Grounds for Respect: Particularism, Universalism, Accountability

Kristi Giselsson
BA (Hons)

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Thesis Abstract

In recent years traditional liberal humanist foundations for respect for others have been challenged on the basis that universalist grounds have resulted in the exclusion of particular others from moral consideration or respect. This current questioning of the concept of universalism is of enormous significance, in that universalism has been one of the central assumptions of modern western philosophy and a foundational key to its moral and political theory. This thesis attempts to answer the question of what grounds are needed in order to justify respect for others; whether these grounds can be said to be universalist or particularist. In attempting to answer this question, past and current arguments for and against universalism are assessed as to the scope of their moral inclusion and the adequacy of their justificatory grounds. Current arguments for particularism – as represented by posthumanism – are discussed in order to gauge whether they do indeed represent a viable alternative to universalism. It will be shown that even scholars who have ostensibly rejected humanism on the grounds that it marginalises others, still rely on implicit assumptions and appeals to humanist concepts regarding the universal equality and unconditional worth – and therefore respect – owed to human beings. Given such reliance, it is concluded that some form of universalism is needed to justify respect for others; that universalism and particularism are indeed mutually dependant. The thesis then concentrates on gauging the efficacy of current critical liberal and humanist arguments for respect. These include an assessment of present day utilitarianism, where it is shown that the inclusion of animals within the realm of moral consideration results in the exclusion of certain humans from the same

realm; in short, that utilitarianism's foundational assumptions do not adequately justify respect. It is also shown that other current humanist scholars who have attempted either to reconceptualise traditional grounds for respect or to broaden the scope of moral consideration to those traditionally excluded from such consideration with arguments based on self-determination, rationality or intuition, also prove inadequate. It is concluded that an ontological understanding of human being is needed in order to provide an adequate foundation for the justification of respect for others. Such a foundation, albeit partial in its conception, is subsequently offered; one that emphasises a communal, as opposed to an atomistic, conception of human being and that seeks to balance the tension between particularism and universalism by showing a common structure of human ethical practice that does not occlude difference. It is suggested that this common structure is the universal human practice of communal accountability, which itself is inextricably linked to communal standards of value and justice. As these communal practices are foundational both to human being and to ethics itself, it is finally concluded that communal practices provide the universal grounds needed in order to justify respect for others.

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Contents

Introduction

This thesis attempts to answer the question of what grounds are needed in order to justify respect for others. This question has become particularly pertinent in recent years as traditional liberal humanist foundations for respect have been challenged on the basis that such universalist grounds have resulted in the exclusion of particular others from moral consideration or respect. The current questioning of the concept of universalism is, moreover, of enormous significance, given that universalism has been one of the central assumptions of modern western philosophy and a foundational key to its moral and political theory. The question arises; why have these foundations come to be seen as exclusionary? To address this question we shall, in Chapter One, outline the reasons why such a critique has come about historically, focusing specifically on the ways in which western philosophy has been seen to fail in regards to the scope of its application, its justificatory grounds regarding universal moral consideration, and in its apparent dichotomy between the individual and the community. It should be stressed that this is only a presentation of the standard or non-nuanced account of western philosophy – as opposed to a critical appraisal of this standard account – for it is this standard interpretation, while at times a philosophical straw-man, which has continued to persist and which has provided much of the impetus to the wholesale rejection of universal humanism.

We will then explore the recent posthumanist challenges to universal concepts of human being in detail, firstly at a broad theoretical level in Chapter Two and then at an applied level in Chapter Three, as posthumanist scholars seek to apply

such theories to particular instances of marginalisation and oppression. While posthumanists have objected to western philosophy on a number of different grounds, one of their major objections to universalism has been its exclusion or marginalisation of difference, and as such, these theories can be seen as arguments for particularism; for the recognition of difference over sameness. We will see that posthumanist critiques of universalist assumptions within humanism are themselves based on unacknowledged ethical assumptions of universal value and respect for others. As these assumptions are implied rather than explicitly justified, they become reliant upon the rhetorical force of their arguments alone, leaving justification for respect for others without any logical or arguable foundation and therefore highly vulnerable to the contingencies of social persuasion and sentiment. For, in explicitly eschewing any metaphysical grounds for respect, posthumanist scholars fail to provide any grounds as to why we should, or ought, to respect others at all.

Following the discussion in the above-stated chapters, it is concluded that some form of universalism is needed to ground respect for the particular; in order to justify *why* we should respect others. The next three chapters explore current re-conceptualisations of universal moral consideration.

In Chapter Four we discuss the current challenges to the grounds and scope of traditional liberal humanism through utilitarian-based arguments for the inclusion of animals within the scope of moral consideration. While classic utilitarian arguments regarding pain and pleasure (or preferences) are used to provide a universal standard of measurement in regards to moral consideration

for both animals and humans, we will see that not only does such a scale create new exclusions of particular humans, but that utilitarian theory still fails to provide satisfactory grounds as to why we should care about the pain or pleasure of others; in other words, why we ought to respect others.

In Chapter Five we examine current arguments by scholars who work within the liberal humanist tradition but from a critical standpoint. These scholars attempt to address the issues of exclusion that have arisen from the universalist tradition by either reconceptualising traditional grounds for respect or broadening the scope of moral consideration to those traditionally excluded from such consideration, such as animals and non-rational humans. Again, we see here that the issue of justification for the respect for others is still not adequately conceptualised, showing that such approaches, which emphasise self-determination, rationality, autonomy and/or intuition, fall short either in regards to their justificatory grounds or scope of moral inclusion. It is in this chapter that the concept of accountability, touched upon in earlier chapters, begins to be more fully considered regarding its role within ethics and human being; a role that is argued to be foundational in the next and final chapter, Chapter Six.

It is concluded that an ontological understanding of human being is needed to provide an adequate foundation for the justification of respect for others. In Chapter Six, such a foundation, albeit partial in its conception, is offered; one that emphasises a communal, as opposed to an atomistic, conception of human being that seeks to balance the tension between particularism and universalism by showing a common structure of human ethical practice that does not occlude

difference. It is suggested that this common structure is the universal human practice of communal accountability, which is inextricably linked to communal standards of value and justice. As such, communal practices are foundational to both human being and ethics and it is concluded that they provide the universal grounds needed in order to justify respect for others.

Before starting, however, it is important to clarify some of the terms used here and throughout the thesis. For a number of reasons, the term 'posthumanism' will be used rather than 'postmodernism' or 'poststructuralism;' first, because the one term – posthumanism – is less unwieldy than the two; secondly, because the term more accurately reflects the issues highlighted in this thesis (i.e., the universalist assumptions in humanism rather than modernism or structuralism); thirdly, because the scholars often referred to by such terms (Jacques Derrida, Michel Foucault and Jean-François Lyotard), have either distanced themselves from their use or simply not used them at all; and finally, because current scholars working within this tradition have begun to use the term posthumanism in relation to their own work.

The term 'accountability' is used in the sense of being accountable to human beings if or when we injure them in some way – and conversely, they injure us – rather than in the sense of the accountability we may have, say, to our employers concerning our conditions of employment. As Stephen Darwall puts it, both a sense of injury, personal worth and an expectation of accountability are implicit

in the cry "Hey, you can't do that to me!"[1] – although it will be argued later that accountability can be assumed both on behalf of others and on an inter-communal basis, as opposed to Darwall's more individual conception.

That which distinguishes ethics from merely prudential or practical considerations, as Jeff Malpas points out, is that ethics is essentially concerned with human worth; "what marks out the questions of ethics are just those questions that concern the propriety of actions inasmuch as those actions affect our own worth as human beings or as persons."[2] In this sense, the term 'respect' in this thesis is directly linked to the recognition of accountability; as intrinsic to the suggestion that some humans are unworthy of equal moral consideration is the denial of accountability towards such humans. Denial of accountability is, therefore, a denial of respect, just as the recognition of accountability is the recognition of respect; for, as shall be suggested later, implicit in such recognition is the acknowledgement that human beings are ends in themselves.

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[1] Stephen Darwall, "Reply to Korsgaard, Wallace and Watson," *Ethics*, 117 (Oct 2007), pp. 52-69; p. 53.

[2] Jeff Malpas, "Human Dignity and Human Being," in Jeff Malpas and Norelle Lickess (eds) *Perspectives on Human Dignity: A Conversation* (Dordrecht, The Netherlands: Springer, 2007), pp. 23-24.

Chapter One

Universalism in the West

As this thesis is an attempt to answer the question of what grounds are needed in order to justify respect for others, it is important to provide a background history as to how the question has arisen and why it has become of such crucial importance within contemporary philosophical debate. Within western philosophical tradition over recent years, the ethical grounds traditionally used to justify respect for others – universalism – have increasingly come under critique, on the grounds that such universalist foundations have resulted in the exclusion of particular others from moral consideration or respect. While it can be said that traditional universalist arguments have been under constant revision since their inception, the current questioning of the concept of universalism is of enormous significance, given that universalism has been one of the central assumptions of modern western philosophy and a foundational key to its moral and political theory. This chapter will outline the reasons why such critique has arisen historically, focusing specifically on the ways in which western philosophy has been seen to fail in regards to the scope of its application, its justificatory grounds regarding universal moral consideration, and in its apparent dichotomy between the individual and the community.

It is important to state that this chapter is not meant to provide a comprehensive history of western moral and political thought, but rather is meant to give a brief

explanatory context to the current schools of debate covered in later chapters, these being the areas of posthumanism, present-day utilitarianism and current critical humanist or liberal-humanist scholarship. Therefore only those philosophers and ideas of direct relevance to these debates will be discussed. Moreover, it is important to reiterate that what is offered here is only a short summary of the standard or non-nuanced accounts given of such philosophers (and philosophical concepts) in terms of these current debates, rather than an analysis of such accounts, or an in-depth analysis of the original concepts. There are, of course, many different ways in which a scholar's work can be interpreted, but the objective here is to highlight those aspects of a philosopher's work that are generally *seen* as having contributed to the current questioning of universalism, either in the way it has been seen to exclude particular others – such as women, peoples of different racial and ethnic origins, and animals, or the way it has been seen to lack adequate philosophical justification concerning its grounds for moral consideration. In regards to utilitarian and critical humanist scholars, this questioning has brought about a re-conceptualisation of earlier liberal-humanist tenets and, to better understand such re-conceptualisations, some brief background information is given on the standard accounts of the original concepts and their inadequacies. Before sketching out this background however, a short word needs to be said concerning the intersection between universalism and humanism.

Universalism is often seen as being synonymous with humanism, and humanism itself as synonymous with the entire tradition of western philosophy.[1] Humanism has also been equated, by Michel Foucault, with both Christianity and the Aryan eugenics of Nazi Germany,[2] and the current critique of western philosophy is often seen as a straightforward debate between humanism and anti- or posthumanism. But while universalism has been closely associated with humanism, it cannot be reduced to the concept of humanism alone; it can also be said to have preceded it, while at the same time contain elements not traditionally associated with humanism at all.

