

**II**

**Bioethics**



## Bioethics and the Posthumanist Imperative

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But who, me?  
—Jacques Derrida, *Limited Inc.*

### Bio-, Ethics

To ask the question, “What can bioethics be thinking?” is to raise the question not only of its institutional norms, which are powerfully vested indeed, but also of its philosophical norms. In that light, I will make the case that bioethics in its dominant mode of practice needs to undertake what philosopher Cora Diamond (following Wittgenstein) calls a “grammatical redescription”<sup>1</sup> of its chosen domain if it is to more fully and responsibly address the “bio-” of “bioethics”—the question of what Jacques Derrida calls simply (but not so simply, of course) “the living in general.”<sup>2</sup>

Within the constraints of this essay, I can only provide a snapshot of contemporary bioethics with reference to one or two of its most well known practitioners. In that light—to glance ahead for a moment—the first point I’d like to make is that contemporary bioethics in its most institutionally powerful form is largely if not exclusively within the purview of *policy studies* and, within that, in policies in healthcare and medicine, with all of the strings attached that one might expect. Indeed, contemporary bioethics is best understood not as ethics at all, but rather as the apotheosis of what Michel Foucault has analyzed as the rise of “bio-power” during the modern period, within which the areas of “health” and what will come to be called the “biomedical” take on new, politically central roles directly linked to the reproduction of both the state and capitalist relations.<sup>3</sup> In this context, Foucault argues, “the emergence of the health and physical well-being of the population in general” becomes “one of the essential objectives of political power.”<sup>4</sup>

In light of Foucault's analysis of "bio-power" and its manifestation in the "medico-administrative" edifice, the root problem with contemporary bioethics is this: Bioethics presumes to serve as the self-designated conscience for those contemporary biotechnical apparatuses and institutions that exert power over life and death, but the obvious problem here is that the functions of "conscience" and those of establishing policies palatable to both state and economic power do not always or even often go hand in hand. Moreover, while there may be precious few compulsions on the side of conscience for the field of bioethics, there is no shortage of them on the side of policy, so that the tail does indeed wag the dog in an arrangement that critic David Shenk calls *Real Ethik*: "To simply declare certain procedures [such as human cloning] immoral and call for an immediate and permanent ban," he writes, "is to ignore brazenly the history of technology, one lesson of which might fairly be summarized as 'If it can be done, it will be done.'"<sup>5</sup>

Of course, such a position is cause for concern, and some of it has come from within the community of bioethicists themselves. Carl Elliott, who hopes to make the field more philosophically and ethically responsive to the real complexities it faces, puts it this way:

[I]f the occupational hazard of philosophy is uselessness, that of medicine is an unthinking pragmatism. . . . Constrained by the demand for immediately useful answers, clinical ethics (at its worst, at any rate) comes dangerously close to being a purely technical enterprise carried out in isolation from any kind of deep reflection about the examined life.<sup>6</sup>

From this vantage, it is not surprising that, as Elliott puts it,

the law is the *lingua franca* of bioethics. The language in which bioethics is discussed revolves around largely quasi-legal notions such as consent, competence, rights to refuse treatment, to have an abortion and so on. . . . [B]ut I also think that the law's influence on bioethics has been much deeper and more subtle. It has given us a picture of morality as somehow like the law in *structure*.<sup>7</sup>

Elliott continues,

This way of reasoning says: we can figure out what to do in this case if we can just get straight about what a person is. That is, we know how to treat a person, so if we decide that this marginal being is a person—a fetus, an anencephalic or a neurologically damaged adult—or, say, a primate used in biomedical research—then a conclusion about how we should morally treat that marginal being will logically follow.<sup>8</sup>

But the problem here, from Elliott's point of view, is "the notion that we can somehow define what a person is apart from our *moral attitudes* towards persons,"<sup>9</sup> a procedure which

ignores the fact that “this is not the way our moral grammar works, in fact, just the opposite. Our moral attitudes are not *grounded* by a theory of persons; they are *built into our language*. Part of what we mean by the word ‘person’ entails a certain moral attitude.”<sup>10</sup>

Trying to derive moral precepts from legalistic hair-splitting about the definition of the word “person” gets things backward, in other words, and when Elliott says “moral grammar” here, he means it in a specifically Wittgensteinian sense, as in Wittgenstein’s well known statement that “to imagine a language is to imagine a form of life.”<sup>11</sup> And equally Wittgensteinian is his contention that “bioethics generally, if implicitly, assumes its subject matter to be questions of conduct and (sometimes) character.” But it almost never confronts head-on

questions about the sense or meaning of life, and it considers only in very awkward constructions (such as “quality of life”) those questions about what makes life worth living. These are ultimate questions about the framework against which our judgments of value get their sense, but they are for the most part absent, or at least hidden, in mainstream bioethics.<sup>12</sup>

To put it another way, we may well agree with the pragmatism of *Real Ethik* in bioethics that dictates shifting “from policies of stark authorization/prohibition to a web of regulation and incentives, from ultimatums to real diplomacy, from grandstanding to nuance and compromise”<sup>13</sup>—but in the name of *what*, exactly, against what “background,” to use the Wittgensteinian term? The answer typically given by bioethics is “to maximize the general social welfare and to minimize harm,”<sup>14</sup> but such a reply, of course, begs all sorts of questions, not the least of which is how it can be distinguished from a simple appeal to ethnocentric prejudice and pragmatic expediency in the service of the various vested interests already noted by Foucault. And on this point, nothing is more symptomatic of the current state of bioethics than its inability or unwillingness to address the ethical issues raised by dramatic changes over the past thirty years in our knowledge about the lives, communication, emotions, and consciousness of a number of nonhuman species.<sup>15</sup> This is entirely to the point for the field of contemporary bioethics, of course, simply because millions of animals are “used” in biomedical research each year.<sup>16</sup>

This problem is perfectly exemplified, it seems to me, by bioethicist Arthur Caplan’s attempt to address the question of our obligations to non-human animals, especially those used in biomedical research, in a recent essay on the ethical complexities of xenotransplantation (transplanting animal organs in humans). I choose Caplan here not because he is an easy mark, a retrograde figure in the field; quite the contrary, he is in some ways one of its more progressive voices. And he is certainly one of its most visible; in addition to running the University of Pennsylvania Center for Bioethics, he is a regular columnist for MSNBC and appears regularly in the major media as the designated “expert” in contemporary bioethics.

