentre of the Anthropic Perimeter – is grounded on this original pathos.

Technology emerges as the *oikos* for today’s humanity, insofar as it undermines this pathic presupposition, transforming it into a product. If

<sup>29</sup> On this topic see Agostino Cera, ‘Sulla questione di una filosofia della tecnica’, in N. Russo (Ed.), *L’uomo e le macchine. Per un’antropologia della tecnica*, (Napoli: Guida, 2007), pp. 41–115 (pp. 98–101).

<sup>30</sup> Jacques Ellul, *The Technological Society*, trans. J. Wilkinson (New York: Vintage Books, 1964), p. 146.

<sup>31</sup> Jacques Ellul, *The Technological System*, trans. J. Neugroschel (New York: Continuum, 1980), p. 38.

this transformation occurs, then contemplation (*Betrachtung*) is downgraded into circumspection (*Umsicht*) and thus becomes functionally alike to the typical pathos of animality: the captivation (*Benommenheit*). When technology shows to be able to dictate this artificial (pseudo-)captivation to man, it becomes what the environment is for the animal, namely a *materia* given *a priori* which demands a complete and immediate adaptation. That is to say, a (neo)environment. As a result, *the metamorphosis of technology into an epochal phenomenon* corresponds to the outcome of two complementary movements, that is *the environmentalization of the world and the feralization of human being*.

The potential character of the human fundamental pathos – the fact, as affirmed, that man’s adaptation expresses itself *in potentia* – is such that it can be referred at least partly to his free responsibility. Differently from ‘being animal’, which corresponds to an immediate givenness, ‘being human’ means also ‘becoming human’ and ‘staying as such’. As Plessner stated, *hominitas* is not yet *humanitas*<sup>32</sup>. The fulfilment of our *Bestimmung* (determination and destination) involves an obligation and a duty.

The fact that being human is a task to be carried out implies the possibility of its failure, too. In such a circumstance, there would be the paradoxical result of having a hypothetical *conditio post-humana* entirely identical to the animal condition, i.e. man would become unrecognizable to his own eyes. Paradoxically, the real *hybris* of the posthuman technolatry<sup>33</sup> is such not because it is too much, rather it is too little, namely, it is an insatiable will to delegate. This brand new form of *hybris* encourages a downgrading from *humanitas* to *hominitas* with its blind commitment to technology, letting us be manipulated by it *ad libitum*. All this is accompanied by the soteriological hope that what technology ‘wants’ will be necessarily our own good. In a formula, the neoenvironmental arrogance lies in its pretension that it can release us from the load that we ourselves are.

On the contrary, the fact that ‘humanity’ emerges as the result of a never-ending historical process, rather than an atemporal datum, does not make it unworthy of safeguard. At the peak of the ‘secular age’ – that is an epochal framework where ‘what we will be’ depends mostly on ‘what we will choose to be’ – it is all the more important to keep in mind that

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<sup>32</sup> Helmuth Plessner, 1983 ‘Über einige Motive der Philosophischen Anthropologie’, in *Gesammelte Schriften VIII*, ed. by G. Dux *et al.* (Frankfurt am Main: Suhrkamp, 1983), pp. 117–35.

<sup>33</sup> With this formula I mean the ideological (and even idolatrous) attitude of the ‘posthuman galaxy’ (i.e. the whole of post-, hyper-, meta-, trans-... humanism) towards technology. That is why I talk about ‘soteriological hope’, too.

nowadays as always the authentic dignity of our *Bestimmung* does not only consist in becoming ‘what we have not been yet’, but in our capability to recognize and safeguard ‘what we can worthily continue being’. The task of that being that can recognize itself as such lies also in claiming to defend its own self-recognisability, namely in maintaining the possibility of an Anthropic Perimeter.

#### 4. GLOSSARY

*Anthropic Perimeter* = A post-essentialist definition of the human being consisting of the set of conditions (worldhood, ek-staticity and historicity) which define the limits of *conditio humana*, i.e. which establish the oikological horizon within which the human being is able to recognize itself as such. Together with Pathic Presupposition/Pathosophy, it is the basic assumption of the Oikological Anthropology.

*Captivation (Benommenheit)* = The fundamental mood of the animal (namely, its Pathic Presupposition). It is the basis of animal’s environmentality.

*Contemplation (Betrachtung)* (or *theorein/thaumazein*) = Man’s fundamental mood (namely, his Pathic Presupposition). It is the basis of man’s worldhood.

*Environment (Umwelt)* = animal’s *oikos*/vital space. It is a *materia* given *a priori* (i.e. a ready-made vital space) and equates to an absolute selfgivenness, namely a natural mould with which animal corresponds completely and immediately.

*Environmentality* = The benchmark of the animal condition, namely the demonstration that animal is an ‘environmental being’ (*Umweltwesen*), as its *oikos*/vital space is environment (*Umwelt*) rather than world (*Welt*). It is pathically grounded in captivity.

*Ek-staticity* = The first element of the Anthropic Perimeter. Ek-staticity means that man’s ‘being-within’ (*in-sistere*) his own *oikos*/vital space is always a ‘being at a distance’ (*ex-sistere*).

*Feralization of Human Being* = The metamorphosis, on the pathic level, of human being into an animal. Together with Neoenvironmentality, it is the main outcome of technology as epochal phenomenon and current ‘subject of history’.

*Historicity* = The third element of the Anthropic Perimeter. Historicity proves that man’s *oikos*/vital space (i.e. world) cannot be restricted to a physical-biological framework, but involves all those elements that constitute the so-called ‘cultural sphere’.

*Milieu (Umgebung)* = The indeterminate background/framework which corresponds to the condition of possibility of every world.

*Neoenvironmentality* = The metamorphosis of world (i.e. man's *oikos*/vital space) into environment (i.e. animal's *oikos*/vital space). Together with Feralization of Human Being, it is the main outcome of technology as epochal phenomenon and current 'subject of history'.

*Oikological Anthropology* = An anthropological approach which addresses the difference between man and animal (i.e. human and animal condition) on the basis of the relationship they establish with their respective *oikos*/vital space. It is the theoretical premise of TECNOM.

*Pathic Presupposition (or Pathosophy)* = Those fundamental moods (*Grundstimmungen*) that refer each living being (i.e. man or animal) to its respective findingness (*Befindlichkeit*). According to this approach, the *pathos* represents the benchmark of the ontological condition of a specific living being. Together with Anthropic Perimeter, it is the basic assumption of the Oikological Anthropology.

*Philosophy of Technology in the Nominative Case' (TECNOM)* = A philosophical anthropology of technology grounded on the concept of Neoenvironmentality. TECNOM interprets technology as epochal phenomenon (i.e. current "subject of history") and moves from an Oikological Anthropology, whose theoretical core is the Anthropic Perimeter.

*World (Welt)* = Human being's *oikos*/vital space. It is a *materia* given *a posteriori* (i.e. a not ready-made vital space), since man (i.e. deficient being) is bound by nature to mould his own vital space.

*Worldhood* = The second element and barycentre of the Anthropic Perimeter. It is the benchmark of the human condition, namely the demonstration that man is a 'worldly being' (*Weltwesen*) since his *oikos*/vital space is world (*Welt*), rather than environment (*Umwelt*). *Man* is *naturaliter* obliged to shape his own oikological niche in order to make it inhabitable. It is pathically grounded in the contemplation.



# Towards a Rights-Based Pedagogy in the Literary Animal Studies Classroom

Dr Frances McCormack

**Abstract:** A classroom-based investigation into how humans relate to other animals, which questions the foundations of that relationship, can result in significant discomfort for students for whom thinking about such issues is new. In this paper I explore, through a description of a module that seeks to do just this, a model for literary animal studies pedagogy grounded in animal rights theory. I will demonstrate how teachers can engage students with some of the key debates surrounding animal use, compel them to think of oppression more broadly, and enable them to engage with literary animals in a transformative way.

To think pedagogically is to think politically: after all, not only is pedagogy concerned with issues of power—with whose voices are amplified or suppressed—it also seeks to impart skills that are ultimately transformative, whether the development of critical thinking or the acquisition of new modes of discourse with which to explore, interrogate, and challenge the world. Throughout history, the classroom has been a place where students have engaged in discussions about identity, experience, and group membership. For the politically engaged teacher, however, questions of what we teach are as important as what we remain silent on. As Richard Shaull writes in the foreword to Paulo Freire's *Pedagogy of the Oppressed*:

There is no such thing as a *neutral* education process. Education either functions as an instrument which is used to facilitate the integration of the younger generation into the logic of the present system and bring about conformity to it, *or* it becomes the 'practice of freedom,' the means by which men and women

deal critically and creatively with reality and discover how to participate in the transformation of the world.<sup>1</sup>

To study the Humanities is to define our present in terms of the lessons of the past, and to construct the discursive tools by which we can shape our future. Although the Humanities have traditionally been understood as asking questions about what makes us human, the canon that informs their study in western countries has tended to centre one particular type of experience. Recent trends in critical theory have attempted to right that imbalance in the scholarship at least. They have emphasised the importance of social engagement, historical reflection, and the acquisition of critical tools that can effect positive social change. In this context, then, there is ample space for a literary pedagogical model that concerns itself with our relationship with nonhuman animals, and that takes a rights-based approach in order facilitate students' deep engagement with the way they position themselves in relation to the other animals with whom they share the world.

So often, the Arts are endorsed for their ability to promote vicarious engagement. Literature courses can reasonably be expected to encourage their students to become more appreciative of diversity and to develop into more empathetic citizens. This field of study is, after all, frequently regarded as a social endeavour, drawing on a sense of connectedness between students and the world to which they belong and helping them to formulate and define their own sense of self. But that which is deemed 'canon' upholds certain hegemonic ideologies, and curricula that teach to it without unpacking the very notion of it are, by definition, political: they take as their starting point the assumption that the ideas that the canon upholds are inherently valuable, and in not confronting those ideas they affirm them. Alice Templeton, writing on the 'broadening of literary criticism into cultural criticism',<sup>2</sup> notes that

The question of how we are relating to and using literature cannot be removed from the question of how we are relating to and using each other. Through this self-reflexive inquiry, cultural criticism fulfils its political role—to liberate us from destructive, restrictive systems of thought and action, to criticize for the purpose of improving, and to avail ourselves

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<sup>1</sup> Richard Shaull, Forward to Paulo Freire, *Pedagogy of the Oppressed*, transl. by Myra Bergin Ramos (New York: Herder & Herder, 1970), p. 15

<sup>2</sup> Alice Templeton, 'Sociology and Literature: Theories for Cultural Criticism', *College Literature* 19.2 (June 1992), 19-30 (p. 19)

and our students of ‘really useful knowledge.’ By understanding the complex relation between the literary and the social context, teachers can avoid promoting determinism and their teaching itself can be a significant, ‘useful’ cultural practice.<sup>3</sup>

We can, then, through literary criticism, challenge and confront texts and the normative ideas that they both reflect and engender. Radical modes of literary analysis that are in dialogue with other forms of cultural criticism thus have a transformative potential. This potential, within the field of animal studies, remains, for the most part, untapped.

The animal turn has seen the burgeoning of a variety of approaches to studying the nonhuman animal. Within the fields that fall under the animal studies umbrella, there are approaches as diverse as animal care and husbandry, zoology, veterinary studies, ethology, and film studies. These disciplines often have wildly divergent orientations and ideologies. Nonetheless, the animal turn has the potential to produce and shape discourse in important ways. Harriet Ritvo writes that

Within my own experience as a scholar, the study of animals has become more respectable and more popular in many disciplines of the humanities and social sciences, but it is far from the recognized core of any of them. It remains marginal in most disciplines and (not the same thing) it is often on the borderline between disciplines. This awkward location or set of locations is, however, the source of much of its appeal and power. Its very marginality allows the study of animals to challenge settled assumptions and relationships—to re-raise the largest issues—both within the community of scholars and in the larger society to which they and their subjects belong.<sup>4</sup>

Animal studies is therefore uniquely positioned to bring change to our relationship with nonhuman animals—a change that is urgently needed. Our

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<sup>3</sup> Op., cit., 29

<sup>4</sup> Harriet Ritvo, ‘On the Animal Turn’, *Daedalus* 136.4 (Fall, 2007), 118-22 (pp. 121-22)

exploitation of nonhuman animals results in the death, annually, of at least sixty-five billion land animals and over a trillion aquatic animals for their flesh alone,<sup>5</sup> and it is an environmental and ecological catastrophe.<sup>6</sup> But in order to enable our discussions of the nonhuman animal to fulfil their radical potential, solid change-making pedagogies and approaches need to be advanced with great urgency. It is in this context that literary animal studies have the power to effect conceptual change and to help bring about a shift in human attitudes to, and relationships with, other animals.

The ethically oriented aspects of fields that fall under the animal studies umbrella (with branches such as ecocriticism, critical animal studies, posthumanism, and so on) have not yet managed to fully and comprehensively articulate the problem of exploitation and posit a solution in the way that other forms of cultural criticism have done for their objects of study. This is because of their tendency to either reject or misunderstand the argument for rights. Ecofeminism, for example, has historically followed the lead of Mary Ann Glendon in rejecting (or at least redefining) terminology associated with rights approaches, perceiving the concept of rights to be patriarchal;<sup>7</sup> elsewhere, it decries rights talk as being hyperrational and unemotive, and neglecting social relationships.<sup>8</sup> Critical Animal

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<sup>5</sup> Hannah Ritchie and Max Roser, 'Meat and Seafood Production and Consumption', 2017, <https://ourworldindata.org/meat-and-seafood-production-consumption> [accessed 27 February 2019]

<sup>6</sup> cf. P.J. Gerber, H. Steinfeld, B. Henderson, et al., 'Tackling Climate Change Through Livestock: A Global Assessment of Emissions and Mitigation Opportunities' (Rome: Food and Agriculture Organization of the United Nations, 2013), <http://www.fao.org/3/a-i3437e.pdf> [accessed 11 March 2019]; M. Herrero, B. Henderson, P. Havlik, et al., 'Greenhouse Gas Mitigation Potentials in the Livestock Sector', *Nature Climate Change* 6 (2016), 452-61; Robert Goodland and Jeff Anhang, 'Livestock and Climate Change', 2009, <http://www.worldwatch.org/files/pdf/Livestock%20and%20Climate%20Change.pdf?fbclid=IwAR2uyAERXrpMlg6IdObIdHcrRXDYzpz0iSW0JwdUn3KAwaDIUGH8PdNSQxg> [accessed 11 March 2019]; Giampiero Grossi, Pietro Goglio, Andrea Vitali, Adrian G. Williams, *Animal Frontiers* 9.1 (2019), 69-76; William J. Ripple, Christopher Wolf, Thomas M. Newsome, et al. 'World Scientists' Warning to Humanity: A Second Notice', *BioScience* 7.12 (December 2017), 1026-28

<sup>7</sup> Mary Ann Glendon, *Rights Talk* (New York: Macmillan, 1991). Gary L. Francione addresses this claim about rights in 'Ecofeminism and Animal Rights: A Review of *Beyond Animal Rights: A Feminist Caring Ethic for the Treatment of Animals*', reprinted in *Animals as Persons: Essays on the Abolition of Animal Exploitation* (New York: Columbia University Press, 2008), pp. 186-209.

<sup>8</sup> Josephine Donovan, 'Feminism and the Treatment of Animals: From Care to Dialogue', *Signs* 31.2 (Winter, 2006), 305-29 (p. 306)

scholars prefer the term ‘total liberation’ to point to a multi-pronged strategy that embraces anarchism and anti-capitalism as tools to dismantle all forms of oppression. Other thinkers, such as the posthumanist Cary Wolfe, conflate the animal rights and animal welfare positions.<sup>9</sup> Yet more, such as Matthew Calarco, frame the discourse of rights as though it pertains only to legal rights:

The difficulty concerns the tacit *anthropocentric* constraints at work in political and legal institutions and how animal rights discourse ends up acceding to and reproducing the constraints that found and sustain these institutions.<sup>10</sup>

It is, however, moral rights—which are merely ways of protecting interests—with which I am concerned here; it is only the recognition of a nonhuman’s inherent right not to be treated solely as the means to an end that can protect their interests from being traded away where it benefits others. As Gary L. Francione insists:

The theory of animal rights maintains that at least some nonhumans possess rights that are substantially similar to human rights. Animal rights ensure that relevant animal interests are absolutely protected and may not be sacrificed

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<sup>9</sup> Animal studies, according to Wolfe, ‘owes its existence in no small part to the emergence of the animal rights movement in the 1970s and to that movement’s foundational philosophical works, Peter Singer’s *Animal Liberation* and, later, Tom Regan’s *The Case for Animal Rights*’ (Cary Wolfe, ‘Human, All Too Human: “Animal Studies” and the Humanities’, *PMLA* 124.2 (March, 2009), 564-75 (p. 565)).

<sup>10</sup> Matthew Calarco, *Zoographies: The Question of the Animal from Heidegger to Derrida* (New York: Columbia University Press, 2008), p. 8. Tom Regan, though is clear about the difference between legal and moral rights in his *Case for Animal Rights*. Legal rights are socially and culturally dependent, subject to change, and not applied in the same way to each individual. Moral rights, on the other hand ‘[...] are universal. This means that if any individual (A) has such a right, then any other individual like A in the relevant respects also has this right. [...] A second feature of moral rights is that they are equal. This means that if any two individuals have the same moral right (e.g., the right to liberty), then they have this right equally. [...] Third, moral rights, unlike legal rights, do not arise as the result of the creative acts of any one individual (e.g., a despot) or any group (e.g., a legislative assembly).’ (Tom Regan, *The Case for Animal Rights*, 3<sup>rd</sup> edn. (Berkeley: University of California Press, 2004), pp. 267-68.

simply to benefit humans, no matter how ‘humane’ the exploitation or how stringent the safeguards from ‘unnecessary’ suffering. Animal rights theory rejects the regulation of atrocities and calls unambiguously and unequivocally for their abolition. Rights theory precludes the treatment of animals exclusively as means to human ends, which means that animals should not be regarded as the property of people. And because rights theory rejects the treatment of animals as property, rights theory rejects completely the institutionalized exploitation of animals, which is made possible only *because* animals have property status.<sup>11</sup>

In those fields of cultural criticism that are concerned with human issues, the moral rights of humans are assumed, even where legal rights are not expressly pursued. It therefore makes sense to construct a radical pedagogy for nonhuman animals that puts forward a rights-based perspective. Such pedagogy need not preclude—contrary to what some critics of rights theories would have us believe—affective and empathetic engagement with nonhuman animals, questions of kinship, and examinations of other forms of injustice that are reflected and refracted through the representation of nonhumans. This kind of enquiry is, after all, what the Humanities is about. In this context, then, there is both ample space and urgent need for a pedagogy that takes as its object of study the representation of animals in textual culture, and that seeks to use the concept of rights to challenge the prevailing discourse around animal issues. Such a mode of teaching would provide a new framework in which animals can be read and unread as both literary tropes and living beings.

The teacher interested in providing students with ways of thinking about ‘the animal question’ and who is, at the same time, concerned with fundamental principles of justice, can take a foundational approach that challenges received wisdom about animals. Our relationships with nonhumans are constructed on a foundation of power imbalance, of oppression and subjugation, and on socially constructed notions of the relative moral worth of human and nonhuman animals. It is, therefore, both possible and desirable to challenge students to reconsider their place in the world and their relationship with the other beings

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<sup>11</sup> Gary L. Francione, *Rain Without Thunder: The Ideology of the Animal Rights Movement*, reprint (Philadelphia: Temple University Press, 1996, 2005), p. 2

who inhabit their lives—not only as family, friends, and acquaintances, but also as food, footwear, and figurative symbols.

In this context, in 2015, I devised and began to teach a final-year undergraduate, elective small-group module called ‘Writing Animals.’ This course was to be an investigation into the representation of animals in both theory and literature. It was designed to examine how humans have traditionally conceptualised their relationship with nonhumans, and how this has shaped our literary histories. In turn, it was intended that it would open up issues surrounding the use of animals and encourage students to at least consider their individual relationships with and behaviour towards animals. The aims of the course, at its inception, were to enable students to articulate the relationship between the representation of animals in literature and trends in ethical arguments, to facilitate their analysis of how our depiction of animals reflects our own conceptualisation of our place in the world, and to encourage them to explore a variety of perspectives and theories related to the place of nonhuman animals in the literary imagination. Four years on, the course varies from semester to semester as I experiment with different forms of engagement with the topic. While I present the description below as though it is a static model, elements of it have varied from semester to semester, and what I describe represents the best and most effective of several iterations of the course.

Such a course, that seeks to effect students’ deep engagement with perspectives on and representations of our relationship with other animals, while questioning the very foundations of that relationship, may be deeply discomfoting for students who may never previously have considered issues of animal rights. This is not, in and of itself, a disincentive for such an approach; in fact, much has been written on the value of a pedagogy of discomfort and its ability to elicit conceptual change.<sup>12</sup> Megan Boler, who devised the notion of pedagogy of discomfort, notes that such an approach

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<sup>12</sup> Megan Boler, *Feeling Power: Emotions and Education* (New York: Routledge, 1999); Yochay Nadan and Marina Stark, ‘The Pedagogy of Discomfort: Enhancing Reflectivity on Stereotypes and Bias’, *The British Journal of Social Work* 47.3 (April, 2007), 638-700; Urmitapa Dutta, Teresa Shroll, Jennifer Engelsen, et al., ‘The “Messiness” of Teaching/Learning Social (In)Justice: Performing a Pedagogy of Discomfort’, *Qualitative Inquiry* 22.5 (June, 2016), 345-52

[...] begins by inviting educators and students to engage in critical inquiry regarding values and cherished beliefs, and to examine constructed self-images in relation to how one has learned to perceive others. Within this culture of inquiry and flexibility, a central focus is to recognize how emotions define how and what one chooses to see, and, conversely, not to see.<sup>13</sup>

This type of pedagogy, according to Michalinos Zembylas,

is grounded in the assumption that discomforting feelings are important in challenging dominant beliefs, social habits and normative practices that sustain social inequities and [...] create openings for individual and social transformation.<sup>14</sup>

The course, then, takes for granted that students will occasionally feel uncomfortable with the subject matter; in fact, it takes such discomfort as a starting point. After all, the material on which this course is built runs counter to the conventional wisdom that students have inherited and, in order to fully effect a deep engagement with the representation of animals in written texts, the learning experience necessitates that the students confront their own attitudes towards animals.

The twenty-hour course is divided into three phases: a pre-literary phase, a literary phase, and a post-literary phase. The pre-literary phase lasts for three two-hour sessions, and it leads students through considerations of their own relationship with nonhuman animals as well as introducing them to some of the debates around the use of animals. In this phase, they also explore some of the intersections of speciesism and other forms of injustice. The literary phase spans five two-hour sessions and investigates the representation of animals in a range of texts and through a variety of critical lenses. The post-literary phase lasts for two sessions and returns students to some of the earlier themes of the course, drawing their learning together.

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<sup>13</sup> Boler, *Feeling Power*, pp. 176-77

<sup>14</sup> Michalinos Zembylas, “‘Pedagogy of Discomfort’ and its Ethical Implications: The Tensions of Ethical Violence in Social Justice Education’, *Ethics and Education* 10.2 (2015), 163-74 (p. 163)



In the opening session, and as an icebreaker, students introduce themselves to each other and tell a story about animals with whom they are (or have been) close; the person to whom they have introduced themselves will then share that story with the group on their behalf. While these stories usually centre on companion animals, we often hear stories of rescue or of tragedy, or childhood memories from the farm that tell of a special bond. Students analyse how these stories are narrated, from the naming of these animals to the pronouns used to describe them (the pronoun that recognises their personhood, for example ('he,' 'she,' singular 'they'), or the pronoun that objectifies ('it')). They examine whether the animals assume the typological traits with which the literary traditions familiar to both parties involved in the storytelling have imbued them. They investigate whether their stories centre humans or the animals they narrate, and they explore the nature and limits of the anthropomorphism that we draw on to represent these animals. As they analyse their modes of narration, they begin to think about the shaping of the literary animal through textual transmission and reception. Throughout the literary phase of the course, we revisit this exercise as we reflect on how we write and speak about nonhuman animals. Here, I encourage the students consider, but not articulate, their claims about their relationship with nonhuman animals: whether they regard themselves as animal lovers, or whether they have neutral attitudes towards them; whether they prefer some species of animal over others; which animals, if any, evoke fear or disgust. I give them some time to reflect on these questions in silence and to make notes on their observations.

The pre-literary phase of the course draws heavily on experiential<sup>15</sup> learning, by which the students engage with the object of study in a way that makes it meaningful to their lives. Fred Glennon notes that such a pedagogical approach can result in students recognising

[...] the way in which their action in this issue empower[s] their own sense of themselves as moral agents, capable of addressing social justice issues now and in the future.<sup>16</sup>

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<sup>15</sup> For an up-to-date introduction to experiential learning, see David A. Kolb, *Experiential Learning: Experience as the Source of Learning and Development*, 2<sup>nd</sup> edn (London: Pearson, 2015).

<sup>16</sup> Fred Glennon, 'Experiential Learning and Social Justice Action: An Experiment in the Scholarship of Teaching and Learning', *Teaching Theology & Religion* 7.1 (2004), 30-7 (p. 36)

Students become actively involved in the material, reflect upon it, and construct their knowledge of it in their own terms, which allows them to feel a sense of ownership over the subject matter: they can easily identify nonhuman animals, and they have an experiential framework in which to discuss them. This is a course that draws from students' own engagement with other animals. They will be repeatedly be asked to consider the material in terms of the companion animals with whom they share their homes and regard as family, the animals who have elicited their empathy in the literary texts they read, or other animals they have encountered. The course repeatedly encourages them to reflect on how they regard animals, and what they consider to be the foundations on which this regard is based. Here, experiential learning provides them with the tools to identify and solve problems related to human interactions with animals and to other social justice issues.

During this pre-literary phase, I survey students on their attitudes towards a range of different forms of animal use or systems of exploitation including, but not limited to, dog fighting, foie gras, dog meat, circuses, wool, puppy mills, kangaroo leather, factory farms, vivisection, trophy hunting, dairy. Students respond with how they feel about these issues—either opposed to, neutral about, or in favour of—and we discuss the results. I invite them to analyse the reasons for the distinctions they make, and it is at this point of the course where their discomfort often begins to manifest. Such discomfort arises from their awareness that they may have inherited attitudes towards animals that they are only beginning to probe, and quite often the students will respond to this session with a remark on how much of the topic—despite being familiar—is entirely new to them. In each iteration of this task, several students have expressed their discomfort with animal use, whether by identifying as vegans, by pointing to their own moral concern for animals, or simply by stating that they feel ill-at-ease with regard to the tension between our behaviour towards other animals and our relationship with them. Discomfort like this can provide the momentum for a lively student-led discussion. Other students may, for example, object to puppy farms but not to pet shops that sell rabbits, hamsters, or fish; some object to fur but not leather; some censure trophy hunting but not game hunting; many students speak against the use of animals in zoos but not in aquarium parks or circuses. What students often cannot articulate here is the tension between their claims about the moral worth of (at least) some nonhuman animals and our practices that involve them. They also fail to fully comprehend, at this point, why some species of animals or some forms of use provoke in them a stronger emotional response than others—we explore this further in the literary phase of the course.

While discomfort is an important pedagogic tool in enacting conceptual change, there are, of course, ethical implications for its use within the classroom.<sup>17</sup> Jonathan D. Jansen, for instance, warns against the teacher positioning themselves on one side of the issue too early in the discussion, and highlights the importance of strategic empathy with the students' processing of the issues. For a teacher who holds a strong ethical position on the issues of animal exploitation, it may be difficult to remain detached from such discussions, but there will be time and space, during the rest of the module, for the teacher to intervene more. At this point, I allow the students to guide the trajectory of the discussion, and I interject only to help moderate it and to steer the conversation if it starts to falter. To enhance student curiosity about the topic, such an activity should take the shape of an inquiry rather than a debate. Here, it is important not to encourage agreement among the students, but rather to allow the contradictions, confusions, and disagreements rest until the following session.

In that session, the students will begin to think about how their attitudes and beliefs are shaped by a normative welfarist view that treats some animals as more morally valuable than others, that regards some forms of use or treatment as more egregious than others, and that holds that the only ethical issue surrounding the use of animals is cruel treatment. An exploration of the history of ethical thinking about animals begins with an attempt to define and delineate the relationship between animals and humans, and to uncover the norms, assumptions, and constructs on which the distinction between humans and nonhumans rest. During this phase of the course, I invite the students to consider what qualities distinguish humans from other animals that we can say apply to all humans in all circumstances and that don't apply to any nonhuman in any circumstance (and vice versa). The exploration of this question is enjoyable for students, who think creatively about the possibilities before concluding in a way that affirms Gary L. Francione's assertion that

[...] there is no special quality that only humans possess. Whatever the characteristic at issue, there are some nonhumans who exhibit the characteristic and some humans who do not. Of course it is possible to identify certain abilities, such as the ability to do calculus or write symphonies, that are peculiar to human beings, but those abilities are also peculiar to a very small

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<sup>17</sup> Zembylas, 'Pedagogy of Discomfort', p. 163

percentage of human beings. [...] Whatever defect we believe justifies our differential treatment of nonhumans, there are some human beings who suffer from these defects as well. And it is unnecessary for humans to possess any special characteristics in order not to be treated as things. That we do not require them to possess special characteristics demonstrates that we recognize that these characteristics have nothing to do with humans' susceptibility to suffering or with their right not to be treated as a resource.<sup>18</sup>

Such an enquiry lays the foundation for students' recognition of the arbitrariness of the human-animal distinction, which will be repeatedly elided during the literary phase and on which they will write their final project.

To begin our analysis of major trends in ethical thinking about animals I invite the students to reflect briefly and quietly on 1) what they think is the source of moral judgements, 2) whether they think that animals have an interest in continued existence, and 3) whether death is a harm to animals. At this point in the course, they will already have read some key writings on the topic of animals and morality, and they will be aware of the major differences between the animal rights and animal welfare positions. They will subsequently hold a structured discussion in which they consider their reflections independently and in terms of each other. They discuss the relative merits and demerits of the rights and welfare positions, and they explore some of the animal advocacy materials that result from these positions. Later, they divide into groups with each group adopting the persona of a key thinker in animal ethics, and they stage a debate in character; through this task they investigate experientially some of the key concepts that underpin animal ethics and that inform the literature they will study.

The final module of the pre-reading phase is one of the most provocative and provoking, and here, we examine the ways in which animalisation, with a particular focus on its metaphors, is used as a tool of otherisation and oppression.<sup>19</sup> We analyse the symbolic interplay between representations of

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<sup>18</sup> Gary L. Francione, *Introduction to Animal Rights: Your Child or the Dog?* (Philadelphia: Temple University Press, 2000), p. 125

<sup>19</sup> See, for example Caroline N. Tipler and Janet B. Ruscher, 'Dehumanizing Representations of Women: The Shaping of Hostile Sexist Attitudes Through Animalistic Metaphors', *Journal of Gender Studies* 28.1 (2019), 109-18; Gerald V. O'Brien, 'Metaphors and the Pejorative Framing of Marginalized Groups:

animals and women in popular culture, explore the gender stereotyping around the consumption of animals, and turn our attention to some of the animal advocacy materials that deploy similar gendered tropes. During this unit, we analyse the ways in which racial and ethnocentric hegemonic values are encoded in the rhetoric of animalisation, and we investigate both historical and contemporary artefacts for the deployment of such rhetoric. This exploration of the connections drawn between various forms of human injustice and of animalisation will come to underpin many of the discussions in the literary phase of the course, when we will explore animality alongside and within themes of abjection, modes of literary anthropomorphism, fabulistic discourse, children's literature, sentimentalism, and satire.

The literary phase of the course investigates the ways in which animals are represented in poetry and literary prose, and it connects these representations to trends in ethical debates about animals. In this phase, through a variety of themes, genres, and critical perspectives, we examine the ways in which animals are used in literature—as ciphers for human traits, as mere symbols or backdrops, or (as is often the case in children's literature) as fully developed characters. At this point in the course, students have a solid framework for thinking about animals; they understand how we see ourselves as both apart from them and yet connected to them, and they are able to articulate some of the major trends in the discussion of animal issues.

In this part of the module, we examine how literary texts frame the problem of our relationship with nonhuman animals, we elucidate and solidify our understanding of the history of animals in our literary traditions, and, in turn, to examine some of the ways in which literary texts construct, reflect, and uphold the normative welfarist paradigm. Although this part of the course produces a broader survey of animals in literature, it considers, among other issues:

- How the nonhuman subject is constructed either in terms of or in opposition to their property status;
- The commodification of nonhuman animals;
- The limits of a text's advocacy for its nonhuman subjects;
- Whether and how the reader's empathy is evoked for nonhuman animals;

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Implications for Social Work Education', *Journal of Social Work Education* 45.1 (2009), 29-46.

- The ways in which the exploitation of nonhuman animals is bound up with other forms of oppression in the texts;
- The actions within the texts that are depicted as having discharged humans' moral duties towards animals.

While participating in this literary phase of the course, students have a solid framework for thinking about animals and can use this framework to analyse how animals have been represented in a range of literary works. They explore texts that treat animals as mere figurative signifiers, and they investigate the mechanisms of literary anthropomorphism. Here, too, they develop modes of reading based on other approaches that consider the nature of oppression in literature and the transformative potential of literature itself. During this phase of the course, students also write their own versions of fables and fairytales in order to understand more clearly how the animal subject is constructed and used in these texts; their rewritings almost always show a broader commitment to social justice issues.

The literary part of the course recognises that, for many students, their empathy for animals will have been shaped by the fictional texts with which they engaged as children, so this part of the course invites them to re-examine those favourite childhood texts, perhaps with an altered perception that has been shaped by their new learning. In these childhood texts, there are often nonhuman animals who either resist human subjugation or who have a human ally who helps them do the same. Here, we investigate the nature of that resistance, its extension (or lack thereof) to the other animals in the text, and the construction of the limits of our moral concern for animals through such modes of writing.

The post-literary phase of the course once again returns to the model of the pedagogy of discomfort and it invites students to reconsider about the foundational questions of the pre-literary phase around the human relationship with other animals. In this part of the course, students submit an independent research project related to those questions. This research project asks them to construct an analysis derived from the following prompt: 'For the most part, literature about animals is aimed not so much at trying to understand animals, but, rather, trying to distinguish ourselves from them.' Students produce a thesis statement related to this topic, propose primary materials to analyse, compile an annotated bibliography, and design a structure for their essay as part of their continuous assessment, and they receive feedback on these before writing and submitting their essays. The openness of the topic allows the students to once

again take ownership not only of the analysis in which they will engage, but also in the research questions they ask and the texts of which they ask them.