For example, many might want to dispute Foucault's equation of Christianity and Nazism with humanism, particularly given that many humanists define humanism as a total repudiation of Christianity – with just as many staunch humanists condemning Nazism on the grounds of its inhumane treatment of other humans. And while Ancient Greek philosophy cannot strictly be called humanist without being anachronistic, Greek philosophy can be seen as containing its own universalist elements, such as Aristotle's classification of 'man' as the "political"[3]

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[1] As suggested by both Martin Heidegger in "Letter on 'Humanism,'" in David Farrell Krell (ed.), *Basic Writings: from Being and Time (1927) to The Task of Thinking (1964)* (New York: Harper Collins, 1992) pp. 213-266 and Jacques Derrida, "The Ends of Man," in *Margins of Philosophy*, trans. A. Bass (Chicago: University of Chicago Press, 1982), pp. 109-136; p. 134, and "Structure, Sign and Play in the Human Sciences," in *Writing and Difference* (London: University of Chicago, 1978), pp. 288-293; p. 292.
[2] See James W. Bernauer and Michael Mahon, "Michel Foucault's Ethical Imagination," in Gary Gutting (ed.) *Cambridge Companion to Foucault* (Cambridge: Cambridge University Press, 2005) pp. 149-177.
[3] Aristotle, *Politics*, Bk. I: Ch. 2, 1253a, 1, in Richard McKeon (ed.) *The Basic Works of Aristotle* (New York: Random House, 1941).

and "rational animal."[4] Moreover, Ancient Greek thought has directly and indirectly

shaped western thought, both in regards to the Medieval scholastic revival of the

ancients, the Renaissance, the Enlightenment and current day political theory

relating to democracy. Similarly, Christianity has shaped and been shaped by

western thought; recalling that its spiritual and physical origins have actually sprung

from very different traditions originating in the Middle East. The Christian concept

of an immortal soul, possessed by all humans, is itself a universalism and has

played an important role in western ethical and political practice, not least in its use

in arguments for the abolition of slavery. So both Christianity and Greek philosophy

have provided powerful conceptualisations of universal grounds for respect in their

own right, but it is not accurate to describe them as humanisms.[5]

That universalism cannot be reduced to humanism becomes clearer when we look at

one of its standard definitions. Kate Soper writes in *Humanism and Anti-Humanism*

that

> a profound confidence in our powers to come to know and thereby
> control our environment and destiny lies at the heart of every
> humanism; in this sense, we must acknowledge a continuity of theme,
> however warped it may have become with the passage of time,
> between the Renaissance celebration of the freedom of humanity from
> any transcendental hierarchy or cosmic order, the Enlightenment faith
> in reason and its powers, and the 'social engineering' advocated by our
> contemporary 'scientific' humanists.[6]

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[4] Aristotle, *Metaphysics*, Z. 12. 1037b 13-14.
[5] While humanism cannot be equated with Christianity, western humanism does have many of its origins in Christianity, particularly with reference to the concept of equality. This became a source of controversy recently when the European Union decided not to include a reference to Christianity in its revised constitution. See Clive H. Church and David Phinnemore, *Understanding the European Constitution* (London: Routledge, 2006), 85ff.
[6] Kate Soper, *Humanism and Anti-Humanism* (La Salle, Illinois: Open Court, 1986), pp.14-15.

Moreover, this is a continuity that maintains "an anthropocentric and secular approach to the study and evaluation of humanity."[7] Soper includes within such continuity the phenomenological and existentialist challenges to classic liberal humanism, in that they still insist that "the distinctive role of human activity in the creation of historical conditions remains, in this humanist conception, irreducible."[8] By contrast, anti-humanist thought views social structures and institutions ultimately as "constitutive of human subjectivity."[9] Tzvetan Todorov, author of several books exploring the humanist tradition, provides a similar definition:

> The term *humanist* has several meanings, but we can say in a first approximation that it refers to the doctrines according to which man is the point of departure and the point of reference for human claims. These are "anthropocentric" doctrines, just as others are theocentric, and still others put nature or tradition in this central place.[10]

As posthumanist critique is not limited to humanism alone but challenges all universalist claims regarding human being, this thesis discusses the seemingly contradictory claims of universalism and particularism rather than debating the merits of humanism compared to anti-humanism (or vice-versa). Subsequently, this chapter provides a brief overview on how respect for others has been variously conceptualised via universalism in the west. Such an overview contextualises the current debate over the tensions between universalism and particularism – including

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[7] Ibid., p. 11.
[8] Ibid., p. 19.
[9] Ibid., p. 18.
[10] Tzvetan Todorov, *The Imperfect Garden: the Legacy of Humanism,* trans. Carol Cosman (Princeton, N-J.; Oxford: Princeton University Press, 2002), p. 6.

the individual and the community. Its focus rests on those aspects of western

philosophy and belief that have generated critiques relating directly to the

marginalisation or exclusion of particular others through the definition of what

constitutes 'the human' and therefore the conditions upon which respect is granted.

Grounds for Respect in Ancient Greek Philosophy

Ancient Greek philosophy can hardly be said to represent a single or unified

philosophical viewpoint, but rather encompassed a broad and diverse array of

philosophical beliefs. However, since the most lasting influence on western

philosophy has come from Plato and Aristotle (and Socrates via Plato), it is on these

philosophers that we will concentrate our attention.

While Plato and Aristotle represented different philosophical viewpoints and

methods, their view of the good life was very much linked to their conception of the

polis. In other words, their conception of human being was communal or social in

nature. Although it was only Aristotle who expressed this formally in terms of

'man' as a political and rational animal, both saw man as fulfilled in his being only

in terms of their relation to others within their community. Each one's good was

only satisfied in terms of their fulfilment of the specific roles each was to play in

their community, with the good of the community being then regarded as

inseparable from each community member's good.[11] Certainly, these roles were

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[11] See Plato, *The Republic* Bk. III and IV in *The Dialogues of Plato*, trans. B. Jowett (Oxford: Clarendon, 1871), pp. 145-264 and Aristotle, *Politics* Bk. I, Ch. 1 - 2 and Bk. III: Ch. 3, 4 and 5.

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hierarchical and specific, with Plato and Aristotle seeing philosophers or guardians as playing a leading role in the polis,[12] but we can say that it is a conception that sees the good of each life as inter-dependent with other lives. Moreover, both saw the role of the citizen very much in terms of the Athenian model of democratic rule, with citizens playing a direct part in the city-state's affairs via enfranchisement. But the status of citizenship, and therefore respect within the community, was, according to Aristotle, 'rightly' restricted to adult Greek males; with women, foreigners, slaves, children and even some of the elderly and peasantry excluded from citizenship.[13] Plato, on the other hand, could envisage women as not only equals but even as potential guardians within *The Republic*.[14] However, while Plato's view shows us that Greek thought was by no means unified regarding who was considered worthy of equal status or consideration within the Greek polis,[15] it is Aristotle's perspective that seems to have reflected actual practice and, moreover, to have influenced much of mediaeval scholasticism.

In order to justify the various exclusions to equal respect made within the polis, Aristotle claimed confidently in *Politics* that just as some were born to rule, others

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[12]See Plato, *The Republic,* Bk. III, IV and Bk. VII and Aristotle, *Politics* Bk. III, Ch. I-5.
[13] See Aristotle, *Politics* Bk. III.
[14] See Plato, *The Republic*, Bk. V, 451-457, for Plato's general views on women and in particular 454 -457 in regards to the possibility of women becoming guardians.
[15] That there were other points of view available is also shown by Aristotle's own note that some opposed slavery on the grounds that it was not "natural;" "Others affirm that the rule of a master over slaves is contrary to nature, and that the distinction between slave and freeman exists by law only, and not by nature; and being an interference with nature is therefore unjust." *Politics*, Bk. I, Ch. 3, 1253b, 20.

were "marked out for subjection;" [16] namely, slaves, animals and women.[17] These latter, quite simply, differ 'by nature' to freemen.

> The same holds good of animals in relation to men; for tame animals have a better nature than wild, and all tame animals are better off when they are ruled by man; for then they are preserved. Again, the male is by nature superior; and the female inferior; and the one rules, and the other is ruled; this principle, of necessity, extends to all mankind.[18]

Aristotle approvingly credits Socrates with having stated that the courage of a woman is "in obeying" whereas the courage of a man is "in commanding;"[19] going on in the same section to quote from the Gorgias that "silence is a woman's glory."[20] Rulers are, furthermore, "rational," whereas those subject to them are deemed "irrational," and although women are allowed a "deliberative faculty," it is "without authority," whereas a slave is described as having "no deliberative faculty at all."[21] Slaves are considered "naturally inferior," and therefore justifiably to be used as "a possession … an instrument of action."[22] Indeed, Aristotle claims that there is no real difference between slaves and tame animals, for, "the use made of slaves and of tame animals is not very different; for both with their bodies minister to the needs of life."[23] For Aristotle, then, it was apparently "clear" that "some men

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[16] Aristotle, *Politics*, Bk. I Ch. 5, 1254, 20-23.
[17] Ibid, Ch. 5.
[18] Ibid., Bk. I, Ch. 5, 1254b, 9-15. See also Bk. I, Ch 13, 1260a 4-15.
[19] Ibid., Bk. 1, Ch.13, 1260a, 20-24.
[20] Ibid., Bk. I. Ch.13, 1260a, 30.
[21] Ibid., Bk. I. Ch.13, 1260a, 5-15. Included in this passage are also comments regarding children; they are also to be ruled over by "the man."
[22] Ibid., Bk. I, Ch 4, 1254, 15-18.
[23] Ibid., Bk. I, Ch.5, 1254b, 23-25.

are by nature free, and others slaves, and that for these latter slavery is both expedient and right."[24]

So while Greek thought, via Plato and Aristotle, contained a powerful conception of man as universally rational, communally social and politically equal, this conception turns out to be not so universal in its application. Rather, the equal consideration or accountability implied in such a definition was restricted only to those able to fulfil the conditions of inclusion, or sameness. Those perceived as different in kind were subsequently excluded from equal moral consideration; with those ultimately deemed incapable of living in the polis described as either "beasts or Gods."[25] In short, that which provided the Ancient Greeks with the basis for respect (or non-respect), was conformity to the same; the same being a Greek, adult, male, citizen.[26] This same was, moreover, seen as man's fixed, unchanging and indeed essential, nature.

Christianity and Medieval Philosophy

As noted above, Christianity can hardly be classically defined as a humanism given its emphasis on God as the centre and ultimate creator of matter and meaning within the universe, along with its doctrine regarding the immortality of the human soul. Certainly some Christians are seen as being instrumental in 'founding' humanism,

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[24] Ibid., Bk. I, Ch. 5, 1255a 39-40.
[25] Ibid., Book I, Ch. 2, 1253a, 29.
[26] As noted earlier, philosophers can be interpreted in a number of different ways. For different readings of Aristotle see Cynthia A. Freeland (ed.), *Feminist Interpretations of Aristotle* (Pennsylvania: The Pennsylvania State University Press, 1998).

such as Erasmus, Thomas More and certain scholars within the Italian Renaissance, but it can be argued that it was their perceived dissent from, rather than their conformity to, certain aspects of Christianity that earned them such a title. As Todorov points out, Erasmus is a humanist by virtue of the fact that he is unable to accept the doctrine of grace; that is, that man was to be justified by grace alone, rather than by works,[27] therefore leaving all justification for righteousness in God's hands alone, as argued by Martin Luther. In short, the fact that man had as a consequence nothing to 'do' in order to achieve righteousness was unacceptable to Erasmus, who wanted more emphasis to be placed on man's part of the bargain, so to speak.[28] Christianity has also been directly critiqued by many humanists for its anti-humanist characteristics, but is included in this analysis as a universalizing story and a practice that has been used to both include and exclude difference.