Caplan's essay, "Is the Use of Animal Organs for Transplants Immoral?" displays exactly the kind of confusion to which Elliott objects, and on every page evinces the kind of contamination of ethical rigor by pragmatic expediency and ethnocentrism that is the hallmark of the *Real Ethik* of contemporary bioethics.<sup>17</sup> At the core of the essay, Caplan argues that it is acceptable to use some animals, even primates, to "demonstrate the feasibility of xenografting in human beings," and that this is so for a familiar set of reasons. First, he argues that the differences "in the capacities and abilities" of humans and primates—he lists the familiar litany: language, tool use, rationality, intentionality, and so on—justify a different moral status. He concedes that all of these are found in nonhuman species, but asserts that "Humans are capable of a much broader range of behavior and intellectual functioning than is any other primate species," and that therefore humans and non-human animals are not "moral equivalents."<sup>18</sup>

One might well begin by observing that there is a fundamental slippage here that needs to be clarified before we can make any real headway on this question. As even the most famous animal rights philosopher on the planet, Peter Singer, has argued, the question is not and has never been whether humans and nonhuman animals are "the same" morally. As Singer puts it, the issue

is *not* saying that all lives are of equal worth or that all interests of humans and other animals are to be given equal weight, no matter what those interests may be. It *is* saying that where animals and humans have similar interests—we might take the interest in avoiding physical pain as an example, for it is an interest that humans clearly share with other animals—those interests are to be counted equally, with no automatic discount just because one of the beings is not human.<sup>19</sup>

A further problem with Caplan's position is that it is open to objection by means of what is often called "the argument from marginal cases." As philosopher Paola Cavalieri puts it,

concretely it is not true that all human beings possess the attributes that allegedly mark the difference between us and the other animals. It is undeniable that there exist within our species individuals who, on account of structural problems due to genetic or developmental anomalies, or of contingent problems due to diseases or accidents, will never acquire, or have forever lost, the characteristics—autonomy, rationality, self-consciousness, and the like—that we consider as typically human.<sup>20</sup>

This objection undermines as well Caplan's second point: "Human beings can be ethical," he writes. "They may act this way only rarely and some may never do so, but we are creatures capable of moral activity and moral responsibility. Humans can be moral agents, while animals, even other primates, are moral subjects."<sup>21</sup> As we have just seen, however,

even if this assertion is true of nonhuman animals, it is certainly not true of all human beings—namely, those “marginal cases” just referenced. And yet we refrain from using them to “harvest” organs while we do so with other animals who are demonstrably superior in relevant moral characteristics.

Moreover, as Cavalieri points out, a position such as Caplan’s rests on a fundamental slippage between the question of “moral agents” and “moral patients.” “This view may appear plausible,” she writes, “but is in fact ambiguous. It can indeed mean two different things: (a) that only rational and autonomous beings can be morally responsible, or (b) that only what is done to rational and autonomous beings has moral weight.”<sup>22</sup> As Cavalieri puts it, “If the moral agent is a being whose *behavior* may be subject to moral evaluation, the moral patient is a being whose *treatment* may be subject to moral evaluation.”<sup>23</sup> From this vantage, it is irrelevant, as Caplan puts it, that “animals are incapable of being held to account for what they do,” since the fundamental issue here is not *their* behavior but rather *our* treatment of them. (One might say the same, after all, of a human being suffering from severe schizophrenia, or a small child, or an elderly person suffering from Alzheimer’s disease, and so on.)

Caplan’s final line of defense in response to the marginal cases problem is perhaps the most telling and disturbing of all. The reason that even the severely retarded or permanently comatose person should not be used in the same research in which we use a more fully endowed great ape

has nothing to do with the properties, capacities, and abilities of children or infants who lack and have always lacked significant degrees of intellectual and cognitive function. The reason they should not be used is because of the impact using them would have upon other human beings. . . . The assessment of the morals of how we treat each other and animals does not hinge simply on the properties that each possess [*sic*]. Relationships must enter into the equation as well, and when they do the balance begins to tip toward human rather than animal interests when there is a conflict.<sup>24</sup>

The problem with *this* position, of course, is at least twofold. Ethically speaking, it is a not even thinly disguised appeal to ethnocentrism and prejudice under the cover term “relations”—in this case, prejudice on the basis of species membership; and logically speaking, it is utterly circular.

As for the first, this appeal to “relational” rather than individual characteristics, though it seems commonsensical and clear-headed enough, is in fact ethically pernicious, and just *how* pernicious is revealed by a little experiment that Cavalieri conducts with it in her book *The Animal Question*. First, she quotes exactly the same “relational” position held by Caplan—this time from the work of Robert Nozick. “Perhaps it will turn out,” Nozick contends,

that the bare species characteristic of simply being human . . . will command special respect only from other humans—this is an instance of the general principle that the members of any species may legitimately give their fellows more weight than they give members of other species (or at least more weight than a neutral view would grant them). Lions, too, if they were moral agents, could not then be criticized for putting other lions first.<sup>25</sup>

But what is revealed about this position, Cavalieri asks, if we plug in other terms instead:

perhaps it will turn out that the bare racial characteristic of simply being white . . . will command special respect only from other whites—this is an instance of the general principle that the members of any race may legitimately give their fellows more weight than they give members of other races (or at least more weight than a neutral view would grant them). Blacks, too . . . could not then be criticized for putting other blacks first.<sup>26</sup>

Caplan may want to reject the view that says “that we are powerful and the primates are less so; therefore they must yield to human purposes”—“this line of response,” he contends, “is far removed from the kinds of arguments that should be mustered in the name of morality.”<sup>26</sup> But the point here, of course, is that this *is* the kind of argument Caplan is making. Moreover—to return to my second point above—it is not just that Caplan’s position is ethnocentric; it is also circular, to wit: “we care about being X because we think of them as ‘persons,’” and “we think of them as ‘persons’ because we care about them.” What is needed here, of course, is a *disarticulation* of the question of “persons” from the question of membership in the species *Homo sapiens*. Here, it is important to note that the Wittgensteinian point about moral attitudes being “built into our language” is not some sort of positivism (though it is sometimes understood that way)<sup>28</sup> that holds that we should simply take for granted what “we” mean by “persons.” On the contrary, it suggests that we should be extraordinarily, indeed philosophically, attuned to how our “forms of language”—what we say, what we write, how we ask philosophical questions—open up certain lines of thought, and indeed the ability to imagine entire worlds (as Wittgenstein puts it), and severely foreclose others.