In the post-literary phase, students reflect on some of the questions that we raised earlier in the course, but with a new understanding informed by familiarity with ethical writings on animals, knowledge of modes of criticism informed by the animal turn, and an analysis of the ways in which literary texts uphold the normative paradigm of thinking about animals. During this phase, students often meet with Gary L. Francione by video link to discuss the Abolitionist Approach to Animal Rights; they prepare for the session by formulating questions for him based on either their pre-literary phase readings or by reflections that they have considered over the course of the module.

Now in its seventh iteration, the course is incredibly popular with students and it receives positive feedback that points to the breadth of learning that has taken place and to the resulting attitudinal and behavioural changes. Most students testify, in the end-of-semester evaluations, to at least some form of conceptual change, which, through the course design, is facilitated not through the teacher's voice but in providing the students with tools to examine the ways in which we engage with animals in both textual culture and in our own lives. The course fills up quickly due to word-of-mouth, and it has moved, due to popular demand, from being taught in only one semester to being taught in both.

This is a module that invites students to challenge the construction of their own knowledge, assumptions, and moral intuitions about animals. The rights-based framework of the course is diametrically opposed to the prevailing welfare-focussed discourse on animals—a pervasive mode of discourse that does not concern itself with questions of use, but rather with issues of treatment.<sup>20</sup> The theoretical and practical questions raised by a rights-based approach therefore provide a useful tool with which the students may disassemble their thinking about other animals and, perhaps, reassemble them in the light of their explorations. While I use a rights-based approach to structure discussions on these issues and to shape the larger questions to which the students will respond throughout the course, the module itself draws heavily on experiential pedagogy in order to facilitate deeper and more personal engagement. The students elicit,

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<sup>20</sup> Cf. Gary L. Francione, 'Animal Welfare and the Moral Value of Nonhuman Animals', *Law, Culture, and the Humanities* 6.1 (January 2010), 24-36

take charge of, and resolve their own discomfort through questioning, discussing, and reconceptualising.

University courses that take as their foundation a rights-based approach to the human's relationship with other animals are far less common than those that explore animal rights as one perspective among many, and 'Writing Animals' is distinctive for its specific focus alone. Yet it is its deployment of a rights-based theoretical model for exploring literary texts that makes this course unique. In future work, I will detail an Abolitionist Approach theoretical model for the exploration of literary texts, in which I will examine how the investigative principles at the heart of the literary phase of this course can serve as a critical lens. What I propose is a model for reading literary texts that recasts the Six Principles of the Abolitionist Approach as a critical apparatus that may be used to explore textual representations of moral concern and its limits, of animal use, and of speciesism, in order to investigate the ways in which the literary canon upholds the normative paradigm of animal. This Abolitionist Approach literary framework seeks to uncover the literary mechanisms that perpetuate speciesism but also to investigate the processes by which the reader's empathy for animal lives is elicited through storytelling. This, in turn, has the potential to inform and shape advocacy for nonhuman animals.

A module such as 'Writing Animals' works best by guiding students' deconstruction of their own relationships with animals with a few key questions and then providing students with an alternative perspective on how that relationship may be configured. Such a module must be student-centred and, indeed, student-led if deep engagement is to be facilitated. Students should also be provided with ample space to explore, discuss, and probe their own thinking and that of their peers, and the stakes of such explorations, from an educational point of view, must be perceived to be low. The students should not be assessed (either formatively or summatively) on their own moral attitudes, and, in my experience, perform best when asked to write about literary texts that they have chosen themselves. The opportunity of unlearning that 'Writing Animals' provides—even if it is just temporary—enhances generic skills such as critical thinking and communication, and offers its students new critical tools with which to examine literature, the society that it reflects, and how they have constructed their identities in relation to it. Most importantly, though, it demonstrates that there are ways of relating to other beings that don't have to be grounded in violence and exploitation. Who knows what kinds of real change this might effect?



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# Ethical Interanimality (Or Empathizing with Nonhuman Others)

Sam Ben-Meir

**Abstract:** In standard approaches to animal ethics moral consideration is incrementally extended out from an established *human* moral core. This method presupposes an attitude of non-affiliation, which we must challenge insofar as it ignores the fact that we begin always already caught up in the experience of being a lived body thoroughly involved in a myriad of ecological and social interrelationships. Our aim is to begin rethinking the ethical in terms of human-animal intertwining and carnal empathy – recognizing that there is no human order as such in isolation from the semiotic networks that connect us inextricably to other living things.

## INTRODUCTION

In standard rationalistic approaches to animal ethics moral consideration is incrementally extended out from an established *human* moral core to grant moral status to ‘others’. Typically, this operation is based upon a principle of similarity or sameness: that is, the strategy consists of basing our ethical obligation to animals on certain morally relevant similarities. In that case, the inclusion of nonhuman animals in the ethical sphere involves a dual operation: first, it must identify the characteristics that make human animals worthy of moral consideration; second, they must then show that nonhuman animals (or at least certain of its members) possess the requisite characteristics. Tom Regan, for example, argues for an extension of moral rights to animals who fit certain criteria, such as those who have “desires and beliefs, who perceive, remember, and can act intentionally.”<sup>21</sup> The fundamental assumption is that these same qualities are what make humans undeniably moral agents who deserve moral rights: the only way, then, for an animal to be “granted” moral standing is to be similar to humans in these specific ways.

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<sup>21</sup> Regan, “The case for animal’s rights” in *The Animal Ethics Reader*, p. 18.

This approach ultimately reinforces the basis of metaphysical anthropocentrism, by reasoning through an ‘assimilationist framework.’<sup>22</sup>

The very attempt to satisfy this two-fold demand already presupposes the implicit attitude of *non-affiliation*. It is precisely this assumption that I intend to challenge – for it fails to appreciate our actual experience since we do not, generally, consider ourselves discreet, solipsistic objects whose original problem is to figure out how to reconnect to the world. It ignores the fact that we begin always already caught up in the experience of being a lived body thoroughly involved in a myriad of ecological and social interrelationships with other living bodies and people. It involves, in other words, a denial of human animality and ecological embeddedness.

I suggest that we should question the presupposition that humans can and should attempt to define criteria for the moral consideration of the nonhuman world. In what follows I will argue that we would do better to adopt a position of genuine ethical openness; which means acknowledging that we can never settle our attitude to the other – that “my knowledge of others may be overthrown” as Stanley Cavell puts it, and “even that it ought to be.” I suggest that we should be skeptical of drawing up criteria for something’s being worthy of moral consideration. Instead of ensuring that nothing is capable of disturbing our ‘good conscience’, the *interanimal ethics* I propose will recognize our fallibility, as well as the limits of our knowledge and understanding. In short, it will recommend a wariness of our natural complacency, so that we remain malleable and receptive to the other who might address us from anywhere, at any time.

## CARNAL EMPATHY

I propose that we begin rethinking the ethical in terms of human-animal intertwining, in terms of how ‘we echo through one another’, such that “the relation between the human and animality is not a hierarchical relation, but lateral.”<sup>23</sup> This will involve recognizing that there is no human order as such in isolation from the semiotic networks – networks of meaning – that connect us inextricably to other living things. What interests me is how we might understand the originary basis for our ethical inter-relations with nonhuman others – which I claim involves understanding interspecies empathy as eminently active and embodied. Edmund Husserl would claim that we “originally” experience both our bodies and the bodies of others (including animals) as expressive: “Each

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<sup>22</sup> Plumwood, *Environmental Culture*, p. 167.

<sup>23</sup> Merleau-Ponty, *Nature*, p. 268.

movement of the Body is full of soul, the coming and going, the standing and sitting, the walking and dancing, etc.”<sup>24</sup>

*Einfühlung*, for Husserl, was a “feeling-one’s-way-into” the expressive body of the other. Merleau-Ponty would take this a step further in claiming that, “*Einfühlung* is a corporeal operation... to perceive the other is to perceive not only that I shake hands, but that he shakes my hand.”<sup>25</sup> Empathy posits, according to Merleau-Ponty, an esthesiological (i.e. perceiving but not yet thinking or speaking) subject that apperceives “the body as perceiving before apperceiving it as thinking.”<sup>26</sup> It is precisely this pre-reflective carnal relation we have with the world that will enable Merleau-Ponty to provide a basis for understanding our experiences of the animal’s comportment toward us. In the human-animal relation there is, for Merleau-Ponty, “an overcoming [*dépassement*] that does not abolish kinship.”<sup>27</sup> Understood as our ‘*Ineinander* with Sensible Being and with other corporeities’ the notion of *kinship* here refers to relations with an extra-human world in which we are always already implicated.

Merleau-Ponty recognizes in the appearance of animals the “existential value of manifestation, of presentation” – how, for example, “the same muscles of the face... have a utilitarian function in lower vertebrates... and in higher animals, an expressive function.”<sup>28</sup> We need to attend to the “way that animals show themselves to each other” – and in doing so we find that “each is the mirror of the other,” such that “what exists are not separate animals, but an *inter-animality*.”<sup>29</sup> Our ‘strange kinship’ with nonhuman animals allows for an intimate relation on the basis of shared embodiment (without erasing differences); it allows us to be together with other embodied beings, as Kelly Oliver puts it, “not because we share an origin and evolution, or a language and culture, but rather because we have bodies that relate to their environment and to other bodies.”<sup>30</sup>

If various animals have their own behavioral styles, this is not to say that one type of being represents the ascent or descent of the other – neither is one radically separated from the other. Merleau-Ponty will maintain the language of ‘higher’ and ‘lower’, but these distinctions need

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<sup>24</sup> Husserl, *Ideas II*, p. 252.

<sup>25</sup> *Nature*, p. 76.

<sup>26</sup> *Nature*, p. 76.

<sup>27</sup> *Nature*, p. 335.

<sup>28</sup> *Nature*, p. 188.

<sup>29</sup> *Nature*, p. 248 Italics added.

<sup>30</sup> Oliver, “Stopping the Anthropological Machine” *PhaenEx* 2, no. 2 (fall/winter 2007), p. 18-19.

to be seen within the larger framework of *manifestation*, *presentation* and, indeed, *expression*. “This strange kinship is not based on descendants nor on generation but rather on shared embodiment in a shared world, even if the style of body and of inhabiting that world are radically different.”<sup>31</sup>

## EMPATHY AND ANIMAL *UMWELTEN*

Lived bodies, human and animal, are always already intercorporeally linked; which makes possible a kind of carnal, or kinesthetic, empathy. I propose that we can gain a deeper appreciation of this kinesthetic empathy by connecting it with Jakob von Uexküll’s *Umwelt* theory – by which I mean his thinking on the nature of signs, phenomena and living beings; and a fundamental premise of which is that the subject and its phenomenal world are not separate entities but together constitute an integrated and dynamic unity. Nonhuman animals should not be regarded as individual black boxes, but rather as subjects with environments or *Umwelten* that we can “feel our way into” and explore. This idea provides the essential epistemological basis for extending the ethical beyond the realm of human interaction. I suggest that we understand *empathy* as involving the attempt to grasp or reconstruct another being’s *Umwelt*, in a way that is unbiased and recognizes the limits of our ability to acquire a complete understanding. Empathic exploration, I maintain, requires of the investigator the creative wherewithal to defer closure, to sustain a process of not-concluding, keeping the mind open to new possibilities for ‘reciprocal insertion and intertwining.’

A nonhuman animal’s surrounding-world can be reconstructed (at least partially) through close, sustained observation in the field, and experiment aimed at finding out what the animal perceives by what it reacts to and how (e.g. Uexküll’s *Umweltforschung*). But empathic reconstruction is not confined to the investigations of ethologists. There is, first of all, the everyday sort of embodied empathy that occurs between humans and their animal companions (dogs, horses, birds, as well as exotic species). Perhaps the greatest virtuosos of embodied empathy are the Kalahari Bushmen of Botswana and Namibia: in the absence of clear footprints, hunters will “reconstruct what the animal was doing and predict where it was going.”<sup>32</sup> Indeed, they will feel their way into the animal’s subjectivity, and reenact the moment when the animal heard the

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<sup>31</sup> Ibid.

<sup>32</sup> Liebenberg, *The Art of Tracking: The Origin of Science*.

hunter approaching. Not surprisingly, E. O. Wilson dismisses as anthropomorphism the way hunters “will strain to enter the minds of the animals they track.”<sup>33</sup> But is it possible that their anthropomorphic interpretations are not entirely unjustified (considering especially that their survival is dependent on their ability to deduce which way an animal has fled)? I deliberately use the example of the Kalahari Bushmen because it seems to me that they may be regarded as true practitioners of ethical interanimality: when the exhausted animal can no longer flee the animal is quickly dispatched and treated in a dignified manner, for when it was alive the hunter ‘lived and breathed with it and felt its every movement in his own body.’

Creative reconstruction can also take aesthetic forms – as in the case of Messiaen’s meticulous rendering of bird songs (which he emphatically regarded as *music*). In his compositions, the material Messiaen derived from close attention to the birds is *translated* into his own musical language. The possibility of translation across environments is central to the ability of living things to grasp, to whatever degree, the surrounding-world of another being. Nor is the capacity to *feel* oneself into the *Umwelt* of another creature exclusive to human beings.

If we ignore or fail to consider the subjective world (or *worlds*) of another being, then we are also failing to interact with that being as a concrete other. To attend to the *Umwelt* of a non-human other is to consider the various contrapuntal relations that it takes part in, the melodic interplays that in a very real sense constitute this particular life form’s way of being-in-the-world. Jesper Hoffmeyer introduced the term *semiotic niche* to refer to the set of contrapuntal relations that an organism participates in.<sup>34</sup> It is through this *semiotic niche* that the *Umwelt* of a life form is intertwined with other *Umwelten* – the point being that empathy with a concrete living other involves attuning oneself to the contrapuntal harmonies to which it contributes and without which it would not be the kind of being it is.

I suggest that an empathic orientation may serve to generate what we can call a *semioethical* relationship.<sup>35</sup> The body is intercorporeal and contiguous with the world, or as Abram puts it: “We are human only in

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<sup>33</sup> Wilson, *Consilience*, p. 257.

<sup>34</sup> See Hoffmeyer, *Signs of Meaning in the Universe*, p. 140: “The character of the animal’s *Umwelt* is what defines the spectrum of positions that an animal can occupy in the biological sphere, its semiotic niche.”

<sup>35</sup> I am indebted to the work of Susan Petrilli and Augusto Ponzio for their elaboration of the concept of *semioethics*. See Petrilli and Ponzio, “Semiotics Today: From Global Semiotics to Semioethics, a Dialogic Response” in *Signs*, Vol. 1: pp. 29-127, 2007.

contact, and conviviality, with what is not human.”<sup>36</sup> The body, then, is ‘in circuit’ with others, including animal others – and such relations, we might add, are essential for making us human. Hence, empathy involves an awareness that our being is carnally intertwined with other semiotic agents (or *Umwelt-builders*) – and by being able to create meaningfully organized *Umwelten* of their own (which may be radically different from ours) these semiotic agents are also in a position to make a claim on us, to challenge our natural complacency and to enter into dialogic relations with us.

The notion of empathy that I want to defend admits the possibility then of meaningful relations in and between species, relations that are not necessarily limited by the absence of language – for it is not as if there exist no other possibilities for inter- and intra-specific communication. Species overlap one another and communication takes place across their borders. Kalevi Kull and Peter Torop explain biological communication in terms of *biotranslation*, or the translation between *Umwelten* of different biological organisms, where “some signs in one *Umwelt* are put into correspondence with some signs in another *Umwelt*... For it to be possible for translation to occur, there must be a certain connection, or overlapping, between the *Umwelten*.”<sup>37</sup> Translation is understood here as essentially trans- or inter-communication across environments; and in this sense it is an indispensable feature of semiosis and semioethical relationships in general.

While one cannot share *Umwelt*, one can participate in a common-*Umwelt*, that is, ‘a particular part of a group of *Umwelten*, belonging to a group of subjects that have *schemata* in common.’ This allows us to begin to understand how carnal empathy is not limited to human-animal (or human-human) relationships. We now have many documented cases of cross-species friendships that hardly seem possible without positing some form of embodied empathy. What is perhaps most remarkable is that cross-species friendships can develop even between animals who are normally predator and prey.<sup>38</sup> Interestingly, Merelau-Ponty will refer to “inter-animality... between two different species, even those that are usually enemies, as the rat lives among vipers.”<sup>39</sup> While some contemporary evolutionists (such as Richard Dawkins) see no room in the animal realm for morality and kindness, in fact empathic ability does not appear to be limited to humans or primates (though it may be limited to mammals – it is still too early to say): there is mounting evidence that cetaceans, elephants, and even mice and rats have the capacity to feel

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<sup>36</sup> David Abram, *The Spell of the Sensuous*, p. 22.

<sup>37</sup> Kull, Torop 2003, p. 318.

<sup>38</sup> Bekoff, *The Emotional Lives of Animals*, p. xix.

<sup>39</sup> *Nature*, p. 173.

empathy. In *The Descent of Man*, Darwin himself views morality, including sympathy, as a natural tendency; and empirical research on animals tends to support this view. As Bekoff observes: “There is solid evidence that many animals have a capacity for empathy, and that empathy is a basic regulator of social life for at least some species of animal.”<sup>40</sup> Animal friendship, play, and most especially communication, is simply not confined to the borders that we generally use to define species.

## VULNERABILITY

Our intercorporeality is absolutely fundamental to the capacity for empathy as understood here. If proximal bodily relations provide experiential resources for empathy between humans, it would seem to follow that such experiences also occur in our interactions with other embodied beings. In terms of the structures of our bodily experience, the other is always already included. The notion of common vulnerability is especially significant insofar as it can serve as the basis for a kind of carnal compassion with respect to non-human animal life. In what follows I want to make the case for vulnerability as an ontological structure that is constitutive of human beings and animals alike.

There are good grounds, I suggest, for resisting the view that we should regard vulnerability as a *conditio humana*, as Michael Kottow suggests, to the exclusion of other animals. His claim is that vulnerability is properly grasped as a descriptive, anthropological fact of human existence. That is, it is not simply that we are susceptible, receptive and exposed, sometimes and in some places, given certain contingent circumstances; rather, corporeal vulnerability constitutes an inherent and non-eliminable aspect of human existence.

Kottow denies that we can use the concept of vulnerability to describe an existential state that is *shared* between humans and other animals. When it comes to the suggestion that vulnerability provides the basis for an ethical response to nonhuman others, Kottow’s response is as follows:

It becomes difficult to understand that vulnerability should “appeal to protection of both animals and the teleological auto-organization of the world,” for the nature of human vulnerability differs from other living beings in that humans are vulnerable to defeat in the complex process of becoming, whereas nonhumans

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<sup>40</sup> Beckoff, *Wild Justice* (p. 87).



are vulnerable to the more simple and radical dichotomy of being or ceasing to be.<sup>41</sup>

Kottow claims that there is an essential difference between the way that human beings are vulnerable and the way that other animals could at all be said to be vulnerable. Falling prey to the ethics of similarity, or lack thereof, animals for Kottow do not partake of a baseline ontological state of vulnerability. Our lives involve ‘complex processes of becoming’; our vulnerability is unique inasmuch as it is intertwined with our pursuit of the good (which is always more or less fraught with difficulty), the planning and realization of life projects (which can be frustrated by various internal/external contingencies), and the development of our practical reasoning skills (which require fostering and cultivation). Other animals are not vulnerable in these distinctly human ways; for Kottow, their lives are simply a question of ‘being or ceasing to be,’ life or death.

Under critical analysis, Kottow’s refusal to acknowledge the vulnerability of all nonhuman animals may be excessively homogenizing; his treatment is characteristic of the tendency which Derrida describes in *The Animal that Therefore I Am* – namely, to reduce the dizzying variety of animals to “a single and fundamentally homogenous set,” embracing “the whole animal kingdom with the exception of the human,” which is then represented by the general term “animal.”<sup>42</sup> For Derrida, this constitutes nothing less than “one of the greatest and most symptomatic *asininites* of those who call themselves humans.”<sup>43</sup> Philosophers often regard animals as belonging to a single class of beings that lack some essential human trait – such as, language, reason, moral agency, etc. – failing to sufficiently consider (or consider at all) the enormous differences that exist among animals themselves; not to mention the false characterization of the differences between human beings and animals. At the very least, it hardly makes sense to consider complex organisms as vulnerable simply in the sense of continuing or ceasing to be. Kottow is ignoring the reality that many animals are creatures with inherent interests; they are centers of needs, value and striving on their own account.

Kurt Goldstein argues in his 1934 classic *The Organism*, that merely staying alive may play ‘a prominent but by no means *the* essential role’ in the self-realization of an organism. We learn from pathology that the tendency to self-preservation is characteristic precisely of ‘anomalous life,’ or the decay of life – for the maintenance of the existent state is the only form of actualization remaining to the sick person. Whereas the concern

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<sup>41</sup> Kottow, “Vulnerability: What Kind of Principle is It?” p. 283.

<sup>42</sup> Derrida, *The Animal That Therefore I Am*, p. 40-1.

<sup>43</sup> *The Animal That Therefore I Am*, p. 41.

for self-preservation is “a phenomena of disease,” the tendency of normal life is toward “activity and progress” – which is to say, the organism “is governed by the tendency to actualize, as much as possible, its individual capacities, its ‘nature’, in the world.”<sup>44</sup> Hence, the drive towards self-preservation should not define the organism and hence its reality, or ontological category, as a whole – for it is not limited to such activities. “We may say... that an organism is governed by the tendency to actualize its individual capacities as fully as possible.”<sup>45</sup> In short, the organism “does not merely strive for self-preservation but is impelled to manifest spontaneity and creativeness.”<sup>46</sup>

The singing of a warbler, for example, “reminds us, forcefully indeed, of another ordering of vital characteristics which differs from that in which survival holds the highest rank.”<sup>47</sup> For Adolf Portmann, the songbird is in fact transforming the dull, meaningless flow of ‘dead time’ into meaningfully lived time – just as we know “from our own experience that any mere lapse of ‘physical’ time is difficult to bear...” – and as such animal (and human) play has a functionless aspect which needs to be recognized inasmuch as it is a free expression lacking the “component of ‘role.’”<sup>48</sup> Indeed, as a fulfillment of genuine free time, such play refers us to a “higher level of living which is *served by* survival functions.”<sup>49</sup>

Further manifestations of this ‘higher level’, closely linked with play, are laughter and humor, which do not seem to be exclusive to primates (let alone human beings). In short, nonhuman animals are clearly involved in complex processes of becoming which embrace inter- and intra-specific structures of communication – and furthermore, these processes can be frustrated or impeded; how could it be otherwise when what we have “in front of us are inner realities experiencing their worlds, realities which have created individual worlds of the most varied intensity of fulfillment?”<sup>50</sup> The concept of vulnerability can contribute to our understanding of the

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<sup>44</sup> Goldstein, *The Organism*, p. 37.

<sup>45</sup> Goldstein, *Human Nature*, p. 141.

<sup>46</sup> *Human Nature*, p. 171.

<sup>47</sup> Adolf Portmann, *Essays in Philosophical Zoology*, p. 3 As R. G. Collingwood points out: “We can show how the games of young animals and of children anticipate the serious work of life and train them unawares to meet the problems which will face them later... But all such explanations of play are in part mythological and forced, because they ascribe to it motives which the player, by his very character as a player, does not feel. From its own point of view play is motiveless, immediate, intuitive; what motive it has is implicit only” (*Speculum Mentis*, p. 103).

<sup>48</sup> *Essays in Philosophical Zoology*, p. 4.

<sup>49</sup> *Essays in Philosophical Zoology*, p. 5.

<sup>50</sup> *Essays in Philosophical Zoology*, p. 143.

primordial basis for our ethical interrelations with nonhuman others – provided we do not understand vulnerability as simply a human condition: vulnerability is a constitutive feature of animals as well.

## CONCLUSION

The redescription of ethics in terms of interanimality involves recognizing our limitations as moral agents. For one thing, there is no neutral moral perspective: we have a tendency to favor ourselves, our family and our species; so that care and concern are necessarily selective emotional responses. It is a foregone conclusion that we will tend to empathize with some forms of life more than with others. The unnecessary infliction of suffering on a dolphin or a cat will be more disconcerting to us morally than if the creature were, say, a spider. At the same time, we have to acknowledge that our knowledge is far from perfect and constantly subject to change, especially where our understanding of animals and their respective life-worlds are concerned. As we learn more we may find that our tendency to empathize with certain creatures is likewise increased.

It is not the case, either for humans or animals, that they are simply enclosed within fixed and immobile *Umwelten*, which refuse to refer beyond themselves in any way. The philosopher Theodor Litt, for example, describes the animal *Umwelt* as “closed and hardened into a self-sufficiency that does not suggest, let alone permit any movement beyond.”<sup>51</sup> I claim that, at least for many animals, such a description is certainly inadequate. As we have seen, semioethical relations can develop across *Umwelten* in often surprising and novel ways, through translation and improvisation of modes of carnal empathy.

Merleau-Ponty will invoke a “massive flesh of esthesiology” from which emerges human desire and animal desire without any “absolute break” between them.<sup>52</sup> “Already in the animal, in the ceremony of love, desire is not mechanical functioning, but an opening to an *Umwelt* of fellow creatures... communication.”<sup>53</sup> The fundamental premise then of ethical interanimality can be stated simply as follows: ‘humans and animals are woven together in inhabiting the earth.’ That is, our flesh is inseparable from the flesh of animals. Our bodies are intertwined with theirs; our carnal sensibilities, as well as our capacities for empathy, are developed in and through an intercorporeal exchange with living Nature. I suggest that

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<sup>51</sup> Quoted in in Rudolf Langenthaler, *Organismus und Umwelt*, p. 235.

<sup>52</sup> *Nature*, p. 225.

<sup>53</sup> *Ibid.*

recognizing human kinship with animals is less a matter of determining behavioral or biological similarities and more a matter of acknowledging how their voices are inextricably interwoven with “the inanimate voices that surround us”<sup>54</sup> and in fact our own. As Abram observes, “To the fully embodied animal *any* movement might be a gesture, and *any* sound may be a voice, a meaningful utterance of the world. And hence to my own creaturely flesh, as well, everything speaks!”<sup>55</sup>

In contrast to the inherently hierarchical relation between the human and animal, I proposed (following Merleau-Ponty’s ‘new ontology’) a ‘laterality’ that becomes recognizable in our *Einfühlung* and web-like intertwining with animals. All semiotic agents can distinguish between what they need and what is harmful or unimportant to them. However, we are not justified in regarding animals as merely striving to continue in their existence – rather the animal is intrinsically a striving towards ontological expansion and self-expression, or what Goldstein calls “self-actualization” and “creativity”.

Nature is the inexhaustible proliferation of creations: an infinitely creative force expressing itself in an infinitely differentiated creation. There is still a tendency to view genuine creativity as the special province of mankind; but there is an argument to be made that true creativity could not arise in the middle of a universe in which creativity did not already exist. So unless we want to say that the creativity of human beings is itself an illusion, then “the world, contrary to the classical physical image, was creative even before human creativity appeared...”<sup>56</sup> This means, among other things, that there is no sharp division between nature and culture, ‘no kingdom within a kingdom,’ which is not to deny those aspects of human culture that make it unique – rather, it is to say that there is no aspect of human culture which is not at least pre-figured in the animal world.

Indeed, structures of performance and spectatorship, music and dance, painting, architecture, courtship, camaraderie, ritual and mourning – all find expression in non-human worlds of meaning. As our knowledge of living Nature deepens we may find that those aspects of ourselves, which we take to be most distinctly human, may in fact be regarded as ‘an extension and refinement of animal abilities.’ In closing, it seems to me that it is incumbent on us to view living entities ‘within the widest of

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<sup>54</sup> Mazis, *Earthbodies*, p. 198.

<sup>55</sup> *Becoming Animal*, p. 167 Compare to Goethe’s observation that to the “attentive observer [Nature] is nowhere dead nor silent” (*Theory of Colours*, p. xviii).

<sup>56</sup> Hoffmeyer, “Biosemiotics and Ethics” in *Biopolitics: A Feminist and Ecological Reader on Biotechnology*, p. 141.

intellectual and spiritual horizons.’ This will mean viewing and treating the animal as a living whole, an irreducible way of being-in-the-world that cannot be grasped through the physico-chemical description of life alone. It will also mean acknowledging that our humanity implies an already existing continuity with the nonhuman, that we inhabit a shared meaningful world with other living things which is constitutive of our humanity itself.

# Close Strangeness

## On the Encounter

Boris Van Meurs

‘I want the materiality of things. Humanity is steeped in humanization, as though that were necessary; and that false humanization impedes man and impedes his humanity. There exists a thing that is broader, deeper, and deeper, less good, less bad, less pretty. Even though that thing too runs the risk of becoming transformed into ‘purity’ in our gross hands, our hands that are gross and full of words.’

- Clarice Lispector, *The Passion according to G.H.*<sup>1</sup>

**Abstract:** Animal ethics presupposes the possibility of *encountering* the animal. The current paper investigates the meaning of such an encounter, through both phenomenological and object-oriented methods. It is suggested that an encounter involves a *closeness*, in which accidental properties of the phenomenon cannot be reduced or abstracted, as well as a *strangeness*, through which the encountered animal sheds a different light on the context in which the encounter takes place. Animals are encountered in their particularity. This poses challenges to an abstracting stance towards animals, prevalent in most theorizing attitudes.

### Introduction

An animal invades! A bird resting in front of the window. An ant seeking its way across the kitchen floor. A spider crawling in the corners of the room. Even though animals are in many ways retreating from the lifeworlds of the Moderns, we still encounter them – and they us! – in the most intimate of spaces, in our houses, in our bedrooms. Most of these

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<sup>1</sup> Clarice Lispector, *The Passion According to G.H.*, trans. by Ronald W. Sousa (Minneapolis: University of Minnesota Press, 1988), p. 151.

encounters do not play large roles in our thoughts. Spiders are squashed, or, if they are lucky, taken outside. Ants and mice run a risk of being poisoned if they encounter humans too often. Birds often fly by unnoticed. This could lead one to thinking that animals have a tendency to *retreat* from human awareness, as if they possess some essential quality that keeps them locked in the background. Non-human animals would then simply be a part of the stage upon which the human story unfolds.

Upon a closer look, many different relations to animals become evident. A prevalent violent attitude towards animals exists: humans kill and eat animals. However, animals are also studied and sometimes passionately followed in their tiniest of gestures to uncover their secrets. Humans can even develop an *ethos* towards animals. *Ethos* could clumsily be translated as a virtuous attitude. The philosophical study concerning this *ethos* towards animals is sometimes called *Animal Ethics*.

What does this philosophical study seek? The aims of animal ethics are plural, ranging from critique<sup>2</sup> to action<sup>3</sup>, and it is therefore impossible to summarize a single goal under which animal ethicists gather. However, a central, simple assumption that is necessarily shared by each of the animal ethicists is that animals can appear to humans. For, if animals were unable to appear to humans, it would be impossible to develop an *ethos* towards them. Moreover, animals do not just *appear*, like a table or a chair, as they do not wait passively. Animals have the special capacity to be *encountered*, rather than to just appear.

But what does it mean to be encountered? It seems to mean that the being that is encountered has a possibility of *countering*. Usually the encountered is ascribed a ‘consciousness’, through which it opposes that which is encountering – a consciousness that is capable of willing otherwise than the encountering party. An animal can counter human plans, following its own desires. Yet, this idea already jumps over a question that should be posed first. *How* do we encounter animals, if they really are beings that can counter us? How does the encounter appear? The assumptions that animals are conscious creatures, that they have a will, that they sometimes will otherwise, etc. are statements *about* certain phenomena. In order to understand if these assumptions are ‘correct’, it is necessary to grasp in what way these phenomena are encountered.

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<sup>2</sup> Fritjof Capra, ‘Deep Ecology: A New Paradigm’, in *Deep Ecology for the 21st Century*, ed. by George Sessions (Boston, MA: Shambhala, 1995), pp. 19–26.

<sup>3</sup> As in Dave Foreman, *Confessions of an Eco-Warrior* (Broadway Books, 1991).

The current investigation will take the example of an *invading spider* in a room as a starting point. Following the spider that is encountered, the focus is returned again and again to what it means to encounter such a creature. The results of this investigation are tentative. Their most important contribution to animal ethics could be a call for a deeper study of the way animals become present to us at all, as a way of respecting their unique way of existing and of understanding what animals can do to our own worlds if openness is maintained. This article will first investigate the encounter phenomenologically, to then follow this phenomenon in its broader implications to other phenomena.

## Phenomenology of the Animal Encounter

### HOW TO STUDY THE ENCOUNTER?

Phenomenology can, as a study of appearances, clarify what constitutes the special way in which animals become present. As the current investigation is interested in precisely this aspect, a first probe into the existence of animals will be attempted through the phenomenological method. However, a first question to pursue is to what degree and in what shape this method can successfully engage with the encounter.

Even though the phenomenal nature of the animal encounter hints at the value of a phenomenological research, the encounter as a phenomenon also betrays a central principal of phenomenology. Classically, as in the phenomenology of Husserl, the study of phenomena aimed at the reduction of phenomena to their *eidōs*, their essential *Form*.<sup>4</sup> That is, through an imaginary process of manipulation of the phenomena, a phenomenologist attempts to uncover what is *essential* about them. The assumption is that phenomena reveal themselves to us in such a way that inessential and essential qualities intermingle. It does not pertain to the essence of Rembrandt's *Nachtwacht* to be present to me at 13:16 on a Sunday, but still it was at that time that I did look at it. The artwork's essential properties lie somewhere under the fullness of the context in which it appears (the lighting conditions, the noises of the crowd of tourists distracting me, the angle from which I looked at the painting). A

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<sup>4</sup> Edmund Husserl, *Ideen Zu Einer Reinen Phänomenologie Und Phänomenologischen Philosophie: Erstes Buch, Allgemeine Einführung in Die Reine Phänomenologie*, Husserliana: Edmund Husserl's Gesammelte Werke (Den Haag: Martinus Nijhof, 1976), III, pp. 13–17.



phenomenological study is successful when the reduction to the essential properties is achieved.

The problem with the encounter is that it essentially entails being face-to-face with a phenomenon in its fullness, both encompassing essentials *and* inessentials. We do not encounter ‘just’ the essence of a phenomenon, but the phenomenon with all its accidental properties. This means that phenomenology, when occupied with studying the encounter, cannot reduce these accidental properties away. They form a part of what is essential in encountering anything at all. Just imagine what your pet dog would be, if you were to encounter it without ‘inessentials’. You would have to be able to encounter it *without* the contingency of the way the sunlight falls upon its fur, without its present mood, outside of any random context that it finds it in, and also, outside of any particular moment in time. What would be left? Whatever the essence of your pet dog may be, it would not look anything like your dog. It would not be able to bark at the neighbours, to drop its ball at your feet as an invitation to play, it would not smell as badly after it went for a swim in the local pond. Yet, an *eidetic* reduction in the tradition of Husserl could result in the effacing of these aspects. Whatever the quest for essential ‘dogness’ may achieve, it comes as a great loss of all that it has to ‘reduce’, ‘bracket’ or simply neglect. In the encounter-phenomenon, the accidental cannot be left out, but forms an essential part. The signal we usually hunt for when doing philosophy is only a small thread woven through the noise of accidents in which entities appear. And yet these entities would not be the same without this noise, without the amalgamation of ‘inessential properties’ that are involved in their appearances. They would not even be able to appear.