Arising from Judaism – within which, in the Orthodox tradition, men praise God for not making them women[29] – there is much evidence within Christian scripture that points to the denigration of woman as both different and inferior in status to men. However, there is also evidence within Christian scripture to the contrary; "There is neither Jew nor Greek, slave nor free, male or female; we are all one in Christ."[30] This discrepancy further confirms that the supposed inferiority of women is a matter of political and social contingency, in that those in positions of privilege

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[27] Ephesians, Chapter 2: 8-9. New International Version.
[28] Todorov, ibid., p. 326.
[29] See Barry Freundel, *Contemporary Orthodox Judaism's R esponse to Modernity* (Jersey City, NJ: KTAV Publishing House Inc., 2004) pp. 274-276. Rabbi Freundel claims, however, that this is intended to "protect" rather than "denigrate" women; p. 276.
[30] Galations, Chapter 3:28, New International Version.

have actively favoured certain scriptural interpretations while actively neglecting others, and that these choices always seem to affirm certain social, political and economic advantages.

The early church fathers extrapolated on potentially sexist material found within scripture, but also actively created sexist stereotypes of women by adding their own theological interpretations to the scriptural material. Thus woman became *the* origin of sin, and, in some cases, even evil incarnate:

> *You* are the Devil's gateway. *You* are the unsealer of that forbidden tree. *You* are the first deserter of the divine Law. *You* are she who persuaded him whom the Devil was not valiant enough to attack. *You* destroyed so easily God's image man. On account of *your* desert, that is death, even the Son of God had to die.[31]

With the revival of Aristotelian philosophy during the scholastic period, misogyny received, not surprisingly, even more affirmation regarding woman's supposed inferiority. Thomas Aquinas, citing Aristotle, affirmed that, "the *female is a misbegotten male*,"[32] in that, in regards to her corporeal body, "the production of woman comes from defect."[33]

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[31] Tertullian on Eve, as cited in Rosemary Radford Ruether (ed.), *Religion and Sexism: Image of Women in the Jewish and Christian Traditions* (New York: Simon and Schuster, 1974), p.157, italics in the original.
[32] Thomas Aquinas, as cited in Elizabeth Clark and Herbert Richardson (eds), *Woman and Religion: A Feminist Sourcebook of Christian Thought* (New York: Harper and Row, 1977), p. 86. Italics in the original.
[33] Ibid., p.87.

Women of course have not been Christianity's only marginalised 'other;' the Crusades are another prolonged example of Christian persecution – this time towards Muslims – and an almost constant 'crusade' against Jews has also been carried out throughout European history in the form of brutal and recurring pogroms.[34] Regarding animals, the standard view of the institutionalised Church has been to cite Adam's naming of the animals in Genesis Chapter 2 as proof of a God-given hierarchy and superiority, and God's affirmation to Noah of man's sovereignty over all nature – animal, plant and mineral – in Genesis Chapter 9.[35]

Renaissance Humanism

The Renaissance has been identified as the official birth-place of humanism proper – when the word humanism itself began to come into use.[36] This is the era that contained those commonly regarded as some of the early 'fathers' of classical humanism – Erasmus and Giovanni Pico della Mirandola, among others – during which 'man' was placed firmly at the centre of the world as a self-defining, autonomous agent; "You shall determine your own nature without constraint from any barrier, by means of the freedom to whose power I have entrusted to you. I have placed you at the centre of the world so that you might see what is in the

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[34] See David Nirnberg, *Communities of Violence: Persecution of Minorities in the Middle Ages* (Princeton, N.J.: Princeton University Press, 1996).

[35] The views of St. Francis of Assisi, of course, differed in this regard, in that he saw animals as our brothers and sisters. See St. Frances of Assisi, *The Writings of St. Frances of Assisi*, trans. Robinson Paschal (Philadelphia: Dolphin Press, 1906).

[36] See Ernesto Grassi, *Heidegger and Renaissance Humanism: Four Studies* (Binghampton, N.Y.: Medieval and Renaissance Texts and Studies Series, 1983), p. 9 and Soper *Humanism and Antihumanism* p. 22.

world."[37] So while God was not suddenly toppled off the top of the hierarchical order of things with one blow, we can see from the Mirandola text, quoted above, that God is nonetheless portrayed as effectively giving over his sovereignty to man; "I have placed you at the centre of the world." Man, then, as the centre, as the definer, as the determining force and authority in the world, was to slowly and surely, from the Renaissance onwards, replace Christianity as the defining universalism within the west; aided in the 19th century by Darwinism and the increasingly central place given to science.

Not all Renaissance humanisms were of the man-aggrandising, chest-beating variety as described by John Carroll in *The Wreck of Western Culture*, where Renaissance man is characterised as the noble, rational hero, who has "nothing to obey but himself; he has nothing above or beyond the *I*. He is the value-creating individual─on the move;" confidently subduing the "volcanic chaos of nature" before him.[38] While such an image is in many ways true – remembering that this was also the time of the great exploratory world voyages, voyages of violent conquest and colonisation – it is also true that alternative versions of humanism were framed.[39] Notable amongst these was the French humanist Montaigne, who was to influence thinkers as diverse as Descartes, Rousseau, Hume, Bentham, Nietzsche and Levi-Strauss; scholars who contributed, in their own way, to both the formation and erosion of humanism. For, while the history of philosophy in the

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[37] Mirandola, *Oration on the Dignity of Man*, as cited in Soper, p. 22.
[38] John Caroll, *The Wreck of Western Culture*, (Melbourne: Scribe Publications, 2004), p. 14.
[39] For example, the early Italian Renaissance humanists who, Ernesto Grassi argues, developed an ontological conception of human being in contrast to the emphasis on rationality favoured at the time. See Grassi, *Heidegger and Renaissance Humanism.*

west is a story of universal conceptions of human being, it is also a story of constant

challenges to that very concept; of attention given to the relative and particular, and

to conceptions of the human not confined to the rational alone. It is in this sense

that posthumanism can be seen as having its roots very much within the humanist

tradition itself.

Presenting a contrast to the often confident assertions regarding man's nature and

sovereignty throughout the Renaissance, but still speaking from within the context

and history of western humanism, is Montaigne's more radical view of both humans

and animals.

> The most wretched and frail of creatures, is man, and with all the
> proudest…. 'Tis by the same vanity of imagination, that he
> equals himself to God, attributes to himself divine qualities,
> withdraws and separates himself from the crowd of creatures,
> cuts out the shares of animals his fellows and companions, and
> distributes to them the portions of faculty and force, as he
> himself sees fit. How does he know by the strength of his
> understanding, the secret and internal motions of animals? And
> from comparison betwixt them and us, does he conclude the
> stupidity he attributes to them? When I play with my cat who
> knows whether I do not make her more sport, than she makes
> me?[40]

Montaigne also challenged the exalted status given 'reason' itself, insisting instead

on the validity of independent thought and the faculty of judgement. He cites

Augustine's challenge to show men the weaknesses of their claims to knowledge,

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[40] Michel de Montaigne, "Of Cruelty," in *The Essays of Michael, Seigneur de Montaigne: with Notes and Quotation, and Account of the Author's Life*, trans. Charles Cotton (London: Ward, Lock and Tyler, 18..?), p.377.

but claims that we must go even further, that men must also be shown the

"weakness of their reason." This, according to Montaigne, is not a difficult task;

> to convince the weakness of their reason, there is no necessity of
> culling out rare examples: and that it is so defective, and so blind
> that there is no clear facility clear enough for it, that to it the
> easie and the hard is all one; that all subjects equally, and nature
> in general disclaims its authority, and rejects its mediation.[41]

In questioning reason's reliability, Montaigne anticipates Hume and, he also, like

Hume, insists that it is human custom and traditions, rather than truth and reason

that holds sway over men's opinions:

> Now, to return to my subject, I find, that there is nothing
> barbarous and savage in this nation, by any thing that I can
> gather, excepting, that every one gives the title of barbarity to
> every thing that is not in use in his own country: as indeed we
> have no other level of truth and reason, than the example and
> idea of the opinions and customs of the place wherein we live.[42]

Montaigne is equally surprising regarding his attitude toward animals, being

inspired by the theories of another extraordinary thinker from the late middle ages,

Raimond Sebond, whose Latin paper Montaigne's father had requested him to

translate into French.

> The defect that hinders communication betwixt them and us, why
> may it not be on our part, as well as theirs? 'Tis yet to determine,
> where the fault lies, where the fault lies, that we understand not
> one another; for we understand them no more, than they do us,

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[41] Montaigne, "Apology for Raimond de Sebond," ibid., p.374.
[42] Montaigne, "Of Cannibals," ibid., p.169.

and by the same reason, may think us to be beasts, as we do them.[43]

Animals are not to be prized or set above humans, but neither are humans to be regarded as sovereign over animals:

> I abate a great deal of our presumption and willingly let fall the title of that imaginary sovereignty, that some attribute to us over other creatures. But supposing all this were true, there is nevertheless a certain respect, and a general duty of humanity, that ties us not only to beasts that have life and sense, but even to trees and plants. We owe justice to men, and grace and benignity to other creatures that are capable of it.[44]

The above passage is striking in its likeness to Hume's conclusion on the subject, more of which will be discussed later in the chapter and at more length in Chapter 6. Reason is not ruled out in animals,[45] but our relationship to them is different *in kind* to that which we owe other humans. And what we owe to humans is *justice*. For Hume too, this is the one moral principle exclusive to human relations, whereas we can and should extend benevolence to both animals and humans. However, Montaigne does not exactly specify why justice is not owed to animals, even though he stresses how similar we are in many other respects.

Through Montaigne it can be seen that posthumanism, too, has its roots in humanist philosophy, just as he can be seen to also have influenced, through Hume, later utilitarian philosophers (among others). We will now briefly discuss some of the

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[43] Montaigne, "Apology for Raimond de Sebond," ibid., p.378.
[44] Montaigne, "Of Cruelty," p. 364.
[45] Montaigne, "Apology," p. 377.

major Enlightenment philosophers in order to continue to provide some background to our later chapters, both in terms of seeing (very broadly) the standard critiques made against them in terms of posthumanist thought, but also to provide a context for the later re-conceptualisations of utilitarianism and liberal humanism, showing (again, very broadly) the importance given to – and the problems associated with – such concepts as natural rights, the social contract, rationality, and the tension between the individual and the community.