So when Caplan asks if it is ethical to use animals to study the feasibility of cross-species xenografting, and he responds that “in part, the answer to this question pivots on whether or not there are plausible alternative models to the use of animals,”<sup>29</sup> we can see, in light of what I have just said, that the question ostensibly being asked has already been decided, since the question is really not “can we consider using them?” but rather, simply, “under what pragmatic circumstances?” Here—as Wittgenstein might put it—animals can’t be persons because they already aren’t.

## Beyond “Rights”

So far, I have been responding to the shortcomings of bioethics in its own terms—that is to say, the terms of analytical philosophy and what is sometimes called its “justice tradition.” As I hope I have shown (far too hastily, I’m afraid), even in its own terms it is woefully inadequate—both ethically and philosophically—for confronting the complex questions of life, death, and our relations to other living beings that far exceed what “bioethics” currently constitutes as its unified field. At this juncture, we might move in one of two directions. Along one tack, we might remain within the purview of the analytical tradition and work more diligently to apply it consistently and dispassionately to the questions just raised—which is essentially what we find in the work of animal rights philosophers such as Cavalieri, Regan, and Singer. Or conversely, we might shift to another way of doing philosophy altogether, one that has a very different notion of the relationship between the practice of philosophy and the kinds of questions that animate, or ought to animate, bioethics. I want to now explore this second option, partly because the first has already been done so well by Cavalieri and others, and partly because the second will help us to tease out the limitations of the analytical tradition (which are, I believe, severe) for addressing questions of bioethics in the broadest sense.

We can begin to get a sense of what I mean by taking seriously Cora Diamond’s contention—an essentially Wittgensteinian contention—that the “grammatical description” of a set of problems or questions is absolutely crucial to, and in some sense determinative of, our ability to do justice to the ethical challenges they pose.<sup>30</sup> For Diamond, the fundamental question of *justice* takes place in an essentially different conceptual register than the question of “rights.” As she argues, “when genuine issues of justice and injustice are framed in terms of rights, they are thereby distorted and trivialized,” in part because the language of rights still bears the imprint of the context in which it was shaped: Roman law and its codification of *property* rights—not least, of course, property rights over slaves.<sup>31</sup> But the question of justice cannot be reduced to the question of the fairness or unfairness of a share. “The attempt to give voice to real injustice in the language of rights,” Diamond argues, “falters because of the underlying tie between rights and a system of entitlement that is concerned, not with evil done to a person, but with how much he or she gets compared to other participants in the system.”<sup>32</sup> And so it is, she argues, that “the *character* of our conflicts is made obscure when two sides of a conflict involving very different elements of human life are expressed in the same terms,” as, for example, when Irish victims of famine are allowed to starve to death because distributing food cheaply would undermine the rights of traders to make a profit.<sup>33</sup>

There are two different levels of value here, in other words,<sup>34</sup> and this is what is missed by *both* “sides” of what Diamond bemusedly calls “that great arena of dissociated thought, contemporary debate about animals’ rights.”<sup>35</sup> The problem with *both* sides of the debate

is that they are locked into a model of justice in which a being does or does not have rights on the basis of its possession of empirically determinable, morally significant characteristics (Singer's "interests," Regan's "inherent value," Caplan's "moral agency," and so on). *Both* sides argue "that what is involved in moral thought is knowledge of empirical similarities and differences, and the testing and application of general principles of evaluation," so that "if a Moral Agent believes it is wrong to torment a cat, this must depend on his having some such general principle as that The Suffering of a Sentient Being is a Bad Thing and that one ought therefore to prevent such bad states of affairs from existing."<sup>36</sup>

But what such accounts leave out for Diamond is "what human beings have *made of* the difference between human beings and animals."<sup>37</sup> What is interesting about Diamond's assertion is that it cuts both ways. For her, proponents of animal rights in the analytical tradition—she has in mind primarily Singer and Regan—are wrong when they insist that the distinction between human and animal is not ethically fundamental. At the same time, however, those who *oppose* animal rights in that same analytical tradition—not least, of course, the overwhelming majority of professional bioethicists—are wrong about how that difference between humans and animals *is* relevant. "The notion 'human being' is of the greatest significance in moral thought,"<sup>38</sup> she argues, but not because it is a "biological notion."<sup>39</sup> The difference between human and nonhuman animals "may indeed start out as a biological difference, but it becomes something for human thought through being taken up and made something *of*—by generations of human beings, in their practices, their art, their literature, their religion."<sup>40</sup> "Grasping a concept," she continues, "is not a matter just of knowing how to group things under that concept; it is being able to participate in life-with-the-concept. . . . To be able to use the concept 'human being' is to be able to think about human life and what happens in it; it is not to be able to pick human beings out from other things or recommend that certain things be done to them or by them."<sup>41</sup>

But it is not at all obvious at first glance how Diamond's insistence on the priority of "human being" as an ethical concept might be enabling for those interested in deepening and extending our ability to think about the question of our relations to the living in general, including nonhuman animals. She insists, however, that the specificity of the concept of "human being" "is a main source of that moral sensibility which we may *then* be able to extend to animals. We can come to think of killing an animal as in some circumstances at least similar to homicide," she continues, "but the significance of doing so depends on our already having an idea of what it is to kill a man; and for us (as opposed to abstract Moral Agents) the idea of what it is to kill a man does depend on the sense of human life as special, as something set apart from what else happens on the planet."<sup>42</sup>