Phenomenology should therefore resist its abstracting reflex in the study of the encounter. If the encounter is to be understood as the encounter it is, the essential properties of the encounter involve the inessential properties of what is encountered. This is the first insight that I want to approach carefully: in the encounter, ‘the’ animal becomes ‘an’ animal. Specificity, not abstraction, is what the encounter is about. The real challenge of thinking the encounter through is that it involves *nothing but* particularity. For once, we are not interested in filtering what we encounter, until we stumble upon something timeless, something persistent – for once, we ask ourselves: what to do with the noise that we actually encounter? *Understanding* an encounter can not lead to abstractions – we will have to deal with this spider, right here, right now. A spider does not just crawl into our homes, this crawling requires some response of us!

Do we leave it be? Do we remove it? Do we squash it? Even neglecting the spider is now a choice of a certain response.

The end result of a phenomenology of the encounter can therefore not be a clearly conceptualized *eidōs*, which is achieved by removing all the accidental obstacles in one's way. The strange situation of the encounter-phenomenon is that it resists reduction of what it encounters. Accidental properties are usually *reduced* to essential ones, however, in the encounter the accidental properties that are encountered cannot be translated into anything else. The encounter must stick to what it encounters and this requires a relation to the inessential properties of the encountered. Even if there is an *eidōs* of the encounter-phenomenon, it would involve 'inessentials' as part of its essence. Its essence would be to encounter contingencies - but that means that the reductive side to phenomenology cannot be applied.

The path of phenomenology does not point towards the timeless World of Forms in this sense, but right towards the pit of sensual existence. A concept of the encounter is therefore still, in some sense, an abstraction, but one that has no other place than *in the world*, because it fully relies on accidentals. The idea of such an immanent concept is developed here, but is not unproblematic – the question of its possibility requires further philosophical research, as will be indicated later. This article will point at the necessity of this research, going as far as it can in pursuing this immanent concept, which can encounter the accidentals as accidentals.

In short, the encounter is a special phenomenon that might be studied by phenomenology, but which highlights the problematic side of the reductive aim of this mode of study. The encounter cannot be reduced to anything else, as it is a phenomenon that requires a full immanency into the moment of encountering. Encounters are essentially dealing with inessentials. We will have to keep these hesitations in mind when we apply the phenomenological method to the encounter, which should not be reduced in order to find the essential form.

## PHENOMENOLOGY OF THE INVASION OF THE HOME ENVIRONMENT

2:05 A.M.: A spider crawls in the corner of my room. As I lie in bed, attempting to fall asleep, I watch its shape creep over the wall in the dim

light of a street lantern shining through my curtains. I can see the traces of its webs, its body illuminated now and then by the lights of passing cars. I watch it from below seemingly finding a place it likes under the windowsill. In the course of the days I watch it build a new web there, until one morning it is gone... None of the above seems to pertain to the essence of the spider, neither the particular moment in which I discover it, neither the light in which it became visible to me, neither its capability of being seen by me at different moments and at different angles – and yet all of these ‘inessentials’ are what constitute the way in which I encounter *this* spider. More importantly, it is *this* spider that makes me feel uneasy, whose presence arouses a certain awkwardness in me. How should we understand this?

A first thing to notice is that this spider somehow feels *invasive*. As a phenomenon the spider appears as invading. This means that the spider-phenomenon is not just limited to its body, but implies a relation to an outer horizon of something that it invades. The invading spider is invading *something else*. It invades my home, which means that, in order to understand this encounter, we must see in what way the spider changes the way the home appears. The encounter, apparently, is not limited to the being we encounter, but changes a relation to an outer horizon. In this case: of the home.

The home-phenomenon is characterized by smoothness. The smoothness of the home lies in the predictability of its parts, which present themselves as suited for certain ends. In their functionality, things retreat, as Heidegger’s tool analysis has taught us.<sup>5</sup> My home follows my laws – I make up its rules. The objects should serve my demands. The table should not be moved without me ordering it to. The posters on my wall should not be changed. The carpet does not have the right to leave this room without my knowledge. I am a dictator over my home, in a sense: my will and law exhaust the being of all the objects that make my house a home, insofar as it appears as my home.

The spider invades my home and intervenes in this smoothness. In the demands that I lay upon the objects that constitute my home, I sense that I unwittingly demand a *predictability* of my home-environment. To this strict demand of full control and smoothness, this spider comes as a challenge. Something is stirring within a juxtaposition of objects that seemed stabilized until further order. Due to the spider, my home is

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<sup>5</sup> Martin Heidegger, *Sein Und Zeit* (Tübingen: Max Niemeyer Verlag, 2006), §§16–17.

suddenly in a state of mutiny against my decree. This spider is moving according to its own will, not to mine. If this surprises me in the encounter, it is only because I am a rather inattentive dictator, one that is mostly unaware of its of law-bestowal upon the things. It is only when this law is broken, that I find out that I expected full compliance of the objects in my house.

The encounter surprises, because it intervenes with a predictability. And it does so by opposing a smoothness that characterizes the mode of appearing of beings by adding a principle different than this smoothness. The encountered animal can move within the smoothness and roughen it by doing so.

## THE ALSO-IS STRUCTURE

The sense of invasion shows that the presence of the spider broke with the way in which the home usually appears. Erica Fudge <sup>6</sup>, a researcher in Animal Studies, recalls how she was confronted with a mouse invading her house. Her being a vegetarian, she struggled with the proper reply to this animal. In analysis she noted how it was the *disregard* of this mouse to her meaning-giving that was haunting her most. “The designation of areas – private / public; domestic / wild – that is central to the structuring of an urban environment is undone by the beings that move between domestic and wild: by those that are untamed but live in our homes. And it is this violation [...] that takes uncertainty into what should be the most stable place of all: the home.”<sup>7</sup>

This is, however, not the full meaning of the phenomenon of the home-invading spider. If so, I could simply remove it and be done. What *this* crawling spider shows, is not just that I do not have full control over what moves and what rests in my room. It shows that my sovereignty over my house only sprinkles a symbolic dust over the things, which they could shake off at any time. When I feel at home, I engage in a specific kind of relation to the objects that appear as mine, which I characterized above as *smoothness*. Most importantly, objects appear within the outer horizon of being the-objects-out-of-which-my-home-is-made, and in such a way that

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<sup>6</sup> ‘Pest Friends’, in *Uncertainty in the City: Pets, Pests and Prey*, ed. by Snæbjörnsdóttir, Bryndis and Mark Wilson (Berlin: The Green Box, 2011), pp. 50–72  
<[https://www.academia.edu/2279425/Pest\\_Friends](https://www.academia.edu/2279425/Pest_Friends)>.

<sup>7</sup> Fudge. 2011.

I am almost never aware of this precise mode of appearing. I see *my chair*, I see *my bed*, I see the picture frames holding *my pictures*. That these objects could be something radically different from how they appear to me, has never occurred to me. That is, until this spider invades my home.

To the spider my carpet may appear as a threatening open spot, a desert that should be avoided, where death from above could strike at any time. The corners of my room are the areas where she feels safe, where she can start to build her web. The backsides of my picture frames are her killing ground, where she hunts for unaware smaller insects that I do not even know are here. My room is not just my room. It is also the whole world in which this spider lives her life, probably without the slightest notice of my sovereign reign over the things – which is actually not that sovereign at all. In this experience, in this invasion of a particular spider crawling besides my bed, I am overcome by a surge of *alterity* that breaks through the familiarity of my room. What do I even know about the objects that constitute my home, if they can, silently, be turned into hunting grounds, hiding places, the stages of so many events of the spider-life?

The encounter in this sense is not just *surprising*, because something is moving according to its own principles (and not mine), but also *transforming*. Precisely because the encountered being interacts with an outer horizon in which it appears, it can actively change the meaning of this outer horizon. This spider can make my home feel less within my control, less smooth. The home *also is* a spider's home. Spiders crawl, ants move, mice pass by, my house is only ever slightly so my house. This first unease of the encounter can be called a sensation of *strangeness* in two senses: one, the strangeness of an animal whose lifeworld is inaccessible to me, two, the strangeness of my own house which turns out to be not exhaustively my home. This visible spider, through its sheer presence, is a symbol of the destruction of my own symbols. Or, at least, it marks the distance between my signifiers and the signified. I signify this building as *my* house, but here it is! Also this spider's house, also this fly's final resting place, also this bird's spot to nest.

After the initial strangeness, a feeling of familiarity, even of empathy can take place. Again, this is strange. This spider makes my home tremble, yet I do not perceive it as an enemy as when a human would invade my room. According to Carl Schmitt, the enemy is the one who is

existentially alien to me, who threatens my peace.<sup>8</sup> This spider is not an enemy, because it shares too much with me. It shares my house, we co-inhabit it rather peacefully, it simply shows that my understanding of all these things around me was not *full*. The things in my lifeworld do not reveal their full being. There is more to them, and this is precisely what this spider shows to me by living in my house. The house 'also is' so much else, infinitely more. The being of a thing exceeds its presence. I can experience only so much of the things, before they retract into a deafening silence, even a place as familiar as my home can slip away because of a stupid little spider.

## CLOSE STRANGENESS

This first exploration of the encounter phenomenon has revealed several of its aspects. It is now necessary to relate these to the remarks made above, concerning the special status of this phenomenon and its challenge to the phenomenological method. The idea of *close strangeness*, which I will elaborate here, can further contextualize the first 'results' of this investigation of what I means at all to encounter an animal.

I noticed above that part of the essence of the encounter is the relation to a phenomenon with all its inessential properties. This led to the issue that the usual reductive stance of phenomenology may fall short, in as far as inessentials cannot be further reduced. Afterwards, I showed that the encounter can both *surprise* and *transform*. It surprises, as something interrupts the smoothness of the outer horizon, due to its own principles, which are different than ours. We encounter a being that introduces the unplanned, which results in friction with the smoothness in which things usually appear. The encountered being transforms, secondly, as it shows that other perspectives on the beings around us are possible. The smoothness of their usual appearances obscures these other possibilities.

These two tendencies of the encountered animal were called 'strange', as they go beyond the usual way in which things present themselves. However, this explanation may sound as if we are succeeding in uncovering an *eidos* of the encounter. Are we secretly removing the inessentials from the encounter? But then, the encounter would not be the encounter anymore, as this involved an irreducible relation to accidentals.

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<sup>8</sup> Carl Schmitt, *Der Begriff Des Politischen* (Hamburg: Hanseatische Verlagsanstalt Hamburg, 1933), p. 8.

We can counter this tendency by highlighting that these strange aspects of the encounter can only be noticed if the animal is also, at the same time *close*.

Closeness is the full openness to the way an encountered being gives itself to us, involving all of its inessential properties. The encountered animal is only ever ‘here’ and ‘now’, fully immersed in the moment in which it appears. And it appears as a confused entity: confused in the sense of being fused by both essential and inessential properties. It cannot be translated into something else, neither can it be abstracted – it is here, crawling, creeping, stalking and requiring some response. Closeness is a meditative awareness of the complete immanence of a being in itself. As such, this being cannot be understood as a figment of imagination, neither as an entity whose existence relies on external principles. No matter what *produces* this entity, what allows it to be, it is beyond these matters in its particularity. Its realness lies in its closeness. Closeness is the full presence of the mixture of essentials and inessentials that we encounter when we encounter an animal.

The strangeness of the animal is founded on this closeness. The closeness can be denied, but the cost of this is that the animal is not truly encountered anymore. Cattle may become nothing but meat to be produced and sold, but then one loses the possibility of a more meaningful relation to it. And remember how Gregor, the poor guy who gets turned into a vermin in Kafka’s *Die Verwandlung*, is denied its humanity immediately, before even being seen by his family, by the very sound of its voice.<sup>9</sup> He is sealed off from the rest, locked in his room, his closeness is denied completely. The requirement of being able to encounter is to engage with the full encountered phenomenon *without reduction* and without averting one’s eyes.

It is the smoothness of the usual mode of presentation of phenomena that urges one to ignore this closeness of animals. An animal invades, it is seen as a problem and it is removed. From the smoothness onwards, the own principles of the animal are merely threats for one’s symbolic power over the things. However, starting from the closeness onwards, it is precisely the smoothness that appears as very fragile and limited. Suddenly, the things in my house turn out to be capable of much

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<sup>9</sup> Franz Kafka and Vladimir Nabokov, *Die Verwandlung* (Frankfurt: Fischer Taschenbuch, 1994).

more than I held possible. And they are already realizing these possibilities in the worlds of spiders, mice and ants!

Openness to closeness is the requirement for the encounter – which involves a letting be of the encountered as it appears. From this closeness follows the strangeness of the also-is structure, in which things turn out to be capable of being otherwise than what I hold them to be. We can call this duality of the encounter *close strangeness*. The animal can be close to us, which leads to a surge of strangeness into our worlds.

## Close Strangeness and the World

### THE ENCOUNTER AND THE WORLD

The consequence of thinking the encounter as *close strangeness* is that it can no longer be considered without taking into account a) a full engagement with a particular as particular and b) the aftermath of this engagement to the outer horizon of the encountered phenomenon. A close strange phenomenon turned out to be able to reveal that the way in which things usually present themselves in my home, smoothness, does not exhaust their being. Because of this contextualization of the encounter, the focus should be shifted from the encountered animal to the repercussions of the encounter to the *world* of the one who encounters. ‘World’ in this context means a coherent whole of interconnections between things, organisms and ideas in which (human) beings orient themselves. As noted above, such a *world* is usually hardly experienced as world at all, as it runs ‘smoothly’ – these interconnections hide themselves to the degree in which they serve the orientation and action of the human being. Close strangeness intervenes in this case and pulls the interconnections of a world into daylight.

Close strangeness can reveal two different levels of the phenomena of the world, one on which they are *becoming* and one on which they are *retreating*. Maybe other perspectives exist as well, this article will explore these two, as they are most clearly related to the way close strangeness leads us into a different understanding of the being of phenomena. A full philosophy of the encounter will need to delve deeper into the structures of encountering, for which there is no room here. The



twofold of *becoming* and *retreating* attempts merely to highlight two ways of looking at the changes that the encounter can bring along.<sup>10</sup>

## BECOMING: THE 'ALSO-IS' STRUCTURE

Every phenomenon implies the possibility of being experienced from other angles, at other times, in other ways. Close strangeness indicated this possibility by intervening with the smoothness by way of which things usually appear – this aspect is called the ‘also-is’ structure of phenomena, as they ‘also are’ different than how they are given to us. The *also-is* structure reveals that things have a further horizon beyond the meaning that one attributes to them. Object oriented philosopher Graham Harman writes that “[o]bjects are units that both display and conceal a multitude of traits.”<sup>11</sup> This spider shows, by its presence, that my carpet ‘is also’ a hunting ground, that it is present in another way to another entity. This can be extended to all things, even to my house itself: whatever I make of it, it is always something different to someone or something else. The *also-is* structure shows that things have inner horizons that exceed my possible experiences of them. This is sand in the motor of the smoothness that usually forms the way the home environment is present to me.

In this sense, one could state that the encounter, as close strangeness, reveals the *becoming* side to phenomenal objects. Whatever is present to us, does not exhaust itself in this presentation. There exist further possibilities for it to realize, beyond how it is here now. Therefore, the thing is not static, but in flux. It is constantly proceeding through different modes of givenness, to other entities at other times. As stated often now, the strangeness of this possibility is that in the home-phenomenon things were given as if they were static, as if their symbolic meaning to us exhausted their being. An encounter can point to all the other ways in which they can become present.

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<sup>10</sup> This section has been influenced by the work of Graham Harman in *The Quadruple Object* (2011), a discussion of which in detail would lead beyond the aim of the current paper.

<sup>11</sup> Graham Harman, *The Quadruple Object* (Alresford: John Hunt Publishing, 2011), p. 7.

## RETREATING: SUBSTANCE AND INDIFFERENCE

This expansion of meanings that shakes things from their functional slumber is a pointer towards the substance of things *themselves*. If things around me are not ever exhaustively experienced by me, I am forced to understand their being on another level – that of substance. In object oriented thought the term substance refers to the core of an object, which unifies the plurality of its properties, but which is inaccessible itself. ‘[T]hings are inherently deeper than their traits.’<sup>12</sup> This core, the substance, is *not* presentable, it *underlies* the phenomenon in such a way that the aspects we see of the things *are* indeed aspects *of* these things. This substance is something truly different than its aspects. ‘A point worth stressing is that the intentional object is no bundle of adumbrations. We do not grasp a tree or mailbox by seeing it from every possible side — which is physically, mentally, and perhaps logically impossible.’<sup>13</sup> When dealing with phenomena, I do not need to exhaustively plow my way through all possible experiences I could have of it in order to grasp that this truly is a thing. The idea of a substance underlying the aspects of a phenomenon, yet also retreating from these in as far as they can never fully enunciate what the thing is for itself, works as a line of flight into a completely different encounter with the *being* of things. But how is this ‘retreating’ aspect present in the encounter, in close strangeness?

In the book *The Passion According to G.H.* by Brazilian novelist Clarice Lispector, we find an investigation of substantiality. A woman named *G.H.* finds a roach in her high-end condo and startles. Face to face with the motionless animal, she meditates on the idea that just like the roach, she is a living creature. This meditation soon swirls into rather bleak reflections on existence and the blindness of the life process in which both the roach and she are participating. *G.H.* then questions the segregation that modern humans install between themselves and the world they live in, as if humanity lived on another plane, far away from the brute ‘roach-existence’. The book continues as a contemplation on the *inexpressiveness* of being, substantiality, which somehow reveals itself in the roach. She writes about the confrontation with the bare existence of the roach in the closet: ‘The neutral was whispering. I was reaching what I had sought after for my whole life: something that is the most ultimate identity and that I had called inexpressive.’<sup>14</sup> The ‘ultimate identity’ is called ‘inexpressive’,

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<sup>12</sup> Harman, p. 17.

<sup>13</sup> Harman, p. 24.

<sup>14</sup> Lispector, pp. 125–26.

even though it is whispering to the protagonist. Lispector has her protagonist suggest that, ultimately, things *appear* as *inexpressive*, as *retreating* from human access – even in their givenness. But this is a paradox!

How can something that is inexpressive whisper at the same time? Close strangeness first led to the also-is structure, in which things turn out to be able to enunciate themselves in hundreds of different ways. And now, suddenly, things are taken to be inexpressive at the same time? Moreover, to be so in ‘their ultimate identity’? This is no prose that lightly skips over the consequences of what is written. In Lispector’s novel, the paradoxical being of objects is brought into the fore, which can guide us further into an understanding of substance.

The answer to the riddle lies in the notion that substance reveals itself only as a retreat. This means that it remains absent, even in its presence. Lispector used the word ‘inexpressive’ in the quote above, but maybe *indifference* is a better term to illustrate this point. At the final moment, beings resist fully presenting themselves, which marks their indifference to their perceivers. You can spend as many days and nights if you’d desire with your partner, but you will only get to know what you can experience *of her* – *her* hair, *her* smell, *her* mannerisms, but these would remain separate experiences if they were not tied together by *her herself*. Her herself, her substance, remains untouched by your efforts to embrace her wholly, indifferent to the wildness of desire that can only caress her multitude of traits. Her substance remains an unreachable surplus over these traits.

This *surplus of substance* is experienced as a *retreat*, which could be dubbed *indifference*. Substantiality of objects is our falling-short when attempting to exhaustively embrace a thing, it involves a feeling of being left empty handed. Even when one holds a bouquet of plurality, the unity that binds it is only hinted at – it *retreats* from our grasp. This retreat is indifferent, as it carelessly leaves a trace of aspects behind to whoever may bump into them. Even in our most intimate approaching of the most beloved objects, their substantiality remains absent, or, at best, signaled at. Substance ‘whispers’ to the perceiver, even though it expresses nothing. It whispers through its multiple aspects, even though itself forms a unity. It can be experienced, but only once it has become something else.

The last lines of Lispector’s book read: ‘The world interdependent with me – that was the confidence I had reached: the world interdependent with me, and I am not understanding what I say, never! Never again shall

I understand what I say. [...] Life is itself for me, and I don't understand what I'm saying. And, therefore, I adore...'<sup>15</sup>

These lines are crucial. If substance is a certain surplus over the way a being presents itself, this means that it can only be encountered *negatively*, as a *shortcoming*. Indifference is not a concept to which further positive aspects can be attributed. Its uncovered being is given only in relation to presented aspects, to which it is indifferent. These it will keep external forever, which means that the perceivers of an object can only orbit around the substance, without hope of touching upon it as it is. Substance presents itself as a retreating force from the revealed aspects of a phenomenon. Indifference is only as a lull in the dynamics of its aspects, that keep changing, swirling, whereas itself remains untouched.

## CLOSE STRANGENESS AND THE WORLD

Now the double absence in the presence of phenomena has been highlighted, it is necessary to make the connection to close strangeness once more. What happens when an animal invades? And how does it lead us to this double absence at the heart of things? Remember that the encounter led us to investigate the way the encountered changes its outer horizon. Smooth things were roughened. The two aspects investigated above show the way in which this roughening takes place.

Close strangeness reveals the *becoming* side to things within the world that seemed to be within our control: they 'also are' presented to other entities in radically other ways. It also shows that these same things *retreat* into an indifference that resists all investigations into its nature. Clarice Lispector wrote about this experience in her novel *The Passion According to G.H.* If smoothness identified the existence of the phenomena around us with the way they present themselves *to us*, another identity of these things is shown once an animal is encountered. The phenomena both are *more* and *less* than what we held them to be. *More*, as they can take on other ways of giving themselves to this encountered animal. *Less*, as their substances hide and retreat, and the given aspects are suddenly only signifiers to something else.

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<sup>15</sup> Lispector, p. 173.

## Further Implications

This article started from the thesis that all animal ethics presuppose the capacity of an animal to be encountered. Hence, it investigated what it means to encounter. The encounter was investigated phenomenologically, and characterized as *close strangeness*. An animal, in the encounter, is radically *close*. It presents itself in a fullness encompassing both its essential and inessential properties. But it also introduces a strangeness into the world in which we encounter it. It shows both that other perspectives on this world are possible, whilst precisely this aspect reveals that things are more than how they present themselves. Things, in short, *become* and *retreat* at the same time.

What is the relevance of these findings to animal ethics? Several suggestions follow from the idea that encounter is an instance of close strangeness.

First, animal ethics can never *just* be about the human-animal connection as a bipolar relation. If animals are encountered as beings that can have repercussions on the way we understand our own worlds, animal ethics should also be about these worlds. Developing a 'right' *ethos* towards animals will always have implications for the way other things appear. Using a metaphor, we could say that animal ethics is not about the discussion partners (human-animal), but about the dialogue that lies in between them.

Second, animal ethicists will need to clarify in what way the suggested *ethos* relates to the animals it speaks of. How are the animals encountered that the *ethos* speaks about? How are their shapes outlined from the bulk of inessentials that they carry along? And how to outline these shapes without betraying the encounter in which the accidentals become present? In short, animal ethics should relate to the immanency of the encounter.

Third, animal ethics will also have to 'relate' to that which retreats from all relations. How to think substance within an *ethos* towards animals? What to do with those aspects that resist all relations? This is meant as an indication for further reflection of animal ethicists: to what degree is *relating* essential when developing an *ethos*? What does this relating entail? If substances indeed do retreat from their givenness, this poses new questions to the attempt of developing an ethics.

I hope that this article can help to foreground the actual presence of animals in our worlds. Animals can be thought about, turned into concepts, generalized - this is true. However, they are first and foremost creatures *inhabiting* our worlds. Maybe ethics does justice to animals by taking more distance to them, by considering laws to be written and measures to be taken. But maybe, in this process, the actual animal is lost.

The present research falls short in doing justice to complex phenomenon of encountering. Questions remain. If the encounter is an instance of full immanence, if it cannot be reduced, how can a concept of the encounter be possible? What is the status of the idea of close strangeness relative to the particularity of the moment it describes? That is, can the encounter be thought about or can it only be experienced? Is philosophy the right road into these questions? I have attempted to contribute to the development of animal ethics, but maybe the questions that these first attempts raise are the most valuable additions. Let us follow the animals in search of answers.

# The Ethics of Love for Animals<sup>1</sup>

Tony Milligan

**Abstract:** This is an exploration of the ethics of our love for animals. The first section defends the capacity of animals for love, and hence to reciprocate our love for them. The second provides an overview of various attempts to situate the importance of love within animal ethics. The final section suggests that the most promising way to make the connection between love and animal ethics may be through valuing and motivation. Love is, after all, the paradigmatic form of valuing, the way of valuing that most obviously motivates us to live our lives in the ways that we do.

## I. The capacity of animals for love

I will begin with the obvious, nothing works as a completely general theory of love. There are always exceptions and anomalies, things that do not fit. An account of love, and more specifically, of the ethics of love for animals, requires a degree of caution rather than a formal specification of necessary and sufficient conditions for what the love in question involves. Nonetheless, there are some comparatively non-controversial things that can be said about most forms of love. For example, while the exact standing of love as an emotion, or as something else is disputed, there is a rough consensus that love is at least emotion-like in various ways.<sup>2</sup> It is

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<sup>1</sup> Previously delivered as a keynote paper for the 2017 Conference of the Cumann Fealsúnachta na hÉireann (Irish Philosophical Society) on Humans and Other Animals held at Carlow College in November 2017. Thanks go to the organisers for their guidance and patience.

<sup>2</sup> For the special case of romantic love, and a claim that it is more of a syndrome than an emotion, see Arina Pismenny and Jesse Prinz, 'Is Love an Emotion?', in *The Oxford Handbook of Philosophy of Love*, ed. by Christopher Grau and Aaron Smuts (Oxford: Oxford University Press, 2019). Smuts has also cast doubt upon the standing of love as an emotion, appealing to its duration rather than transitoriness and to the absence of 'reasons for love' in any sense that matches up with our reasons for emotional response. See Smuts, 'Normative Reasons for Love, Part I.' *Philosophy Compass* 9 (2014), 507-514.

not, for example, a strictly cognitive response and it seems to be connected to various sorts of felt bodily experiences, or rather dispositions towards such experiences. Like anger, jealousy, shame and guilt, love is also complex. It involves several things which are not easily disentangled. My preferred list includes affective dispositions, desires, and (a little more controversially) a cognitive component, i.e. something akin to a belief or appraisal. Accordingly, while accepting that love is not exclusively cognitive, I will nonetheless side with those who regard love as at least *partly* cognitive. This links love strongly to emotion, and also to vision and ‘appraisal’ rather than to ‘bestowal’ and projection even if we also happen to be disposed to project various qualities and accomplishments onto those we love. (Perhaps some of us do and so of us don’t.)

Broadly, when we love someone we have various dispositions towards the relevant affective responses and actions; we desire to be with the object of our love, or at least we desire that who or what we love should flourish or at least not come to certain kinds of serious harm. We also, figuratively and sometimes literally, see them in a way that we do not ordinarily see others, with care and attention. These are, of course, philosophical formulations. Ways of articulating the desires in question. Few agents would revert to the Aristotelian language of flourishing if asked ‘What is love?’ Rather, they would use some sort of shorthand for a more complex reality.

Here, I am also addressing love as a response to *particular* others. For the purposes of this paper, I will set aside love for that which goes beyond the individual: love for humanity, of the sort that the later Kant and Gandhi considered important; love for species and types which figures in Aldo Leopold’s *A Sand County Almanac* (1949); and loving reverence for all living things in the manner of Albert Schweitzer *The Philosophy of Civilization* (1923), and E.O.Wilson’s *Biophilia* (1984). This is not because I discount these loves. They seem, up to a point, both possible and admirable, even if a little overextended in Wilson’s case. Instead, they are set aside in order to focus upon the place where all love begins. Love of the relevant sort is *by* particular beings (such as you, me, and everyone we know) and it is directed *towards* other particular beings. These other particular beings are often, but not always, other humans.

There is a strong line of thought which holds that such love *should or must* only be directed towards humans. This is the kind of story that we encounter in a good deal of the analytic literature on love. For David Velleman, in his classic paper on ‘Love as a Moral Emotion’, love is a



recognition of personhood in a strong, broadly Kantian sense that will exclude love for non-humans because they are also non-persons. Yet Velleman allows that *in some sense* there is also a love (not our kind of love) which is ‘felt for many things other than the possessors of a rational nature’.<sup>3</sup> Similarly, Niko Kolodny wants to allow that there is a love for non-persons, but insists that the philosophically interesting kind of love is for and by people like us. A determination to exclude animals and situate philosophically-interesting love within the context of cognitively demanding inter-personal relationships which also results in the implausible exclusion of humans who are not yet capable of such cognitively demanding relationships. (A high price to pay to keep animals out of the picture.)<sup>4</sup> Harry Frankfurt is more generous and allows that we can *in some sense* love animals but they certainly cannot love us in return. More specifically, on the Frankfortian account, love requires not just desires but *identification* with desires, ‘a lover identifies himself with what he loves.’<sup>5</sup> It requires something second-order, i.e. desires about desires. And such hierarchies of desire are something that rarely if ever characterise animal psychology. (Frankfurt says never, but I suspect that there may be outliers, occasional exceptions.) Here, it does not matter if we argue that some animals are, in fact, persons. That will simply be a terminological shift to the use of the concept in a less Kantian way. The point is that love is tied to the kind of beings who would match something close to the Kantian criteria even if there is a case for moving on from the latter.

One of the many curious features of such approaches is its *apriorism*. The fixed determination to set aside a growing body of evidence for love *by* animals, a body of evidence that has accrued over the past half-century and, perhaps, just as importantly, the growing evidence for animal grief which has accrued over the same period.<sup>6</sup> Here, I have shifted the discussion temporarily to the subject of love *by* animals rather than our love *for* them. I do this for a reason, because of a widespread idea that what makes other humans especially suitable as recipients of love is their capacity to reciprocate. The guiding thought is that love for humans is

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<sup>3</sup> David Velleman, ‘Love as a Moral Emotion’, *Ethics*, 109 (1999), 45-59 (p. 365).

<sup>4</sup> Niko Kolodny, ‘Love as Valuing a Relationship’, *Philosophical Review*, 112 (2003), 135-189 (p. 137)

<sup>5</sup> Harry Frankfurt, *Reasons of Love* (Princeton NJ: Princeton University Press, 2004), p. 61.

<sup>6</sup> Useful summaries of the research can be found in the works of ethologist such as Bekoff and de Waal. For example, Marc Bekoff, *The Emotional Lives of Animals* (California: New World Library, 2007) and Frans de Waal, *Chimpanzee Politics: Power and Sex among Apes* (Baltimore: John Hopkins University Press, 2017).

often well-invested because there can be a return. In Troy Jollimore's terms (and again restricting the concept of personhood) 'The special opportunity that love for persons affords us is the opportunity to care about something that can care about us.'<sup>7</sup>

By contrast, any inability of animals (by which I mean, *other* animals) to love us will cast doubt upon their appropriateness as recipients of our love, and will ultimately, if indirectly, cast doubt upon the depth of any love that we might happen to feel for them. If such love is based upon anthropomorphic delusions about reciprocation, e.g. the mistaken thought that 'she understands every word I say', how deep and genuine can the love be? If the love is based upon delusions, then we may not love the actual animal but rather a creature who isn't there.

While reciprocation among humans is important to our living and faring well, I suspect that the exclusion of animals on this basis is misplaced, not only because we humans may love one another deeply, legitimately and even tragically, without reciprocation, but because many animals can and do return our love. (Not all, but many.) Other creatures do not, in other words, always lack the capacity to love. Indeed, their well-documented capacity to grieve presupposes a capacity to love. The two go together. We can see this from some simple reflections upon when grief is and is not possible. I, a human, may feel sorry for the unknown motorcyclist whose boots stick out from under a white sheet by the side of the road, but I cannot truly grieve for him. Rather, I can only grieve over the loss of things and beings with whom, and with which, I have a longer history of concern. There must be a history of emotional entanglement of the sort that is also integral to love. This leaves interesting problems about (i) love at first sight; and (ii) false grief, but there are ways in which they can be tackled which do not presuppose the sudden emergence of either love or grief as some form of emotion without history.

Even so, there are aspects of the hierarchical and cognitively-demanding models of love, such as the one set out by Harry Frankfurt (among others, e.g. Bennett Helm), which I do not wish to deny.<sup>8</sup> One of these is that love is not just a matter of desires, but of desires that connect up to one another, and by virtue of doing so may be said to be 'deep'. We

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<sup>7</sup> Troy Jollimore, *Love's Vision* (Princeton NJ: Princeton University Press, 2011), p. 122. On my understanding, Jollimore, is not trying to avoid the evidence for animal love, but simply to say something special about humans.

<sup>8</sup> Bennett Helm, *Love, Friendship and the Self*, (Oxford: Oxford University Press, 2010), p. 152.

can well understand why such complex connections and networks require history, why they take time to form. There are, however, different ways to work with this insight about interconnection. As indicated before, Frankfurt suggests that love requires second order-desires: we have desires for the well-being of the other person and *we identify with* those desires, we desire to have them. This will, of course, make grief intelligible up to a point. When someone we love dies, there is no way for our first-order desires for their well-being to be satisfied, *yet we continue to have these desires* and continue to have second-order desires about them. We continue to want to have them. We remain caught up in the web until, gradually, it is reconfigured.

In various places I have presented a different sort of story about the interconnectedness of desires, a counter-picture, that will work at least as well (and arguably better) as an explanation of human grief but will allow for a better match-up with the evidence for animal grief.<sup>9</sup> The counter-picture draws upon the idea of conditional desires rather than second-order desires. In spite of the shorthand that we regularly use when explaining what we want, most if not all of our desires are (upon closer examination) conditional in one way or another. When we want *x*, what we actually want is to have or to enjoy *x* while we still want it and not, for example, after the desire has faded. When I want to go to Yankee Stadium for the ball game, what I actually want is to go under specified conditions, with my wife Suzanne, with both of us faring well and not so preoccupied with other concerns that our enjoyment will be blocked off. When Aaron Judge hits a ball that is high, far and gone, I do not want to be preoccupied by data sets concerning this year's student intake. Numerous folk tales capture the point: when we meet the devil at the crossroads and make a deal with him, what he gives us is *what we say we want*, but it is not *what we really want*. He gives us wealth but makes us ill, he gives us health but separates us from those we love. He delivers *x* when we actually want *x* and *y*. (Or, more plausibly, *x* and  $y_1, \dots, y_n$ .) What we want, when we want most things, can best be represented as a conjunction of circumstances, and not one single circumstance on its own.