The Enlightenment

While the concept of natural law had been in existence since Ancient Greece and was in evidence during the Medieval Scholastic period through Aquinas' amalgamation of Aristotle with Christian theology, it was during the late Renaissance and Enlightenment period that natural law and its affiliated concept, natural rights, began to replace divine law as the major foundation for moral and political philosophy in the west. While reference to a divine authority was to continue to play an important role within western philosophy, its influence and use as a grounds for respect became increasingly replaced by arguments based on either rationalism or empiricism. Closely linked to such arguments was an emphasis on 'man' himself as law-maker with certain natural rights and the undermining of the divine-right of monarchical sovereignty, which Thomas Paine was to describe in the *Rights of Man* as "the enemy of mankind, and the source of misery," and which,

once abolished, would restore sovereignty to its "natural and original place, the Nation."[46]

René Descartes is viewed by many as the founder of Modern, and rationalistic, philosophy. With his famous reduction of the certainty of knowledge to the only fact of which we can be without doubt absolutely sure of ("I think, therefore I am"),[47] Descartes ushered in an era in western thought which viewed the human as an atomistic, rational and autonomous individual. For, even though Aristotle had previously classified man as rational, man was also very much a political being, with his life inextricably linked and affirmed through the social and political life of the *polis.* After Descartes more emphasis was placed on the individual subject's experience and knowledge alone, rather than on any inter-subjective relation with an other. Moreover, man was regarded as being a creature of thought, and thus of soul alone, which led to the infamous jibe that we are merely 'ghosts' residing in the 'machines' of our bodies.[48] As animals were seen as possessing neither a mind, reason, nor a soul, Descartes himself subsequently likened them to machines.[49] However, Montaigne's influence can be seen both in Descartes' scepticism and in his willingness to learn from other cultures; that is, as opposed to judging them from within the comfortable prejudices of his own culture's customs and traditions. This dedication to

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[46] Thomas Paine, *Rights of Man* (ed.) Henry Collins (Harmondsworth: Penguin, 1969), p. 166.
[47] See René Descartes, *Discourse on Method* Part 4, p. 53, in *Discourse on Method and the Meditations*, trans. F.E. Sutcliffe (Harmondsworth: Penguin, 1968, 1985) p. 32-91.
[48] See *Discourse,* Part 5, p. 76.
[49] Ibid, Part 5, pp. 74-76.

cultivating his own judgement can be further seen in the very method he

undertakes in the *Meditations*.[50]

Hugo Grotius, while also a jurist and Christian apologist, was one of the early

natural law exponents of the period, arguing that all humans were naturally rational

and social and that this could be seen as providing a basis for a system of

international law. But it was specifically the work of what are now regarded as the

classic social contract theorists, such as Hobbes, Locke and Rousseau, that

consolidated the concept of individual natural rights, along with the idea of moral

and political obligations to others being ratified via mutual agreement between

contracting parties, rather than through divine or kingly dispensation. It is this

conception of human subject – man as equal, free, rational and autonomous, born

with certain natural rights to private property, self-determination, dignity and

respect – that has proved enormously influential in the conceptualisation of human

being in the west up until the present day. But, Charles Taylor has noted,[51] such an

emphasis on the individual's rights has resulted in a corresponding weakness

regarding the conceptualisation of the sorts of duties and obligations we might have

to others or our communities. Indeed, any such duties are not generally

conceptualised as natural obligations at all, but rather are to come about through an

agreement via the social contract alone, where, as Martha Nussbaum points out,

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[50] See Marc Foglia, "Michel de Montaigne," *The Stanford Encyclopedia of Philosophy (Fall 2008 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2008/entries/montaigne/>. Accessed 2007.
[51] See Charles Taylor, "Atomism," in *Philosophical Papers, 2: Philosophy and the Human Sciences* (Cambridge: Cambridge University Press), pp. 187-210.

rational and roughly equal parties contract to their mutual advantage; more of which shall be discussed in Chapter Five.[52]

There are exceptions to such a general model, such as Grotius, as noted above, and Rousseau, whose conception of the social contract is somewhat more complex, in that it can be seen as both a representation of the primacy of individual rights, as well as an affirmation of a more communitarian view, where the individual can also be subordinated to the General Will.[53] Kant also wrote in terms of a social contract in his more political oriented work,[54] but his most influential conceptualisation of the moral obligations we owe others, framed in terms of the Categorical Imperative, is an obligation the individual places on himself, rather than something he contracts with others.[55] However, the model Kant uses for his human subject is the same as that used by other social contract scholars, in that it is only the free, rational, autonomous individual who creates his own laws and, moreover, is worthy of dignity and respect. Although Kant's emphasis on the interdependence of rationality, autonomy and respect can be seen as an attempt to circumvent the prevailing insistence on 'natural' rights – such 'natural' rights being notoriously difficult to prove – the mechanism he suggests to justify our obligations to others has its own difficulties, as shall be seen below.

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[52] See Martha C. Nussbaum *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, Massachusetts/London, England: The Belknap Press of Harvard University Press, 2006, 2007), pp. 9-53.

[53] See Jean-Jacques Rousseau, *The Social Contract*, trans. Maurice Cranston (Baltimore: Penguin, 1968).

[54] Immanuel Kant, *Kant: Political Writings* (ed.) Hans Reis (Cambridge: Cambridge University Press, 1970).

[55] See Immanuel Kant, *Groundwork of the Metaphysics of Morals* in *The Cambridge Edition of the Works of Immanuel Kant: Practical* Philosophy, trans. and ed., Mary J. Gregor (Cambridge: Cambridge University Press, 1996, 1999, 2006).

So while the emergence of natural rights theories as justification for respect attempted to broaden the scope of respect to include those previously neglected or marginalised, there were, and remain, several disadvantages to such theories; both in terms of their internal justification and their exclusionary nature. First, as mentioned above, the argument for natural rights has proved difficult to sustain, lacking as it does any adequate philosophical justification, and so contemporary defenders of inherent rights and dignity as a basis for either social contract theory or human rights tend now to insist on the intuitive nature of such rights, such as John Rawls[56] and Martha Nussbaum[57] (as Nussbaum also notes, intuitive claims also underlie the present United Nations Declaration of Human Rights[58]). However, this still leaves unanswered the question of just *why* we should be obligated to respect someone's rights or dignity; whether they possess such rights naturally or whether we feel they have them intuitively. As Charles Taylor admits, even if we might feel that some "specifically human capacities command our respect," it is a "far from easy task" to give "a satisfactory formulation" as to just "what it is in human beings which commands our respect;"[59] let alone being able to justify such respect to a person who does not have the same intuition. Secondly, Nussbaum herself has pointed out the exclusionary nature of social contract theories in general, in that the

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[56] By contrast to Nussbaum, however, Rawls admits that these intuitive ideas are culturally relative: "But not only are our everyday ideas of justice influenced by our own situation, they are strongly colored by custom and current expectations."John Rawls, *A Theory of Justice* (Cambridge, Mass; The Belknap Press of Harvard University Press, 1971) p.35. See also Rawls' *The Law of Peoples with "The Idea of Public Reason Revisited"* (Cambridge, Mass.: Harvard University Press, 2000). However, Rawls' arguments in terms of rights and respect for persons might also be viewed as being based on reason.
[57]See Nussbaum, *Frontiers of Justice*, pp. 224-270.
[58] Ibid., p.163.
[59] Taylor, "Atomism," p. 193.

contracting parties are limited to rational, roughly equal subjects contracting to mutual advantage, leaving all non-rational humans and animals – along with all foreigners, in that the contract is always conceived as taking place within a nation-state ─ excluded from both the benefits from and the decision–making within the contract-making process; more of which will be discussed in Chapter 5. Both Susan Okin and Nussbaum[60] have also highlighted the indirect exclusion of women via the neglect of the private sphere within social-contract theory, yet in its early conception women – along with non-Europeans and slaves ─ were in fact quite directly excluded from consideration both within contract theory and liberal humanism in general, in that the universal subject and creator of such theories was quite literally 'man'; that is, white, European, adult males. Such a viewpoint is illustrated in the work of John Locke.

As Andrea Nye points out, much of John Locke's political writings seem fraught with contradiction regarding the matter of the universal subject and natural rights, although Nye credits much of this to the nature of Locke's employment as the Earl of Shaftebury's secretary, where his role was to promote the Earl's business interests. Such interests included the need for philosophical arguments that would undermine monarchical rule and the charting of a political constitution for the colony of Carolina; which included, among other things, a philosophical justification of slavery. So while Locke is credited with stridently defending the natural rights of all men (including property rights and the right to the integrity of

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[60] See Susan Moller Okin, *Justice, Gender and the Family* (New York: Basic Books, 1989) and Nussbaum, *Frontiers of Justice*, pp. 105-106 and p.405.

one's own person), slavery is defended by Locke on the Aristotelian grounds that the slaves used in Carolina could somehow be regarded as the captives of war, and therefore, legally their captor's property.[61] Obviously such philosophical manipulation can be seen as simply a convenient but inhumane means by which to make the colony commercially viable, but as Nye also points out, while Locke has shown evidence of some sympathy with the plight of Native Americans, he, along with many 17th, 18th and 19th century philosophers, seem to have regarded black Africans as somehow different in kind to other 'men;'[62] a view they often seemed to extend to women. Nye places what can be seen as Locke's quite unorthodox views regarding women within the context of his need to undermine the religious based arguments for the divine right of kings – the king as head of State being likened to the male head of the family. Locke, in trying to circumvent such an analogy, was forced to concede women some rights within the family, but drew short of granting women the same natural equality granted men, leaving some clear contradictions within his own argument by doing so. Both Nye and Okin conclude that Locke's concessions regarding women were on the grounds of political expediency alone,[63] just as much as his about-face regarding slavery might be seen in a similar light.

However, it is Rousseau who, perhaps more than any other philosopher within the western tradition, is famous for his egalitarian view of 'natural man' with 'natural rights;' his ideas on equality influencing not only Kant but sowing the seeds for the

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[61] Andrea Nye, *Feminism and Modern Philosophy: An Introduction* (New York, London: Routledge, 2004), pp. 50-51.
[62] Ibid., p. 50.
[63] Ibid., p. 54.

French Revolution. Rousseau regarded even animals as a part of natural law, and although they could not participate equally in regards to men – not having the requisite rationality and freedom – he did regard them as participatory on the grounds of their sentience and so could, on such grounds, consequently be spared physical ill-treatment.

> This view also entitles us to end the ancient dispute concerning the participation of animals in natural law, for it is clear that, lacking understanding and freedom, they cannot recognize that law, but since they share our nature to some extent because of the sensitivity with which they are endowed, it follows that they must participate in natural right, and that man is bound by a certain duty toward them.. It appears, in fact, that if I am obliged to do no harm to my fellow man, this is less because he is an intelligent being than because he is a sentient creature, and since that quality is both common to man and animals, it should at least give the latter the right not to be needlessly mistreated by the former.[64]

Rousseau's view of women, however, was less egalitarian. As Nye notes;

> The quest for abstract and speculative truths, principles, and axioms in the sciences, for everything that tends to generalize ideas, is not within the competence of women … Nor do women have sufficient precision and attention to succeed at the exact sciences. Woman, who is weak and sees nothing outside the house, estimates and judges the forces she can put to work to make up for her weaknesses, and those forces are men's passions.[65]

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[64]Jean Jacques Rousseau, "Discourse on Inequality Among Men," in *The Essential Rousseau*, trans. Lowell Blair (New York: New American Library, 1974), pp. 126-202; p.141.

[65] Rousseau, *Emile*, pp 386-7, as cited in Nye, p.12.