For Diamond, in other words, it is not by denying the special status of "human being" but rather by intensifying and extending it that we can come to think of nonhuman animals not as bearers of "interests" or as "rights holders," but rather as something much

more important and compelling: “fellow creatures.” That phrase “does not mean, biologically, an animal, something with *biological* life,” but rather our “response to animals as our fellows in mortality, in life on this earth.”<sup>43</sup> As Diamond might say, there is the *biological* fact of the mortality we share with animals, and then there is the *ethical* import of what human beings have *made* of that fact. She writes:

if we appeal to people to prevent suffering, and we, in our appeal, try to obliterate the distinction between human beings and animals and just get people to speak or think of “different species of animals,” there is no footing left from which to tell us what we ought to do. . . . The moral expectations of other human beings demand something of me as other than an animal; and we do something like imaginatively read into animals something like such expectations when we think of vegetarianism as enabling us to meet a cow’s eyes. There is nothing wrong with that; there *is* something wrong with trying to keep that response and destroy its foundation.<sup>44</sup>

We can get a sense of the implications of this view for the grain and texture of ethical thinking and the question of the living by following Diamond’s very interesting discussion of a highly publicized case several years ago. In a videotape smuggled out of the University of Pennsylvania’s Head Injury Laboratory, researchers and lab workers are shown making fun of a baboon who has been subjected to massive injuries in their experiments, as one of the lab workers poses with the animal while the rest of the staff laughs at what one calls the “punk look” of the its massive cranial sutures.<sup>45</sup> Viewers, almost without exception, find this tape deeply disturbing—but not, Diamond argues, in a way accountable (or defensible) by either side of the animal rights debate.

For Diamond—and here she is extending remarks on ethics by Simone Weil—the nub of the issue is that “the animal’s body, which is all it has, as a poor man’s body may be all he has, is turned into the mere butt of your jokes”; the animal “lacks the power to get away, or to resist,” and what is morally repugnant is to make this disempowerment, this abjection, the occasion for sport. But this repugnance is not easily accounted for by the rights framework, fixated as it is on the dependence of rights on interests, and interests in turn on a more or less naturalistic conception of the good of the animal. “Not being a butt of humor is not taken to be part of its good,” Diamond writes; “we cannot owe it to animals that they not be treated in some way, unless they would *suffer* from such treatment; and the idea would be that an animal cannot suffer from being ridiculed if it is not even aware that it is being ridiculed.”<sup>46</sup>

For Diamond, this example helps to illustrate two crucial points. The first, captured by the notion of “fellow creature,” is that what generates our moral response to animals and their treatment is our sense of the mortality and vulnerability that we share with them, of which the brute subjection of the body—in the treatment of animals as mere research tools, say, or the torture of human beings as political prisoners—is perhaps the most

poignant testament. For Diamond, the “horror at the conceptualizing of animals as putting nothing in the way of their use as mere stuff” is dependent upon “a comparable horror at human relentlessness and pitiliness in the exercise of power” toward other humans.<sup>47</sup> And this leads in turn to a second point that Diamond wants to make about ethics in relation to the question of the living, one that has to do with how we *relate* to that vulnerability. Here, what the rights tradition misses, in her view, is that the “capacity to respond to injustice as injustice” depends not on working out (from a safe ontological distance, as it were) who should have a fair share of this or that abstract “good,” but rather on “a recognition of *our own* vulnerability”—a recognition not demanded and in some sense actively avoided by rights-oriented thinking.<sup>48</sup>

More specifically—and here we find the full resonance of the Head Injury Lab example discussed earlier for ethics as such—“there is something wrong with the contrast, taken to be exhaustive, between demanding one’s rights and begging for kindness—begging for what is *merely* kindness. The idea that *those* are the only possibilities is . . . one of the main props of the idea that doing injustice *is* failing to respect rights.”<sup>49</sup> Contemporary moral theory “pushes apart justice, on the one hand, and compassion, love, pity, tenderness, on the other,”<sup>50</sup> but Diamond’s understanding of the question “has at its center the idea that a kind of loving attention to another being, a possible victim of injustice, is essential to any understanding of the evil of injustice.”<sup>51</sup> On this understanding, as Weil suggests, “rights can work for justice or for injustice,” and the concept of rights itself possesses “a kind of moral noncommitment to the good”<sup>52</sup>; it is, strictly speaking, *beside the point* of justice as such.

It may come as something of a surprise, then, that Diamond finds in the contemporary animal *rights* movement a profundity not available in the idea of mere animal *welfare*. “The welfarist view,” she writes, “is essentially that we should ease the burdens we impose on animals . . . without ceasing to impose burdens on them, burdens that we impose because we *can*, because they are in general helpless” to resist us<sup>53</sup>; and “the force of the animal rights movement comes from the sense of the profound injustice of this.” If we reject the opposition, all too dominant in contemporary moral theory, of justice and compassion, rights and pity, what is revealed, in fact, is “a kind of pitilessness at the heart of welfarism, a willingness to go ahead with what we do to the vulnerable, a willingness to go on subjecting them to our power because we can,” that is different not in kind but only in degree from what goes on in the animal research labs. “‘Willingness’ is indeed too weak a word,” she writes; “we *will* not give up a form of life resting on the oppression of others; and the will to continue exercising power in such ways . . . is inseparable from the ‘compassion’ we express in welfarism.” What the idea of “animal rights” points toward but cannot articulate is that what is needed is attention to “how deeply attached we are to the institutions that make possible all sorts of goods for ourselves at terrible costs to others, an attachment entirely compatible with attempts to make those costs a little less burdensome.”<sup>54</sup>

## Taking Bioethics Off “Auto”-Pilot

The originality and subtlety of Diamond’s position lies in no small part, as we have seen, in her separation of the question of justice from the discourse of rights—and beyond that, in her insistence that vulnerability and compassion reside at the very heart of justice. But my interest in her work also concerns its attempt “to show how philosophical misconceptions about language are connected with blindness to what our conceptual life is like.”<sup>55</sup> It is here, I think, that Diamond’s approach runs aground, and for a very specific reason. She is certainly right in her Wittgensteinian suggestion that our ability to think about questions of bioethics depends on the language—and the understanding of language—that we bring to it. But what we find in her work, I believe, is a view of how language operates in a philosophical context—a view directly linked to her notion of “human being”—that undermines her attempt to open the question of justice beyond the human sphere alone.