The connectedness of circumstances that we desire is integral to both love and grief. When we love someone, we do not simply want them to flourish. (I want that much for strangers, roadside victims, tax collectors

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<sup>9</sup> Tony Milligan, 'Animals and the Capacity for Love', in *Love and its Objects*, eds. Christian Maurer, Kamila Pacovská and Tony Milligan, (Harmondsworth: Palgrave Macmillan, 2014), 211-25.

and, on occasion, political opponents.) Rather, when we love someone, our desires for their well-being become entangled with all sorts of other desires that we have. We want various things *and* for our loved one to be well. The result is that when our loved one is not well, or when we are caught up in grief over their loss, it will tend to corrupt our enjoyment of even the simplest of things: watching a favourite TV programme, coffee at the coffee shop, settling down with chocolate to watch the game against the Red Sox. Desires concerning such matters, and the desire for the well-being of a loved one connect but, in grief, the desire for the well-being of the other person, a desire on which many other desires have become conditional, can no longer be satisfied. A more or less lengthy process of disentangling ensues and is only ever partially completed. Grief endures but in a more subdued form. Ultimately, we return to the world of ordinary pleasures as more burdened agents.

Notice the way in which the interconnectedness of desires is sustained in this counter-picture, without the necessity for any appeal to higher-order desires. What we want may remain resolutely first-order, and hence accessible to a range of familiar animals. (Dogs would be one obvious example.) Of course, there is a good deal more that we can say about the structure of desires, about the way in which some desires are deeper than others because of the range of connections that they have and the kinds of other desires that are conditional upon their fulfilment. But again, a hierarchical shift is unnecessary and even when made, even when higher-order desires are brought into the picture in the case of humans, their conditionality still needs to be accounted for and does a good deal of the work. For those animals capable of developing the relevant kinds of networks of conditional desires, reciprocation of our love is possible. And so, even if we make this capacity a requirement for any being to be a suitable object of our love, love for animals will still not be ruled out, even if such love ordinarily feels different from our love for other humans. Even if it *ought* to feel different from such love in various ways.<sup>10</sup>

## II. Situating Love within Animal Ethics

Why ethical theory ought to be interested in this (and interested in love of any sort) is, of course, a broader topic with some history and notable

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<sup>10</sup> There is a debt to Quine's account of the 'web of belief' in this account of the interconnectedness of desires and something is also owed to David Pugmire's account of emotional depth (which itself has acknowledged Quinean roots), Pugmire *Sound Sentiments: Integrity in the Emotions* (Oxford: Oxford University Press, 2007), pp. 39-45.

contributors (Plato and the later Kant being two examples).<sup>11</sup> Generally, the modern version of the story told is that notions of respect, and relatedly of rights, do important ethical work, but they are asked to do too much work, or *the wrong kind of work*, unless love is also appealed to. Talk about rights, respect and even duty can seem cold and impersonal. Love, on the other hand, is closer to the personal dimensions of ethics. As a point that owes something to Iris Murdoch, our daily lives are, in multiple ways, shaped by our love for others.<sup>12</sup> Deliberation about rights often tends to be much more intermittent, akin to an interruption in the regular pattern of our day-to-day cares. And so, at least in those areas where ethics has a personal dimension and cannot simply appeal to notions of inherent value and universal principles, love retains an important place.

A familiar example from Simone Weil may help to illustrate the point: a father who sells his daughter into prostitution would ordinarily (and justifiably) be reproached with something far more straightforward than a failure to respect her rights, even though such an action would not doubt also involve a failure to respect her rights and talk about the latter might be added as an afterthought.<sup>13</sup> This has been a line of discussion picked up on especially within the Wittgensteinian tradition in its more impressive encounters with issues of animal ethics, with attention drawn towards the ways in which rights talk can soften the harsher realities of betrayal, suffering and animal harm into something more legalistic. Like the characters in J.M. Coetzee's novel, *Elizabeth Costello* (2003), we can discuss 'animal rights' over dinner without registering a sense of moral horror about what is done. Meaning is, for a large class of cases, *use* and one use of the language of 'rights' sometimes happens to be *evasion* even if it is not the only use.<sup>14</sup>

Relatedly, rights talk, does not seem to motivate in the way that love does. Most of us, most of the time, will do little to ensure that all of the relevant rights of fellow human agents are respected. Many of us will

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<sup>11</sup> Plato's *Lysis*, *Symposium* and *Phaedrus* are the classic sources for love as integral to ethics. Strictly, in *The Doctrine of Virtue* (1797) Kant tried to fuse the language of the impersonal and the language of love through the idea of duties of love.

<sup>12</sup> Murdoch's *The Sovereignty of Good* (1970) is a key source for this idea. However, in her later work, *Metaphysics as a Guide to Morals* (1992) she attempts to restrict love to the domain of personal moral pilgrimage and ethical being and to keep it apart from areas such as politics.

<sup>13</sup> Simone Weil, 'Human Personality', in Simone Weil, *Selected Essays 1934-43* (London: Oxford University Press, 1962), p. 21.

<sup>14</sup> Coetzee's novel has become a touchstone for a good deal of these discussions.

even routinely fail to assert our own rights on suitable occasions. We are very selective about such matters. The interconnectedness of desires which are integral to love then seems to contrast with the apparent shallowness of a variety of our beliefs about which creatures have rights and about the kind of rights that they might actually have. (Given that they could not be, across the board, identical to the rights that we enjoy, and which are premised upon our special modes of engagement with one another. Animals could not have a right to free speech.) Such points about the *limitations* of rights talk can, of course, be pressed too far. For example, in ways which presuppose the very same moral psychology as theories that are overly dependent upon rights talk. They can presuppose a moral psychology which artificially separates beliefs and desires, the cognitive and the supposedly non-cognitive, and then associates rights talk too exclusively with the former side of the contrast. Yet beliefs too can be deep, bound into our identity, and therefore bound together with the complex fabric of our desires. The two do not fall apart. Drawing upon Weil, the limitations point has been pressed in a particularly strong manner in the feminist-influenced literature on animal ethics. In Kathy Rudy's *Loving Animals* (2011), for example, there is a tendency to endorse love *rather than* rights, or love as a way of dispensing altogether with talk about rights and this seems odd or at least unintentional but misleading. It also has the awkward consequence that we are still permitted to eat the ones we love and they have no rights which might prevent this from taking place when the understanding of the love in question fails to do so.<sup>15</sup>

As a point of clarification, my point here is not to run chapter-and-verse through the literature, but simply to highlight the difference between some familiar ways of setting love and rights against one another and the position from the one that I am advocating. When I write about love and ethics, or love and politics, I am advocating a fuller normative pluralism within which love and rights can (or must) play different, if sometimes overlapping, ethical roles. Rights talk is, after all, one of the standard currencies of politico-legal discussion. Whatever endgame we envisage for animal ethics, we do still need rights talk, even if we do not need *only* rights talk. A different way of putting the point would be to say that love is part of the broader background of valuing without which rights talk is likely to remain a dead letter.

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<sup>15</sup> This is a guiding consideration in Kathy Rudy, *Loving Animal: Towards a New Animal Advocacy*. (Minneapolis: University of Minnesota Press, 2011).

But this is perhaps a little cryptic. Where precisely does love fit within this mixed picture where rights talk remains but is not asked to do all of the work? Precision here is possible only up to a point. Some aspects of the ambiguities of love talk will no doubt remain. However, one place where it might fit is at the juncture of ethics and politics. And here, I am thinking of something broadly Aristotelian, i.e. a preconditions argument. I am thinking about *the ways in which we must see the other* before a commitment to political community is at all possible. Notoriously, the Aristotelian political community is bound together by bonds of political friendship, by *philia politike*. The notion is elusive and a good deal of ink has been spent upon it from more liberal individualist and more communitarian standpoints. On the reading that I favour, what he had in mind was (minimally) the idea that society is made up of various interlocking clusters of social groups, and especially clusters of male friends who are bound to each other (but not to everyone else) by various sorts of *philia* or friendship love. To be able to fit in as a citizen, you have to be able to fit somewhere in relation to these interlocking groups. This means that you have to be, in some sense, seen as lovable, if only in some very rudimentary sense. Not by everyone but by some group of citizens. Without this, the very idea of pursuing a common good, the idea at the very heart of political community, remains empty. This is only one side of the position. Aristotle was also, no doubt, implying that the kinds of friendship available to us, or most readily available, might themselves be inflected by the kind of political system that we live in.

Gender is, of course, was an issue in Aristotle's way of putting matters and a problem with similar attempts to build fraternity into more modern models of political community. The idea that man-to-man might brothers be, seems to take one portion of humanity as the norm and we know which one. Be that as it may, there is something to the Aristotelian inclusion of love within the domain of the political community, and the treatment of the former as a precondition for the latter. More minimally, familiar attempts to situate some (not all) animals *within* the political community, e.g. Donaldson and Kymlicka's *Zoopolis* (2011), will have nothing to fear from such a preconditions argument, just so long as the animals who are candidates for becoming our fellow citizens are well chosen. We might, however, adopt the Aristotelian argument while remaining officially neutral on the idea of animal citizenship or sceptical about its possibility. For clarity, I actually regard the latter as an interesting but ultimately utopian notion. However, to say this is not intended as a dismissive move because all of the great social and political movements

have included utopian strands of thought. This is not simply because people in their aggregate are prone to include some who will go to extremes. It is because such utopias can function as placeholders for difficult-to-specify final objectives. They help us to deal with the ambiguities of our best political aspirations. In any case, if animals cannot actually be fellow citizens in a complex modern democracy, the reasons for this are not because they are unsuitable as recipients of the love, and even friendship, of established citizens. They will, in many cases, meet any such requirement. The obstacles to animal citizenship will, instead, be of a different sort.<sup>16</sup>

This does not, of course, rule out all forms of mixed (human/non-human) community or even the reasonableness of thinking of such community in thinner political terms than those of citizenship. The absolute limits of such shared community will then be the limits of ‘creatures we could love’, creatures with whom we could conceive of ourselves as having a common good rather than merely conflicting goods or enjoying co-existence. The practical limits of realisable communities will no doubt be narrower still, set by history and multiple contingencies. Beyond this, we will be left with the difficult challenges of recognition and valuing without the possibility of shared community.

### III. Love and valuing

The overall thought here is that an attitude towards others as suitable recipients of love by humans, or as excluded from such love, tells us something about whether or not those others (who or whatever they may be) are seen in ways which make the idea of a *shared life* of some depth possible. The possibility of love is, as it was for Aristotle, seen as a precondition for other possibilities. Although, here I use this insight in a way that he might not have approved of, as a way to think of what might connect human and non-human animals in deep ways, in spite of our many differences. But just how strong is the linkage? How far can the point be pressed? This is much harder to say. Against too tight a connection, we might consider that, firstly, there clearly are obviously valuable creatures who we cannot love in any sort of reciprocated way. Whales are an example. We cannot relate to them in the ways required for

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<sup>16</sup> For a little more detail on these matters, see Milligan ‘The Politicization of Animal Love’, in E.Aaltola and J.Hadley (eds.) *Animal Ethics and Philosophy: Questioning the Orthodoxy* (London: Rowman and Littlefield, 2014), pp. 185-200.



a reciprocated love, yet they matter too. Valuing without even the possibility of love cannot become an afterthought.

Secondly, talk about human love for animals, and about our emotional responsiveness to them, has not always been benevolent. This is a point which the literature on love for animals (e.g. the feminist literature and the marginalia considering love for animals in the analytic sources cited above) has not always appreciated. Thinking ourselves into their world has, historically, been tied to various sorts of dominance. Here we may think of Harry Harlow's maternal deprivation experiments upon primates, one of Peter Singer's classic early exemplars of a conspicuously cruel failure to appropriately value animal lives.<sup>17</sup> These experiments were premised upon the reality of animal love and its importance. However, this is a cautionary note of a qualified sort given that the conception of love involved was radically reductionist. Love was *attachment* and little else. Harlow was in the business of levelling humans (and human love) down, rather than raising animals up. However, love also figures, in less reductionist ways, in the morally ambiguous literature on animal training (e.g. in Vicki Hearne) where dominance and affection are closely combined.<sup>18</sup> Talk about love for and by animals may then be ethically significant, but it does not excuse all or lead us to forgive all. It does not remove familiar ethical dilemmas about making sense of inequalities which are tolerable, perhaps unavoidable because of moral failures by prior humans, and those which are intolerable. To speak of love for and by animals still leaves a great deal unsaid about how an appreciation of such love might be taken up.

On the side of a stronger and more positive connection between love and available forms of responsiveness, Raimond Gaita has suggested that *nothing discloses value in the way that love does*. 'Sometimes we see that it is precious only in the light of someone's love for it'.<sup>19</sup> Note, here, the more expansive conception of the objects of love or those things we may (defensibly) love. I can certainly understand why Gaita makes this claim. To see a being as lovable is to see the possibility of having relationships of depth with them. But this does not involve the much stronger claim that *only* love can disclose value, or the idea that all of our failures are ultimately failures of love. It merely situates love in a distinctive and exemplary way:

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<sup>17</sup> Harry F. Harlow, 'The Nature of Love', *American Psychologist* 13 (1958), 673-85.

<sup>18</sup> Vicki Hearne, *Adams Task: Calling Animals by Name*. (New York: Skyhorse Publishing, 2007).

<sup>19</sup> Raimond Gaita, *Good and Evil: An Absolute Conception* (Oxford: Macmillan, 1991), xxiv.

loving is valuing in its most obvious, tangible and motivating form. Here, I have also shifted from the familiar language associated with Kantian-inspired rights literature, the language of *value*, to the less metaphysically and theory-loaded language of *valuing*. This may be an uncomfortable thought if we are reluctant to see emotion in general (not just love) as integral to ethics. Patterns of emotional responsiveness are, after all, integral to *valuing*, not just in the sense of being causally connected to it. Rather, a patterning of emotional response *partly constitutes* valuing and does not fall apart from it. And, in the case of non-humans, just as in the case of humans, the responsiveness which is constitutive of valuing generally (perhaps necessarily) begins with a responsiveness to particular others. This too will be a source of unease for at least some animal advocates who want one big concept, such as rights, to perform all or most of the ethical work of acknowledging that animals matter in some way which might help us to shape policy and law. Here, I will concede that, by contrast with love and emotion, rights talk generalises more easily and so is often a better fit for such discussions.

If some particular being has rights  $r_1, \dots, r_n$  by virtue of having properties  $p_1, \dots, p_n$ , then any other being with the same properties to at least the same degree will ordinarily also be entitled to these same rights. Love, by contrast, does not carry over in quite the same way. A person who loves their dog does not necessarily love all dogs, let alone all animals with various comparable properties which are possessed to comparable degrees. A person who says that they are an 'animal lover' does not literally mean that they love each and every individual creature: rats and rhinos, foxes and flamingos. They mean something more restrictive. Unless we are carried away by partisanship, we will recognise that there is no hypocrisy here, any more than there is hypocrisy when I say that I love Suzanne but not Angela, Pamela, Sandra or Rita. Love may then seem to provide a hopeless inroad to any truly *general* form of ethical concern for animals and the political domain where such concern feeds through into legislation and norms.

Yet, curiously, with non-humans, as with humans, the transition from caring for the particular being to broader forms of concern has been accomplished on many occasions. Indeed, for those who reach the point of a more generalised care (valuing) this is perhaps the normal pathway. It may even be the only pathway for psychologically typical agents. Our deepest concern for others, i.e. the concern most likely to motivate action, always seems to *begin* with love for discrete particular others. And, however partially it does so, such love breaks the egocentricity upon which so much

harm to others depends. There may then be no necessary *conceptual* relationship between loving discrete particular others and the valuing of all *other* creatures, but there is often a close causal relationship. If our concern is ultimately for animals themselves, rather than conceptual connectivity, this can be just as important.

This will leave love in play within the political domain, even when the language of rights does happen to be more convenient or does happen to take precedence. And I will close out this discussion with a cautionary tale about what happens when we lose sight of this. What happens is that we risk lapsing into ‘moral schizophrenia’, a condition in which our *motivations* for actions and *justifications* for actions fall apart, with justifications often then given primacy.<sup>20</sup> Typically, agents such as myself come to advocate animal rights, and various changes in the anthropocentric order of things, in response to cruelty, the experience of loving particular animals, and out of some level of imperfect care and compassion. We come to value the lives of animals without any special theory about why we ought to do so. The justifications which we then learn to offer as the only truly legitimate non-sentimental reason for valuing are, however, of a very different sort. They often proceed by appeal to a set of problematic analogies with acknowledged prejudices and claims of a metaphysical sort about a concept of inherent value. Such theories do something. They have a place. But that place cannot be *everywhere*. It has little role to play when trying to make sense of why we are motivated to become involved in animal advocacy in the first place. Accordingly, if there is such a thing as an ethics of activism and dissent, it ought surely to be part of such an ethics that we try to avoid becoming too dependent upon such theories, and too divided in our motivations and justifications. Such a division can, after all, tend to cover over our own deepest concerns, concealing them from others and from ourselves.

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<sup>20</sup> Michael Stocker, ‘The Schizophrenia of Modern Ethical Theories’, *The Journal of Philosophy*, 73.14 (1976), 453-66.

# On the Separateness of Human and non-Human Animals

Peter Morriss

**Abstract:** Human and non-human animals are usually thought of as being in completely separate categories, so that it is not normal to talk about ‘non-human animals’ at all: conventionally there are animals, and there are humans. This paper explores the development of this distinction in the West. It does so by looking predominantly at two (linked) areas in which there are powerful taboos rendering both abhorrent and illegal the failure to keep these two categories separate: the creation of human/animal hybrids and sexual relations between humans and non-human animals.

Socrates is reported to have said that he was born thrice-blessed: he was blessed because he was born a Greek and not a barbarian; he was blessed because he was born a man and not a woman; and he was blessed because he was born a human and not an animal.<sup>1</sup> Nowadays it is not considered appropriate to stress the superiority of one’s nationality in this way (or one’s race – an idea unknown to the Greeks); nor would it be acceptable, I think, for me to claim that the gods had smiled on me by ensuring that I was born male and not female. However, the third contrast – between human and animal – has not been rejected in the same way; indeed, it has become so central to our thinking over the last few hundred years that it seems odd to remark on it. It is this contrast that I will address in this paper.<sup>2</sup>

My approach is to focus on two taboos, which I think we will all recognize as present within our culture, which both involve a failure to keep humans and animals separate, in the ways we seem to think that they should be kept separate. The first of my taboos is failing to keep humans and animals separate by producing creatures which are a *mixture* of human and animal. Scientists can now do this by manipulating and combining

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<sup>1</sup>Diogenes Laertius, *Lives of Eminent Philosophers* (London: Loeb, 1925; originally written in the third century) 1.33. Diogenes says that this saying was also attributed to Thales, who would have said it before Socrates.

<sup>2</sup>I will talk in this paper of ‘humans’ and ‘animals’, rather than the more accurate ‘human vs nonhuman animal’, both for simplicity and in order to use more colloquial language.

human and animal cells, thereby creating human-animal hybrids and chimeras. There are a variety of practical reasons why scientists might want to do this. One of the earliest, discovered in the 1960s, was as a test for male fertility or infertility: the potency of a man's sperm can be established by seeing whether it can fertilise specially treated hamster eggs. When successful, a human-hamster hybrid is produced. Failure to fertilise the hamster egg and create this hybrid demonstrates the man's infertility. More recently, hybrids have been created for several other reasons, such as in order to test drugs on more human-like subjects when it was not known if they were safe enough to test on real humans; in research on the development of degenerative diseases such as Parkinson's and Alzheimer's; and to develop drugs which would not be rejected by the human recipient's immune system, as they would contain the recipient's own DNA.<sup>3</sup> So far this research has involved, at most, the creation of embryos, which are not allowed to develop further; there are as yet no human-hamster hybrids running around (or maybe walking around). Nevertheless, the creation of such hybrid embryos has proved highly contentious: George Bush jnr, in his State of the Union address in 2006, condemned 'creating human-animal hybrids' as one of 'the most egregious abuses of medical research', and promised to make it illegal.<sup>4</sup> George Bush was, I take it, no philosopher, and I probably shouldn't refer to him in this journal, but there are many card-carrying philosophers who have said exactly the same.

In the United Kingdom, the creation of human-hamster hybrids was allowed by the Human Fertilisation and Embryology Act 1990. (There has been no comparable legislation in Ireland because Ireland is bad at getting around to legislating about such things, so in this article I will concentrate instead mainly on the UK.) The 1990 Act, whilst allowing some hybrid creation, *only* allowed any such hybrid to develop as far as the two-cell stage. Predictably, as scientific techniques developed, this restriction proved too limiting, and so in 2007 scientists requested that it be relaxed; in response to that there was a consultation of the public to find out what they thought. When asked whether it should be legal to create 'true hybrid embryos' for bona fide research purposes, 85% of those

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<sup>3</sup>For an accessible survey, see The Academy of Medical Sciences, *Interspecies Embryos - A Report by the Academy of Medical Sciences* (2007).

<sup>4</sup> *Washington Post* 31 January 2006. This was a promise he failed to fulfil: Human-Animal Hybrid Prohibition Bills were introduced into the Senate and House in 2007 and 2008 but were not passed. However, such an Act was passed in some American states, such as Arizona.

who expressed a view said No.<sup>5</sup> When asked to give a reason, about 80% of those who rejected it responded that it was against nature or that it was repulsive.<sup>6</sup> The public consultation then went on to have deliberative meetings, in which they found that opinions changed notably in favour of allowing such research. After this public consultation, the UK legislation was altered, in the Human Fertilisation and Embryology Act 2008, to allow more latitude; now scientists who produce human-animal hybrid embryos in licensed research may keep them alive for 14 days.

In an article I wrote over twenty years ago,<sup>7</sup> I considered why anybody should have a problem with creating hybrid embryos – or, indeed, hybrid animals. What would be *wrong*, I asked, with having human-hamster hybrids, for instance, in our world? (They might be rather cute.) I will not repeat my arguments here, though at the end of this article I will consider a couple of responses to my earlier piece. Before that I want to sketch the history of this human/animal boundary in western culture, which I think is interesting and, hopefully, instructive.

Let us go back to Socrates. Socrates lived in a culture that was *saturated* with human-animal hybrids and chimeras. For instance, the Parthenon, which was finished when Socrates was a young man, was decorated throughout with portrayals of Greek myths involving centaurs: beings that were half-horse, half-man (almost all centaurs were male). In the myths, centaurs were sometimes wise and gentle, but more often subject to violent tempers; what is perhaps worse, they could not hold their drink, and, when drunk, tended to abduct and rape women. The Parthenon frieze represents a story well-known to the Greeks when centaurs who had been invited to a wedding feast got drunk, became unruly, and a riot ensued. That might seem a strange episode to commemorate in your main temple, but the centaurs were seen as providing a warning of what men could be when not controlled; although it is a bit unfair to blame any

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<sup>5</sup> Human Fertilisation and Embryology Authority, *Hybrids and Chimeras: A Report on the Findings of the Consultation*, October 2007, Appendix D: no pagination: ‘Question 3: Do you think that the law should in future permit the creation of true hybrid embryos for licensed research purposes? Yes: 91; No: 519; Not sure: 27; No response: 99.’

<sup>6</sup> Of those who were against and gave a reason, 68 (20%) of the answers were classified as a ‘yuck’ response, 60 (18%) as relying on human dignity, 44 (13%) life is sacred, 30 (9%) Playing God, 45 (14%) potentiality of the embryo, 41 (12%) unconvinced by science, 29 (9%) slippery slope, and 10 (3%) safety risks. I have estimated these numbers from a bar graph provided in the Report, so they may be one or two percent out. Similar answers were given when asked about using chimera embryos in research (Human Fertilisation and Embryology Authority, *Report* Question 4).

<sup>7</sup> P. Morriss, ‘Blurred Boundaries’, *Inquiry* 40 (September 1997) pp. 259-89.

horse side of our nature for drunken excesses that only humans are capable of, that was the message being conveyed in the Parthenon. Centaurs also represented Athens' enemies, the barbarians who lacked the civilising culture of Athens: the Parthenon was built because the previous temple had been burnt down during the Persian invasion when Athens was destroyed, and so the frieze of centaurs also symbolized the threats to Athens from abroad.<sup>8</sup> So the centaurs symbolized both internal and external threats to Athenian civilization. Hybrids, then, were treated as a part of life, but a potentially dangerous part. This danger – this threat to our civilization – has come down to us two and a half millennia later. What we seem to have here is the view, familiar to us, that humans and animals are separate beings, and should be kept separate to avoid disasters such as those caused by the centaurs at the wedding feast.

But our culture has, of course, been moulded more by Christianity than by the ancient world, and I will next look briefly at Christianity's views on the human/animal boundary. Christianity has, on the whole, been unimaginative when it comes to the world of ideas: most non-theological Christian thinking was taken over wholesale from either the Greeks or the Old Testament. The great innovation of Christian thought that distinguishes it from its predecessors is an intense abhorrence or fear of sex, which we see most markedly in the veneration of a mother who gave birth to a son of God without, allegedly, having had any sex with the god who was nevertheless somehow the father of her child. Such an occurrence would never have occurred in Greek thought. Their gods *loved* sex: for the Greeks the main point of *being* a god was that one could have sex as often as one liked, with as many partners as one liked, and in as many forms as one could imagine, frequently turning into some animal or other in order to do so. Christianity rejected that idea of a sex-mad god, replacing it by the sexless god we all know.

And that brings me to my second taboo, which is a person's failure to acknowledge that humans and animals must be kept in separate realms by their engaging in sexual intercourse with an animal – that is, what we

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<sup>8</sup> 'The Centaurs formed an asymmetrical, overly masculine, violently bestial alternative to the norm of what was seen by the Greeks as human culture.' Page DuBois, *Centaurs and Amazons: Women and the pre-History of the Great Chain of Being* (Ann Arbor: University of Michigan Press 1991, orig. 1982) p. 31. See also R. Osborne, 'Framing the centaur: reading fifth-century architectural sculpture,' in S. Goldhill and R. Osborne, eds, *Art and text in ancient Greek culture* (Cambridge: Cambridge University Press, 1994): 'Among centaurs individual virtue coexists with a capacity for group viciousness on a large scale, and the same creatures that promote civilisation through education also disrupt the basic civilising activities of commensality and marriage.' (p. 84).

call bestiality. These two taboos have often been linked, as it was thought, reasonably enough, that sex between a human and animal could produce an offspring that was half-human and half-animal. So if you didn't want hybrids you didn't want to allow cross-species sex.

The Old Testament was very harsh on bestiality: in the well-known passage from Leviticus, the punishment was that both human and animal were to be put to death.<sup>9</sup> (It has been suggested that that was in part because other, rival, religions had ceremonies that involved ritual sex between human and animals, and the early Jews wanted to differentiate themselves from their rivals.) This was eventually followed within Christianity, so that, for Aquinas, bestiality was the worst form of sexual sin.<sup>10</sup> However, it took Christianity about a thousand years to get around to this assessment of bestiality.

It seems that at the beginning Christianity did *not* view humans and animals as completely separate sorts of creatures. Early on, at least in the eastern church, but also in Ireland, holy men *rejected* the Greek idea of civilization: they retreated to the deserts, where they tried to live a life which *resembled* as much as possible that of a wild animal. So

For around two hundred years the deserts of the Holy Land were filled ... with countless cave-dwelling hermits and great herds of 'grazers', nomadic monks who ... 'wander in the desert as if they were wild animals: like birds they fly about the hills; they forage like goats. Their daily round is inflexible, always predictable, for they feed on roots, the natural products of the earth.'<sup>11</sup>

They also, incidentally, thought that washing was one of the civilized things they shouldn't have anything to do with:

one story of the desert fathers admiringly tells how a wandering monk chanced upon a saintly hermit in a cave in the furthest

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<sup>9</sup> 'And if a man lie with a beast, he shall surely be put to death: and ye shall slay the beast.' (Leviticus 20:15: King James's Bible).

<sup>10</sup> '... among sins against nature, the lowest place belongs to the sin of uncleanness [masturbation]... . While the most grievous is the sin of bestiality, because use of the due species is not observed.' (T. Aquinas, *Summa Theologica* [New York: Benziger Brothers, 1921; originally c. 1270]) II-II, 154.12 ad 4).

<sup>11</sup> W. Dalrymple, *From the Holy Mountain: A Journey in the Shadow of Byzantium* (London: Harper Press, 2011; orig. 1997) p. 294. The internal quotation is from John Moschos, *The Spiritual Meadow* (Kalamazoo: Cistercian Publications, 1992; orig. before 619, the year of his death; no pagination).



reaches of the desert, 'and believe me, my brothers, I, Pambo, ... smelt the good odour of that brother from a mile away'.<sup>12</sup>

It is amusing to think what our world would now be like if *that* strand of Christianity had become the dominant one.

But – to get back to my taboo - within mainstream Christianity there was no particular horror of bestiality before about 1200. We can get an idea of how the early church viewed the relative seriousness of various sins by looking at the penances prescribed for them, which are preserved in manuscripts that have come down to us: many of these are Irish, and one of the earliest is that drawn up by Columbanus in the sixth century. What is perhaps surprising is that bestiality was considered a mild sexual sin; it incurred the same penance as masturbation.<sup>13</sup> The logic seemed to be that Christian teaching had quite early settled on the view that sex was sinful, with the sole exception of sex between a husband and wife with a view to reproduction. Hence *all* non-marital sex was sinful, simply by virtue of it being the product of lust, and it would miss the point to think that one form of lust was any more sinful than another. Indeed, some thought that adultery and homosexual sex were far *worse* than bestiality, because by engaging in one of those one was corrupting another person, which was an accentuating factor that was absent with bestiality. Along similar lines, it has been suggested by a modern historian that animals were thought of as having a similar moral standing to *things*, and so sex with an animal was no different from using some inanimate object as a sex aid.<sup>14</sup> Whether that is the reason or not, it seems that in early Christianity there was no particular abhorrence of bestiality, and that was because there was no particular desire to keep humans and animals always apart.

All that changed after the thirteenth century. And in the sixteenth to eighteenth centuries there was almost an epidemic of executions for bestiality. This was a time, as is well known, when there was an obsession with witchcraft; one of the signs of a witch was that they possessed animals – often a cat - with which they consorted too familiarly. (Think of the modern portrayal of a witch with a cat on a broomstick.) Often they were

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<sup>12</sup>Dalrymple pp. 325-6. There is no reference to the internal quotation; it seems to be from a manuscript in the British Museum: see 'The Life of Apa Cyrus' in E.A. Wallis Budge, *Coptic Martyrdoms etc. in the Dialect of Upper Egypt* (London: Longmans, 1914) p. 383, or T. Vivian, 'Journeying into God: The Story of Abba Pambo,' *Cistercian Studies Quarterly* 26 (1991), pp. 95-106.

<sup>13</sup> See P.J. Payer, *Sex and the Penitentials: The Development of a Sexual Code 550 - 1150* (Buffalo: University of Toronto Press, 1984) p. 44; more generally, pp. 44-6.

<sup>14</sup> J.E. Salisbury, *The Beast Within: Animals in the Middle Ages* (London: Routledge, 1994) pp. 90-91.

thought to engage in orgies with these animals. And the animals were not mere creatures: they were the devil in disguise.<sup>15</sup> (The Greek idea that gods could take animal form for sexual purposes had been transcribed to that being a property of the devil – perhaps originally to associate the idea of the devil with those pagan gods.) Men as well as women could be tricked into a sexual transgression with the devil, and whilst witches tended to be women – who could be executed *as* witches – men who were similarly positioned would be executed for bestiality. And so they were, in considerable numbers.

It has been much debated why the witch craze and obsession with bestiality occurred, and why in church circles there was an increasing obsession with the need to keep the species separate. One possibility that I would suggest is that the writings of Aristotle were translated into Latin in the twelfth and thirteenth centuries and quickly thereafter became incorporated almost wholesale into Christian thinking. Aristotle insisted on a sharp boundary between humans and animals, and came up with a number of distinguishing characteristics that humans possessed and animals did not. The best known is that he thought that humans had *reason*, and animals did not; and of course for Aristotle, as all philosophers, reason is the most important quality anybody or anything could possess. But the desperation with which Aristotle tried to find differences between us and the brutes can be seen by looking at some of his other characteristics. One is that Aristotle defined the human as a featherless biped, and the ‘biped’ bit is not arbitrary: our standing upright was seen as crucial for our high status because it (allegedly) thereby put us nearer to god. We were also different from most other animals in that we are able to look upwards - towards god - which the quadrupeds, with their downward-pointing heads, could not. As Aristotle put it, ‘Man is the only animal that stands upright, and this is because his nature and essence is divine’.<sup>16</sup> This idea was a commonplace in the classical world, and was later adopted by Aquinas, amongst many others. It is clearly a dreadful argument: apart from its many other failings, it is just circular, in that we probably think that heaven is somehow in an upward direction as a consequence of our own erect

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<sup>15</sup> See J. Serpell & E. Paul, ‘Pets and the Development of Positive Attitudes to Animals’, and E. Cohen, ‘Animals in Medieval Perceptions: the image of the ubiquitous other’ both in A. Manning & J. Serpell, eds, *Animals and Human Society: changing perspectives* (London: Routledge, 1994)

<sup>16</sup> Aristotle, *De partibus animalium* 653a, 669b, 656a, 686a; *Parts of Animals*, trans. A.L. Peck (Cambridge, Mass.: Harvard University Press, 1968), pp. 259, 173-5, 367. Cf. *Historial animalium* 494b. As quoted (and referenced) in M. O’Rourke Boyle, *Senses of Touch: Human Dignity and Deformity from Michelangelo to Calvin* (Leiden: Brill, 1998) 34.

posture, with the head at the top. It does, though, have the useful result that infants, who are unable to walk but only to crawl, are less god-like than adults.<sup>17</sup>

I take it that this interpretation of the importance of bipedality has now died out; but the obsessive search for a factor – *any* factor – that separates humans from animals, and shows that humans are superior to animals, remains. Recent research has shown that nonhuman animals do possess considerable ability to reason, so that won't produce the desired clear dividing line. (Incidentally, the latest animal to be shown to possess considerable reasoning capacity is the octopus.<sup>18</sup>) The ethologist Frans de Waal - who works mainly with apes – has described the reactions of non-biologists (including philosophers) to his convincing demonstrations that apes can reason: rather than acknowledge that in that case apes and humans must be rather similar, philosophers invariably tried to produce some other distinguishing characteristic that put humans in a completely different, and superior, category from all other animals.<sup>19</sup> One such attempt was the claim that only human use tools. When that was demonstrated to fail - even crows have been observed using tools – then they switched the requirement to making tools *using* tools; but nope, elephants and many other animals do that. Then language was proposed as a defining characteristic; but we now believe that many animals, such as dolphins and even bees, have a quite sophisticated level of communication with each other. De Waal said, in exasperation, that each time he demonstrated to philosophers the presence in animal behaviour of a quality previously thought to be uniquely human, they switched the defining characteristic: rather than accept that humans and nonhuman animals are really rather similar, it is felt that there *must* be a clear basis for human uniqueness and superiority, even though we do not at present know just what that basis is. I blame Aristotle for this obtuseness.