Not only do we find plenty of evidence in this passage in regards to Rousseau's condescending view of women, but also much affirmation of the general Enlightenment conception of 'man' as a rational, scientific being on a 'quest' for truth, principles and scientific axioms. In her important work *The Second Sex* Simone de Beauvoir says of the Enlightenment that "[i]n proving women's inferiority, the anti-feminists then began to draw not only upon religion, philosophy, and theology, as before, but also upon science – biology, experimental psychology, etc."[66] While Beauvoir acknowledges that such an attitude was by no means uniform, citing Diderot and Mill as exceptions, she regards them as just that; exceptions to the widespread and almost universally validated norm. Dorinda Outram also sees the rise in scientific explanations regarding women's difference during the Enlightenment as a prominent feature, where women seemed to be increasingly and disturbingly confirmed as a "separate species."[67] As Outram herself notes, this is somewhat unexpected, given the common belief that the Enlightenment was a time in European thought where arguments for the equality of all human beings ─ particularly the previously marginalised common people ─ flourished.[68] Outram cites Mary Wollstonecraft's *A Vindication of the Rights of Woman*, published in 1792,[69] as an important critique of the "contradictions implicit" within Enlightenment thought regarding women; Wollstonecraft specifically critiquing Rousseau and the denial of rationality, and thus equality, to

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[66] Simone de Beauvoir, *The Second Sex* trans. H.M. Parshley (Harmondsworth: Penguin, 1949, 1975) p. 23.
[67] Dorinda Outram, *The Enlightenment* (Cambridge: Cambridge University Press, 1995), p. 81.
[68] Nye's work in *Feminism and Modern Philosophy* would seem to confirm such a reading, Nye suggesting that the majority of Enlightenment philosophers (with the exception of Hume) held disparaging views of women.
[69] Mary Wollstonecraft, *A Vindication of the Rights of Woman* (Köln: Könneman, 1998).

women;[70] although it is important to note that part of Wollstonecraft's argument was also based on premise that women also possessed, like men, immortal souls. One contemporary response to Wollstonecraft's book is also telling as to the standard opinion of both women and animals at the time; Thomas Taylor publishing (initially anonymously), a tract entitled *A Vindication of the Rights of Brutes*, which was intended to show that the granting of rights to women was as ridiculous as granting rights to animals.[71]

Outram concludes that the Enlightenment, "for all its universalist claims, had much difficulty in finding a place for social groups – not just women, but also lower social classes and other races – which previous historical periods had equally defined as outside the central human community."[72] However, she also states that in the future, "its theory of universalism also gave ammunition to those who were to struggle to free women from restricting definitions of gender."[73]

Slavery and Universalism

The argument that all human beings possessed an immortal soul and were therefore universally equal in the eyes of God was also one the major arguments used in the

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[70] Outram, *The Enlightenment*, pp.80-83.
[71] Thomas Taylor, *A Vindication of the Rights of Brutes* (Gainsville, Fla.: Scholars Facsimiles and Reprints, 1966).
[72] Outram, *The Enlightenment*, pp. 94-95.
[73] Ibid., p. 95.

abolition of the slave trade,[74] a campaign that began in the 1760s and ended in

1833, when slavery was officially ended in the British Colonies.[75] While the

political work of Dissenters such as Granville Sharp, Thomas Clarkson and the

Anglican evangelical William Wilberforce – along with the grass-roots work of

many religious lay-women – were without question important, the arguments and

active political work of slaves and ex-slaves themselves played a crucial role. As

the British National Archives on slavery attest: "[r]esistance amongst enslaved

Africans began the moment they were captured."[76] Or as Nobel Laureate Toni

Morrison expressed it when describing a scene in her forthcoming play on the same

theme; captured Africans are on the deck of a slave ship, "and they are saying

'*No*!'"[77] Resistance included a number of revolts on slave plantations in the British

Colonies, including a major revolt in Haiti in 1791 – where slaves successfully

grounded the first black republic – and significant rebellions in Antigua (1735),

Jamaica (1760), Guyana (1763), Granada (1795-7) and Barbados (1816), among

others. Runaway slaves – known as "Maroons" – set up permanent colonies in

Jamaica; their resistance sometimes erupting into open war, such as the Maroon

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[74] Here it is important to note that some Christians have also attempted to defend slavery via a false interpretation of Genesis 9, where Noah is represented as having cursed Canaan to become a slave of his brothers.

[75] While other countries were also involved in the slave trade and slavery continued unofficially in some British colonies and the Americas after this time – indeed, slavery continues to this day in many parts of the world – the British slave trade is our main focus here, given that Britain was the major trader in slaves throughout the Enlightenment period.

[76] The National Archives: Slavery http://www.nationalarchives.gov.uk/slavery/ 'The National Archives Learning Curve,' Bussa's Rebellion, http://www.learningcurve.gov.uk/snapshots/snapshot52/snapshot52.htm 2008. Accessed 13.09.2008.

[77] "A Conversation with Toni Morrison and Valerie Smith," as personally witnessed by the author, held as part of the Plenary Address for the American Comparative Literature Association's conference 'The Human and Its Others,' Princeton University, March 24th 2006.

Wars of 1730-1740 and 1795-7.[78] Indeed, one of the other major arguments used by

abolitionists against slavery was that the slaves themselves offered constant and

continued resistance to their enslavement.[79] Black abolitionists were also active

from the very beginning in the campaign to end slavery in Britain, where the

personal testimonies and autobiographical accounts of ex-slaves such as Olaudah

Equiano, Ottobah Cugoano and Mary Prince played a vital role in the movement.[80]

However, the argument that all humans possess an immortal soul and can therefore

seen to be equal in the sight of God naturally depends on a prerequisite belief in the

existence of God (and hence, immortal souls). If one was to lack such a belief,

logical or empirical proof would be needed in order to convince sceptics to the

contrary, but such proof was – and still is – lacking within western philosophy,

despite the best efforts of Augustine, Anselm and Descartes (among others).[81] Yet

what such concerted resistance to slavery on the part of the slaves themselves can

testify to is the fact that they obviously regarded themselves as ends, in that they

repeatedly resisted being used as means to the white slave owner's and trader's

ends. Further, they clearly viewed the owners and traders as people who could be

held accountable regarding their actions towards them. The concept of a person as

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[78] The National Archives: Slavery http://www.nationalarchives.gov.uk/slavery/ The National
Archives Learning Curve, "Bussa's Rebellion,"
http://www.learningcurve.gov.uk/snapshots/snapshot52/snapshot52.htm 2008. Accessed
13.09.2008.
[79] The National Archives: Slavery http://www.nationalarchives.gov.uk/slavery/ The National
Archives Learning Curve, "Snapshots," Accessed 13.09.2008.
http://www.learningcurve.gov.uk/SNAPSHOTS/SNAPSHOT27/SNAPSHOT27.HTM
[80] The National Archives: Abolition of Slavery, http://www.nationalarchives.gov.uk/slavery/ The
National Archives Learning Curve
http://www.learningcurve.gov.uk/snapshots/snapshot27/snapshot27.htm
Accessed 13.09.2008. Pages 1-4.
[81] Descartes' famous proofs for the existence of God in the *Meditations* can be seen as variations of
the earlier arguments of Augustine and Anselm.

an end as inextricably linked to the concept of accountability will be explored more fully in Chapter 6, but it is of course Immanuel Kant who first famously attempted to create a formula by which humans could be universally conceived as ends in themselves. And it was Kant who in the *Critique of Pure Reason*, equally famously demolished the ontological proofs previously put forward for the existence of God[82] and who created a theory of moral consideration not based on divine law. Yet while Kant argued that the freedom required by the moral law necessarily precluded the imposition of a divine law, he still insisted, nonetheless, on the importance of the concept of God in terms of providing an "independent" measure of good, thus avoiding relativism.[83] Kant linked his theory directly to what he saw as the universal human capacity for rationality, but the actual universality of its application to all humans – both theoretically and practically – is still a matter of debate, as shall be discussed below.

Immanuel Kant: Universality and Rationality

Kant is well known for his contribution to the Enlightenment picture of humans as universally rational and autonomous beings, although he did not restrict such a

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[82] Immanuel Kant, *Critique of Pure Reason*, trans. Norman Kemp Smith (London: Macmillan and Co., 1929), Chapter III, Section 4, pp. 500-507.

[83] "Now reason *needs* to assume , for the sake of such a *dependent* highest good, a supreme intelligence as the highest *independent* good; not of course, to derive from this assumption the binding authority of moral precepts or the incentives to observe them (for they would have no moral worth if their motive were derived from anything but the law alone, which is of itself apodictically certain), but rather only in order to give objective reality to the concept of the highest good, i.e. to prevent it, along with morality, from being taken merely as a mere ideal, as it would be if that whose idea inseparably accompanies morality should not exist anywhere." Immanuel Kant, "What Does it Mean to Orient Oneself in Thinking," *The Cambridge Edition of the Works of Immanuel Kant: Religion and Rational Theology*, trans. and eds. Allen W. Wood and George Di Giovanni (Cambridge: Cambridge University Press, 1996, 2001, 2005), pp. 1-18; 8:139, p. 12.

description to humans alone, leaving open the possibility of the existence of angels and other divine beings (which would then further reduce the possibility that morality might be seen as merely man-made and relative). For Kant, our rational capacity is directly linked to our ability to act as our own moral legislators; indeed, Kant saw morality as defined by our capacity to act disinterestedly, which was to choose to act on our own self-created laws for no other end save those we could rationally approve as consistently universalisable. Moreover, as all humans had the capacity to be rational, therefore all humans – regardless of class or social status, were to be considered equal in regards to self-legislation and indeed worth, in that Kant directly equated the capacity of rationality and autonomy with dignity; as being regarded as an end.[84] In conceptualising persons as ends in themselves, Kant created an ultimate – indeed, even to this day, unsurpassed ─ standard of worth against which respect could be measured; a standard we will return to in Chapter 6. He also represents an attempt to justify the universal respect of persons through logical argument alone. That is, without the appeal to either divine or natural law, both of which, as Kant himself argues, are logically impossible to sustain without undermining what Kant saw as the basic component of morality; the possibility of free choice.[85]

In a world where serfdom, slavery and huge class inequalities still existed, such egalitarian thinking could be considered truly radical for its time. However, Kant's equation of rationality with treating each person as an end has been rightly

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[84] See Kant, *Groundwork of the Metaphysic of Morals.*

[85] See footnote above, "What does it mean to Orient Oneself in Thinking," 8:139 p.12 in *Religion and Rational Theology* and the *Critique of Practical Reason*, particularly the Conclusion.

questioned as to its logical consistency and efficacy.[86] For example, we might well ask why a person ought to be treated as an end, simply because they are rational, and why rationality should automatically entitle a person to dignity. Moreover, why should an autonomous, law creating person respect another equally autonomous person, when surely by their very definition as autonomous persons they should have no moral obligations to others whatsoever? The moral obligation entailed by the Categorical Imperative is based on its rational and logical consistency – effectively a law of non-contradiction – but the move from the Formula of Universal Law to the Kingdom of Ends requires a valuing of human being as an end in itself that is not necessarily logically linked to a law of non-contradiction.[87] That is, the moral obligation to treat humans as ends needs to be justified by something other than an appeal to a law of non-contradiction. Also, as mentioned earlier, Kant's condition of rationality as the grounds for respect automatically excludes all non-rational beings – human and non-human alike[88] – from moral consideration. Further, some scholars have accused Kant of excluding even rational humans from moral consideration. For example, Nye claims that Kant excluded women from the possibility of acting as moral, autonomous agents altogether, in that they were seen as having a character "given by nature, a character ordained by biology," which would then, in terms of being able to "achieve moral character," render them

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[86] See, for example, H.J Paton *The Categorical Imperative: a Study in Kant's Moral Philosophy* (London: Hutchinson, 1947).