The problem is hinted at, for example, by how easily the terms “language” and “conceptual life” drift apart in the formulation of Diamond’s I just quoted, and I want to bring out what is at stake here for ethics by way of contrast with the work of Jacques Derrida. I choose Derrida not so much because of—or at least not *first* because of—his concept of language (though “concept” is not how he would put it, of course), but rather because we find in his recent work a gathering of terms around questions of justice and the living that is strikingly similar to what we have just seen in Diamond.

It will come as a surprise to any reader, I think, that in his recent work on ethics and the question of nonhuman others, Derrida returns to what serves in *Singer’s* animal rights philosophy as the very benchmark for the ethical consideration of animals: namely, the utilitarian philosopher Jeremy Bentham’s contention that the relevant question here is not “can they talk,” or “can they reason,” but “can they *suffer*?” For Derrida, putting the question in this way “changes everything,” because in the philosophical lineage that runs from Aristotle through Descartes and Heidegger to Lacan, posing the question of the animal in terms of either the capacity for thought or language “determines so many others concerning *power* or *capability* [*pouvoirs*], and *attributes* [*avoirs*]: being able, having the power to give, to die, to bury one’s dead, to dress, to work, to invent a technique.”<sup>56</sup> What makes Bentham’s reframing of the problem so powerful is that now, “The question is disturbed by a certain *passivity*. It . . . testifies to sufferance, a passion, a not-being-able.” “What of the vulnerability felt on the basis of this inability?” he continues; “what is this non-power at the heart of power? . . . What right should be accorded it? To what extent does it concern us?” It concerns us very directly, in fact, for “mortality resides there, as the most radical means of thinking the finitude that we share with animals, the mortality that belongs to the very finitude of life, to the experience of compassion, to the possibility of sharing the possibility of this non-power . . . the anguish of this vulnerability.”<sup>56</sup>

In Derrida as in Diamond, the vulnerability and, ultimately, mortality that we share with nonhuman animals, and the compassion that they elicit are at the very core of the

question of ethics: not just “mere” kindness, but *justice*. And for Derrida as for Diamond, the force of “what is still presented in such a problematic way as *animal rights*” is that it “involves a new experience of this compassion,” one that has opened anew for ethics the question of “suffering, pity and compassion,” “the sharing of this suffering among the living,” and “the law, ethics, and politics that must be brought to bear upon this experience of compassion.”<sup>58</sup> For Derrida as for Diamond, then, the force of the animal rights movement outstrips its own ability to articulate the questions it addresses, questions that require a different conception of ethics. For Singer, as we have already suggested, ethics means the application of what Derrida will elsewhere characterize as a “calculable process,” in this case quite literally: the utilitarian calculus that tallies up the “interests” of the particular beings in question in a given situation, regardless of their species, and determines what counts as a just act by calculating which action maximizes the greatest good for the greatest number.<sup>59</sup> In doing so, however, Singer would reduce ethics to the very antithesis of ethics in Derrida’s terms because it would overleap what Derrida calls “the ordeal of the undecidable,” which “must be gone through by any decision worthy of the name.” For Derrida, “A decision that didn’t go through the ordeal of the undecidable would not be a free decision, it would only be the programmable application or unfolding of a calculable process. It might be legal; it would not be just.”<sup>60</sup>

Moreover, such a “calculation,” in its derivation of the shared “interests” of human and nonhuman animals, would confuse what Diamond calls “biological concepts” with the concepts proper to *ethical* thought. This is exactly what Derrida has in mind, I think, in his criticism of “geneticism” and what he calls a “biological continuum, whose sinister connotations we are well aware of.” “I have thus never believed in some homogeneous continuity between what calls *itself* man and what *he* calls the animal,” which relies upon “a naïve misapprehension of this abyssal rupture.”<sup>61,62</sup> Here we might well ask why Derrida’s appeal to the shared mortality of human and nonhuman animals is not itself a form of this very continuum, were it not for the fact that Derrida provides an answer in insistence on the “abyssal rupture” between the human and animal—his version, with a very different inflection (as we are about to see), of Diamond’s insistence on the importance of “what we humans have *made* of the difference” between humans and animals.

At this juncture, however—and it is marked quite precisely by Derrida’s emphasis on “what calls *itself* man and what *he* calls the animal”—some fundamental differences between Derrida and Diamond begin to come into view, not least of all in the articulation of this peculiar thing called “the human.” We can begin to get a sense of this difference by returning to the crucial role that vulnerability, passivity, and, ultimately, mortality play for both Diamond and Derrida. Let us recall Diamond’s contention that “We can come to think of killing an animal as in some circumstances at least similar to homicide, but the significance of doing so depends on our already having an idea of what it is to kill a man.”<sup>63</sup> Such an idea depends, however, on precisely the kind of relation to our own mortality that is rejected in Derrida’s work; for with Derrida, *contra* Diamond, we *never* have

an idea of what death is *for us*—indeed, death is precisely that which can never be *for us*—if we did, then the ethical relation to the other would be immediately foreclosed.

This is clearest, perhaps, in Derrida's reading of Heidegger and his concept of "being-toward-death," a concept that appears—but only appears—to do justice to the passivity and finitude in which the ethical resides. As Richard Beardsworth characterizes it, for Derrida, Heidegger *appropriates* the limit of death "rather than returning it to *the other* of time. The existential of 'being-towards-death' is consequently a 'being-able' (*pouvoir-être*), not the impossibility of all power" whose passivity and vulnerability ties the self to the other in an ethical bond. For Derrida, on the other hand,

the "impossibility" of death for the ego confirms that the experience of finitude is one of radical passivity. That the "I" cannot experience its "own" death means, firstly, that death is an immanence *without* horizon, and secondly, that time is that which exceeds my death, that time is the generation which precedes and follows me. . . . Death is not a limit or horizon which, re-cognized, allows the ego to assume the "there" [as in Heidegger's "being-toward-death"]; it is something that never arrives in the ego's time, a "not-yet" which confirms the priority of time over the ego, marking, accordingly, the precedence of the other over the ego.<sup>64</sup>

Because the ego cannot experience its own death, "The recognition of the limit of death is always through another and is, therefore, at the same time the recognition of the other."<sup>65</sup> And since the same is true *of* the other in relation to its *own* death, what this means is that death—as an absolute horizon that nevertheless never appears *as such, for me*—"impossibilizes existence," and does so both for me *and* for the other, since death is no more "for" the other than it is for me.<sup>66</sup> But it is, paradoxically, in just this impossibility that the possibility of justice resides, the (as it were) permanent call of the other in the face of which the subject always arrives "too late."