I now want to leave religion and Aristotle, and look briefly at science. Most people think that the first scientist to attack the human/animal

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<sup>17</sup> Boyle, p. 34. She has a fascinating discussion of the importance, and significance, of bipedality on pp. 31-44; it explains, amongst other things, why in classical statues men are almost always shown standing.

<sup>18</sup> See Peter Godfrey-Smith, *Other Minds: The Octopus and the Evolution of Intelligent Life* (London: William Collins, 2016).

<sup>19</sup> Frans B. M. de Waal 'What We Can Learn from Animals', (Pufendorf Lectures, May 2017), available at <http://www.pufendorf.se/recordings/2017/dag1.mp4>, <http://www.pufendorf.se/recordings/2017/dag2.mp4>, and <http://www.pufendorf.se/recordings/2017/dag3.mp4>.

separation was Darwin, but in fact he had already been anticipated by almost exactly a hundred years, by Linnaeus. Linnaeus produced the first systematic account of the natural world, classifying everything into its genus and species. It is noteworthy that he included humans in his list of creatures in the natural world. That was revolutionary: it denied the prevailing classification that there was *nature* and *animals*, on the one hand, and *us*, on the other. Instead Linnaeus put us firmly within the mammals, in the same genus as chimpanzees.<sup>20</sup>

It is interesting to think about that a bit more.<sup>21</sup> At first Linnaeus had used Aristotle's term for the genus – *Quadrupedia*, or four-footed. But that obviously didn't fit well with the inclusion of humans, so Linnaeus invented the word 'mammal' for this group, derived from *mamma*, the Latin for 'breast'. This is odd, for several reasons. One is that, of course, only the female of the species have breasts; men do not (at least not functioning ones); so men would seem to be left out of the classification. He *could* have defined us as 'creatures who are suckled when young', which would have included us all, instead of 'creatures who suckle', which describes only half of us. Secondly, it had always been the case that the standard exemplar of an animal was the male of the species, with the female being dragged along behind, as it were. Thus the blackbird is called that because the male is black, even though the female (and juveniles) are brown. So Mrs Blackbird is named after her husband's characteristics, just as she would have been in the human world. Linnaeus reversed that, and was being highly unusual in privileging the female in this way. But he was not making any sort of a feminist point; rather the contrary. For he well realised that it could be considered blasphemous to describe us as just another animal. But if we could think of that as determined by a feature of the *female* of the species, it would be seen as less threatening: everybody at the time knew that women were somehow more part of the natural world than men were, so thinking of *them* as just another part of nature was less threatening to the dominant male sensibility. So the use of the term 'mammal' implied that it was women that determined that our place was with the animals, and it was *men* that were dragged along behind *them* – exactly as in the Garden of Eden myth, it was Eve who corrupted Adam.

But when Linnaeus came to give a name to our *species*, after trying several candidates he eventually settled on the conventionally Aristotelian

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<sup>20</sup>C. Linné, *A General System of Nature*, Vol. I (London: Lackington, Allen, 1806), originally C. Linnaeus, *Systema naturae* (10<sup>th</sup> ed., 1758).

<sup>21</sup>For a fascinating account of this, on which I have drawn heavily, see Londa Schiebinger, 'Why Mammals are Called Mammals: Gender Politics in Eighteenth-Century Natural History,' *American Historical Review* 98(2) (1993) pp. 382-411.

*homo sapiens* to indicate that it was our *reason* that set us apart from other animals – a feature which, as was also well known at the time, men have in greater abundance than women. So our similarity to other animals was marked by what *women* are (they share with other mammals the possession of breasts), and our difference from them by what *men* are (the allegedly unique possession of reason). Thus was the theory made safe for public consumption.

The next important person in this story is Linnaeus's contemporary, the Frenchman Buffon. Buffon came up with our standard popular definition of what a *species* is. Linnaeus had categorized species by what they looked like: basically, if it looked like a duck and quacked like a duck, then a duck is what it was. This was all rather subjective - and, of course, left open whether the different human races were members of the same species or not: were the differences in (e.g.) skin colour *enough* to classify Europeans and Africans as different species, or did they point to variants within the same species? Buffon came up with a firmer difference, based on sex and reproduction: if two creatures, of different sex, could reproduce, and if the resultant being was itself fertile, then they were of the same species.<sup>22</sup> Thus it had been known since antiquity that a horse and a donkey could mate, and would give birth to a mule, which would be sterile. Therefore horses and donkeys were separate species, whilst if the mule had turned out to have been fertile, then horses and donkeys must be different variants of the same species. Now there is a lot of things wrong with this definition – just one of them being that it cannot apply to creatures that reproduce asexually, which are the vast bulk of them – and it has been abandoned by biologists, but I think it is still the popular understanding of what a species is. (There is currently no accepted definition of 'species'; if you would like to feel really confused, try reading the article on species in the *Stanford Encyclopedia of Philosophy*, which puts forward some fifteen definitions of 'species' from the literature, and produces a dozen objections to each one of them – and then stops.<sup>23</sup>)

Now what Linnaeus thought he was doing was creating an account of the Natural Order, as it had been created by God. (Linnaeus was deeply religious.) And what Buffon added was that that order was defined by sex: sex *within* species. It would follow from that, that sex *between* species was transgressive of the actual order that God had created. So this new science

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<sup>22</sup>Georges-Louis Leclerc, Comte de Buffon, *Histoire naturelle, generale et particuliere* Vol. II. (Paris, 1749).

<sup>23</sup>Marc Ereshefsky, 'Species', *Stanford Encyclopedia of Philosophy* (2017); available only online at <https://plato.stanford.edu/entries/species/>.

fitted well with the hysteria about bestiality that existed at precisely this time: it is worth noting that Linnaeus was Swedish, the main edition of his work was published in 1758, and that Sweden at that time was in the grip of a virulent campaign against those who engaged in bestiality, to the extent that in the forty previous years about a thousand people had been tried for bestiality, of whom about three hundred were executed.<sup>24</sup> So the eighteenth-century naturalists, although they placed humans in the animal world, if anything reinforced, and gave theoretical backing to, the prevalent view that humans were really very different from animals, and that the boundary between the two should not be transgressed.

The final episode I want to draw attention to is the development of the orthodoxy of human rights (often said to be based on the idea of human dignity) in the post-war era. The driving force behind this is clear: an abhorrence of the ease with which the Nazis came to hold some people as sub-human and ripe for extermination. Hence to stop a repeat of this, a clear line had to be drawn around humans – *all* humans – so that no human group could again be ill-treated the way the Jews and others had been. I cannot go into these ideas further here, except to say that this way of thinking has reinforced the sharp human/animal division which re-emerged in the late Middle Ages: humans have rights by virtue of their humanity, which those beings lacking humanity must necessarily lack.<sup>25</sup> Hence the dilemma with human-animal hybrids: the problem with them is that we don't know whether they are human or animal (because they are both); and if they are human, they have human rights and dignity and so on, whilst if they are not we can do what we like with them.<sup>26</sup>

This leads me in to the final section of my paper, which is to consider two responses in the philosophical literature to my original article.<sup>27</sup> The most cited contribution in this area is a 2003 article in the *American Journal of Bioethics*.<sup>28</sup> The authors asked what, if anything, might underpin the

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<sup>24</sup>Jonas Liliequist, 'Peasants against Nature: Crossing the Boundaries between Man and Animal in Seventeenth and Eighteenth-Century Sweden,' *Journal of the History of Sexuality* 1(3) (Jan. 1991) pp. 393-423; figures from Table 1, p. 395.

<sup>25</sup> Of course there is now a large literature on animal rights, but this has scarcely entered the mainstream in the way that the language of human rights has.

<sup>26</sup>Actually, remember, these are embryos consisting of just a few undifferentiated cells, so it is somewhat odd to be talking of their rights or their dignity.

<sup>27</sup>See the reference in n. 7.

<sup>28</sup> Jason Robert and Françoise Baylis, 'Crossing Species Boundaries,' *American Journal of Bioethics* 3(3) (2003) pp. 1 – 13.

common ‘yuck’ response to hybrids that cross the species boundary. They found it difficult to come up with anything plausible, but did offer for consideration the following suggestion: creatures that are part-human and part nonhuman would ‘introduce inexorable moral confusion’<sup>29</sup> because – as I have just pointed out – the moral status of human and nonhuman animals is very different. ‘It follows that hybrids and chimeras made from human materials are threatening insofar as there is no clear way of understanding (or even imagining) our moral obligations to those beings’. They then draw on the claim by the historian Keith Thomas, and others, that ‘the separateness of humanity is precious and easily lost; hence the need for tightly guarded boundaries’. So we should avoid ‘moral confusion’ by banning the creation of such confusing, anomalous, beings. Perhaps I should say that in my earlier article, I came up with the same suggestion and then argued against it; Robert and Baylis think that it is the only plausible suggestion, but are agnostic on whether the argument should be accepted, and finish with the feeble ‘more conceptual work needs to be done’.

For what it is worth, I think that their proposal won’t do at all. Philosophers cannot throw up their hands when things get difficult, and say ‘that would be very confusing – let’s ban it so that we don’t get all confused’, even if non-philosophers can (and do). Put another way, us philosophers are used to dealing with thought-experiments, which force us to think carefully about the categories we use in our moral lives. Human-animal chimeras are merely thought-experiments made flesh, as it were. That might create doubts for *non*-philosophers (who in my experience are not willing to cope with thought-experiments, and think that they are just silly), but, if so, this is surely an excellent opportunity for us philosophers to be able to engage with the general public, who might now be willing to listen to us. To say that a new development will confuse us, and that therefore we should ban it is to abdicate from philosophy. If the creation of hybrids is bad, we should oppose it because we have reasons for declaring it bad; not because it is just so confusing. Philosophers have the task of *resolving* such confusions, not *relying* on them.<sup>30</sup>

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<sup>29</sup> p. 9. All remaining quotations in this paragraph are also from p. 9.

<sup>30</sup> The best and most thorough analysis of the arguments against producing chimeras and hybrids – or what she calls ‘interspecifics’ – is to be found in Constanze Huther, *Chimeras: The Ethics of Creating Human-Animal Interspecifics* (PhD thesis, Ludwig-Maximilians-Universität Munich, 2009), available on the internet.

The other article I wish to mention, also from 2003, concentrated on the law on bestiality, and asked whether there should be such a law.<sup>31</sup> The author dealt fairly with my arguments, and agreed that there is nothing morally wrong with bestiality. But he thought that nevertheless we might do right to make it illegal.

He based this conclusion on a communitarian argument. Now I am not happy with communitarianism of this sort – when thinking about freedom-restricting legislation I prefer to follow an anti-communitarian like J.S. Mill – and this argument shows rather neatly why I think that. Levy’s argument is that we have a set of cultural understandings about what it is to be human, and that anybody who does not share those understandings is not welcome in our community. That one does not have sex with animals is one of those cultural understandings. Hence, he wrote,

to the extent that someone engages in bestiality, she will find it harder to retain a grip on her identity as a full member of our community, and we will find it harder to admit her to full membership.<sup>32</sup>

I do think that here he is factually correct: thus in the only bestiality case I have been able to discover in Ireland (which was as recent as 2012), the human involved, who pleaded guilty, felt forced to leave the country after his name was printed in his local paper.<sup>33</sup> By apparently enjoying bestiality (and, of course, by being caught) he was, in the eyes of his community, not fit to belong.

Levy’s article ends

If this picture is correct, then ... there is nothing wrong with bestiality, at least from the point of view of morality understood narrowly. Nevertheless, the repugnance that we, most of us, feel with regard to it is not irrational. It is not merely the residue of a superstitious worldview but reflects the culturally defined conditions of our sense of who we are.

But, again, I think that the task of the philosopher is precisely to question any such ‘culturally defined ... sense of who we are’. Cultures do not

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<sup>31</sup> Neil Levy, ‘What (if Anything) Is Wrong with Bestiality?’, *Journal of Social Philosophy* 34 (3) (2003) pp. 444–456.

<sup>32</sup> Levy p. 454. The following quotation is also from p. 454.

<sup>33</sup> The case seems not to have been discussed in the legal literature, and is not mentioned in the standard textbook on the subject, Thomas O’Malley, *Sexual Offences* (2<sup>nd</sup> ed.; Dublin: Round Hall, 2013). For an outline of the case – truly tragic, for all concerned – see *The Irish Times* 3 November 2012 and 15 December 2012.



emerge spontaneously, nor after sober rational reflection. As I have tried to sketch in this article, our cultural sense of the inviolability of species boundaries is one that was imposed on us with a lot of effort, and often in a particularly harsh and cruel way. To put this point another way, in my lifetime exactly the same comments about the need to enforce 'our understanding of who we are' have been used to make criminal both homosexual conduct and inter-racial marriage; both of these are now thought to be perfectly acceptable, and, indeed, anybody who now wishes to punish those who engage them would be regarded as outside our new, contemporary, cultural definition of who we are. Philosophers should be in the vanguard of such a process: willing to adopt unpopular positions in an attempt to drive change. They should not cower behind their society's prejudices, and defend them simply because they *are* the prejudices of our society.

So these two arguments both fail because they do not show a basic understanding of what a philosophical argument should look like. Some twenty years ago I suggested that there could be no rational objection in principle<sup>34</sup> either to the creation of human-animal hybrids or to sexual engagement between human and nonhuman animals; none of the responses to my article have caused me to change my mind.

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<sup>34</sup> 'In principle' because there are, of course, reasons for objecting to *certain sorts* of hybrid-creation or bestiality, such as those that involve inflicting pain or death.

# The Biosemiotic Gaze of the Cosmic 'Wholly Other' in Jacques Derrida's Posthumous Thought

Keith Moser

**Abstract:** The purpose of this investigation is to explore Derrida's reworking of other-than-human semiosis from a biosemiotic lens. Heavily influenced by the founding father of the interdiscipline of biosemiotics Jakob von Uexküll, the philosopher insists that many other organisms are endowed with semiotic faculties permitting them to send, receive, interpret, and stockpile signs strategically and purposefully. In his deconstruction of ubiquitous, anthropocentric discourse related to allegedly unique human capabilities, Derrida implores us to rethink the porous boundaries that separate human and other-than-human types of semiosis. From an environmental perspective, Derrida also expresses his fears about the effects of human semiotic pollution.

## I. Introduction

This essay proposes a biosemiotic<sup>1</sup> interpretation of Jacques Derrida's transdisciplinary theories related to the complexity of other-than-human communication in his posthumously published thoughts. In the lectures that comprise *The Animal That Therefore I Am* and the multi-volume work *The Beast and the Sovereign*, Derrida demonstrates how a seemingly banal encounter with a cosmic 'wholly other'<sup>2</sup> in the form of an ordinary

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<sup>1</sup> When I use the term 'biosemiotic,' I am referring to the interdiscipline of Biosemiotics in a general sense. Similar to many biosemioticians, I take advantage of the word 'biosemiotic' to indicate that it is really a question of semiosis.

<sup>2</sup> Jacques Derrida, *The Animal That Therefore I Am*, trans. by David Wills (Fordham, NY: Fordham University Press, 2008), p. 11.

housecat would trigger ‘intensive philosophical reflections’<sup>3</sup> about the essence of communication itself. Based on a plethora of evidence derived from the hard sciences, the philosopher compels other thinkers to reexamine ‘language in the broad sense, codes of traces being designed, among all living things.’<sup>4</sup> Deconstructing dominant anthropocentric communicative paradigms that are grounded in chimerical wishful thinking as opposed to rigorous philosophical inquiry, Derrida outlines a biosemiotic approach that corresponds to the basic tenets of contemporary scientific erudition.

Illustrating that many other organisms possess semiotic faculties that enable them to exchange information in both meaningful and purposeful ways, the philosopher advocates in favor of a radical reconceptualization of communication in Western civilization. Given that the sign systems of other sentient beings are much more elaborate and sophisticated than traditional linguistic models suggest, Derrida urges us to reinvestigate the sharp ontological distinctions between *Homo sapiens* and other life forms centered around human forms of semiosis. In this vein, the philosopher’s biosemiotic reflections are also emblematic of a biocentric ethic. Derrida promotes a kind of ecological solidarity that he implies is paramount to stemming the tide of the anthropogenic crisis. The philosopher convincingly posits that the question of other-than-human semiosis is a microcosmic representation of our outdated thought systems that continue to justify our *ecocidal* relationship with the remainder of the biosphere in the face of stern warnings from the scientific community.

## II. The Autobiographical Representation of Derrida’s Cat as an Autonomous Semiotic Agent

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<sup>3</sup> Linda Williams, ‘Darwin and Derrida on Human and Animal Emotions: The Question of Shame as a Measure of Ontological Difference’, *New Formations* 76 (2012), 21-37 (p. 25).

<sup>4</sup> Jacques Derrida, *The Beast and the Sovereign*, trans. by Geoffrey Bennington (Chicago: Chicago University Press, 2011), p. 8, vol. 2.

As numerous critics including Michael Naas,<sup>5</sup> Jessica Polish,<sup>6</sup> Suzanne Guerlac,<sup>7</sup> and Sharon Sliwinski<sup>8</sup> have noted in their analyses of the opening pages of *The Animal That Therefore I am*, it is the destabilizing ‘experience of coming out of the shower and being looked at naked by his household cat’ that leads Derrida to the ecocentric<sup>9</sup> realization that this other-than-human entity is an autonomous semiotic agent.<sup>10</sup> By Derrida’s own admission, there are ‘copious references’ to the German biologist and founding father of biosemiotics Jakob von Uexküll all throughout the aforementioned lectures that appeared in print after the philosopher’s death.<sup>11</sup> Thus, it is hardly surprising that Derrida seems to have adopted a biosemiotic view regarding the exchange of signs occurring at all biological levels of organization. Specifically, von Uexküll’s concept of an *umwelt* provides an interesting lens from which to interpret the biocentric epiphanies induced by the biosemiotic gaze<sup>12</sup> of Derrida’s cat. First, it is noteworthy that the term *umwelt* has very different connotations for biosemioticians as opposed to many people from other disciplines. Offering an operational definition of the biosemiotic notion of an *umwelt*, Dusan Galik reveals, ‘Contrary to the contemporary meaning of ‘Umwelt’, which means [sic] organism’s external environment, Uexküll’s ‘Umwelt’ meant the inner world of [sic]<sup>13</sup> organism, the fact that every living organism creates its own world, its own reflection of the surrounding

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<sup>5</sup> Michael Naas, ‘Derrida’s Flair (For the Animals to Follow...)', *Research in Phenomenology*, 40 (2010), 219-242.

<sup>6</sup> Jessica Polish, ‘After Alice After Cats in Derrida’s *L’animal que donc je suis*’, *Derrida Today*, 7.2 (2014), 180-196.

<sup>7</sup> Suzanne Guerlac, ‘Derrida and His Cat: The Most Important Question’, *Contemporary French and Francophone Studies*, 16.5 (2012), 695-702.

<sup>8</sup> Sharon Sliwinski, ‘The Gaze Called Animal’, *CR: The New Centennial Review*, 11 (2012), 61-82.

<sup>9</sup> ‘Ecocentrism is the broadest term for worldviews that recognize intrinsic value in all life forms and ecosystems themselves, including their abiotic components.’ Hadyn Washington, Bron Taylor, Helen Kopnina, Paul Cryer, and John Piccolo, ‘Why Ecocentrism is the Key Pathway to Sustainability’, *The Ecological Citizen*, 7.1 (2017), 35-41 (p. 35). It is in this sense in which I employ the adjective ‘ecocentric.’

<sup>10</sup> Naas, p. 225.

<sup>11</sup> Derrida, *The Animal*, p. 143.

<sup>12</sup> As Will Abberley notes, Derrida recognizes that his cat is a ‘sign maker’ in its own right during this poignant encounter. (Will Abberley, ‘Mimicry, Biosemiotics, and the Animal-Human Binary in Thomas Belt’s *The Naturalist in Nicaragua*’, *Resilience: A Journal of the Environmental Humanities*, 4.1 (2017), 1-27 (p. 10).

<sup>13</sup> These ‘sics’ refer to the absence of the word ‘an.’

environment and acts in this environment according to this reflection.<sup>14</sup> In the context of biosemiotic research, an *umwelt* is the ‘personal semiotic space’<sup>15</sup> of a given species in which it is able to conceive a mental representation of the world and its relationship to it. As Wendy Wheeler explains, ‘from von Uexküll we gain the insight that living things exist in species *Umwelten* which are signifying environments composed of the signs which are meaningful in the survival of any species. Environments [...] are always semiotic environments [...] the biosphere overall can be thought of as the semiosphere.’<sup>16</sup> In a separate article, Wheeler maintains that all creatures have a unique ‘subjective point of view’<sup>17</sup> or frame of reference that corresponds to their species-specific semiotic abilities. Clearly espousing the core biosemiotic principle that ‘semiosis is synonymous with life,’<sup>18</sup> Derrida contends, ‘The animal is there before me [...] it can look at me. It has its point of view regarding me. The point of view of the absolute other, and nothing will have ever given me more food for thinking that this absolute alterity of the neighbor or of the next (-door) than these moments when I see myself naked under the gaze of the cat.’<sup>19</sup> After he recovers from the initial state of shock actuated by this encounter, the philosopher starts to reflect upon what it means to see and to be seen by what he refers to as the ‘wholly other.’ Instead of being mindless, robotic automatons that purely operate according to an internal machinery, Derrida realizes that other entities are capable of creating mental models for comprehending the world in which they live and die. Similar to Michel Serres in the aptly named *Yeux* (2014), Derrida attempts

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<sup>14</sup> Dusan Galik, ‘Biosemiotics: A New Science of Biology’, *Filozofia*, 68 (2013), 859-867 (p. 860).

<sup>15</sup> Kalevi Kull, ‘Chapter 7: Biosemiotics and Biophysics-The Fundamental Approaches to the Study of Life,’ in *Introduction to Biosemiotics: The New Biological Synthesis*, ed. by Marcello Barbieri (New York: Springer, 2007), 167-177 (p. 172).

<sup>16</sup> Wendy Wheeler, ‘Postscript on Biosemiotics: Reading Beyond Words-And Ecocriticism’, *New Formations*, 64 (2008), 137-154 (pp. 140-141).

<sup>17</sup> Wendy Wheeler, ‘A Feeling for Life: Biosemiotics, Autopoiesis, and the Orders of Discourse’, *Anglia-Zeitschrift für englische Philologie*, 133.1 (2015), 53-68 (p. 65).

<sup>18</sup> Wendy Wheeler, ‘The Book of Nature: Biosemiotics and the Evolution of Literature’, in *The Evolution of Literature: Legacies of Darwin in European Cultures*, ed. by Nicholas Saul and Simon James (Rodopi, Amsterdam, 2011), pp. 171-184 (p. 177).

<sup>19</sup> Derrida, *The Animal*, p. 11.

to catch a glimpse of the complexity of the signs endlessly being sent, received, stockpiled, and interpreted through the ‘regard actif’ of other sentient beings within the confines of the *umwelt* in question.<sup>20</sup> In simple terms, Derrida insists that each life form has a singular vantage point that allows it to engage in semiosis.<sup>21</sup>

As several researchers including Claudia Egerer,<sup>22</sup> Belinda Kleinhans,<sup>23</sup> Linda Williams,<sup>24</sup> and Kathryn Saint-Ours<sup>25</sup> underscore, Derrida’s disquieting confrontation with the semiotic gaze of the ‘Cosmic Other,’<sup>26</sup> vividly depicted in *The Animal That Therefore I am*, also opens the door to the possibility of universal subjecthood. Whereas much of Western philosophy affirms that only humans are able to attain the status of a fully autonomous subject by virtue of our supposedly unique attributes, an issue which will be more systematically probed in a later section of the essay, Derrida argues that other organisms are active subjects in their own right. Highlighting how Derrida promulgates the idea of universal subjecthood in stark contrast to anthropocentric thinkers like René Descartes, Emmanuel Levinas, Martin Heidegger, and Immanuel Kant who he often criticizes, Claudia Egerer avers, ‘Derrida challenges us to recognise the animal in its specificity by meeting the animal gaze. The animal gaze that,

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<sup>20</sup> Michel Serres, *Yeux* (Paris: Le Pommier, 2014), p. 11.

<sup>21</sup> Although von Uexküll maintains that plants do not have Umwelten, Jesper Hoffmeyer contends that we should ‘broaden the Umwelt concept to cover the phenomenal worlds of plants, fungi, and protists’ (Jesper Hoffmeyer, ‘Seeing Virtuality in Nature’, *Semiotica*, 134 (2001), 381-398 (p. 396)). In this essay and in other biosemiotic reflections, I argue along the same lines as Hoffmeyer. However, it should be noted that some Umwelten are undoubtedly much more complex and richer semiotic spaces than others.

<sup>22</sup> Claudia Egerer, ‘The Speaking Animal Speaking the Animal: Three Turning Points in Thinking the Animal’, in *Turning Points: Concepts and Narratives of Change in Literature and Other Media*, ed. by Ansgar Nünning and Kai Marcel Sicks (Boston: De Gruyter, 2012), pp. 437-452.

<sup>23</sup> Belinda Kleinhans, ‘Posthuman Ethics, Violence, Creaturely Suffering and the (Other) Animal: Schnurre’s Postwar Animal Stories’, *Humanities*, 5 (2016), 1-19.

<sup>24</sup> Linda Williams, ‘Darwin and Derrida on Human and Animal Emotions: The Question of Shame as a Measure of Ontological Difference’, *New Formations* 76 (2012), 21-37 (p. 25).

<sup>25</sup> Kathryn Saint-Ours, ‘Le regard de l’animal chez Jean-Loup Trassard et Jacques Derrida’, *Revue Romane*, 45.2 (2010), 315-327.

<sup>26</sup> This is a term coined by the French ecocritic Keith Moser in *J.M.G. Le Clézio: A Concerned Citizen of the Global Village* (2012).

if met, challenges us to think of animals not just as objects of our investigation subjected to our gaze, but animals as subjects responding to our gaze and as subjects gazing at us.<sup>27</sup> In this sense, Derrida beckons the reader to imagine how other species perceive the role of *Homo sapiens* in the world through their subjective filter.

Defending the interrelated positions that all life forms are able to constitute a sense of self in addition to possessing a considerable amount of semiotic autonomy, the philosopher declares, 'Let me repeat it, every living creature, and thus every animal to the extent that it is living, has recognized in it this power to move spontaneously, to feel itself and to relate to itself. However, problematic it be, that is even the characteristic of what lives.'<sup>28</sup> Taking aim at those who deny that other species are able to create a stable sense of selfhood, Derrida opines,

what is in dispute-and it is here that the functioning and the structure of the 'I' count so much, even where the word I is lacking-is the power to make reference to the self [...] the capability at least virtually to turn a finger toward oneself in order to say 'this is I.' [...] Because it is held to be incapable of this autodeictic or auto-referential self-distancing [...] and deprived of the 'I,' the animal will lack any 'I think' as well as understanding and reason, response and responsibility. The 'I think' that must accompany every representation is this auto-reference as condition for thinking, as thinking itself, that is precisely what is proper to the human, of which the animal would be deprived.<sup>29</sup>

Derrida readily admits that he has no objective basis for knowing exactly what is transpiring inside of his cat's *umwelt* or in the subjective inner world of any other creature. Nonetheless, he adamantly reinforces his argument that the dualistic distinction between 'semiotically active humans and a

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<sup>27</sup> Egerer, p. 442.

<sup>28</sup> Derrida, *The Animal*, p. 94.

<sup>29</sup> Derrida, *The Animal*, p. 94.

semiotically inactive nature' runs counter to the evidence already compiled by numerous researchers in the hard sciences.<sup>30</sup>

Although the human semiosphere is undoubtedly the most expansive of all, largely due to the sophisticated nature of what biosemioticians refer to as the primary modeling device of 'language,' Derrida maintains that it would be a basic error in logic to assume that non-human animals are entirely deprived of a 'degree of *semiotic freedom*' connected to selfhood.<sup>31</sup> As Angus Taylor elucidates, 'Animals, it is true, do not possess the reasoning power of human beings, yet [...] they are sentient and possess a degree of autonomy in conducting their lives [...] Many animals exhibit more autonomy than many humans do, in the sense that they are better able to care for themselves and to navigate successfully through their natural and social environments.'<sup>32</sup> Reaching the same conclusion as von Uexküll that 'all sensory beings should be considered as subjects inhabiting their own perceptual world, or *Umwelt*,' Derrida cannot ignore the ethical summons extended by the biosemiotic gaze of the Cosmic Other that forces him to take a closer look at the inner workings of a biosphere that is teeming with the meaningful exchange of information.<sup>33</sup> As Marian Hobson,<sup>34</sup> Gerald Bruns,<sup>35</sup> Matthew Calarco,<sup>36</sup> Gerasimos Kakoliris<sup>37</sup> have noted, this rudimentary form of interspecies communication is significant because it undermines Emmanuel Levinas's anthropocentric supposition that only fellow human beings have a face that is able to interrogate us

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<sup>30</sup> Timo Maran, 'Semiotization of Matter: A Hybrid Zone between Biosemiotics and Material Ecocriticism', in *Material Ecocriticism*, ed. by Serenella Iovino and Serpil Oppermann (Bloomington, IN: Indiana University Press, 2014), pp. 141-154 (p. 142).

<sup>31</sup> Alexei Sharov, Timo Maran, and Morten Tønnessen, 'Comprehending the Semiosis of Evolution', *Biosemiotics*, 9.1 (2016), 1-6 (p. 2).

<sup>32</sup> Angus Taylor, 'Electric Sheep and the New Argument from Nature', in *Animal Subjects: An Ethical Reader in a Posthuman World*, ed. by Jodey Castricano (Waterloo: Wilfrid Laurier University Press, 2008), pp. 177-193 (p. 180).

<sup>33</sup> Will Abberley, 'Mimicry, Biosemiotics, and the Animal-Human Binary in Thomas Belt's *The Naturalist in Nicaragua*', *Resilience: A Journal of the Environmental Humanities*, 4.1 (2017), 1-27 (p. 11).

<sup>34</sup> Marian Hobson, 'The Final Seminars of Jacques Derrida: "The Beast and the Sovereign"', *Paragraph*, 35.3 (2012), 435-450.

<sup>35</sup> Gerard Bruns, 'Derrida's Cat (Who Am I)?', *Research in Phenomenology*, 38 (2008), 404-423.

<sup>36</sup> Matthew Calarco, 'Another Insistence of Man?: Prolegomena to the Question of the Animal in Derrida's Reading of Heidegger', *Human Studies*, 28 (2005), 317-334.

<sup>37</sup> Gerasimos Kakoliris, 'Hospitality and Non-Human Beings: Jacques Derrida's Reading of D.H. Lawrence's Poem "Snake"', *Hospitality & Society*, 6.3 (2016), 243-255.



through poignant encounters from a moral and philosophical standpoint. In reference to the deep skepticism expressed by Derrida that all other beings are faceless entities, Gerald Bruns hypothesizes, ‘Derrida wants to contest, and he does so by mapping onto his cat-encounter (something like) the ethical relation described by Emmanuel Levinas [...] Levinas does not really think animals have faces.’<sup>38</sup> Despite the fact that he will never be granted any kind of privileged access to the inner, semiotic realms of another organism, Derrida recognizes the ontological sovereignty and autonomy of the billions of other subjects with whom we share this planet.

In the seminar from *The Animal That Therefore I am* entitled ‘But as for me, whom am I (following),’ the philosopher presents further evidence that other creatures respond and interact with their surroundings based upon mental models. For Derrida, the proven ability of many other species to dream unequivocally reveals that other-than-human subjects have their own representations of the world. As the philosopher muses, ‘Since it indeed seems, if we are attuned to our common experience, to the most domestic, day-to-day observation of our dogs and cats, as well as to the conclusions of numerous qualified zoologists, that certain animals dream (I have just recalled that there are so-called objective, in fact encephalographically measurable signs of and criteria for that).’<sup>39</sup> Pondering the philosophical and linguistic implications of this knowledge that has now been confirmed by many scientists from several different fields (e.g. Langley 2015,<sup>40</sup> Miller 2012,<sup>41</sup> Goldman 2014,<sup>42</sup> and Bekoff 2012<sup>43</sup>), Derrida poses the following questions:

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<sup>38</sup> Bruns, p. 409.

<sup>39</sup> Derrida *The Animal*, p. 62).

<sup>40</sup> Liz Langley, ‘Do Animals Dream?’, *National Geographic*, 5 Sep. 2015, n.p. <<https://news.nationalgeographic.com/2015/09/150905-animals-sleep-science-dreaming-cats-brains/>> [accessed 10 February 2018].

<sup>41</sup> Kaitlin Miller, ‘FYI: Do Animals Dream?’, *Popular Science*, 1 Feb. 2012, n.p. <<https://www.popsci.com/science/article/2012-01/do-animals-dream>> [accessed 10 February 2018].

<sup>42</sup> Jason Goldman, ‘What do Animals Dream About?’, *BBC Future*, 25 April 2014, n.p. <<http://www.bbc.com/future/story/20140425-what-do-animals-dream-about>> [accessed 10 February 2018].