[87] See *Groundwork of the Metaphysics of Morals.*

[88] Kant did not regard animals as rational, which meant that they could not then be considered as either autonomous, or moral, agents. As neither capable of creating nor abiding by self-created laws they are therefore not part of the Kingdom of Ends, and therefore could not be regarded as ends in themselves. Nonetheless, Kant maintains that treating animals with cruelty inures a human to the practice of cruelty – leading them in turn to treat humans cruelly and thus diminishing their own humanity; see "Duties Towards Animal and Spirits" in *Lectures on Ethics*, trans. Louis Infield (London: Methuen and Co., 1930), pp. 239-241.

"completely disqualified."[89] Nye then goes on to suggest in no uncertain terms that

Kant did not expect women to participate in the Enlightenment project at all;

> Certainly Kant did not contemplate that women would
> participate in the modern enlightenment that he considered to be
> the great achievement of his age. If Kant noted the great
> reluctance of many men to be released from self-incurred
> tutelage and think for themselves, he reported the total refusal of
> women. "The step to competence is held to be very dangerous by
> the far greater portion of mankind (and by the entire fair sex)."[90]

Not only Kant but other key Enlightenment figures have been questioned as to their

consistency concerning the application of universal grounds for respect in regards to

race, as we saw earlier with Nye's critique of Locke. In the Introduction to his book

Race and the Enlightenment: A Reader, Emmanuel Chukwudi Eze argues that a

continuity exists between the attitudes of the Ancient Greeks regarding those whom

they considered to be barbarians and the attitudes of Enlightenment philosophers

towards those they considered 'savages.' Eze documents the racist comments of

many Enlightenment figures, including Kant, Hume, Hegel, Jefferson, Leclerc and

Linnè; pointing out that the racism found within these philosophers' works is often

dismissed or ignored even to this day.[91] Eze cites an appalling statement by Kant,

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[89] Nye, p. 14.

[90] Nye, p. 15. Nye is citing Kant from his paper "What is Enlightenment?" but what the quote can also be taken to referring to here is the reluctance of many to undertake the act of thinking for themselves, rather than their inability. For the whole force of Kant's argument here can be seen to rest on the assumption that *all* of mankind, including the 'fair sex,' actually do have the ability to think for themselves, but are simply afraid to take the risk. If reluctance to participate were grounds for exclusion alone, then "by far the greater proportion of mankind" would also be excluded, which is not consistent with Kant's philosophy as a whole. On the other hand, women have indeed been repeatedly excluded from equal moral consideration in the west on the grounds that they are 'irrational,' although whether Kant can be accused of the same exclusion is not conclusive.

[91] Emmanuel Chukwudi Eze, *Race and the Enlightenment: A Reader* (Malden, Mass.: Blackwell, 1997).

who writes in his anthropological work, "On National Characteristics;" "in short, this fellow was quite black from head to foot, a clear proof that what he said was stupid."[92] Eze further argues that, for Kant, progress was linked to the progress of rationality; "from the "primitive" to the "civilised.""[93] Indeed, Andrew Valls has suggested that both Eze and Robert Bernasconi – another scholar who has highlighted the racist aspects of Kant's work[94] – regard Kant as "one of the founders of modern "scientific" racism."[95] However, Eze does recognise that there were some Enlightenment thinkers who challenged such views, citing, for example, the debate between Kant and his former student Johann Gottfried Herder over a number of issues relating race and cultural difference, as well as the debate between David Hume and his contemporary James Beattie, who objected to Hume's suggestion that "the negroes" were "naturally inferior to the whites."[96] What Eze does not acknowledge is that contradictions may also perhaps exist within Kant's and other Enlightenment philosophers own work.[97]

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[92] Ibid., p.38 and p. 57.
[93] Ibid., p. 65.
[94] See Robert Bernasconi, "Who Invented the Concept of Race?" in R. Bernasconi (ed.) *Race* (Malden, MA: Blackwell. 2001), pp. 11-36; Robert Bernasconi, "Kant as an Unfamiliar Source of Racism" in Julie K. Ward and Tommy L. Lott (eds.) *Philosophers on Race: Critical Essays* (Malden, MA: Blackwell, 2002), pp.145-166; Emmanuel Chukwudi Eze, "The Color of Reason: The Idea of 'Race' in E.C. Eze (ed.) *Postcolonial African Philosophy: A Critical Reader* (Cambridge, MA: Blackwell, 1997), pp. 103-140.
[95] Andrew Valls, (ed.) *Race and Racism in Modern Philosophy* (Cornell: Cornell University Press, 2005), p. 183.
[96] Eze, pp. 34-37.
[97] For example, in his book *Enlightenment Against Empire*, Sankar Muthu argues that not only Diderot and Herder, but Kant himself actively argued against imperialism, and this directly due to their conception of humans as cultural agents, who, as such, inevitably produce a plurality of cultures and traditions. Muthu claims that the diversity of such thought warrants reference to "Enlightenments," rather than a single homogenous Enlightenment given the anti-empire nature of the thought of some of its thinkers and as contrasted with the pro-empire thinkers of the 19th century, such as Mill, Tocqueville, Hegel and Marx. See Sankar Muthu, *Enlightenment Against Empire* (Princeton and Oxford: Princeton University press, 2003), p.259.

David Hume: Universality, Justice, Benevolence and Community

Similarly, Hume's work might also be seen to be full of discrepancies in regards to the traditionally marginalised. As Nye suggests, Hume is for many modern-day feminists a "friend from the past;" "[i]f anyone has won the laurel as the contemporary feminist's friend from the past it has been David Hume."[98] However, Hume can also be accused of racism; in his book Eze provides an excerpt from Hume's "Of the Populousness of Ancient Nations," where he declares in an infamous footnote:

> I am apt to suspect the negroes and in general all other species of men (for there are four or five different kinds) to be naturally inferior to the whites. There never was a civilised nation of any other complexion than white, nor even any individual eminent either in action or speculation.[99]

Yet Hume is also praised by Nye for "a non-essentialist social view of personhood that allows women and natives to be included."[100] And there is certainly evidence of such a view in the passages below:

> Were there a species of creatures intermingled with men, which, though rational, were possessed of such inferior strength, both of body and mind, that they were incapable of all resistance, and could never, upon the highest provocation, make us feel the effects of their resentment; the necessary consequence, I think, is that we should be bound by the laws of humanity to give gentle usage to these creatures, but should not, properly speaking, lie under any restraint of justice with regard to them, nor could they

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[98] Nye, p. 99.
[99] Eze, *Race and the Enlightenment* p. 33.
[100] Nye, p. 99.

possess any right or property, exclusive of such arbitrary lords. Our intercourse with them could not be called society, which supposes a degree of equality; but absolute command on the one side, and servile obedience on the other. Whatever we covet, they must instantly resign: Our permission is the only tenure, by which they hold their possessions: Our compassion and kindness the only check, by which they curb our lawless will: And as no inconvenience ever results from the exercise of a power, so firmly established in nature, the restraints of justice and property, being totally USELESS, would never have place in so unequal a confederacy.

This is plainly the situation of men, with regard to animals; and how far these may be said to possess reason, I leave it to others to determine. The great superiority of civilised Europeans above barbarous Indians, tempted us to imagine ourselves on the same footing with regard to them, and made us throw off all restraints of justice, and even of humanity, in our treatment of them. In many nations, the female sex are reduced to like slavery, and are rendered incapable of all property, in opposition to their lordly masters. But though the males, when united, have in all countries bodily force sufficient to maintain this severe tyranny, yet such are the insinuation, address, and charms of their fair companions, that women are commonly able to break the confederacy, and share with the other sex in all the rights and privileges of society.[101]

Here we can, as noted earlier, see the similarities in these passages to Montaigne's views, both in terms of his views on animals, our unwarranted prejudices towards other cultures, and the power of social custom and convention. The latter sentiment is indeed one of the basic hallmarks of Hume's epistemic philosophy, in that our opinions can be seen to be matters of custom and belief alone. Hume also provides more unfortunate evidence regarding his belief in the apparent "great superiority" of "European civilisations" compared to "barbarous Indians," but what is also clear

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[101]David Hume, "An Enquiry Concerning the Principles of Morals" in *Enquiries Concerning Human Understanding And Concerning the Principles of Morals*, (ed.) L.A. Selby-Brigge (Oxford: Clarendon Press, 1975), Section III, Part , I152, p. 190. I am grateful to Professor Andrew Brennan for bringing the significance of these passages to my attention.

here is that he quite explicitly states that neither Indians nor women are to be regarded on the same footing as animals and therefore outside of the bounds of justice. Rather, he insists that such an assumption was completely misguided, resulting in the unjustified disregard of both "the restraints of justice" and "humanity" – and in the case of women, both "slavery" and "tyranny." So while we may want to rightly condemn Hume's views regarding what he saw as the superiority of European civilisation to others, it is clear that he regarded both women and non-Europeans as human beings and therefore subject to the same degree of moral consideration.

What is also clear is Hume's distinction between justice and benevolence. For Hume the distinction lay in the fact that he saw justice as being an artificially occurring principle, as opposed to beneficence, which occurs naturally. Basically, justice only arises and becomes necessary within disputes over property. So if a society is so abundantly endowed with natural resources that there is no scarcity, or in a state of war, when all justice is suspended, then for Hume it follows that there would be no dispute over property ownership, and therefore no need for justice to intervene; "Hence, the ideas of property become necessary in all civil society; hence justice derives its usefulness to the public; and hence alone arises its merit and moral obligation."[102] What is interesting is that in regards to animals, disputes of justice do not arise, not because animals are not rational, but because they are weaker than us and cannot "make us feel the effects of their resentment," resulting in an unequal relationship of "absolute command on the one side, and servile

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[102] Ibid., p. 189.

obedience on the other." Animals are completely dependent on our benevolence, which, for Hume, therefore makes it impossible for them to enter into a relationship which can be governed by justice; the significance of which will be discussed more fully in Chapters Five and Six.

While Hume regards the concept of justice as arising from its direct utility to society alone, as noted above, Hume's broader moral philosophy of social approbation is itself based on what he considers to be the more naturally occurring benevolence and sympathy of humankind. We simply possess "humanity or a fellow feeling with others;" this feeling being, moreover, simply "a principle of human nature."[103] Therefore, everything "which contributes to the happiness of society, recommends itself directly to our good will. Here is a principle, which accounts, in great part, for the origin of morality."[104] Such "social virtues" are indeed also praised in regards to their usefulness to society, although it should perhaps be noted that they form "a *part* of their merit,"[105] rather than the whole. Hume argues here that benevolence can also be disinterested, rather than solely self-interested,[106] along with the fact that one can also be considered as being "*too good.*"[107] What is more important to note here Hume's suggestion that we simply naturally experience concern for others, and, moreover, that it is through such natural feelings that we can tell the difference between good and evil:

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[103] Ibid., 178. p. 219, see Hume's footnote here.
[104] Ibid., 178, p. 219.
[105] Ibid., 141-142, pp. 178-179. Hume's italics.
[106] Ibid., Appendix 2, 252, pp. 300-301.
[107] Ibid., 208, p. 297. Hume's italics.