Such is the full resonance, I think, of Derrida's recent contention with regard to Bentham: "The word *can* [*pouvoir*] changes sense and sign here once one asks 'can they suffer?' The word wavers henceforth. As soon as such a question is posed what counts is not only the idea of a transitivity or activity (being able to speak, to reason, and so on); *the important thing is rather what impels it towards self-contradiction, something we will later relate back to auto-biography.*"<sup>67</sup> What Derrida has in mind by the "auto-" of "auto-biography" here is exemplified, I think, in Diamond's picture of the human in relation to ethics, a picture in which, as in Heidegger, vulnerability, passivity, and finitude are recuperated as a "being-able" and a "transitivity," thus ontologizing the split between the human and the other, across which the human then reaches, so to speak, in an act of benevolence towards an other we "imagine" is enough like us to warrant ethical treatment. And in Diamond, this "human being" is an essentially homogeneous and undifferentiated creature that is capable of a more or less transparent relationship to its own nature, a relationship that it

*then* expresses in and through language in a second-order operation, and which it may *then* extend benevolently (or not) to the nonhuman other.

This seems clear enough, for example, in Diamond's contention that the "basis for justice" lies in the human being's "unreasoned expectation of good,"<sup>68</sup> or her contention that "we do something like imaginatively read into animals something like such expectations when we think of vegetarianism as enabling us to meet a cow's eyes."<sup>69</sup> In both of these examples, what the language of "unreasoned good," "moral expectations," and "imaginatively read into" attempts to paper over (unsuccessfully, I think) is just how undifferentiated in relation to itself the "human" is in this account, and how hypostatized its relations to the nonhuman other have become. And matters are not helped any by her contention that "Our *bearing* the moral appeal of an animal is our hearing it speak—as it were—the language of our fellow human beings."<sup>70</sup>

There are two distinct issues here that we need to treat in turn. The first is who, exactly, these "fellow human beings" are, particularly if we have ruled out recourse to "a biological concept," as Diamond insists we should. The second—and I will return to this in a moment—is that even if we know who those "fellows" are, what does it mean to say that there is "a language" proper to them, and that the animal must speak it if it is to be heard morally?

As for the first of these, perhaps the most succinct way to make my point is simply to note the question of ethnocentrism that it begs. For example, Diamond writes in "Experimenting on Animals" that if we want to know whether it is a good thing to treat dogs differently from other animals, or cows differently from other animals,

it is absurd to think these are questions you should try to answer in some sort of totally general terms, quite independently of seeing what particular human sense people have *actually* made out of the differences or similarities you are concerned with. And this is not predictable. If the Nuer, for example, had not actually made something humanly remarkable out of giving cows a treatment quite different from that accorded other animals, one could not know that "singling cows out for special treatment" could come to that.<sup>71</sup>

The first half of Diamond's contention may be right but the problem is that there is nothing to prevent us from carrying out exactly the same sort of thought experiment here that we saw Cavalieri carry out with Nozick's "relational" view of ethics. (To wit: "if the Germans, for example, had not actually made something humanly remarkable out of giving Aryans a treatment quite different from that accorded Jews," and so on).

We seem to be faced, then, with a double bind: How can we agree with Diamond's rejection of basing ethical questions on empirical data and "biological concepts," and at the same time distance her view from the pernicious ethnocentrism harbored by a completely "relational" view of ethics? And at this juncture, we suspect that an altogether

different way of thinking about these problems may be necessary, a way that is invoked, for Derrida, by the name of “Nietzsche.” From that vantage—the vantage staked out, say, in Nietzsche’s “Truth and Lie in the Ultra-Moral Sense”—we might say that we find in Diamond the same problem we see in Richard Rorty’s concept of “belief.”<sup>72</sup> The question here is not so much the opening of the self-enclosed *ethnos* to an equally hypostatized outside named by “the biological” or “science,” but rather that there is nothing *in the relation of the ethnos to itself*—the relation of the “auto-” to its “autobiography,” to use Derrida’s terms—that necessitates an ethical opening to the other by means of an alterity installed not *outside* the *ethnos* (who may then benevolently recognize—or not—such difference from a safe ontological distance), but rather at its very core, as the truth of the subject itself. And here, it is useful to remember the specific sense of Nietzsche’s phrase “human, all too human,” in which, as Diana Fuss puts it, “the ‘all too’ syntactically locates at the center of the human some unnamed surplus—some residue, overabundance, or excess. The doubling of the human that embraces the ‘all too’ suggests that this excess may be internal to the very definition of the human, an exteriority embedded inside the human as its condition of possibility. If humanness constitutes itself through its own superfluity, then to be human is already to be, in some profound sense, nonhuman.”<sup>73</sup>

For Derrida, of course, that nonhuman alterity at the very core of the human is language itself, understood in his specific sense as an “arche-writing” constituted in and through “*différance*.” I cannot revisit here the contours of Derrida’s theory of language (which are in any case well known), but instead want only to emphasize how that view of language opens up our ability to think the ethical question of our relation to the living. For Derrida, “all the concepts of metaphysics”—including, of course, self-presence, the transparent presence of the self to itself of the sort we saw in Diamond—function to “*cover up* the strange ‘movement’ of this difference. But this pure difference, which constitutes the self-presence of the living present, introduces into self-presence from the beginning all the impurity putatively excluded from it. The living present springs forth out of its nonidentity with itself and from the possibility of a retentional trace. It is always already a trace.” And what this means, in turn, is that “the trace is the intimate relation of the living present to its outside, the opening to exteriority in general.”<sup>74</sup>

The ethical implications of this view are captured well, I think, by Vicki Kirby, and they form a stark contrast to Diamond’s contention that the ethical call of the nonhuman animal depends upon our “hearing it speak *our* language.” As Kirby puts it, if one places difference and alterity outside the subject and its means of representation, then “this division actually severs the possibility of an ethical relation with the Other. . . . [E]thical responsibility to the Other therefore becomes an act of conscious humility and benevolent obligation to an Other who is not me, an Other whose difference is so foreign that it cannot be known.” A Derridean reading, on the other hand, would surely discover that alterity and difference within the subject itself, as “a constitutive breaching, a recalling and

differentiating within the subject, that hails it into presence. As impossible as it may seem, the ethical relation to radical alterity is to an other that is, also, me.<sup>75</sup>