<sup>43</sup> Marc Bekoff, ‘Do Animals Dream? Science Shows Of Course They Do, Rats Too’, *Psychology Today* 4 Dec. 2012, n.p. <

if certain animals dream-but not all, and not all in the same way-what sense is there in using this noun in the singular (the animal), and what right do we have to do so wherever an experience as essential as dreaming, and hence a relation among consciousness, subconsciousness, and unconsciousness, as well as representation and desire, separates so many animal species from the other and at the same time brings together certain animals, and what is called man? [...] The question “Does the animal dream?” is in its form, premises, and stakes, at least analogous to the questions “Does the animal think?” “Does the animal produce representations?” a self, imagination, a relation to the future as such? Does the animal have not only signs but a language, and what language?<sup>44</sup>

Not only does Derrida appeal to common sense rooted in astute observation to refute the unfounded idea that only *Homo sapiens* dream, but he also mentions the preliminary findings of studies related to this phenomenon. For instance, Matthew Wilson from the Massachusetts Institute of Technology recently discovered that ‘Animals have complex dreams and are able to retain and recall long sequences of events while they are asleep.’<sup>45</sup> Moreover, Wilson and his team uncovered that ‘rats go through multiple stages of sleep [...] The researchers [...] examined more than 40 REM episodes recorded while the rats slept. About half repeated the unique signature of brain activity that was created as the animal ran [...] the researchers found that as the animal dreamed, they could reconstruct where it would be in the maze if it were awake and whether the animal was dreaming of running or standing still.’<sup>46</sup> Wilson’s research gives credence to Derrida’s deconstruction of the homocentric notion that other-than-human entities are allegedly deprived of many of the essential faculties that define humans in opposition to ‘animals.’ If other organisms relive past experiences and try to anticipate future occurrences while they are dreaming, as the results of many experiments suggest, Derrida also contends that the sign systems of these other subjects are probably an

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<https://www.psychologytoday.com/us/blog/animal-emotions/201212/do-animals-dream-science-shows-course-they-do-rats-too> [accessed 10 February 2018].

<sup>44</sup> Derrida, *The Animal*, pp. 62-63.

<sup>45</sup> ‘Animals Have Complex Dreams, MIT Researcher Proves’, *MIT News*, 24 Jan 2001, n.p. < <http://news.mit.edu/2001/dreaming> > [accessed 10 February 2018].

<sup>46</sup> ‘Animals Have Complex Dreams,’ n.p.

integral component of the formation of their species-specific *umwelten* as well. Given that the standard logic in Western civilization concerning the supposed deficiencies of other creatures compared to *Homo sapiens* used to portray other-than-human realms as semiotically inactive spaces collapses under critical scrutiny, Derrida posits that it is time to reevaluate the semiotic capabilities of other species.

### III. The Deconstruction of Anthropocentric Discourse Concerning Allegedly Unique Human Capacities

As Kelly Oliver,<sup>47</sup> Michael Naas, Dominique Lestel,<sup>48</sup> and Melanie White<sup>49</sup> highlight, Derrida often derides mainstream thinkers who continue to rehash outmoded, anthropocentric discourse describing communication as a uniquely human attribute. Since modern science beginning with Darwin's theory of evolution by natural selection has effectively debunked the illusion of a human-centered universe, many proponents of the doctrine of human exceptionalism desperately cling to our heightened disposition to engage in semiosis as a feature that somehow distinguishes us from all other life forms. For this reason, Derrida devotes much of his time to exposing the flawed, reductionistic thinking that lies at the heart of traditional conceptions of semiosis in *The Animal That Therefore I am* and *The Beast and The Sovereign*. In a concerted effort to erode the shaky foundation of what many ecolinguistics and biosemioticians refer to as the 'last bastion' of human exceptionalism, the philosopher attacks the most pervasive types of binary thought undergirding homocentric models of communication.<sup>50</sup>

First of all, Derrida 'challenges the distinction between reaction and response, suggesting that we cannot so easily distinguish between the two, even in humans. What we take to be human response also contains elements of reaction.'<sup>51</sup> Whereas many traditional linguists would argue that the vocalizations of other species fall into the category of mechanistic

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<sup>47</sup> Kelly Oliver, 'Sexual Difference, Animal Difference: Derrida and Difference "Worthy of Its Name"', *Hypatia*, 24.2 (2009), 54-76.

<sup>48</sup> Dominique Lestel, 'The Infinite Debt of the Human Towards the Animal', trans. by Matthew Chrulew, *Angelaki*, 19.3 (2014), 171-181.

<sup>49</sup> Melanie White, 'Derrida and Durkheim on Suffering', *SubStance*, 43.2 (2014), 100-114.

<sup>50</sup> David Klinghoffer, 'Dogs Communicate, So Do Prairie Dogs-So?', *Evolution News & Science Today*, 17 May 2017. n.p. <https://evolutionnews.org/2017/05/dogs-and-prairie-dogs-communicate-with-each-other-and-us-so/> [accessed 10 February 2018].

<sup>51</sup> Oliver, p. 69.

reactions that are void of any real significance based upon this rather fuzzy dichotomy, Derrida explains that it is not so easy to discern between ‘fight or flight’ behavior and actions that are indicative of a more meaningful semiotic response to environmental stimuli. In the opening pages of *The Animal That Therefore I am* and all throughout his posthumous lectures dedicated to issues revolving around environmental ethics, Derrida problematizes the previously mentioned binary that still forms the basis of many anthropocentric explanations of the varied kinds of semiosis transpiring within the biosphere. As the philosopher bemoans, ‘All the philosophers we will investigate (from Aristotle to Lacan, and including Descartes, Kant, Heidegger, and Levinas), all of them say the same thing: the animal is deprived of language. Or, more precisely, of response, of a response that could be precisely and rigorously distinguished from a reaction.’<sup>52</sup> In a later seminar, Derrida reiterates, ‘for everything is in play in the distinction between reaction and response [...] For Descartes does not seem to attribute any significance to the signs themselves, to the category of signs that he chooses. They are signs of reaction.’<sup>53</sup> With regard to the idea that it is possible to mark a clear division between what differentiates a reaction from a response, Derrida cautions the reader to not dismiss the information shared amongst other organisms as insignificant background noise. Proposing a more biocentric philosophy of language that does not fall prey to the inherent limitations and aporia of oppositional thinking, the philosopher ‘cannot accept without question this barrier that separates reaction (belonging to the animal) and response (belonging to man). Furthermore, it is the very essence of ethical responsibility to doubt this distinction. It needs to be rethought.’<sup>54</sup>

Revisiting this philosophical and linguistic debate in *The Beast and the Sovereign*, Derrida once again calls into question the homocentric theories conceived by Descartes and Lacan. In the context of the influential ‘Rome Discourse,’ Derrida blames Lacan for promoting ‘a code that allows only reactions to stimuli and not responses to questions.’<sup>55</sup> (Re-)emphasizing his main point about the simplistic nature of the reaction versus response dichotomy that he asserts is misleading at best, Derrida declares, ‘I say ‘semiotic system’ and not language, for it is language that Lacan also refuses to the animal, allowing it only what he calls a ‘code,’ ‘the fixity of

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<sup>52</sup> Derrida, *The Animal*, p. 32.

<sup>53</sup> Derrida, *The Animal*, p. 81.

<sup>54</sup> Hobson, p. 441.

<sup>55</sup> Jacques Derrida, *The Beast and the Sovereign*, trans. by Geoffrey Bennington (Chicago: Chicago University Press, 2011), p.116, vol. 2.

a coding' or a 'system of signaling.' Other ways of naming what-in a cognitivist problematic of the animal, which often repeats [...] the most tired truisms of metaphysics-is called the 'hardwired response' or 'hardwired behavior.'<sup>56</sup> In this passage which could be labeled a self-critique, the philosopher confesses that he employs the term 'language' too often, given that the words 'semiotic' and 'semiosis' are more precise and accurate when discussing other-than-human communication. Although the philosopher rejects the theory that other organisms have such glaring semiotic deficiencies that they are unable to express anything at all outside of mechanistic reactions, he does not reduce the complexity of human speech that biosemioticians pinpoint 'as the most powerful tool for semiotic mediation.'<sup>57</sup> In this regard, it is apparent that Derrida is citing certain kinds of scientific evidence in an attempt to outline the basic parameters of what a more balanced position regarding human and other-than-human semiosis would entail.

In the second volume of *The Beast and the Sovereign*, Derrida offers concrete examples from a few of the recent findings of empirical studies related to non-human sentience and semiosis that have demystified the reaction-response binary. Underscoring how the philosopher appeals to scientific logic in order to discredit anthropocentric communicative paradigms that continue to linger, Michael Naas explains, 'He argues that philosophers must begin to take seriously the progress that has been made in ethology or primatology with regard to these questions, since some of the most rigorous and thoughtful work in these areas would suggest that animals perhaps *do*<sup>58</sup> respond and not just react.'<sup>59</sup> In keeping with a growing body of research from numerous fields (e.g. Correia, Dickinson, and Clayton 2007,<sup>60</sup> Grandin and Shivley 2015,<sup>61</sup> Karban 2008,<sup>62</sup> and

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<sup>56</sup> Derrida, *The Beast and the Sovereign*, p. 116.

<sup>57</sup> Ruqaiya Hasan, 'Speech Genre, Semiotic Mediation and the Development of Higher Mental Functions', *Language Sciences*, 14.4 (1992), 489-452 (p. 489).

<sup>58</sup> These italics are in the original text. They are not my own.

<sup>59</sup> Naas, p. 231.

<sup>60</sup> Sergio Correia, Anthony Dickinson, and Nicola Clayton, 'Western Scrub-Jays Anticipate Future Need States Independently of Their Current Motivational State', *Current Biology*, 17 (2007), 856-861.

<sup>61</sup> Temple Grandin and Chelsey Shivley, 'How Farm Animals React and Perceive Stressful Situations such as Handling, Restraint, and Transport', *Animals*, 5.4 (2015), 1233-1251.

<sup>62</sup> Richard Karban, 'Plant Behaviour and Communication', *Ecology Letters*, 11 (2008), 727-739.

Pennisi 2017<sup>63</sup>) which clearly demonstrates that many other animals and even some plants are able to predict future events and to respond appropriately through the transmission of semiotic codes, Derrida delves into the contentious subject of other-than-human intuition connected to natural disasters. Implying that some species have a sort of ‘six sense’ enabling them to seek shelter from ecological catastrophes long before humans are cognizant of the mortal dangers posed by these events, the philosopher describes how ‘animals sense [...] and do better with scent and with noses, than we humans, when animals sense catastrophes coming that we do not see coming, for example earthquakes that certain animals register long before we do, even before the earthquake breaks surface, if I can put it like that; I had the feeling.’<sup>64</sup> Even though many scientists would take issue with the veracity of these claims, Derrida’s central argument in this ‘Seventh Session’ is valid. Whether or not any organism possesses these kinds of abilities is highly controversial within scientific circles. Nevertheless, Derrida successfully delivers a proverbial *coup de grâce* to the longstanding philosophical tradition in Western society that relegates other-than-human entities to the status of automatons that are deprived of any type of semiotic agency in this section of the multi-volume work *The Beast and the Sovereign*. Even if some researchers in the hard sciences would scoff at the notion that certain life forms possess these kinds of premonitory capabilities, Derrida illustrates that many other species are able to anticipate possible outcomes when placed into a given situation and to respond accordingly through the skillful and deliberate dissemination of signs.<sup>65</sup>

In both *The Animal That Therefore I am* and *The Beast and the Sovereign*, the philosopher broaches the topic of semiotic deception in order to undermine the anthropocentric fallacy that *Homo sapiens* are the only creatures that are capable of responding to environmental stimuli even further. Expressing a strong suspicion that dominant linguistic theories denying other animals the ability to mislead through the creation,

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<sup>63</sup> Elizabeth Pennisi, ‘Ravens-Like Humans and Apes-Can Plan for the Future.’ *Science* 13 July 2017. n.p.

<sup>64</sup> Derrida *The Beast and the Sovereign* 2, p. 173.

<sup>65</sup> To be more precise, it is the notion of a ‘sixth sense’ that many scientists would consider to be problematic. It appears that the ability of certain organisms to seek shelter before natural disasters is linked to how other species use their existing sensorial faculties much more efficiently than *Homo sapiens*. For a more comprehensive investigation of this phenomenon, see the special issue of *Animals* dedicated to ‘Animal Behavior and Natural Disasters’ from 2018.

diffusion, and interpretation of codes are disconnected from the material realities that govern the biosphere, Derrida proclaims, ‘And we shall see, even those who, from Descartes to Lacan, have conceded to the animal some aptitude for signs and for communication have always denied it the power to *respond-to pretend*, to *lie*, to *cover its tracks* or *erase* its own traces.’<sup>66</sup> According to Derrida, not only must more philosophers come to terms with the established scientific fact that many other organisms engage in semiosis, but other mainstream thinkers also need to acknowledge that the incessant exchange of information in which we are immersed is much more complex than what ardent defenders of human exceptionalism maintain. As Andrea Hurst observes, ‘Derrida criticises the philosophical tradition for precisely the claim that animals cannot communicate [...] This remark is directed precisely towards philosophers who deny the fact that animals communicate, or try to reduce ‘animal communication’ to non-linguistic signalling by suggesting that a proper communicative response implies the power of pretence, which is said to be unique to humans.’<sup>67</sup> In a later lecture entitled ‘And Say the Animal Responded?’, which the subtitle indicates is a direct response to Lacan, Derrida retorts, ‘Indeed, animals too, show that they are capable of such behavior when they are being hunted: they manage to put their pursuers off the scent [dépister] by making a false start.’<sup>68</sup> Similar to ‘Thomas Sebeok (who) addresses this question in a series of studies in which he maintains that as a semiotic process the capacity for lying is structural to both human and nonhuman animal behavior,’ Derrida insists that certain other-than-human strategies linked to survival are too calculated to be purely reactive.<sup>69</sup> In a study dedicated to how fireflies conceive, share, and decode a vast array of signs to lead predators astray, João Queiroz, Frederik Stjernfelt and Charbel Niño El-Hani conclude that the semiotic codes endlessly generated by these small insects represent the nexus of the ‘deceptive strategies’ employed by fireflies to prolong their existence as long as possible.<sup>70</sup> Although Queiroz, Stjernfelt, and El-Hani reveal that many future studies are needed to explore the ‘evolution of deception’ throughout the universe more fully, their preliminary findings lend

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<sup>66</sup> Derrida, *The Animal*, p. 33.

<sup>67</sup> Andrea Hurst, ‘This Auto-bio-graphical Animal That I Am’, *Journal of Literary Studies*, 23.2 (2007), 118–147 (p. 124).

<sup>68</sup> Derrida, *The Animal*, p. 129.

<sup>69</sup> Susan Petrilli, *Expression and Interpretation in Language* (New Brunswick, NJ: Transaction, 2012), p. 204, my insertion.

<sup>70</sup> João Queiroz, Frederik Stjernfelt, and Charbel Niño El-Hani, ‘Dicent Symbols in Mimicry’, in *Semiotics in the Wild*, ed. by Timo Maran, Kati Lindström, Rün Magnus and Morten Tønnessen (Tartu, Estonia: University of Tartu Press, 2012), pp. 79–86 (p. 83).

support to Derrida's deconstruction of the notion that semiotic deceit is one of the qualities that is supposedly proper to humankind.<sup>71</sup>

The philosophical reverie triggered by finding himself under the active semiotic gaze of another autonomous semiotic agent also leads Derrida to question whether another attribute widely considered to be a hallmark of human sentience is actually relatively universal. As he is still endeavoring to grapple with all of the mixed emotions including shame produced by being caught naked under the watchful eye of another sentient being, Derrida wonders, 'What happens to me each time that I see an animal in a room where there is a mirror [...] not even to mention the animal that finds itself faced with a television that is showing it animals, in particular animals of the same species, for example, a cat seeing and hearing cats on television.'<sup>72</sup> For those who are not familiar with the research that he mentions in the seminar 'But as for me, who am I (following)?,' Derrida presents an anecdote from daily life to cast doubt upon the idea that the so-called mirror effect is limited to humans. Given that many pet owners have witnessed their cat or dog staring at another member of its species in front of a television screen, this part of his argument is quite persuasive.

Linking the concept of the mirror effect to the semiotic faculties that permit an organism to conceive a sense of self in relation to other individuals in one's community, Derrida affirms,

the question of whether an animal can see me naked, and especially whether it can see itself naked, is never asked [...] Where do the mirror and the reflecting image begin, which also refers to the identification of one's fellow being? Can one not speak of an experience that is already specular as soon as a cat recognizes a cat and begins to know [...] that [...] "a cat is a cat." Does not the mirror effect also begin wherever a living creature, whatever it be, identifies another living creature of its own species as its neighbor [prochain] or fellow [semblable] [...] Certain animals identify their partner or their fellow, they identify themselves and each other, by the sound of their voices or

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<sup>71</sup> Queiroz et al., p. 84.

<sup>72</sup> Derrida, *The Animal*, p. 58).



their songs. They recognize [...] the voice of their congeneric fellows in cases of what one can call, without exaggeration, declarations of love or hate, peace or war, and of seduction or hunt hence modalities of following.<sup>73</sup>

Contrasting the traditional linguistic view of other-than-human communication that describes the vocalizations of other creatures as an insignificant by-product of an internal machinery to the biosemiotic perspective, the philosopher theorizes that the entire biosphere is a semiotic 'soundscape' (a concept developed by R. Murray Schafer in *The Tuning of the World*<sup>74</sup>) laden with meaning. Moreover, the types of other-than-human semiosis outlined by Derrida related to self-recognition and self-representation are reminiscent of numerous studies conducted by marine biologists confirming the existence of 'distinctive signature whistles [...] used to identify individuals'<sup>75</sup> in the close-knit, complex societies of bottlenose dolphins. Furthermore, it should be noted that many scientists have now taken advantage of the research instruments initially conceived by Gordon Gallup Jr. to investigate the presence of the mirror effect in non-human populations.<sup>76</sup> *As Megumi Fukuzawa, Satomi Igarashi,<sup>77</sup> Theresa Schilhab,<sup>78</sup> Amanda Pachniewska, G.C. Westergaard, and C.W. Hyatt<sup>79</sup> demonstrate through scientific data, several other organisms including dolphins, whales, bonobos, chimpanzees, orangutans, gorillas, magpies, and ants have passed*

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<sup>73</sup> Derrida, *The Animal*, pp. 59-60.

<sup>74</sup> R. Murray Schafer, *The Tuning of the World* (New York: Random House, 1977).

<sup>75</sup> V.M. Janik, L.S. Sayigh, and R.S. Wells, 'Signature Whistle Shape Conveys Identity Information to Bottlenose Dolphins', *Proceedings of the National Academy of Sciences of the United States of America*, 103.21 (2006), 8293-8297 (p. 8293).

<sup>76</sup> Amanda Pachniewska, 'List of Animals That Have Passed The Mirror Test,' *Animal Cognition*, 12 May 2017. n.p. <<http://www.animalcognition.org/2015/04/15/list-of-animals-that-have-passed-the-mirror-test/>> [accessed 10 February 2018].

<sup>77</sup> Megumi Fukuzawa and Satomi Igarashi, 'Mirror Reflection or Real Image: Does Past Mirror Experience Influence a Dog's Use of a Mirror?', *Journal of Veterinary Behavior: Clinical Applications and Research*, 22 (2017), 7-12.

<sup>78</sup> Theresa Schilhab, 'What Mirror Self-Recognition in Nonhumans Can Tell Us About Aspects of Self', *Biology and Philosophy*, 19.1 (2004), 111-126.

<sup>79</sup> G.C. Westergaard and C.W. Hyatt, 'The Responses of Bonobos (*Pan Paniscus*) to Their Mirror Images: Evidence of Selfrecognition', *Human Evolution*, 9.4 (1994), 273-279.

Gallup Jr.'s mirror test.<sup>80</sup> The results of these studies bolster Derrida's claim that the ability of other life forms to represent the world in which they live and to construct a sense of self has been grossly underestimated by mainstream Western philosophy.

#### IV. The Biosemiotic Exercise of 'Limitrophy' or Rethinking the Porous Boundaries of the Biosphere-Semiosphere

Rejecting all of the aforementioned ideological oversimplifications concerning other-than-human semiosis that have been soundly disproven by numerous scientists, Derrida attempts to rethink the porous boundaries that separate *Homo sapiens* from other species. As a result of his efforts 'quite deliberately, to cross the frontiers of anthropocentrism, the limits of a language confined to human words and discourse,' the philosopher discovers that 'Mark, gramma, trace, and différance refer differentially to all living things, all the relations between living and nonliving.'<sup>81</sup> After being struck by the biosemiotic epiphany that 'the essence of the entire life process is semiosis,'<sup>82</sup> Derrida reinvestigates 'the differences between and among human beings and animals in non-oppositional terms.'<sup>83</sup> In place of the 'sharp-edged hierarchical opposition' between human languages and the supposedly reactionary, mechanistic vocalizations of all other creatures, Derrida compels us to 'rethink the definition of language and broaden it to include some of the other modes of communication among animals.'<sup>84</sup> As several critics

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<sup>80</sup> In order to measure mirror self-recognition, Gallup Jr. created a rather controversial scientific instrument called the 'mark test.' 'In the mark test, an odorless, non-tactile pigment is placed on a part of the animal's body which cannot be perceived without a mirror, typically the face. As a control, a transparent, non-pigmented mark is also placed in the same area. A mirror is then placed in the animal's proximity. Responses to the mirror follow a distinctive progression, beginning with species-typical social behavior toward a conspecific (e.g. threat faces), followed by exploration of the area behind the mirror, "testing" of the reflection's properties and, potentially, exploration of the mark and other regions of the body not visible without the mirror' (E.E. Hecht, L.M. Mahovetz, T.M. Preuss, and W.D. Hopkins, 'A Neuroanatomical Predictor of Mirror Self-Recognition in Chimpanzees', *Social Cognitive and Affective Neuroscience*, 12.1 (2017), 37-48 (p. 37).

<sup>81</sup> Derrida, *The Animal*, p. 104; p. 104.

<sup>82</sup> Louise Westling, 'Très Bête: Evolutionary Continuity and Human Animality', *Environmental Philosophy*, 11.1 (2014), 1-16 (p. 12).

<sup>83</sup> Matthew Calarco, 'Another Insistence of Man?: Prolegomena to the Question of the Animal in Derrida's Reading of Heidegger', *Human Studies*, 28 (2005), 317-334 (p. 332).

<sup>84</sup> Hurst, p. 123; Westling, p. 11.

including Paul Patton,<sup>85</sup> Patrick Llored, Gerald Bruns, and Matthew Congdon<sup>86</sup> underscore, this reexamination of boundaries that Derrida terms 'limitrophy' is a biosemiotic exercise *par excellence*.

Contesting the notion that *Homo sapiens* are the only *animot*<sup>87</sup> with any sort of semiotic faculties at all predicated upon a form of dichotomous thinking, Derrida 'clearly wants to challenge many of the ways in which this border has been traditionally delineated, without for all that denying that there are significant differences between humans and other animals.'<sup>88</sup> Recognizing that humans are quite dissimilar from other species in many fundamental ways that should not be ignored, 'Derrida's idea is not to erase the line that separates us from other living things [...] but rather to multiply its dimensions.'<sup>89</sup> From a philosophical and linguistic angle, the philosopher contends that Western civilization is in dire need of a new theoretical framework for understanding semiosis that is a more faithful representation of the complexity of the 'world of things' to which we belong. For Derrida, the first step in this process of reconceptualization is to transcend the binary logic that does not stand up to any kind of evidence-based scrutiny at all. In this vein, the philosopher overtly reveals that the main objective of his environmental thought is to denounce 'this simple and dogmatic opposition, the abuses of this oversimplification.'<sup>90</sup> The philosopher maintains that binaries have obfuscated the genuine similarities and differences that exist between human and other-than-human semiosis that warrant further investigation.

In a rather scathing critique of Heidegger's 'distinction between what is natural (*phusei*) and what is conventional or symbolic (*kata suntheken*),' Derrida declares, 'the assertion that the animal is a stranger to learning technical conventions and to any technical artifice in language is an idea that is quite crude and primitive, not to say stupid [...]' The idea that the animal has only an innate and natural language, although

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<sup>85</sup> Paul Patton, 'Sovereignty Conditioned and Unconditioned', *SubStance*, 43.2 (2014), 162-172.

<sup>86</sup> Matthew Congdon, 'Derrida and Other Animals', *Telos: A Quarterly Journal of Politics, Philosophy, Critical Theory, Culture, and the Arts*, 148 (2009), 185-191.

<sup>87</sup> This is a neologism often employed by Derrida in his late philosophy to demonstrate that the extreme diversity that is emblematic of life in its many divergent forms should not be reduced to the catch-all concept of an 'animal.' As Patrick Llored explains, the philosopher decries the widespread belief that there is a 'single indivisible line between the human and the animal' (p. 115). Instead, Derrida posits that 'animal life is the outcome of a multitude of differences that are in no way reducible to a homogeneous category that would include a certain number of characteristics shared by all animals, or that they would otherwise lack' (Llored, p. 115).

<sup>88</sup> Patton, p. 164.

<sup>89</sup> Bruns, p. 415.

<sup>90</sup> Derrida *The Beast and the Sovereign*, p. 65.

quite widespread in the philosophical tradition and elsewhere, is nonetheless crude and primitive.<sup>91</sup> In a similar passage in which he does not mince his words regarding how Lacan has also contributed to this erroneous dichotomous thinking that he seeks to undercut all throughout his diverse philosophical repertoire, Derrida argues, 'Lacan spares no effort to undermine the assurance of those who grant animals a language, or even grant an interest for human-type language to animals-basically a right to speech.'<sup>92</sup> Distancing himself from the perils of binary discourse that he considers to be antithetical to an authentic dialogue concerning the sophistication of other-than-human sign systems, Derrida contemplates what a more realistic and scientifically accurate blueprint for reconstituting our outmoded communication models would encompass.

Counterpointing the alleged 'animal linguistic poverty' articulated by Heidegger and Lacan with a more nuanced position, Derrida imagines, 'How might we respond to nonhuman speech in a manner that does not preemptively divest animals of the capacity to respond-a response that would avoid the knee-jerk humanist reduction of nonhuman speech to pure mechanical repetition.'<sup>93</sup> Summarizing Derrida's moderate perspective about other-than-human communication, Christopher Peterson notes that the philosopher stresses 'that the question of where we draw the line between human language and nonhuman vocalizations is among the most pressing questions [...] Yet even if one were to concede that animal symbolization is less developed than that of humans this concession would still not justify restricting the term 'language' to human forms of communication.'<sup>94</sup> Peterson's analysis of the linguistic theories that Derrida outlines in his posthumous thought provides a plausible explanation as to why the philosopher uses the term 'language' when referring to the semiotic capabilities of other species. As discussed earlier in the essay, Derrida is keenly aware that many biosemioticians are critical of the concept of other-than-human 'languages.' The philosopher's motivations for using this controversial term within biosemiotic circles appear to be multifaceted. In addition to suggesting that more philosophers should probe the evolutionary origins of our heightened predilection for the symbolic exchange of information, Derrida laments that 'The language faculty is often equated with 'communication'-a trait that is shared by all animal species and possibly also by plants.'<sup>95</sup> It seems probable that the philosopher rarely employs what he identifies himself as the more appropriate word 'semiosis' in an effort to force us to deconstruct many of our preconceived ideas about other-than-human semiotic faculties that have been proven to be false from the beginning.

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<sup>91</sup> Derrida, *The Beast and the Sovereign 2*, p. 222; p. 222.

<sup>92</sup> Derrida, *The Beast and the Sovereign 2*, p. 248.

<sup>93</sup> Christopher Peterson, 'The Monolingualism of the Human', *SubStance*, 43.2 (2014), 83-99 (p. 90; p. 90).

<sup>94</sup> Peterson, pp. 92-93.

<sup>95</sup> Johan Bolhuis, Ian Tattersall, Noam Chomsky, and Robert Berwick, 'How Could Language Have Evolved?', *PLoS Biology*, 12.8 (2014), 1-6 (p. 1).

Given that many people have the tendency to conflate language with communication, Derrida takes advantage of this confusion to implore us to think harder about human and other-than-human types of semiosis. Urging us to take nothing for granted, the philosophical exercise of 'limitrophy' is a reminder to start at square one when going back to the drawing board.

In the second volume of *The Beast and the Sovereign*, Derrida builds upon his original premise in *The Animal That Therefore I am* that it is an 'asinanity' to subscribe to the anthropocentric doctrine stipulating that there is a clear line of demarcation between humans who are endowed with language and other cosmic entities that lack any semiotic ability whatsoever.<sup>96</sup> Asserting that philosophical and linguistic issues revolving around the exchange of information transpiring throughout the cosmos cannot possibly be this simple, Derrida avers, 'The inarticulate sounds that animals produce of course indicate (*zeigen*) something; they have a power of indication, animals can even, as people say [...] understand each other.'<sup>97</sup> According to Derrida, the linguistic theories proposed by Heidegger, Descartes, Levinas, and Kant are simplistic to the point of being absurd. Derrida claims that many philosophers in Western civilization have fallen into the trap of assuming that other organisms do not communicate purposefully at all, owing to the fact that they do not speak the same 'language' as *Homo sapiens*.

It is in this sense in which Derrida evokes the naïveté of researchers such as Herbert Terrace, Thomas Bever, and Beatrix Gardner who have attempted to gauge the semiotic ability of other animals by teaching them human language. Concurring with Thomas Sebeok that 'no valuable insights about human language or primate cognition would be gleaned from teaching language to a chimpanzee or a bonobo,' Derrida asserts that these kinds of experiments reflect a rudimentary break in logic.<sup>98</sup> For Derrida, this 'argument about language' supported by the observation that 'beasts do not understand' human linguistic codes very well in a laboratory setting misses the mark entirely.<sup>99</sup> The findings of researchers like Vincent Janik, Jessica Flack,<sup>100</sup> Todd Freeberg<sup>101</sup>, and Ellen

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<sup>96</sup> Derrida, *The Animal*, p. 47.

<sup>97</sup> Derrida, *The Beast and the Sovereign*, p. 220.

<sup>98</sup> Prisca Augustyn, 'Biology, Linguistics, and the Semiotic Perspective on Language', in *Biosemiotic Perspectives on Language and Linguistics*, ed. by Ekaterina Velmezova, Kalevi Kull, and Stephen J. Cowley (New York: Springer 2015), pp. 169-189 (p. 181).

<sup>99</sup> Derrida, *The Beast and the Sovereign*, p. 55; p. 55.

<sup>100</sup> Jessica Flack, 'Animal Communication: Hidden Complexity', *Current Biology*, 23.21 (2013), R967-R969.

<sup>101</sup> Todd Freeberg, 'Social Complexity Can Drive Vocal Complexity', *Psychological Science*, 17. 7 (2006), 557-561.

Harvey<sup>102</sup> related to the astonishing complexity of the communication taking place within the *umwelten* of dolphins, whales, primates, ants, bees, and rodents illustrate that many other species are able to accomplish impressive feats through the creation, transmission, and interpretation of signs in their natural environments. In the second session from *The Beast and the Sovereign* lecture series cited above, Derrida highlights the most glaring problem with studies like the 'Nim Chimpsky' experiment and with this sort of bad thinking in general.<sup>103</sup> These kinds of arguments fail to take into account how the sign systems of the given organism in question might operate differently from the human primary modeling device of language. Since other life forms are equipped with distinctive semiotic abilities from a biological standpoint, trying to teach them elements of human language would not provide a reliable measurement of their linguistic capabilities. Derrida's deconstruction of the Heideggerian notion that other creatures are 'poor in the world'<sup>104</sup> because they lack the intellectual capacity to master human language encourages us to begin the arduous process of redrawing the lines that connect us to the remainder of the semiosphere in order to avoid 'so many asinities concerning the so-called animal.'<sup>105</sup>

In an era that is increasingly defined by an ecological calamity of epic proportions that threatens the continued existence of every sentient and non-sentient being on this planet, Derrida also argues in his posthumous philosophy that debunking the largely discredited belief that other species are 'incapable of the *as such*' is vital to fostering a sense of ecological solidarity that could slow down the deleterious effects of anthropogenic climate change.<sup>106</sup> In *The Animal That Therefore I am* and *The Beast and the Sovereign*, the philosopher explains that other animals find themselves outside of ethical consideration, because of their supposed inability to perform a certain task, especially the meaningful and deliberate exchange of signs. Demonstrating how anthropocentric attitudes grounded in speciesism and willful blindness are directly correlated to a self-proclaimed, singular faculty solely possessed by *Homo sapiens*, Derrida

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<sup>102</sup> Todd Freeberg and Ellen Harvey, 'Group Size and Social Interactions Are Associated With Calling Behavior in Carolina Chickadees', *Journal of Comparative Psychology*, 122.3 (2008), 312-318.

<sup>103</sup> However, it is important to note the fundamental flaws in the design of the Nim Chimpsky experiment and others. Some of these glaring structural problems are presented in the documentary *Project Nim* directed by James Marsh.

<sup>104</sup> Nathan Van Camp, 'Negotiating the Anthropological Limit: Derrida, Stiegler, and the Question of the Animal', *Between the Species*, 14.1 (2011), 57-80 (p. 62).

<sup>105</sup> Derrida *The Animal*, p. 63.

<sup>106</sup> Derrida, *The Beast and the Sovereign* 2, p. 116.

posits, ‘this question determines so many other concerning *power* and *capability* [pouvoirs] and *attributes* [avoirs]: being able, having the power or capability to give, to die, to bury one’s dead, to dress, to work, to invent a technique, etc., a power that consists in having such and such a faculty, thus such and such a capability, as an essential attribute.’<sup>107</sup> From an ecological and ethical angle, the philosopher’s deconstructive approach to engaging in philosophical inquiry about other-than-human semiosis opens up into a larger debate about how to minimize the unsustainable violence inflicted upon the rest of the biotic community of life that another contemporary French thinker Michel Serres refers to as a ‘world war.’<sup>108</sup> Underscoring why issues surrounding alleged other-than-human deficiencies are of the utmost importance in the modern world, Derrida’s exploration of the multiplicity of sign systems that enable all organisms to survive in a hostile universe epitomized by the law of universal predation strives to ‘awaken us to our responsibilities and our obligations vis-à-vis the living in general, and precisely to this fundamental compassion that were we to take it seriously, would have to change even the very cornerstone [...] of the philosophical problematic of the animal.’<sup>109</sup> Although the critic David Wood warns other scholars to not ‘kidnap Derrida for the environmentalist agenda,’<sup>110</sup> this ‘sincere anti-Cartesian advocacy of cross-species sympathy’<sup>111</sup> reflects Derrida’s profound apprehension related to the impending ecological crisis that is palpable throughout his late philosophy.

In one of the most rending passages of *The Beast and the Sovereign* in which he expresses his deep-seated environmental fears, Derrida ponders, ‘The worst, the cruelest, the most human violence has been unleashed against living beings [...] who precisely were not accorded the dignity of being fellows [...] I am serendipitously extending the similar, the fellow, to all forms of life, to all species. All animals qua living beings are my fellows.’<sup>112</sup> In this section of the text, Derrida suggests that the only way to save the biosphere-semiosphere and ourselves in the process is to confer the status of universal subjecthood upon all living beings. Derrida

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<sup>107</sup> Derrida, *The Animal*, p. 27.

<sup>108</sup> See Serres, Michel. *La Guerre Mondiale*. Paris: Le Pommier, 2008.

<sup>109</sup> Derrida, *The Animal*, p. 27.

<sup>110</sup> David Wood, ‘Derrida Vert?’, *The Oxford Literary Review*, 36.2 (2014), 319-322 (p. 319).