> If we consider the principles of the human make, such as they appear in daily experience and observation, we must, *a priori,* conclude it impossible for such a creature as man to be totally indifferent to the well or ill-being of his fellow creatures, and not readily, of himself, to pronounce, where nothing gives him any particular bias, that which promotes their happiness is good, what tends to their misery is evil, without any farther regard or consideration.[108]

Consistent with his general epistemological assertions and empirical approach, Hume is emphasising the role social customs and sentiments have in regards to our moral beliefs. For, although he does concede rationality a small role,[109] basically for Hume "morality is determined by sentiment."[110] But it is Hume's insistence on a universally and naturally occurring human nature, as seen above, that can be seen as somewhat at odds with his generally relativistic and sceptical approach. He is indeed careful to distance morality from truth, going so far as to state that should a truth result in having a "pernicious" effect on society, then it is better to go with the error of that which is ultimately more "advantageous" to it.[111] Further, while it is reason's job to "discover objects as they really are in nature," it is "taste" – inextricably linked with sentiment – that "has a productive faculty…gilding or staining all natural objects with colours."[112] Such statements are reminiscent of the "is/ought" distinction he makes in the *Treatise*,[113] commonly used as an argument against what is now known as the "naturalistic fallacy" (the actual term arising from G.E. Moore's somewhat similar argument against imputing values from facts). In

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[108] Ibid., 187, p. 230
[109] Ibid., 235, p. 286.
[110] Ibid., 239, p. 289.
[111] Ibid., 228, p. 279.
[112] Ibid., 246, p. 294.
[113] See David Hume, *Treatise on Human Nature* (ed.) L.A. Selby-Bigge (Oxford: Clarendon Press, 1978), III (i)1.

placing so much emphasis on societal approbation (for surely different societies

have different customs and practices they approve and disapprove of?), and indeed,

by emphasising the importance of feelings and sentiment in determining morality

(for don't different people have different feelings regarding moral matters?), it

might well be assumed that Hume is promoting a relativistic view of morality. But

it is his constant assertion to the contrary that belies such a conclusion; "One man's

ambition is not another's ambition, nor will the same object satisfy both; but the

humanity of one man is the humanity of everyone, and the same object touches this

passion in all human creatures."[114] Hume's view of the natural "affection of

humanity" for one another[115] differed greatly to the conception held by the social

contract philosophers of the time, who viewed humanity as composed of essentially

selfish and independent individuals, only choosing to contract together if it could be

seen to be to their personal advantage (Hobbes' description of human life as

essentially 'nasty, brutish and short' being the consequence of such view).[116] Hume

explicitly rejects such a position, however. For Hume, moral principles are "social

and universal," forming "the *party* of humanity against vice and disorder, its

common enemy."[117] It is in this sense that Hume argues that we can then speak of

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[114] *An Enquiry Concerning the Principles of Morals*, 222, p. 273. See also: "The notion of morals implies some sentiment common to all mankind, which recommends the same object to general approbation, and makes every man, or most men, agree in the same opinion or decision concerning it. It also implies some sentiment, so universal and so comprehensive as to extend to all mankind, and render the actions and conduct, even of the persons the most remote, an object of applause or censure, according as they agree or disagree with that rule of right which is established. These two requisite circumstances belong alone to the sentiment of humanity here insisted on." 221, p. 272.
[115] Ibid., 222, p.273.
[116] See Thomas Hobbes, *Leviathan* (ed.) Richard Tuck (Cambridge, New York: Cambridge University Press, 1996).
[117] Hume's italics, 224, p. 275.

an "obligation"[118] to be morally virtuous, in that Hume's conception of moral virtue is intimately bound to its usefulness and advantage, both to the individual and to society, and indeed, mankind itself.[119]

While Hume distinguishes elsewhere between an is and an ought, or nature and value, we can see a clear association in his moral philosophy between what he regards as universally natural to human beings and a universal moral code. But to associate morality so strongly with universal feelings or sentiments is to of course assume that all human beings experience the *same* sorts of feelings, which tends to neglect or not allow for the possibility of difference; for what is considered "natural" in one society might be deemed highly unnatural in another (for example, the eating of human flesh). Moreover, by associating morality directly with social approbation – and the well-being of the individual so directly with that social approbation,[120] Hume leaves little possibility for any real dissent from society's norms. Morality becomes just what society approves of, and the individual who dissents is then necessarily deemed immoral. But we can all think of various mores that have gained a society's approval but that have not necessarily been to the individual's benefit; one can think, for example, of the various 'charms' women have had to employ just to be regarded as 'agreeable' – such as foot-binding. Hume's conception of society does not allow for the changing nature of feelings and opinions – of individuals and society itself – making sentiment an unstable and inconsistent foundation for a universal moral theory. Finally, the evidence of the

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118 Ibid., 228, p. 278.
119 Ibid., 231, p. 282.
120 Ibid., 231-232, pp. 282-283.

frequent wars and atrocities that humanity has committed against itself, both inter- and intra-culturally, also tends to undermine Hume's thesis regarding the natural fellow-feeling of humanity. For quite often, and sadly, we tend feel a distinct lack of sympathy for our fellow humans.

However, there is much that is admirable in Hume's attempt to justify a universal respect for other humans; both in his attempt to conceive of a more communal conception of humankind and in his important distinction between animals and humans, which we will be returning to in Chapter Six. Hume is also significant for the fact that in his arguments regarding universal respect and in his wider philosophy in general, he makes no appeal or reference to divine justification or sanction, which was to become an increasing trend within western thought. It was also Hume's views connecting the nature of morality to its benefits to society which was to become the major focus for the next highly influential conceptualisation of universal respect; utilitarianism.

Utilitarianism

In considering utilitarianism and its major proponents in Jeremy Bentham and John Stuart Mill, we begin to leave what is generally considered the Enlightenment proper as we move into the 19th century; although the preoccupations of these philosophers owed much to their predecessors in the Enlightenment; not least being the attempt to justify universal grounds for moral and political consideration. What

was unique to utilitarianism is that it not only sought to change the foundations for respect to include considerations of pain and pleasure − or utility − but also their very scope; the inclusion of animals.

Utilitarianism attempts to provide a new foundation upon which to base moral consideration, this being the consideration of pleasure and pain. As Jeremy Bentham famously began his *Principals of Moral and Legislation*, "Nature has placed mankind under the governance of two sovereign masters, *pain* and *pleasure.* It is for them alone to point out what we ought to do, as well as to determine what we shall do."[121] It is therefore pain and pleasure that provide the foundation for the "principle of utility," which itself is the principle "which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question;" whether that party be a community or an individual.[122] Utilitarianism is in fact often characterised as promoting the principle of "the greatest happiness for the greatest number" (although this expression seems to have been first used by Hutcheson, rather than Bentham[123]). There are, however, several problems with utilitarianism's internal justification, most notably as to why we should actually care about the happiness of others. Bentham himself asks "what motives (independent of such as legislation and religion may chance to furnish) can one man have to consult the happiness of another?" before going on to declare that; "it cannot but be admitted,

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[121]Jeremy Bentham, *An Introduction to the Principals of Moral and Legislation* (New York, Hafner Publishing Co., 1948), p. 1.
[122] Ibid., p. 2.
[123] As suggested by Rawls in *A Theory of Justice*, p.22, who in turn cites Henry Sidgewick's *Outlines of the History of Ethics*, 5th Edition, (London, 1902).

the only interests which a man at all times and upon all occasions is sure to find *adequate* motives for consulting, are his own."[124] Nevertheless, Bentham does declare that sentiment or benevolence can provide such motives, and, when these fail, "the love of amity and love of reputation"[125] can provide the leap from a consideration of what Bentham terms one's own "private ethics,"[126] i.e., the concern for one's own happiness, to the consideration of the happiness of others. These reasons bear much resemblance to Hume's (even in regards to a love of reputation), and therefore, like Hume's, are also susceptible to the critique that the whole question of ethics can be said to have arisen precisely *because* our feelings towards others are often not driven by either benevolence or sympathy, but rather the opposite. As such, feelings of benevolence subsequently can only provide an intermittent, contingent and ultimately unstable foundation upon which to base moral consideration.

Moreover, although pleasure or the desire for happiness might exist, it does not automatically follow that we ought to then pursue them as ethical goals or principles; a common argument used against utilitarianism based on Hume's famous is/ought distinction and G. E. Moore's conception of the naturalistic fallacy[127] (although it is important to note that the two are only similar, not synonymous). John Rawls' main critique of utilitarianism is its neglect of the individual in favour of the majority. While Rawls notes that both Bentham and Mill

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[124] Bentham, *An Introduction to the Principals of Moral and Legislation*, pp. 312-313.
[125] Ibid., p. 313.
[126] Ibid., p. 312.
[127] G.E. Moore, *Principia Ethica* (Cambridge: Cambridge University Press, 1929), Chapter I.

do insist that each individual's happiness should count as much as the next person's[128]– and in this sense might be seen to regard a person as an end in themselves – it is nevertheless utilitarianism's insistence on justice as that which is "derivative from the one end of attaining the greatest balance of satisfaction,"[129] that results in the subordination of the individual to the greater good. In other words, as being seen as a *means* to such an end, rather than an end in themselves.[130] Within such a schema, as Rawls' points out, there is "no reason in principle" as to why "the violation of the liberty of a few might not be made right by the greater good shared by many. It is simply happens that under most conditions, at least in a reasonably advanced stage of civilisation, the greatest sum of advantages is not attained in this way."[131] This means that, in principle, a slave owning society might justify its use of slaves as being for the overall greater good or utility of society. Rawls is challenging here, moreover, the utilitarian definition of the 'right' as "that which maximizes the good."[132]

Another common critique of Bentham's theory concern his suggestion that pains and pleasures can be somehow calculated, which he attempted to do by numbering them within a 'hedonic calculus.'[133] On the other hand, Bentham can be seen as admirably egalitarian in his suggestion that all pleasures are equal in value, in that the building of a pub can be seen as on par with the building of a theatre. Broadly

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[128]Rawls, *A Theory of Justice* p. 182.
[129] Ibid., p. 26.
[130] Ibid., pp. 182-183.
[131] Ibid., p. 26.
[132] Ibid., p.24-25.
[133] See *Introduction to the Principles of Morals and Legislation*, Chapter V.

egalitarian, also, is the utilitarian emphasis on 'the greatest happiness for the greatest majority.' However, as Rawls suggest, such a calculation inevitably results in the neglect of the pleasure or pain of a marginalised minority. Correspondingly, just how viable is it to calculate which particular act will be of most benefit to the majority? How can pleasures be objectively measured or numbered at all (as Bentham claimed), given that different people have different experiences and perceptions of both pain and pleasure? In his list of pleasures Bentham also includes the pleasure of malevolence,[134] which of course depends on another's pain. How are we to calculate whose pleasure (or pain) is to be considered above another's? Gladiatorial games are often used as just such an example. In such an instance we can say that the majority receive a malevolent pleasure over the pain of a relative few, and so could be therefore justified according to Bentham's calculus. Yet, again, the individual, minorities and the marginalised are not granted equal moral consideration within such a schema and therefore its application cannot be seen as being of equal and universal benefit to all. William Godwin's version of utilitarianism is another example of the expediency of the individual in this sense, made apparent in his famous example of the Archbishop and the valet. Godwin asks us to imagine that a house is burning down and only one person can be saved from the inferno; either the Archbishop or his valet. Godwin argues that, as the Archbishop is of more 'use' to society as a whole, he should be saved rather than

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[134] Ibid., p 36.

the valet, who as an individual is, apparently, of little 'use' and therefore, most importantly, of less worth.[135]

Peter Singer cites Bentham as one of the few philosophers who has, like himself, applied "the principle of equal consideration of interests" to animals.[136] Bentham clearly does attempt, as can be seen in the following statement, to radically alter the grounds needed in order to justify respect for others, both animal and human.[137]

> The day *may* come when the rest of the animal creation may acquire those rights which never could have been withholden from them except by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor. It may one day come to be recognized that the number of legs, the villosity of the skin or the termination of the *os sacrum* are reasons 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 they were otherwise, what would it avail? The question is not, Can they *reason*? Nor, Can they *talk*? But, Can they *suffer*?[138]

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[135] See William Godwin, "The Valet and the Archbishop", in *Enquiry Concerning Political Justice* (ed.) K. Codell Carter (Oxford: Clarendon Press, 1971), pp. 70-71.