This is what Derrida has in mind, I think, when he contends in the interview “Eating Well” that

The idea according to which man is the only speaking being, in its traditional form or in its Heideggerian form, seems to me at once undisplaceable and highly problematic. Of course, if one defines language in such a way that it is reserved for what we call man, what is there to say? But if one reinscribes language in a network of possibilities that do not merely encompass it but mark it irreducibly from the inside, everything changes. I am thinking in particular of the mark in general, of the trace, of iterability, of *différance*. These possibilities or necessities, without which there would be no language, *are themselves not only human*. . . . And what I am proposing here should allow us to take into account scientific knowledge about the complexity of ‘animal languages,’ genetic coding, all forms of marking within which so-called human language, as original as it might be, does not allow us to ‘cut’ once and for all where we would in general like to cut.<sup>76</sup>

At this juncture, we can feel the full force of the difference between Derrida’s post-humanist position and how Diamond’s humanism formulates the relation between language, ethics, and the human/animal divide. In “Injustice and Animals,” Diamond suggests that applying the concept of justice to nonhuman animals is “a response to communicative pressure,” “the ways of speaking we find in response to activities and experiences may accommodate a merely superficial kind of ‘meaning it’; or we may be able to find words that more fully render experiences or activities, *words that can be meant more fully*.”<sup>77</sup> But it ought to be clear by now that the distinction between superficially “meaning it” and *really* “meaning it” reinstates—like J. L. Austin’s distinction between “serious” and “non-serious” performatives that Derrida critiques in “Signature Event Context”—the subject as “auto-,” “a free consciousness present to the totality of the operation, and of absolutely meaningful speech [*vouloir-dire*], master of itself: the teleological jurisdiction of an entire field whose organizing center remains *intention*.”<sup>78</sup>

Over and against this recovery of humanism by what one might think of as the “Analytical-with-Apologies” tradition, Derrida counterposes what he characterizes as the “corrupting” and “contaminating” work of “iterability,”<sup>79</sup> which “does not signify simply . . . repeatability of the same, but rather alterability of this same idealized in the singularity of the event.”<sup>80</sup> As such, it names a form of ethical responsibility that entails vigilant attention to each specific, interfolded iteration of “rule and event,” to “*this particular* undecidable” that “opens the field of decision or decidability,”<sup>81</sup> one that “is always a *determinate* oscillation between possibilities” that takes place “in strictly *defined* situations” that are “*pragmatically* determined.”<sup>82</sup> Here, we find a sense of ethics obviously opposed to

the discourse of “(animal) rights,” one quite congenial, or so it would seem, to Diamond. But Derrida’s point, of course is that the question “what is to be done?” can only be addressed in light of a prior one that in some sense determines the entire ethical field: “by whom?”

### Notes

1. Cora Diamond, “Injustice and Animals,” in *Slow Cures and Bad Philosophers: Essays on Wittgenstein, Medicine, and Bioethics*, ed. Carl Elliott (Durham, NC: Duke University Press, 2001), 123.
2. Derrida uses this phrase in many places, but the salient context for my purposes is his essay, “The Animal That Therefore I Am (More to Follow),” trans. David Wills, *Critical Inquiry* 28 (Winter 2002): 395.
3. Michel Foucault, “Right of Death and Power Over Life,” in *The Foucault Reader*, ed. Paul Rabinow (New York: Pantheon, 1984), 263.
4. Michel Foucault, “The Politics of Health in the Eighteenth Century,” in *The Foucault Reader*, ed. Paul Rabinow (New York: Pantheon, 1984), 277.
5. David Shenk, “Biocapitalism: What Price Genetic Revolution?,” *Harper’s* (December 1997): 44.
6. Carl Elliott, *A Philosophical Disease: Bioethics, Culture, and Identity* (New York: Routledge, 1999), xxii.
7. *Ibid.*, xxviii.
8. *Ibid.*, 159.
9. *Ibid.*
10. *Ibid.*, 160.
11. Quoted in Carl Elliott, “Introduction: Treating Bioethics,” in *Slow Cures and Bad Philosophers*, 12. It is beyond the scope of this essay to take up Wittgenstein’s work in any detail, but I have investigated this question elsewhere, in my essay “In the Shadow of Wittgenstein’s Lion: Language, Ethics, and the Question of the Animal,” in *Zoontologies: The Question of the Animal* (Minneapolis: University of Minnesota Press, 2003), 1–57; it is also available as a chapter of my *Animal Rites: American Culture, the Discourse of Species, and Posthumanist Theory* (Chicago: University of Chicago Press, 2003), 44–94.
12. Elliott, *A Philosophical Disease*, xxxi.
13. Shenk, “Biocapitalism,” 44.
14. *Ibid.*
15. These developments are not hard to come by; they have been widely popularized on cable television venues such as The Animal Planet station, and in series such as PBS’s *The Animal Mind*, hosted by George Page. But the reader should also consult, among many others, *The Great Ape Project: Equality Beyond Humanity*, eds. Paola Cavalieri and Peter Singer (New York: St. Martin’s Press, 1993); *Anthropomorphism, Anecdotes, and Animals*, eds. Robert W. Mitchell, Nicholas S. Thompson,

and H. Lyn Miles (Albany, NY: State University of New York Press, 1997); and, especially, *Interpretation and Explanation in the Study of Animal Behavior*, eds. Marc Bekoff and Dale Jamieson (Boulder, CO: Westview Press, 1990).

16. Reliable figures on the exact number of animals used for research in the United States are hard to come by, for one simple reason: Mice, rats, and birds account for upwards of eighty percent of all animals used, but because they are not covered by the United States Animal Welfare Act, laboratories are not required to report their numbers. Estimates for total number of animals used range from seventeen to seventy million. See F. Barbara Orlans, "Data on Animal Experimentation in the United States: What They Do and Do Not Show," *Perspectives in Biology and Medicine* 37, no. 2 (Winter 1994). Readers interested in pursuing these questions should consult, among others, Orlans's *In the Name of Science: Issues in Responsible Animal Experimentation* (New York: Oxford University Press, 1993), and Hugh LaFollette and Niall Shanks, *Brute Science: Dilemmas of Animal Experimentation* (New York: Routledge, 1996).