<sup>111</sup> Richard Nash, ‘Joy and Pity: Reading Animal Bodies in Late Eighteenth-Century Culture’, *The Eighteenth Century*, 52.1 (2011), 47-67 (p. 58).

<sup>112</sup> Derrida, *The Beast and the Sovereign*, pp. 108-109.

observes that what continues to justify our parasitic relationship with the cosmic whole is the mentality that *Homo sapiens* are so radically different from other species that we have little in common with other earthly entities. Specifically, the philosopher's linguistic theories demonstrate that there is no reason to have any sympathy at all for a creature that we consider to be a robotic automaton that is unable to speak and utterly deprived of any sort of semiotic faculties. As Rod Preece asserts, 'If the animal is truly a living machine [...] on what basis may we respect the animal in a manner different from the bizarre idea of respecting a machine in and for itself? How may we treat the animal 'machine' as an end in itself, as an object of moral consideration, when we treat a machine—a watch, say, or a locomotive—entirely as a means to an end.'<sup>113</sup> Given that anyone supporting the idea of expressing solidarity for the fate of a soulless machine-like being would be ruthlessly mocked, Derrida maintains that the very structure of our philosophical and linguistic systems must be (re-)envisioned in order to allow global society to take action in defense of our imperiled planet.

## V. The Pervasiveness of Human Semiotic Pollution in the Technosphere

In the tenth session from *The Beast and the Sovereign* lecture series, the philosopher pinpoints one of the linguistic factors at play in this environmental degradation linked to an alarming loss of biodiversity. In this lesson, he briefly touches on the pervasiveness of human semiotic pollution in the ever-expanding human technosphere. Espousing what Susan Petrilli, Ronald Arnett,<sup>114</sup> and Francesco Benozzo<sup>115</sup> label a 'semioethical' point of view, Derrida discusses the plight of 'all the dolphins [*dauphins*], those beasts that are held to be so human, so intelligent, almost as intelligent as man, a species a large number of whom, two or three weeks ago, seem to have lost their sense of direction, and, doubtless through the fault of men and human pollution of the ocean depths as well as the water close to the coast, and thereby disoriented by

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<sup>113</sup> Rod Preece, 'Selfish Genes, Sociobiology and Animal Respect', in *Animal Subjects: An Ethical Reader in a Posthuman World*, ed. by Jodey Castricano (Waterloo: Wilfrid Laurier University Press, 2008), pp. 40-62 (p. 46).

<sup>114</sup> Ronald Arnett, 'Communicative Ethics: The Phenomenological Sense of Semioethics', *Language and Dialogue*, 7.1 (2017), 80-99.

<sup>115</sup> Francesco Benozzo, 'Demanding the Impossible? Semioethics, Ethnophilology and the Fourth Humanism', in *Writing, Voice, Undertaking*, ed. by Susan Petrilli (Ottawa: Legas, 2013), pp. 38-41.



man, those poor dolphins lamentably but obstinately became beached, and died, on the beaches of northern France.<sup>116</sup> At first glance, it could be surmised that Derrida is merely articulating his ecological concerns about the ubiquity of the various types of pollution that have placed our existence into jeopardy. However, a close reading of this passage reveals that the philosopher is cognizant of the environmental impact of the thick layer of human semiosis that has interfered with the ability of other organisms to ‘decipher natural signs’<sup>117</sup> in their environment that are essential to their survival. In a human-centered universe in which it is becoming more difficult with each passing day to find a space that has not been tainted by the omnipresent realm of human semiosis, Derrida wonders how our heavy ecological footprint has adversely affected the creation, transmission, and interpretation of signs by other organisms. In the current period of environmental uncertainty in which the sounds of human activities often drown out other-than-human vocalizations, thereby impeding the capacity of other species to communicate information effectively and efficiently, the philosopher offers concrete examples illustrating why semiotic pollution is a ‘serious environmental problem.’<sup>118</sup>

Echoing the ecological anxiety shared by researchers such as Almo Farina, Nadia Pieretti, and Rachele Malavasi<sup>119</sup> who have created a measurement called the ‘Acoustic Complexity Index’ based upon Raymond Murray Schafer’s concept of a ‘soundscape’ to evaluate the overall health of an ecosystem, Derrida notes how various forms of human semiotic pollution ‘influence the sign activities of other animals’ to their detriment.<sup>120</sup> Living on a planet in which nearly every parcel of matter has been radically transformed and filled with the deafening noise that concretizes modern human civilization, Derrida explains that it is not by chance that many dolphins have lost their sense of direction. The ability

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<sup>116</sup> Derrida, *The Beast and the Sovereign*, p. 253.

<sup>117</sup> Keith Moser, ‘Rethinking the Essence of Human and Other-Than-Human Communication in the Anthropocene Epoch: A Biosemiotic Interpretation of Edgar Morin’s “Complex Thought”’, in *Ecocriticism 2018: International Conference on Literature, Arts and Ecological Environment*, ed. by Isabel Ponce de Leao, Maria do Carmo Mendes, and Sergio Lira (Porto, Portugal: Green Lines Institute, 2018), pp.137-146 (p. 139).

<sup>118</sup> (Maran, p. 154.

<sup>119</sup> Almo Farina, Nadia Pieretti, and Rachele Malavasi, ‘Patterns and Dynamics of (bird) Soundscapes: A Biosemiotic Interpretation’, *Semiotica*, 98 (2014), 241-255.

<sup>120</sup> Maran, p. 153.

of other animals to decode ‘environmental cues’<sup>121</sup> and to send, receive, and stockpile this information in order to make informed decisions has been disrupted by a high ‘level of (human) acoustic pollution.’<sup>122</sup> Researchers from numerous disciplines including Heidi E. Ware, Christopher J. W. McClure, Jay D. Carlisle, and Jesse R. Barber<sup>123</sup> agree with Derrida’s implication that the signs continually emitted from the ever-growing human *umwelt* have altered the migration patterns of many species that had been relatively stable for millennia. In an article entitled ‘How Noise Pollution is Changing Animal Behavior,’ Henry Gray summarizes a few of the deadly effects of human semiotic pollution.<sup>124</sup> In particular, Gray emphasizes ‘how important sound production and hearing are for a range of behaviours, such as locating food, avoiding predators and finding a mate.’<sup>125</sup> Gray further clarifies, ‘For example, bats and dolphins rely on high frequency sonar to detect highly mobile prey, while great tits, red deer and grasshoppers are among the many species that advertise their dominance and desirability using vocalisations. Elephants can even use sound to determine the threat presented by different human groups.’<sup>126</sup> Gray’s frank assessment of the gravity of the situation reveals that the issue of human semiosis is a matter of life and death.

In this regard, the connection between mass extinctions and all of the sorts of waste produced inside of ‘human-altered environments’ developed by the biosemiotician Timo Maran sheds light on numerous passages from *The Animal That Therefore I am*.<sup>127</sup> After declaring that ‘the number of species endangered because of man takes one’s breath away,’ Derrida paints a dystopian ‘tableau of a world after animality, after a sort of holocaust, a world from which animality, at first present to man, would

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<sup>121</sup> Frank Seebacher and Eric Post, ‘Climate Change Impacts on Animal Migration’, *Climate Change Responses*, 2.5 (2015), 1-2 (p. 1).

<sup>122</sup> Farina, Pieretti, and Malavasi, p. 250, my insertion.

<sup>123</sup> Ware, Heidi E., Christopher J. W. McClure, Jay D. Carlisle, and Jesse R. Barber. ‘A Phantom Road Experiment Reveals Traffic Noise is an Invisible Source of Habitat Degradation.’ *Proceedings of the National Academy of Sciences of the United States of America* 112.39 (2015): 12105-12109.

<sup>124</sup> Henry Gray, ‘How Noise Pollution is Changing Animal Behavior’, *The Conversation*, 17 Dec. 2015, n.p. <<https://theconversation.com/how-noise-pollution-is-changing-animal-behaviour-52339>> [accessed 10 February 2018].

<sup>125</sup> Gray, n.p.

<sup>126</sup> Gray, n.p..

<sup>127</sup> Maran, p. 153.

have one day disappeared: destroyed or annihilated by man.<sup>128</sup> In the troubling seminar quoted above ‘But as for me, who am I (following)?’, Derrida affirms that the doomsday scenario predicted by the vast majority of the world’s leading scientists generates its force from the visible manifestations of climate change like drastic variations in migration patterns that have driven many other animals to the brink of extinction. By obstinately refusing to admit the presence of other-than-human communication, Derrida implies that we have forgotten that the lives of many other ‘fellows’ also depend upon their capacity to exchange a litany of information through semiotic codes on a regular basis.

## VI. Conclusion

In conclusion, not only does Derrida’s encounter with the semiotic gaze of his cat represent a catalyst for philosophical reflection, but it also indicative of an ethical summons that beckons him to think and live otherwise. Instead of accepting the standard orthodoxy of the mainstream philosophical establishment, he will soon begin to question everything that he thinks that he knows about other-than-human semiosis. For the first time, Derrida realizes that he *sees* and is *seen* by other autonomous semiotic agents possessing their own unique frame of reference. During this fortuitous inner journey, he starts to reexamine timeless philosophical questions linked to human and other-than-human semiotic capabilities. After carefully reevaluating evidence from the hard sciences and speculating about what can be inferred from common sense observations regarding how the entire universe operates according to universal principles, Derrida ultimately rejects many of the anthropocentric theories that have been the cornerstone of Western thought for eons. Although the philosopher does not employ the term Anthropocene,<sup>129</sup> as David Wood importantly notes, he clearly understands the urgency of the situation.<sup>130</sup> Citing numerous examples of the environmental degradation that has become the defining characteristic of the modern age in *The Animal That Therefore I am* and *The Beast and the Sovereign*, Derrida implores us to respond to this semiotic plea while there is still time. When too many

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<sup>128</sup> Derrida, *The Animal*, p. 26; p. 80.

<sup>129</sup> Derrida objects to the concept of the Anthropocene on purely philosophical and linguistic grounds. As he reveals in *The Animal That Therefore I am*, ‘The figure of a turning point implies a rupture, or an instantaneous mutation [...] I shall therefore not be speaking of a historical turning point in order to name a transformation in progress’ (p. 24).

<sup>130</sup> Wood, p. 320.

of the faint voices representing the cosmic 'Wholly Other' have been silenced or stifled by the ubiquitous noise of a human technosphere that knows no bounds, the philosopher explains that we will have written our swan song.

# Two Kinds of Human Dignity?

## Sebastian Muders

**Abstract:** Human dignity is a value often cited to justify a normative gap between human beings and other animals. One important issue within the debate concerns the question of which properties ground human dignity. While it has traditionally been assumed that we can identify a single property that controls its ascription, the paper examines two proposals which suggest that we need two different grounding properties to ensure that all human beings are dignity bearers. While these proposals promise to avoid notorious problems plaguing more traditional accounts, I argue that they nonetheless are faced with problems of their own that make them far less attractive than they initially appear.

### 1. Human Dignity: Its Norms, Bearers, and Grounding Properties

When it comes to questions of moral status and its differences within the community of entities that merit our moral concern for their own sake, human dignity is the value most frequently cited to justify a normative gap between human beings and other living entities: Even if human beings are not special with respect to a prohibition to kill them, they are special with respect to the weight of this obligation. For instance, although it will often be immoral to kill pigs in order to eat them, exceptions from this prohibition are way more numerous compared to the cases where we are allowed to kill human beings.<sup>1</sup>

Even more important is the role of human dignity *within* the domain of human beings. Our moral status quite often differs in important respects – we have certain claims not against the whole community of our fellow moral agents, but only against some of them (e.g. our parents); and our

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<sup>1</sup> Even an animal rights egalitarianist such as Tom Regan allows that giving all subjects-of-a-life an equal right to life (a category that includes human as well as non-human animals) does not imply *not* to give human beings priority in conflict cases. Even if, in a lifeboat scenario, it is either four humans or a million dogs, then his ‘rights view still implies that, special considerations apart, the million dogs should be thrown overboard and the four humans saved.’ (Tom Regan, *The Case for Animal Rights* (Berkeley and Los Angeles: University of California Press, 1983), p. 325.)

duties against others also differ, for instance, according to the profession we occupy: Due to her expertise, a physician has a weightier duty to help in situations where someone suddenly collapses. Still, the idea is that a significant part of our moral status, which encompasses some of the most important norms that protect us from malevolent behavior, is equally distributed among all human beings.<sup>2</sup>

As these reflections make clear, human dignity is supposed to be the justificatory source of weighty, maybe (near-)absolute norms which equally protect all human beings.<sup>3</sup> If these norms showed a different weight among their bearers – if, for example, we were allowed to easily torture some human beings in the name of human dignity, but not others –, or if these norms were not applicable to virtually all human beings<sup>4</sup> – say, they protect only the healthy and mature exemplars of our species –, we would have no reason to assume that it is *human dignity* which guides their application. Hence, if we treat these two defining characteristics of human dignity – its norms and its bearers – as fixed, as I will do throughout this paper, the question of what justifies the ascription of human dignity to certain entities but not to others becomes even more pressing: If we treat human dignity, like many other normative properties, as what Robert Audi calls a ‘consequential property’,<sup>5</sup> we can ask *in virtue*

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<sup>2</sup> As Stefan Gosepath states, most theories of basic moral equality do not treat equality as intrinsically valuable, but as derived ‘from another, higher moral principle of equal dignity and respect.’ See Stefan Gosepath, ‘Equality’, in *The Stanford Encyclopedia of Philosophy* <<https://plato.stanford.edu/archives/spr2011/entries/equality/>>, sec. 5.1. Cf. also the final section of this paper for an alternative on how to ground moral equality in some other normative property besides human dignity.

<sup>3</sup> George Kateb neatly summarizes this when writing: ‘All individuals are equal; no other species is equal to humanity. These are the two basic propositions that make up the concept of human dignity.’ (George Kateb, *Human Dignity* (Cambridge (MA): The Belknap Press, 2011), p. 5)

<sup>4</sup> Why only ‘virtually’ all human beings? In some cases under dispute, in particular the case of early human embryos, some scholars argue that the entities in question should not count as human beings, but instead merely regard them as being human. Because of the difficult empirical nature of this dispute, I will altogether bracket the question up to which stage in the embryogenetic process a human dignity theorist can ignore the issue whether human must fall within this property’s protective sphere.

<sup>5</sup> Cf. Robert Audi, ‘Intrinsic Value and Reasons for Action’, *The Southern Journal of Philosophy*, 41(S1) (2003), 30–56.

*of which* further properties human beings have human dignity. In accordance with the current philosophical literature, I will call these properties dignity's *grounding properties*.

In light of the high diversity of the bearers of human dignity, especially with respect to so-called 'marginal cases' – human beings that belong to especially vulnerable groups, notably the very young, the very old, and the severely handicapped –, this proves to be by no means an easy task, for not just any grounding property will do. What we are looking for are properties that, first, are shared by all human beings, since this alone secures their equality in terms of human dignity. Second, these properties need to have normative significance on their own, since this alone makes them suitable candidates for grounding a normative property that can be used to justify norms as weighty as those frequently defended with reference to human dignity. And finally, these properties should not be exemplified by so many other entities besides human beings that the priority of human beings over other entities gets completely lost. For example, if it turns out that being alive is normatively significant, as some biocentrists believe,<sup>6</sup> and if we attribute human dignity on the basis of this property, all life forms inhabiting this planet will find themselves among its bearers. But this is obviously absurd, given the role of human dignity sketched in the opening paragraphs of this introduction.

In sight of these challenges of finding the appropriate grounding property controlling our ascription of human dignity, a natural suspicion is that the idea that there is only *one* such property which does the grounding might have been mistaken from the very beginning. For one thing, in contrast to dignity's norms and bearers, there is no special reason why we should refrain from identifying the source of certain norms as human dignity merely because, at the end of our philosophical analysis, it turns out that the normative property in question can be metaphysically triggered by *manifold* different further properties. While such a result might plausibly yield the conclusion that there are more than one *kind* of human dignity, it does not justify the belief that there really is *no such thing* as human dignity.

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<sup>6</sup> Cf. Paul W. Taylor, *Respect for Nature* (Princeton: Princeton University Press, 1986) as a notable advocate of biocentrism.

Furthermore, many other normative properties apart from human dignity plausibly have different grounding properties and yet are treated as one single property, at least under some ethical theories. Take David Ross' famous pluralist approach to moral wrongness.<sup>7</sup> According to him, an action might be wrong because it violates the duty of beneficence, but also because it breaks a promise, or is ungrateful. For Ross, there is no convincing overarching moral principle from which more specific moral duties can be derived, and a given action can be wrong for a variety of different wrong-making features. For example, by not helping my neighbor's little son who has seriously injured himself, I might violate all three aforementioned kinds of duties. But if a central normative property for actions allows for different groundings, why should not the same be true for an important normative property for holders of a moral status?

While this line of thought appears to be promising at first sight, I think that, in the end, it offers an unstable compromise between the skeptical position that human dignity's grounding problem is irresolvable, and the traditional position that there is at best only *one* property that grounds human dignity. Or so I will argue. In what follows, I will analyze two recent proposals on how to conceive of human dignity as arising from two different metaphysical underpinnings which ground it, and show that both these proposals have decisive shortcomings. These shortcomings tip over both suggestions either into the *skeptical* position, whose positive outcome in effect replaces the notion of *human* dignity in favor of a more narrow notion of *personal* dignity; or into the *traditional* position, which in effect offers an explanation on how the seemingly two different ways of grounding human dignity are reducible to only one more basic way of doing so.

This setup immediately raises two methodological questions. *First*, why do I examine only two proposals? Are not more variations of the type of theory I am investigating possible or even already out there? Yes, there are,<sup>8</sup> but the aim of this paper is not to argue against all possible theories

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<sup>7</sup> Cf. the famous 2<sup>nd</sup> chapter of Ross seminal work *The Right and the Good*, ed. By Philip Straton-Lake (Oxford: Oxford University Press, 2002), pp.16–46.

<sup>8</sup> Cf. Jeremy Waldron, *One Another's Equals: The Basis of Human Equality* (Cambridge (MA): Harvard University Press, 2017), who states that 'there is no reason to say that basic equality must supervene on just one range property [by which he means a property that can be realized in different ways and to different



that identify more than one grounding property for human dignity. Rather, the proposals are selected in order to serve as illustrative examples of systematic challenges that face this type of theory, rendering it far more unattractive than the first superficial assessment just given might suggest. And since I claim that an account of human dignity which argues for numerous grounding properties either easily collapses into the skeptical position or else is under pressure to join the traditional camp, I need to explore at least two proposals, since it seems to be highly unlikely that one single theory can combine both possibilities with an equal plausibility.

The *second* methodological question does not concern the number of positions assessed in this paper, but the number of groundings they have on offer to explain the reality of human dignity. Why only two instead of three, four, or even more? In response to this question, let me go back to the first argument in favor of a multi-grounding approach towards human dignity. There, I highlighted the fact that it does no harm to the reality of human dignity if it turns out that there is not just one but a plurality of groundings available for this property. That is not to say, though, that, if we accept the requirement of at least one grounding property, the introduction of additional groundings comes for free. Surely there is something to explain here: Why do these and only these properties generate a normative property so powerful that it opens the huge normative gap between human beings and other animals to which I pointed to in the opening paragraph of this paper? And indeed, in the case of Ross' pluralism of moral duties, a frequent charge made against his account laments that it transforms morality into 'a heap of unrelated obligations'.<sup>9</sup> This type of objection – that a given view is not systematic enough in terms of its explanatory power – will be weaker the fewer

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degrees.]. Perhaps we should be looking for a complex account of human equality – a set of range properties, overlapping and complementing each other.' (pp. 126 f.). Later he identifies properties like 'personal autonomy, reason, the capacity for moral thought and action, and the capacity for love' (p. 196) as elements of this set. Cf. also Timothy Chappell, *Knowing What To Do* (Oxford: Oxford University Press, 2014), ch. 6, who defends 'humanism' as a view which states that 'normally, to be a person it is *sufficient* to be a human being. Not *necessary*, because humanism does not imply that members of other species could not be drawn into the moral community of human persons.' (p. 150)

<sup>9</sup> This quotation is taken from H.W.B. Joseph, one of Ross' contemporary colleagues. Cf. David McNaughton, 'An Unconnected Heap of Duties?', *The Philosophical Quarterly*, 46 (October 1996), 433–47 (p. 434).

elements a theory contains; thus, reducing their number to two in the case at hand gives this objection the smallest possible weight.

The further structure of the paper unfolds as follows: In the second section, I seek to explain why, contrary to the theories examined in this paper, a common default assumption of theories of human dignity indeed should be that this type of dignity has only one grounding property: the property of being human. While I think that some of the standard objections invoked against this default assumption are far from convincing, I will nevertheless argue for the conclusion that theories of human dignity which allow for a multitude of groundings may be in a better position to explain why virtually all human beings are bearers of this kind of dignity. The third and the fourth section then go on to assess two proposals made by Reinhard Merkel and William FitzPatrick on how we can use two different understandings of human dignity – different with respect to the features that ground it, but indistinguishable as far as their moral norms are concerned – to secure that even people belonging to vulnerable groups fall within human dignity’s protectional sphere. As already stated, I argue that a closer examination reveals that both eventually collapse into one of two more extreme positions – the skeptic or the traditional. In the concluding fifth section, I ask what this outcome implies for these two remaining theory types on the field.

## **2. Human Dignity and the property of being a human being**

Whether and in which way human dignity is a relevant notion within normative ethics at all is, like much else in philosophy, a disputed question. The standard motivation for introducing human dignity so is to point to specific moral wrongs – humiliation for example<sup>10</sup> – and then to observe that we often use the language of dignity to explain why it is wrong to act this way. Humiliation, for instance, involves treating someone disrespectfully, and what makes this kind of behavior wrong is not adequately explained by the person’s profession, their merits or convictions, but by pointing to the fact that they are human: We do not

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<sup>10</sup> Since the appearance of Avishai Margalit’s justly famous book *The Decent Society* (Cambridge (MA): Harvard University Press, 1996), humiliation has taken center stage as a paradigmatic example of a dignity violation. Other frequent examples include torture and hate killings.

say that we may not humiliate someone because of their special status, for example, as a judge, but because we may not humiliate other human beings.

This line of justification presumes that being a human being already has moral significance. And since it is at least disputable with respect to humiliation as the paradigmatic case of a dignity violation whether non-human animals we know of can be humiliated – it appears to be difficult to humiliate an ant, a snake, an elephant or even a chimpanzee –, it seems to be at least promising to identify the property of being a human being as a relevant grounding property.<sup>11</sup> Now, one standard way of spelling out what it means that a being with a certain property has a higher normative significance compared to things without it is to attribute a certain *value* to the entity which possesses this property.<sup>12</sup> In the case at hand, ‘human dignity’ appears to be a decent choice.<sup>13</sup>

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<sup>11</sup> That a grounding feature is ‘relevant’ of course does not imply that it is also fundamental (in the sense that it constitutes the final link in the chain of the grounding relation in question), as the considerations on the following pages show. Even if we grant, however, that the ultimate grounding feature of human dignity is not the membership in the biological species, we may nonetheless be justified to speak of human dignity rather than, say, the dignity of rational beings (if we take the capacity for rationality to be dignity’s ultimate grounding feature). For we might be more certain that (virtually) all human beings possess dignity than we might be certain about the extension and intension of the property of rationality. Cf. Sebastian Muders, ‘Dignity and Human Dignity’, *Philosophy and Public Issues (New Series)*, 8(2) (2018), 109-138.

<sup>12</sup> While this is the standard way of granting an entity a higher normative significance by ascribing to it a normative property, some Kantian interpreters hold that Kant thought that the respect we owe to the bearer of human dignity is directed strictly speaking not to him, but to the grounding feature. Cf. Allen Wood, ‘Kant on Duties Regarding Nonrational Nature’, *Proceedings of the Aristotelian Society, Supplementary Volumes*, 72 (1998), 198–210, who speaks of the ‘dignity of rational nature’ instead of the ‘dignity of human beings’. As we shall see in the next section, this hardly fits with our contemporary understanding of human dignity.

<sup>13</sup> This is not to say that the nature of human dignity needs to be explicated in terms of a value. Indeed, most contemporary theories of human dignity exactly deny that an understanding of dignity as a value can deliver the most promising account of its various features. Instead, theories that understand human dignity either as a status (cf. Jeremy Waldron, *Dignity, Rank, and Rights* (New York: Oxford University Press, 2012)) or as an attitude (cf. Gideon Rosen, *Dignity: Its History and Meaning* (Cambridge (MA): Harvard University Press, 2012)) are on the rise. I will not deal with these theories here, and everything I say in this paper should in principle be applicable to these understandings as well.

Introducing human dignity this way naturally invites a couple of assumptions about its further characteristics: Firstly, if being a human being is all it takes to have human dignity, and if the property of being a human being (plausibly) does not come in degrees, we can readily explain why all human beings should enjoy it to an equal degree. Secondly, it will be difficult to lose the status which the value of human dignity confers to its bearer, simply because it is difficult to stop being a human being prior to one's death.<sup>14</sup> Thirdly, while many sorts of status have to be actively acquired one or the other way (consider, for example, the status of a judge, or the status of a scientific expert), one does not have to achieve anything to become a bearer of human dignity, and the current proposal can affirm this because one has not done anything to become a human being. Fourthly and lastly, whether someone belongs to the group of human beings or not does not depend on any individual subjective attitude (like wishes or beliefs) someone has, and neither does human dignity. In this sense, the supervening value of human dignity is 'objective'.

Indeed, independently from presuming the grounding role of being a human being when it comes to explicate human dignity's concept, the four features just mentioned are widely regarded as conceptual truisms of the concept of human dignity:<sup>15</sup> Notwithstanding a modest flexibility on how to interpret them in detail, a theory of human dignity that declares them as nonexistent or puts forward interpretations of them which result in claims such as that one's dignity can be easily forfeited through simple misbehavior will clearly bear a rather heavy burden of proof.<sup>16</sup>

On the other hand, conceptual claims all by themselves cannot ensure the existence of the thing described by them. Thus, even if the property of being a human being as a grounding property in various ways has a natural fit with regard to the core characteristics of any plausible conception of human dignity, maybe there is no property instantiated in the world that fulfills the demands laid down in its concept. One notorious difficulty highlighted by many sceptics of human dignity is the puzzle of how the

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<sup>14</sup> Arguably, we do not stop being human beings even *after* our death: A dead human being is no longer alive, but it is not on a par with a 'false friend'.

<sup>15</sup> Cf. e.g. Ariel Zylberman, 'Human Dignity', *Philosophy Compass* 11(4) (2016), 201–210, for a similar list of characteristics.

<sup>16</sup> Cf. Sebastian Muders, 'Natural Good Theories and the Value of Human Dignity', *Cambridge Quarterly of Healthcare Ethics*, 25 (2016), 239–249 (pp. 241 f.).

mere fact of belonging to a biological species can have the effect of being protected by norms (such as the prohibition to humiliate oneself or others) that are widely classified as ‘absolute’ (in the sense of being almost never outweighed by conflicting norms).

Introducing this difficulty in this familiar manner immediately calls for two caveats. *First*, I do not understand the concern articulated in this objection as expressing the point that one cannot derive an ‘ought’ from an ‘is’: I take it for granted that many natural and social features of the world (such as being capable of feeling pleasure and pain; being witty; behaving politely) are valuable – either for us or as such. How this is ontologically possible – what, if anything, ‘grounds’ the fact that these features are valuable – is an interesting question, and different metaethical theories provide different answers which I need not pursue here. It suffices to say that under different realist as well as anti-realist metaethical theories, there will be explanations of how certain facts come equipped with some sort of objective normativity we call ‘moral’, and every point made in this paper should be compatible with a broad variety of metaethical outlooks.<sup>17</sup>

*Second*, I also do not understand this difficulty as simply pointing to the fact that it is not intelligible at all why ‘being a human being’ – being in possession of a certain species membership explicated by biological properties such as one’s genome<sup>18</sup> – is valuable. On the contrary, it appears to be perfectly legitimate to justify our condemnation of certain acts with sentences such as ‘How could you treat her that way – she is a human being’.<sup>19</sup> Thus, it surely must be true at some level that the fact that

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<sup>17</sup> Thus, the ideas unfolded in this paper do not presuppose a metaethical realism, though they are of course sympathetic toward it. Metaethical realism comes itself in many degrees – for a recent overview, cf. e.g. FitzPatrick, ‘Recent work on ethical realism’, *Analysis Reviews*, 69(4) (2009), 746–60. Its main competitor is an anti-realism that seeks to preserve morality’s realist impression. Cf. Richard Joyce, ‘Moral Anti-Realism’, in *The Stanford Encyclopedia of Philosophy* <<https://plato.stanford.edu/archives/win2016/entries/moral-anti-realism/>>, sec. ‘Projectivism and Quasi-realism’.

<sup>18</sup> For the options and difficulties to ground the species concept on biologically reputable properties see Marc Ereshefsky, ‘Species’, in *The Stanford Encyclopedia of Philosophy* <<https://plato.stanford.edu/archives/fall2017/entries/species/>>.

<sup>19</sup> Cf. the 3<sup>rd</sup> chapter (‘Mortal Men and Rational Beings’) in Raymond Gaita’s *Good and Evil. An Absolute Conception. Second edition* (New York (NY): Routledge, 2004). There, Gaita comments on Alan Donagan’s *Theory of Morality* (Chicago

someone is a human being can play a grounding role in attributing human dignity to them.

However, the phrases ‘true at some level’ and ‘a grounding role’ already point to the real difficulty I am after: While being a human being surely is a *relevant* grounding property for human dignity, it is much harder to sustain that it is the *ultimate* grounding property.<sup>20</sup> To take a famous example from Jeff McMahan, if a chimpanzee ‘through genetic therapy has developed psychological capacities comparable to those of a ten-year-old human child’, then it surely ‘would be entitled to whatever forms of respect are due to normal ten-year-old human beings.’<sup>21</sup> According to all relevant theories of human dignity, however, ten-year-old human beings definitely are among its bearers. Thus, it is possible that non-human beings such as chimpanzees can also exhibit human dignity, and presumably for the same reasons that make human beings dignity bearers.

A quick solution to this problem would be to introduce further relevant grounding properties that we identify as central to our (normative) understanding of human beings, but which also can be possessed by members of other species. This way, we could maintain that human dignity is instantiated in some beings due to their membership in the human species, but ground this truth in the further fact that human beings possess certain properties which might also be shared by members of other species. And indeed, the philosophical tradition *has* made several

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(IL): University of Chicago Press, 1977) and his Kantian emphasis that we ought to respect the rational nature in human beings. Gaita uses a passage from Shakespeare’s *King Henry IV, The first Part* also employed by Donagan to argue that a theory which treats rational nature as the object of our unconditional respect is not easily in line with our common morality, which quite often focuses simply on an aspect of human beings’ vulnerable nature, e.g. their mortality. But this presupposes that the entity that demands our respect due to their vulnerability *is* already valuable in a certain way.

<sup>20</sup> The only exception I am aware of is David Oderberg, who equates ‘being with a rational nature’ with ‘human being’ in the sense that the two properties are necessarily co-extensional. He argues that we should regard ‘being human’ as ‘primarily a metaphysical category with biological content that gives us the ways in which humanity physically manifests itself’ and allows that ‘any truly rational animal, if such were metaphysically possible, would still be human.’ (David S. Oderberg, *Real Essentialism* (New York (NY) and Oxon (UK): Routledge, 2007), p. 104 f.

<sup>21</sup> Jeff McMahan, *The Ethics of Killing: Problems at the Margins of Life* (New York (NY): Oxford University Press, 2002), p. 211.

suggestions about which further properties besides being a human being could guide our ascriptions of human dignity. These typically include capacities like being autonomous, being rational, or being self-conscious.<sup>22</sup> Since these capacities are also put forward as criteria for personhood, construing human dignity this way amounts to saying that human dignity really is personal dignity, the dignity of persons.

However, the drawback of this solution is that so construed, being a human being and being a person seem to come apart quite easily: Only entities who possess the relevant capacities are bearers of dignity, but there seem to be human beings, i.e. the very young, the very old, and the severely handicapped, who might not yet or no longer possess these capacities. This would not pose a problem as long as we do not think that these people deserve or even need protection against the moral wrongdoings which we identify as dignity violations, such as humiliation. If this were the case, we could conclude that the term 'human dignity' is merely a rough shorthand to indicate that the *majority* of human beings (in particular the mature and healthy ones) enjoy the rights and duties that are justified by the normative property in question.

Yet the contrary seems to be the case: When we declare that all human beings are protected by human dignity, we appear to make this claim with a special attention to those that are most vulnerable. Ralf Stoecker's report from a report of a young man doing his civil service in a hospital may serve as an illustration. Seeking revenge on a demented old man with whom he is annoyed, the young man humiliates him by using only one washing cloth both for the upperpart of the patient's body and his legs and genitals. Stoecker writes:

[T]here is no evidence in the report that the treatment harmed the old man's health. [...] And although the client certainly would never have consented to having been washed with just one washcloth, it sounds somewhat forced to maintain that what is morally at stake in the example is merely a violation of autonomy.

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<sup>22</sup> See Peter Baumann, 'Persons, Beings and Respect,' *Polish Journal of Philosophy* 1(2) (2007): 5–17 (pp. 7–10), for further candidates for this role.

The young man's deed was so bad [...] because the treatment was deeply humiliating; it violated the old man's dignity.<sup>23</sup>

If we agree with Stoecker's description, we should conclude that if there is such a thing as human dignity, it will most importantly include those usually brought under the header 'marginal cases'. But how can we reconcile this idea with the observation that the classic candidates assigned as the ultimate grounding properties for human dignity are at least *prima facie* not present in the case at hand? For given the old man's condition, we may be forced to say that he simply lacks the capacities for being autonomous, rational, or even self-conscious.

In face of this difficulty, perhaps the most radical solution would be to abandon the belief in human dignity altogether, or to find some other way to secure the fundamental moral equality of all human beings along the lines presented in the introduction. We will give this option I earlier labeled 'skeptical' a closer look in the final section of this paper. Another, rather obvious alternative is to provide an interpretation of the ultimate dignity-conferring capacities that would allow us to attribute them also to the members of the groups of vulnerable persons just listed. This is the 'traditional' choice, and again we will briefly look at its strengths and weaknesses in the paper's concluding section.