17. Arthur L. Caplan, *Am I My Brother's Keeper?: The Ethical Frontiers of Biomedicine* (Bloomington, IN: Indiana University Press, 1997), 101–114.

18. *Ibid.*, 108.

19. Peter Singer, "Prologue: Ethics and the New Animal Liberation Movement," in *In Defense of Animals*, ed. Peter Singer (New York: Harper and Row, 1985), 9.

20. Paola Cavalieri, *The Animal Question: Why Nonhuman Animals Deserve Human Rights*, trans. Catherine Woollard (New York: Oxford University Press, 2001), 76.

21. Caplan, *Am I My Brother's Keeper?*, 109.

22. Cavalieri, *The Animal Question*, 28.

23. *Ibid.*, 29.

24. Caplan, *Am I My Brother's Keeper?*, 111.

25. Quoted in Cavalieri, *The Animal Question*, 80.

26. *Ibid.*, 80.

27. Caplan, *Am I My Brother's Keeper?*, 110.

28. As Vicki Hearne writes of "thinkers who like to say that a cat cannot be said to be 'really' playing with a ball because a cat does not seem to know our grammar of what 'playing with' and 'ball' are" (a position that is sometimes attributed to Wittgenstein): "This more or less positivist position requires a fundamental assumption that 'meaning' is a homogeneous, quantifiable thing, and that the universe is dualistic in that there are only two states of meaning in it—significant and insignificant, and further that 'significant' means only 'significant to me' . . . Such positivism of meaning looks often enough like an injunction against the pathetic fallacy, but seems to me to be quite the opposite" Hearne, *Adam's Task: Calling Animals By Name* (New York: Pantheon, 1986), 238.

29. Caplan, *Am I My Brother's Keeper?*, 107–108.

30. Diamond, "Injustice and Animals," 123.

31. *Ibid.*, 120.

32. Ibid., 121.
33. Ibid., 124.
34. Ibid., 121.
35. Cora Diamond, "Losing Your Concepts," *Ethics* 98, no. 2 (January 1998): 276.
36. Cora Diamond, "Experimenting on Animals: A Problem in Ethics," in *The Realistic Spirit: Wittgenstein, Philosophy, and the Mind* (Cambridge, MA: MIT Press, 1991), 350.
37. Ibid., 351.
38. Ibid., 264.
39. Ibid.
40. Ibid., 351.
41. Diamond, "Losing Your Concepts," 266.
42. Diamond, "Experimenting on Animals," 353.
43. Cora Diamond, "Eating Meat and Eating People," in *The Realistic Spirit*, 329.
44. Ibid., 333.
45. Diamond, "Injustice and Animals," 148n.41.
46. Ibid., 137–138.
47. Ibid., 136.
48. Ibid., 121.
49. Ibid., 129.
50. Ibid., 131.
51. Ibid., 131–132.
52. Ibid., 128.
53. Ibid., 141.
54. Ibid., 141–142.
55. Diamond, "Losing Your Concepts," 263.
56. Derrida, "The Animal That Therefore I Am (More to Follow)," 386, 395.
57. Ibid., 396.
58. Ibid., 395.
59. Jacques Derrida, "Force of Law": The 'Mystical Foundation of Authority,'" trans. Mary Quaintance, in *Deconstruction and the Possibility of Justice*, eds. Drucilla Cornell, Michael Rosenfeld, and David Gray Carlson (London: Routledge, 1992), 24.
60. Ibid.
61. Derrida, "The Animal That Therefore I Am (More to Follow)," 45, 46.

62. As Derrida has suggested in his reading of Heidegger and the animal in *Of Spirit: Heidegger and the Question*, trans. Geoffrey Bennington and Rachel Bowlby (Chicago: University of Chicago Press, 1989), those “sinister connotations” of “continuism”—which Heidegger’s humanist separation of human and animal is dead set against—include racism, the use of naturalism to countenance xenophobia, and much else besides, all of which are important in understanding Heidegger’s complex relationship to Nazi ideology (56).
63. Diamond, “Experimenting on Animals,” 353.
64. Richard Beardsworth, *Derrida and the Political* (London: Routledge, 1996), 130–131.
65. *Ibid.*, 118.
66. *Ibid.*, 132.
67. Derrida, “The Animal That Therefore I Am (More to Follow),” 396, emphasis mine.
68. Diamond, “Injustice and Animals,” 131.
69. Diamond, “Eating Meat and Eating People,” 333.
70. *Ibid.*, 333–334.
71. Diamond, “Experimenting on Animals,” 351.
72. See in this connection my discussion of Rorty in *Critical Environments: Postmodern Theory and the Pragmatics of the “Outside”* (Minneapolis, MN: University of Minnesota Press, 1998), 20–22, 140–141, 144–145.
73. Diana Fuss, Introduction in *Human, All Too Human*, ed. Diana Fuss (New York: Routledge, 1996), 4.
74. Jacques Derrida, “From *Speech and Phenomena*,” in *A Derrida Reader: Between the Blinds*, ed. Peggy Kamuf (New York: Columbia University Press, 1991), 26–27.
75. Vicki Kirby, *Telling Flesh: The Substance of the Corporeal* (New York: Routledge, 1997), 95.
76. Jacques Derrida, “‘Eating Well,’ or The Calculation of the Subject: An Interview with Jacques Derrida,” in *Who Comes After the Subject?*, ed. Eduardo Cadava, Peter Connor, and Jean-Luc Nancy (New York: Routledge, 1991), 116–117. See also Derrida’s *Limited Inc.*, ed. Gerald Graff (Evanston, IL: Northwestern University Press, 1988), 134, 136.
77. Diamond, “Injustice and Animals,” 134, emphasis mine.
78. Derrida, *Limited Inc.*, 15.
79. *Ibid.*, 70.
80. *Ibid.*, 119.
81. *Ibid.*, 116.
82. *Ibid.*, 148.