In the following sections, though, I wish to focus on yet a different alternative which, for the reasons presented in the introduction, may appear to deliver the most promising approach. Its general idea consists in disambiguating human dignity in terms of its grounding properties. The core claim found in all its variations may be expressed by saying that the term 'human dignity' refers to different values that are possessed by different members of the human family but nonetheless can explain the applicability of the very same norms that formulate prohibitions against

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<sup>23</sup> Ralf Stoecker, 'Three Crucial Turns on the Road to an Adequate Understanding of Human Dignity', in *Humiliation, Degradation, Dehumanization: Human Dignity Violated*, ed. by Paulus Kaufmann, Hannes Kuch, Christian Neuhaeuser and Elaine Webster (Dordrecht: Springer, 2011), 7–17 (p. 11). Cf. also Wayne Sumner's example of The Bride in Quentin Tarantino's *Kill Bill* (L.W. Sumner, 'Dignity Through Thick and Thin', in *Human Dignity and Assisted Death*, ed. by Sebastian Muders (New York: Oxford University Press, 2017), pp. 49–67 (p. 64)), which provides evidence that it is possible not only to violate the dignity of highly demented persons, but also of persons in a PVS-like state. This will become important in the next two sections.



dignity violations. In what follows, I am going to examine two proposals of this option, arguing that, in the end, they merely offer an unstable compromise between the sceptic and the traditionalist, and ultimately collapse into one of their competitors.

### 3. The Dignity of Humankind vs. the Dignity of Human Beings

The first proposal has been presented by Reinhard Merkel in his monograph *Forschungsobjekt Embryo* (2002). The primary aim of the book is to present a legal and moral case in favor of scientific research on early human embryos. But when considering different moral arguments that are employed to prohibit this sort of research, Merkel also brings up the question whether the human dignity of an embryo may be used as the justificatory ground of such a prohibition.

His answer is negative, since such a being shows no sign of subjectivity. ‘Since it [...] has no [...] weal or woe on its own, because it cannot experience any weal or woe, it [also] cannot be the object of any moral consideration for its own sake’.<sup>24</sup> And since subjectivity is one of the preconditions for having dignity – plausibly, all the capacities mentioned on p. 258 of the last section presuppose it – early human embryos cannot be bearers of a moral status.

As Merkel notes, this reasoning implies that not only human embryos, but also adults in a persistent vegetative state (PVS) have no dignity: Like early embryos, they lack the kind of subjectivity he believes to be crucial for being the object of our direct moral consideration. At the same time, he emphasizes that a position that would not grant them ‘fundamental rights to life and dignity’ would be ‘intolerable’.<sup>25</sup> This leads him to introduce a second kind of human dignity, the dignity of humanity.

This latter kind of dignity is also called ‘species-bound dignity’ by Merkel.<sup>26</sup> Its function is to protect the ‘normative-symbolic image humanity has from itself’. This image allows all human beings to identify themselves ‘with the species to which they belong’<sup>27</sup> and gives rise to both ‘duties of

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<sup>24</sup> Reinhard Merkel, *Forschungsobjekt Embryo* (Stuttgart: dtv, 2002), 136. All cited passages are my translations from German.

<sup>25</sup> Merkel, p. 147 and p. 147, fn. 195.

<sup>26</sup> Cf. Merkel, p. 188.

<sup>27</sup> Merkel, p. 40.

solidarity' and duties derived from the principle of norm protection.<sup>28</sup> The former class of duties addresses all kinds of wicked treatment of all members of the human species. Examples of such norms with regard to the group of entities Merkel is interested in – early human embryos – are the usage of such embryos in 'frivolous or meaningless experiments' or as a commodity in profit-oriented trade.<sup>29</sup> The latter class of duties aims at ensuring the general compliance to norms justified by other moral principles. Merkel gives the example of the harm principle which condemns actions that are done for the sake of harming others.<sup>30</sup>

To justify the view that even people in a PVS have a right to life and dignity despite their lack of subjectivity, Merkel identifies the principle of norm protection as the main source of the norms protecting people in this group.<sup>31</sup> Hence, let us start our assessment of Merkel's position by first looking at this principle before going on to the duties of solidarity.

As mentioned, one important norm that Merkel seeks to preserve with regard to human beings in a PVS is their 'right to life'. As he elaborates, though, this right strictly speaking protects not them, but 'also and even primarily the general prohibition of killing as one of the fundamental norms of ethics and law'.<sup>32</sup> In another passage, he explains that granting members of this and similar groups a right to life helps to stabilize the whole system of norms, increases the motivation of those which are subjects to the norms to follow them, and offers them a higher degree of guidance.<sup>33</sup> For the sake of argument, I will grant Merkel the assumption that all these considerations can provide a justification for extending the rights in question to people that do not fulfill the criteria of personal dignity. Even so, at least two problems with Merkel's proposal remain: One concerns the *source* of the property of human dignity whose norms protect people of vulnerable groups, the other concerns the *nature* of these norms.

Starting with the former, if the dignity that we can ascribe to people in a PVS is the product of a 'normative-symbolic image', questions about the

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<sup>28</sup> Cf. Merkel, pp. 142–146.

<sup>29</sup> Merkel, p. 188.

<sup>30</sup> Merkel, pp. 144 f.

<sup>31</sup> Cf. Merkel, p. 147.

<sup>32</sup> Ibid.

<sup>33</sup> Cf. Merkel, p. 144.

stability of this image naturally arise. Images in the sense employed by Merkel – collective ideas about an envisaged ideal – are usually conceived of as ontologically dependent on the collective articulating them: The normative-symbolic image of marriage, for example, will differ significantly, depending on whether you ask a Roman Catholic or a secular, liberal humanist about it.<sup>34</sup> And indeed, views about humanity have altered between different times and cultures, and this subsequently has affected the image built up from them. If this is correct, the objectivity condition mentioned in the previous section – human dignity should not be dependent on the beliefs or wants of anyone of us – cannot be preserved.

If it should turn out, however, that our image of humanity ought not to change anymore, then this is presumably because it satisfies certain correctness conditions – for instance, because it correctly depicts the value we ascribe to our humanity. Interpreting Merkel this way brings him into loose contact with Kant’s famous saying that ‘humanity itself is a dignity’,<sup>35</sup> meaning that a certain feature of our nature grants this nature a certain worth human beings ought to live up to. For Kant, this feature is our capacity for freedom – the capacity to act independently of our inclinations – which he identifies with the capacity to act morally. While he regards this capacity as deeply entrenched in our (noumenal) human nature, it is still our nature to which this kind of dignity is attributed – not their bearers. As a consequence, only our success to live in accordance with the demands of this capacity and thus our nature can grant the individual human being dignity.<sup>36</sup> As Oliver Sensen has argued, this conception of human dignity is only remotely connected to the contemporary understanding of its concept as an absolute inner value

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<sup>34</sup> Cf. e.g. the dispute between Robert R. George, Christopher Tollefsen on one side and Edwin Cameron on the other in Christopher McCrudden (ed.), *Understanding Human Dignity* (Oxford: Oxford University Press, 2013), pp. 467–508.

<sup>35</sup> Immanuel Kant, *The Metaphysics of Morals*, translated by Mary Gregor (Cambridge: Cambridge University Press, 1991), p. 255.

<sup>36</sup> Cf. a passage in Kant’s *Reflexionen* as quoted by Oliver Sensen in his ‘Kants erhabene Würde’, in *Menschenwürde: Eine philosophische Debatte über Dimensionen ihrer Kontingenz*, ed. by Mario Brandhorst and Eva Weber-Guskar (Berlin: Suhrkamp, 2017), p. 170: ‘Die Würde der Menschlichen Natur liegt bloß in der Freiheit [...]. Aber die Würde eines Menschen (Würdigkeit) beruht auf dem Gebrauch der Freiheit.’ (‘The dignity of human nature merely lies in the freedom [...]. But the dignity of man (worthiness) is based on the exercise of freedom.’)

possessed by all human beings.<sup>37</sup> Be this as it may, we might at any case be worried about the analogous shift suggested by Merkel from a specific individual to the whole species as the ultimate bearer of human dignity: After all, what we are supposed to respect when paying tribute to human dignity are individual human beings, not an abstract biological collective they all belong to.

This worry is reinforced when we put aside the problems regarding the suitability of the properties that ground non-personal human dignity, and adjust our attention to the nature of the norms justified by them: What does it mean that norms such as a right to life which aim to secure the dignity of PVS patients can be derived from the principle of norm protection? As explicated above, this principle is concerned with the proper handling of moral norms, *not* with the people they aim to protect. This brings me to the second concern I have with Merkel's account: Although it is important to us that vulnerable and nonvulnerable people alike are protected by the same basic norms, this does not strike us to be sufficient; what matters is also that these norms are backed up by the *same sort of reasons*. One can see this most clearly in the case of animal morality: The most common objection against Kant's animal ethics is *not* that he cannot explain why we should not show cruelty toward animals, but that we do not owe this to them, but only to ourselves, i.e. to the entities that deserve moral concern for their own sake.<sup>38</sup> It is hard to believe that the concern people show for their loved ones even in the most wretched circumstances is ultimately self-centered, i.e. that their perceived value and the norms derived from it are entirely self-created through the loving attitudes of the entities that *do* matter morally.

In response, Merkel could point to the second set of norms related to species-bound dignity mentioned above: The norms of solidarity. While this will not silence the first concern with respect to the source of both kinds of norms, maybe we can make progress regarding the second concern. According to at least one common definition of solidarity, this idea involves 'one person giving a certain subset of the interests of another

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<sup>37</sup> Cf. Oliver Sensen, 'Kant's Conception of Human Dignity', *Kant-Studien* 100 (2009), 309–331.

<sup>38</sup> For a classic analysis of Kant's treatment of animals along these lines, cf. Alexander Broadie and Elizabeth M. Pybus, 'Kant's treatment of animals', *Philosophy* 49(190) (1974), 375–383.

person a status in her reasoning that is analogous to the status that she gives to her own interests in her reasoning'.<sup>39</sup> If we apply this idea to the case at hand, and start with the thought that we take some of our interests (such as our interest in being alive) not only as weighty enough to generate a right out of it, but also that this right is supposed to rest at least in part on our human dignity,<sup>40</sup> we should conclude that we give the relevant interests of other entities to whom the norms of solidarity apply the same status. In effect, this would mean not only that we do something wrong if we kill people in a PVS, but that we wrong *them*; giving their interests the same status as ours means granting them rights.<sup>41</sup>

I think this is a promising way to go, although it of course invites the question why we should then suppose any longer that there are two grounds for human dignity instead of one. For why do the norms of solidarity apply to them if not because there is a sufficient similarity between us and them? But if this is the case, the idea that it is the object of this similarity which grounds their human dignity is not very far away. We will follow a related trail in the next section. With respect to the present proposal, however, this strategy does not get off the ground, for Merkel attaches an important qualification to the duties of solidarity. As we have seen in the introduction, the norms which protect the bearers of personal dignity can be hardly outweighed – maybe save for emergency cases where a significant number of people would otherwise face the same or another violation of their dignity. On the other hand, norms resulting from Merkel's principle of solidarity *are* subject to trade-offs when the interests of other moral subjects are affected. And this seems wrong with

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<sup>39</sup> Cf Waheed Hussain, 'The Common Good', in *The Stanford Encyclopedia of Philosophy* <<https://plato.stanford.edu/archives/spr2018/entries/common-good/>>, sec. 4.4.

<sup>40</sup> Cf. John Tasioulas, 'On the Foundations of Human Rights', in *Philosophical Foundations of Human Rights.*, ed. by Rowan Cruft, Matthew S. Liao and Massimo Renzo (New York: Oxford University Press, 2015), 45–70, for an account on how certain human interests in tandem with human dignity may generate human rights such as a right to life.

<sup>41</sup> See on this distinction between merely 'doing something wrong' and 'wronging someone' Michael Thompson's paper on what he calls 'bipolar normativity'. Cf. Michael Thompson, 'What is it to Wrong Someone? A Puzzle about Justice', in *Reason and Value. Themes From the Moral Philosophy of Joseph Raz.*, ed. by R. Jay Wallace, Philip Pettit, Samuel Scheffler and Michael Smith (New York: Oxford University Press, 2004), 333–384.

respect to paradigmatic dignity-protecting norms: Surely the prohibition to humiliate others does not vary in strength when applied to a healthy victim or a person in a PVS?

Because of all these shortcomings, Merkel's proposal shows a tendency to collapse into a skeptical position which claims that *not* all human beings enjoy a human dignity that is marked by an equal consideration towards all of its bearers. For one thing, it can be questioned whether the ground which Merkel proposes for what he calls species-bound dignity is stable enough to provide for the objectivity that the norms derived from it are supposed to have. Furthermore, the ultimate bearer of the more inclusive form of dignity Merkel has in mind appears to be the quality of humanity, not the entities that exhibit this quality. Moreover, the kind of human dignity Merkel assigns to members of vulnerable groups like PVS patients is a dignity which *either* does not grant them rights, but at best justifies prohibitions based on considerations that aim to benefit *other* human beings than the ones these norms protect; *or* it lets the norms justified by it show an alarming openness to be overridden when confronted with conflicting normative considerations. As remarked, this kind of flexibility precisely should be alien to the norms that can be derived from proper human dignity.

#### 4. The Dignity of Human Beings vs. the Dignity of Persons

To solve the problems generated by these shortcomings, it might be useful to have a look at a second proposal. In providing an analysis of the role of human dignity in assisted death, William FitzPatrick has attempted to provide a unified account for personal dignity and the dignity of human beings. Like Merkel, he sees the former as primarily operating in the 'well-functioning organism, and the higher-level activities'<sup>42</sup> of human beings. It is these higher activities which allow us to recognize the presence of certain capacities responsible for a human being's 'rational nature';<sup>43</sup> and it is these capacities which grant the human being possessing them person status and personal dignity.

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<sup>42</sup> William FitzPatrick, 'The Value of Life and the Dignity of Persons,' in *Human Dignity and Assisted Death*, ed. by Sebastian Muders (New York: Oxford University Press, 2017), pp. 175–196 (p. 181).

<sup>43</sup> FitzPatrick, p. 177.

By contrast, human beings that lack these capacities also lack, it seems, human dignity. Much hinges, of course, on the question of how to interpret the term ‘rational nature’. We should not overstate this problem, though; for instance, all of the standard suggestions for dignity-conferring capacities mentioned in section 2 presumably can be related to our rational faculties in one or the other way. In any case, FitzPatrick is ready to admit that ‘small children (who possess such capacities only potentially), the severely mentally handicapped (who do not possess even the potential for them), and those afflicted with dementia (who have irretrievably lost them) lack the basic human dignity I have ascribed to persons.’<sup>44</sup> And again, like Merkel, he thinks that such a result will condemn an ethical theory as untenable.

Also like Merkel, though, he believes that besides the existence of the relevant capacities, there exists a second way of ascribing dignity to human beings that can be reached ‘derivatively’ from the former:<sup>45</sup> But where Merkel pointed to an *image* human beings have of their shared humanity, FitzPatrick goes directly to the plausible *object* of such an image: As he states, ‘when thinking about the normative significance of a living being, it is entirely plausible that in addition to taking account of its individual mental properties, we should also be sensitive to the *fundamental kind* of thing we are presented with.’<sup>46</sup> He thinks that being ‘*a member of a person species*’ is the fundamental kind to which all members of the human family belong, and this membership is ‘*likewise sufficient* for special moral status’<sup>47</sup> (i.e. human dignity) – ‘likewise sufficient’, because having the relevant capacities *also* is sufficient, regardless whether the individual belongs to a person-species or not. Thus, if my cat, perhaps after exposure to radioactive radiation, begins to talk and shows all signs of understanding, we have a decisive reason to assign to it the same special moral status as that ascribed to myself.

When we compare FitzPatrick’s account with the four shortcomings of Merkel’s approach that I listed at the end of the preceding section, we can see that FitzPatrick is cautious to avoid all of them. Starting with the last one, while Merkel is reluctant to allow that at least a certain set of dignity-

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<sup>44</sup> Ibid.

<sup>45</sup> FitzPatrick, p. 179.

<sup>46</sup> FitzPatrick, p. 191.

<sup>47</sup> FitzPatrick, p. 192.

related norms – those which form the ‘duties of solidarity’ – has the same force for all members of the human species, FitzPatrick does not think that the moral status ascribable to members of vulnerable groups is in any regard less strong when compared to the moral status of healthy and adult human beings. As he explicitly announces, despite his narrow conception of a person, his approach is

compatible with extending to so-called ‘marginal cases’ *the same kind and degree of respect* owed to persons (in the narrow sense) because personhood can ground the relevant dignity not only directly by being manifested in the individual case but also indirectly via kind-oriented considerations.<sup>48</sup>

This means that mature and healthy human beings, who typically fulfill *both* criteria, cannot demand a prioritized treatment in cases where their claims compete with, say, those of small children. Thus, the dignity that flows from species membership only kicks in when an individual shows no signs of the rational capacities usually exhibited by the healthy, mature members of their species.<sup>49</sup>

The first problem with Merkel’s proposal that I mentioned above was concerned with the apparently unstable nature of the ‘normative-symbolic image of humanity’, given its purpose as a source of human dignity norms. FitzPatrick, on the other hand, while admitting that ontologically speaking, there are ‘inevitably grey areas’, thinks that the criterion of species-membership gives us a sufficiently clear and objective basis for the distribution of dignity, ‘given the role of species in determining fundamental kinds for living things’.<sup>50</sup> Hence, the attribution of dignity is not dependent on what people think or want at a given time.

Finally, in response to the remaining two difficulties that plagued Merkel’s account, FitzPatrick dedicates a whole section to showing that on his account, human dignity always depicts the value of *individual* persons, instead of attributing this value to a special capacity they possess, which under his account merely serves as dignity’s ontological ground. He draws

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<sup>48</sup> FitzPatrick, p. 195, my emphasis.

<sup>49</sup> Cf. FitzPatrick, p. 192n32.

<sup>50</sup> FitzPatrick, p. 193.



an analogy between the agapeic love for a fellow person like a friend and the ‘basic respect’ we owe to human beings as bearers of human dignity:

Just as love is irreducibly a way in which one relates to another person (or at least a human subject, in cases in which personhood is compromised, as discussed later) rather than to a set of qualities in the person, basic respect is plausibly also irreducibly a way in which one relates to persons rather than to a capacity in a person – even if that capacity is what inspires this sort of respect for the person.<sup>51</sup>

If we take the analogy as portrayed in this sentence seriously, it is not just the case that the bearer of the value of human dignity is the individual, but also that the respect which can be demanded because of this value from any moral agent is owed to them as well. After all, the duties which are generated because I befriend someone are not owed to an abstract ‘ideal of friendship’, but directly to my friend: If she confides one of her secrets to me, and I generously pass it on to a stranger at a party I attend the following evening, *she* has a special reason to have a grudge against me. Thus, contrary to Merkel, the duties derivable from FitzPatrick’s conception are truly owed to individual human beings, not to an ‘image of our humanity’.

Despite these advantages of FitzPatrick’s proposal, there remain two concerns, which once more are about the *source* of the property of human dignity whose norms protect people of vulnerable groups, and about the *nature* of these norms. The first concern tackles the normative relationship between FitzPatrick’s two criteria for ascribing dignity. The membership to a species is only relevant when the species belongs to the group of biological kinds whose mature and healthy members exhibit the relevant person-conferring capacities. But why exactly is the fact that an individual belongs to such a kind is not only normatively relevant, but also grants it *the same degree* of normative protection that possessors of the capacities responsible for rational nature enjoy?

As we saw above, while ‘being a human being’ might indeed be a relevant grounding property, it seemed much more difficult to argue for its status as an *ultimate* grounding property. And maybe FitzPatrick could argue that,

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<sup>51</sup> FitzPatrick, p. 184.

by his own lights, 'being a human being' *is* just a relevant, but not an ultimate grounding property: Since it is merely 'derived', what makes it relevant, in the end, are the individual properties that ground personhood, i.e. the higher cognitive abilities. But if we read FitzPatrick's suggestion along these lines, he appears to say what makes, say, small children dignity owners is the fact that they belong to a species whose members *usually at some point will have* the capacities that make them dignity bearers. But this is implausible, as the common objection against the 'argument from potentiality' claims: Even if we grant that an entity with the potential of acquiring capacities that will make it valuable is thereby itself valuable, why should we also think that it already has the same value to the same degree?

I believe FitzPatrick is right in insisting that his account of species-wide human dignity 'is supported by reflection on small children, the severely handicapped, and those suffering from dementia'. I am more doubtful, though, that he looks at the right spot when he continues 'where a focus on individual properties alone misses something crucial'.<sup>52</sup> On the contrary, when we look back again at his proposed analogy, it exactly seems to be the other way round: The reason that explains why I regard someone as my friend and take care of her well-being for her own sake is something about her, some individual property she instantiates, not something about what she should, could or may become, let alone something about a cool gang she happens to be a member of.

Apart from the question why the ontological kind many dignity bearers belong to grants the very same value to all members of the kind, a further question is how it can lead to the same kind of moral status for them. Since the set of norms attached to a status forms one of its crucial parts,<sup>53</sup> the question can be reformulated as whether all members of the human species are subject to the same moral norms flowing from their dignity. Despite his claims to the contrary, we have reason to worry that FitzPatrick has problems to secure the equality of dignity in this sense. He thinks, following Merkel in this respect, that a person in a PVS 'in the absence of any experience, no longer [has] any interests that might be furthered or frustrated'.<sup>54</sup> At the same time, he insists that such a human being 'surely requires respectful handling', which includes 'a prohibition

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<sup>52</sup> FitzPatrick, p. 192 f.

<sup>53</sup> Cf. Waldron, p. 139.

<sup>54</sup> FitzPatrick, p. 194.

against killing it without prior consent in an advance directive'.<sup>55</sup> But presumably this prohibition does not rest on a *right* this individual has, if we assume, as FitzPatrick does, that 'there is no longer any subject present', which naturally leads to the conclusion that the individual cannot be the *subject* of a right.<sup>56</sup> As in Merkel's case, we might regard this as a shortcoming, for any disrespectful treatment – think again of Stoecker's case of humiliation<sup>57</sup> – seems to wrong the individual who is the victim of the misdeed: Indeed, most people care a lot about what happens to them if they fall into a persistent vegetative state, and they would go a great length to ensure that they will not receive this kind of treatment if they should get in this condition.

But then again, by revisiting FitzPatrick's analogy between respect for human dignity bearers and the agapeic love we show toward our friends, what first appears like a crucial misstep can be reconciled with the spirit of his approach. When I promise my terminally ill friend out of love to look after her cat, her death most certainly will not make the duty go away: Its fulfillment is still owed to her directly. The lesson to be learned from this when switching back to what respect for the bearers of human dignity requires of us is that we should relax FitzPatrick's conjunction between the subject of an experience and its interests. True, someone in a PVS, due to her condition, will be unable to uphold many of her interests having to do with the exercise of capacities she has irrevocably lost. Nonetheless, we can easily identify some basic legitimate interests that still can meaningfully be attributed to her, such as the interest of not being humiliated, not being raped, or more generally interests against the sorts of wrongdoing most frequently identified as dignity violations. These interests can be attributed to her not merely *although* she is a severely handicapped human being, but precisely because she is *still* a human being.<sup>58</sup> Hence, recognizing this kind of interest does not even depend on her opportunity to tell us her wishes

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<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> I should add that FitzPatrick distinguishes between PVS patients and people with severe dementia, and observes that the latter group undoubtedly has interests which members of the former group have not. Yet, this does not seem to help in the example of humiliation, where I see no reason why we should presume that an interest not to be degraded is not present in *either* of these groups.

<sup>58</sup> As mentioned above in footnote 14, this sense of 'human being' even appears to extend to cases where there is no longer any *living* human being.

beforehand, since the measure for this, quite plausibly, is simply what she *would* want if she *were* able to look at her condition from the standpoint of a healthy and reasonable exemplar of her species.

Both of these adjustments suggested to preserve the spirit of FitzPatrick's theory, however, will inevitably draw it over to a more traditionalist account of properties-conferring human dignity. With regard to the first, insisting on the individual properties as the basis for our ascription of human dignity in analogy to FitzPatrick's portrayal of agapeic love will give the species membership the status of a 'derived' property for grounding human dignity only if we can identify individual properties which, first, can be meaningfully attributed even to members of the vulnerable groups FitzPatrick has in mind and, second, are at the same time common enough to explain why the property of belonging to the family of human beings can rightfully be regarded as a relevant (albeit not ultimate) grounding property for human dignity. But if these properties exist, they should easily be able to provide the *sole* basis for human dignity, since they can be found in (virtually) every human being.

With regard to the second adjustment, our appreciation of the higher cognitive capacities that constitute our rationality and serve as the primary properties that ground human dignity cannot be restricted to those human beings that still can make good use of them. If these are the properties, which, in FitzPatrick's terminology, 'inspire' the respect that we owe to human beings, just as certain properties 'inspire' our agapeic love for certain human beings, they will do their work not only for the healthy and the mature, but also for the very old, the very young, and the severely handicapped. Just as we think about the former that they should not be subject to humiliation, degradation and the like, so we think about the latter. And although especially in extreme cases, many interests people have usually vanish – someone in a PVS will have no more interest in making new experiences, eat delicious food, etc. – some important interests are still applicable, and these interests, as FitzPatrick rightly recognizes, are the interests we owe to them as members of the human family. This standard is indeed not different with respect to the norms generated by it, as FitzPatrick also affirms, from the standard provided for rational beings. However, this is not because the 'derived' criterion for special moral status somehow miraculously grants its bearers the same protection wherever possible, but again because the ultimate grounding

property is not at all different regardless whether we look at marginal or 'typical' cases of human beings. This is the traditional stance, and it is usually reached by a certain interpretation of our higher order capacities that allows us to attribute them to all members of our species.

## **5. One kind of human dignity or none?**

In conclusion, what do the challenges which face theories of human dignity that suggest multiple groundings for the normative property in question imply for theories that adopt a traditional or skeptical stance towards their subject? On first glimpse, they should strengthen these theories in three ways: First, since the paper was mainly focused on problems arising for their main competitor, they should gain plausibility in comparison. Second, the dialectic at the end of the paper's first two sections suggested a special advantage for a theory of human dignity that puts forward different groundings instead of a 'one size fits all' property which is presumably not able to cover all the complexities found within the human species. Since this apparently more flexible theory was not able to deliver on its promise, though, the prospects should have become brighter for the traditionalist or the sceptic. Third, if I am right that at least the two versions of the multi-grounding approach discussed in this paper either tend toward the sceptic position or are pushed in the direction of the traditional approach, then, depending on which theory one assigns the higher overall plausibility, one or the other of its rivals should take over the resulting benefit.

However, as a brief look into the literature indicates, the current state of the debate seems to be that the difficulties that plague the traditionalist as well as the skeptical position are so grave that it remains unclear whether they can gain any significant profit from the weaknesses of their common contender. This is of course not the place to give an in-depth analysis of the pros and cons of either the traditionalist or the sceptic approach, so a few words must suffice pointing to what I take to be the main weak spot of each. In sum, both shortcomings revolve around Richard Arneson's claim that the belief in 'basic human equality', i.e. the idea that '[a]ll persons

simply by virtue of being persons have equal basic dignity and worth' is 'neither acceptable nor rejectable'.<sup>59</sup>

Starting with the sceptics, they seem to be committed to a denial of the disjunction's second part. According to Peter Singer, for example, while

we may continue to see normal members of our species as possessing greater qualities of rationality, self-consciousness, communication and so on than members of any other species, [...] we will not regard as sacrosanct the life of every member of our species, no matter how limited its capacity for intelligent or even conscious life may be.<sup>60</sup>

Thus, since the 'view of universal and equal human dignity cannot be supported', we should opt for 'a graduated view of the moral status of humans and nonhuman animals.'<sup>61</sup> That way, the notion of human dignity would be abandoned in favor of personal dignity. Independently of how they assess Singer's position, nearly all sides agree on the radically revisionary stance it adopts, a stance that many find deeply counterintuitive. As Arneson put it, 'I find it hard to swallow the thought that basic equality is a nonissue.'<sup>62</sup>

Of course, the sceptic does not need to go as far as Singer does. Maybe we can explain this kind of moral equality in ways that have nothing to do with the idea of human dignity. Andrea Sangiovanni recently has published a monograph that tries to preserve important aspects of our firm belief in moral equality among humans while jettisoning the idea that we need human dignity to make sense of this. As a very rough sketch of Sangiovanni's very complex argument, his basic idea is that instead of conceiving of dignity as the justificatory ground that dictates a certain behavior, it is better to start first with the repugnant nature of certain kinds

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<sup>59</sup> Richard Arneson, 'Basic Equality: Neither Acceptable nor Rejectable', in *Do All Persons Have Equal Moral Worth?*, ed. by Uwe Steinhoff (New York: Oxford University Press, 2015), pp. 30–52 (p. 30).

<sup>60</sup> Peter Singer, 'Sanctity of Life or Quality of Life?', *Pediatrics* 72(1) (1983): 128–129 (p. 129). Although Singer speaks of 'the sanctity of life' in this essay, it is the dignity of human beings he has in mind, as shown by the next quotation, taken from a more recent paper by him.

<sup>61</sup> Peter Singer, 'Speciesism and Moral Status,' *Metaphilosophy* 40 (2009): 567–581(p. 568).

<sup>62</sup> Arneson, p. 52.

of behavior (such as humiliation and other forms of socially cruel treatment) and ask whether we can identify a common ground of their wrongness.<sup>63</sup> Sangiovanni's suggestion is that all forms of wronging that usually lead us to appeals to human dignity are all ways of attacking our 'integral sense of the self,' our 'sense of being in control of their environment and their bodies in a way that preserved their ability to express a self-conception without fear of retribution.'<sup>64</sup> According to Sangiovanni, it is our deep interest in such a self that can serve as a more promising basis of why we should regard each other as moral equals. In response, critics have asked why the central place of having a sense of self for leading a flourishing human life does not call for a further explanation, an explanation that can be given precisely in terms of the special dignity of human beings.<sup>65</sup> Furthermore, and even more importantly for our purposes, they have questioned how our 'sense of self' as specified by Sangiovanni can be the basis of our moral equality, given that this quality naturally varies between different human beings, and seems to be completely absent in many members of the vulnerable groups discussed in this paper.<sup>66</sup>

If we now turn our attention to the traditionalist camp in the hope of receiving a more promising account, we are likely to be disappointed. Again, we may broadly distinguish between more and less radical variations of the traditionalist approach. The former category includes theories of human dignity that not merely reduce the number of dignity-conferring properties to one, but which flatly deny that any grounding is needed. This means that one of the presumptions made in section one, that dignity is a consequential property in Audis sense, is dropped.

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<sup>63</sup> In the opening paragraphs of the second section, we followed a similar strategy, albeit to the effect that what some grave moral wrongs have in common is precisely that we appeal to human dignity to account for their morally repugnant nature.

<sup>64</sup> Andrea Sangiovanni, *Humanity without Dignity* (Cambridge (MA): Harvard University Press, 2017), p. 77.

<sup>65</sup> Cf. Anna Elisabetta Galeotti, 'Book Review: Andrea Sangiovanni, *Humanity Without Dignity*', *Argumenta* 4(1) (2018), 193–97 (p. 194 f.); Grant J. Rozeboom, 'Book Review: Andrea Sangiovanni, *Humanity Without Dignity*', *Ethics* 128(2) (2017), 505 – 509 (p. 508).

<sup>66</sup> Cf. Geleotti, p. 195; Paul Sagar, 'Back to Basics', *Contemporary Political Theory* (2017), doi:10.1057/s41296-017-0153-8.

For example, Robert Spaemann has argued that “[h]uman dignity has no biological “reason”, but having dignity does come with biological membership in the family of free beings<sup>67</sup> – by which he refers to the family of human beings. We can read the first half of this passage as denying that the biological species serves as the dignity-conferring property or that indeed any biological capacity is relevant – as Spaemann also writes, he believes that the word ‘dignity’ ‘denotes an indefinable, simple quality’.<sup>68</sup> Thus, while human dignity as a quality can be attributed to each and every human being, there is no further ground for doing so.

Without going into the details of Spaemann’s position, we might note again that, similar to Singer, his theory appears to be not very well-grounded in our common intuitions. Given the two highly significant roles of human dignity to justify the special treatment which we owe exclusively to human beings as well as to demand equal consideration of every member of our species, an explanation for why human dignity grants its bearers this special treatment cannot easily be refused. Of course, all philosophical explanations must come to an end somewhere, but the end suggested by Spaemann simply appears to come way too early.

A more moderate variation of traditionalism allows for one grounding property for human dignity – the capacity of being rational – that is instantiated in all human beings. One of its more prominent versions is defended by adherents of the new natural law school. Prominent advocates are John Finnis, Robert George and others.<sup>69</sup> They characterize the capacity of being rational as a ‘root capacity’, a capacity which serves as the ontological ground (and explanatory presupposition) for an ‘activated capacity’.<sup>70</sup> For example, a human being’s capacity to talk or to reason is not something that happens to them merely accidentally. We

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<sup>67</sup> Robert Spaemann, ‘Human Dignity and Human Nature,’ in Robert Spaemann, *Love and the Dignity of Human Life: On Nature and Natural Law*, with a foreword by David L. Schindler (Grand Rapids (MI): William B. Eerdmans, 2012), pp. 27–44 (p. 28).

<sup>68</sup> Robert Spaemann, ‘Human Dignity,’ in Robert Spaemann, *Essays in Anthropology: Variations on a Theme*, translated by Guido de Graaff and James Mumford (Eugene (OR): Cascade Books, 2010), pp. 49–72 (p. 52).

<sup>69</sup> Cf. Patrick Lee and Robert P. George, ‘The Nature and Basis of Human Dignity,’ *Ratio Juris* 21 (2008), 173–193.

<sup>70</sup> Cf. John Finnis, ‘Equality and Differences,’ *Solidarity: The Journal of Catholic Social Thought and Secular Ethics* 2(1) (2012), 1–22 (pp. 1–3).



*expect* human beings to develop these capacities because these are part of their natural kind, encoded in their biological species membership. If this does not happen or if human beings cease to have these capacities due to disease or injury or other disablement, this condition is regarded as a deprivation of what they *should* be able to do. And the explanation why this teleological expectation is justified even then is given by the ontological assumption of a root capacity inherent in all members of the species in question. Yet, as critics have pointed out,<sup>71</sup> this reasoning does presuppose a specific metaphysical framework developed within Aristotelian-Aquinean thought, a framework that is nowadays mostly regarded as outdated at best. Thus, whatever its merits as a grounding theory of human dignity may be, it must be conceded that it has not won many friends over the last decades within mainstream bioethics.

As emphasized at the beginning of this section, this cursory overview of some more notable views within the skeptical and traditional camp is in no way meant to be conclusive. But it should give us an idea why the multiple groundings approach to human dignity, despite all its shortcomings, may in the end be in no worse condition than its main competitors. However, the hope that it offers a promising advantage over its more well-known alternatives was shown to be in vain.<sup>72</sup>

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<sup>71</sup> See Sangiovanni, p. 35.

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