[136] Peter Singer *Writings on an Ethical Life* (London: Fourth Estate, 2000, 2001) p. 33.

[137] Although it should be noted that Hume also wrote in terms of pain (and correspondingly, happiness) of being the ultimate measure of that which was considered evil and good, respectively, as seen above and in the following; "If you push your enquiries farther, and desire a reason *why he hates pain*, it is impossible he can ever give any. This is an ultimate end, and is never referred to any object" (*An Enquiry Concerning the Principles of Morals,* Appendix I, 244, p. 293). Hume obviously did not apply such a measure to animals, however, and concentrated instead on that which he saw as the *result* of such pain or pleasure; namely, sympathy and human fellow-feeling.

[138] As cited in Singer, *Writings on an Ethical Life* p. 33.

Here Bentham challenges the usual criteria given by philosophers in order to justify respect for others; most notably, the ability to reason. As Bentham quite radically points out, human infants are not rational – or considerably less rational than some animals – implying that any moral theory based on rationality must needs admit that human infants can then hardly be said to qualify; a point which Singer takes up and expands upon, as we shall see later in Chapter 4. Bentham also clearly believes in the equal consideration of all humans on the grounds of sentience, apparent in his championing of the equality of blacks, as seen above. However, it is important to note that, as Singer remarks above, such equal consideration is only in terms of what can seen to be the respective, and therefore differing, *interests* of sentient beings. In other words, apart from our common interest in avoiding pain, what is of interest to pigs is not necessarily of the same interest to humans. For what Bentham is discussing within the context of this famous passage (actually a lengthy footnote) cited by Singer is not that we should not kill animals, but rather that we should not torment them.

> If the being eaten were all, there is very good reason why we should be suffered to eat such of them as we like to eat: we are the better for it, and they are never the worse. They have none of those long-protracted anticipations of future misery we have. The death they suffer in our hands commonly is, and always may be, a speedier, and by that means a less painful one, than that which would await them in the inevitable course of nature. If the being killed were all, there is very good reason why we should be suffered to kill such as molest us: we should be the worse for their living, and they are never the worse for being dead. But is there any reason why we should be suffered to torment them? Not any that I can see.[139]

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[139] Bentham, *Introduction to the Principles of Morals and Legislation*, p. 311.

In this passage Bentham suggests that we are not only "better off" for eating

animals, but that we actually might be doing animals a kindness by killing them –

considering the sort of death they might face in nature. Just prior to this passage

Bentham refers to the laws that we have to protect ourselves from other humans as

the product of "mutual fear," and, as animals do not suffer from any anticipated fear

in being killed – any of those "long-protracted anticipations of future misery we

have"– we therefore do not have laws against killing them as we do against the

killing of humans.[140] This is a classic utilitarian argument still acknowledged as

sound by current day utilitarians, although, as we shall see in Chapter Four, many

do now nevertheless attempt to argue against the killing and eating of animals.

John Stuart Mill

Mill attempted to refine utilitarianism in reponse to some of the critiques levelled

against it. He insisted, for example, that pleasures could and should be

differentiated by a hierarchy ("better to be Socrates dissatisfied that a fool

satisfied"[141]). He also insisted that one man's happiness was as valuable as any

other's, arguing strongly against the possibility of the neglect of minority interests

within any democracy where the majority of the voting public hold sway.[142] Mill's

answer to the tyranny of the majority was to emphasise the political rights of every

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[140] Ibid., p. 311.
[141] See John Stuart Mill, "Utilitarianism" in *John Stuart Mill: Utilitarianism, Liberty and Representative Government*, (ed.) H.B. Acton (London: J.M. Dent & Sons, 1972), p. 9.
[142] See Mill, "Representative Government," Chapter VII, "Representation of Minorities" in *John Stuart Mill: Utilitarianism, Liberty, Representative Government* (London: J-M. Dent & Sons, 1910, 1964), pp. 256-275.

individual ─ including women – who, along with the majority of working men, were at that time not permitted to vote.

> In the preceding argument for universal, but graduated suffrage, I have taken no account of difference of sex. I consider it to be as entirely irrelevant to political rights as difference in height or in the colour of the hair. All human beings have the same interest in good government; the welfare of all is alike affected by it, and they have equal need of a voice in it to secure their share of its benefits.[143]

Mill emphasises the equality of the *interest* that "all human beings" have in "good government," in that they are all likewise affected by its decisions. This does not necessarily entail that all have a "right" to govern, but that they still have a "right" not to be "misgoverned" by others.[144] Mill also, like Wollstonecraft, insists that the status of women in society is not something ordained by nature but rather is the result of prevailing laws and social customs which affect not only how they are perceived, but also how they perceive themselves:

> It is a benefit to human beings to take off their fetters, even if they do not desire to walk. It would already be a great improvement in the moral position of women to be no longer declared by law incapable of an opinion, and not entitled to a preference, respecting the most important concerns of humanity.[145]

However, in so emphasising 'rights,' Mill can also be seen as abandoning classic utilitarianism. Moreover, the adequacy of Mill's admirable defence of women's

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[143] Ibid., p. 290.
[144] Ibid., p. 291.
[145] Ibid., p. 291.

political rights ultimately rests on the adequacy of his justification for rights in general, which for Mill is for "no other reason than its general utility."[146] Yet Mill does not adequately justify *why* the "general utility" should be of importance to all, nor indeed why one person's happiness should be the concern of everybody else. Mill wrote;

> for whether there be any other ground of moral obligation than the general happiness or not, men do desire happiness; and however imperfect may be their own practice, they desire and commend all conduct in others towards themselves, by which they think there happiness promoted.[147]

This is Mill's general argument for the acceptance of happiness, or utility, as a proper goal, clearly showing Mill's assumption in regards to something that *is* (desiring happiness), with something that *ought* to be (the promotion of happiness). Even if we were to accept such an argument, it still does not give sufficient cause in terms of any obligation we might have to desire *another's* happiness. In arguing in relation to our duty to others, Mill echoes Hume in insisting that its real endorsement is a "pain" or a "feeling;" "[t]he ultimate sanction, therefore, of all morality (external motives apart) being a subjective feeling in our own minds."[148]. Although in contrast to Hume, Mill does not regard these feelings as "innate," but rather as "acquired,"[149] and sees education as playing a vital role in the cultivation of such feelings, he still insists nonetheless that it is the natural "social feelings of

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[146] "Utilitarianism," p. 50.
[147] Ibid., p. 25.
[148] Ibid., p. 26.
[149] Ibid., p. 28.

mankind" which *naturally* create societies in which "the interests of all are to be regarded equally."[150]

> The firm foundation is that of the social feelings of mankind; the desire to be in unity with our fellow creatures, which is already a powerful principle in human nature, and happily one of those which tend to become stronger, even without express inculcation, from the influences of advancing civilisation. The social state is at once so natural, so necessary, and so habitual to man, that, except in some unusual circumstances or by an effort of voluntary abstraction, he never conceives himself otherwise than as a member of a body; and this association is riveted more and more, as mankind are further removed from the state of savage independence.[151]

Mill is suggesting a view of 'man' here that is much more communal in its nature — "as a member of a body" — but it is one that sits uneasily with his equally insistent stance on individual political rights and happiness, in that the two might be seen as mutually exclusive. Mill is also describing what he sees as the teleological advancement of society very much in terms of the scientific positivism that was dominating the 19th century. During this period, the writings of Hegel, Marx, Augustus Comte and Charles Darwin all expressed a belief in the positive advancement of human societies from either lesser, more primitive or barbarous states into more civilised, enlightened and generally more 'scientific' states of culture (although Hegel's 'World Spirit' was more theo-philosophically than scientifically based). Such teleological narratives were similar to the 'progress of man' narratives of the Renaissance and Enlightenment, where 'civilisation' was, similarly, often linked with current western or European culture, in contrast to the

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[150] Ibid., p. 29.
[151] Ibid., p. 29.

association of the barbaric and primitive with non-European culture. For example,

Mill suggests, "(u)nquestionably it is possible to do without Happiness; it is done

involuntarily by nineteen-twentieths of mankind, even in those parts of our present

world which are least deep in barbarism."[152] Indeed, such narratives of progress –

which Lyotard was to call the "grand Narratives" of the west[153] – were inextricably

linked to the expansion and consolidation of the imperial and colonial enterprises of

European nations throughout the 19th century. The common method used to justify

the invasion or continued suppression of other cultures and lands was, as

previously, to dehumanise the African, Asian or Indigenous peoples who belonged

there. This was sometimes still justified on supposedly Christian grounds, as was

Kipling's attempt in 1899 to convince the United States to civilise the "heathen

Folly" of the Philippines, which they had recently 'won' in the Spanish-American

war:

> Take up the White Man's Burden--
> Send forth the best ye breed-
> Go bind your sons to exile
> To serve your captives' need;
> To wait in heavy harness,
> On fluttered folk and wild--
> Your new-caught, sullen peoples,
> Half-devil and Half-Child.[154]

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[152] Ibid., p.14.
[153] See Jean Francois Lyotard, *The Postmodern Condition*: *A Report on Knowledge*, trans. Geoff Bennington and Brian Massumi (Minneapolis: University of Minnesota Press, 1979, 1984), p. 15.
[154] Rudyard Kipling, "The White Man's Burden," http://www.wsu.edu:8080/~wldciv/world_civ_reader/world_civ_reader_2/kipling.html 1998. Accessed on 23/09/2008.

Although Christianity was often used to justify imperialism since European invasion began in the late 15th Century, imperialist justifications became more secular in their approach, with increasing emphasis given to scientific explanations of the world – such as Darwin's theory of evolution and natural selection. More emphasis was placed on the 'natural' state of things and the 'development' of human beings was viewed more as being linked to their environment and the forces of nature. Although Darwin himself did not repudiate the existence of God, his theory could be seen to stand independently of God as an originating force. And it was certainly taken up and propagated as such – both at the time and since – by people such as Thomas Henry Huxley, who coined the term agnosticism and became famously known as "Darwin's bulldog,"[155] and his grandson, Julian Huxley; a prominent member of the British Eugenics Society and the British Humanist Association. Darwin's ideas were also used to propagate what came to be known as Social Darwinism – the belief that that the various 'races' of the world themselves represented the evolution of 'man,' with 'negro' races being classified as somehow lower down on the evolutionary scale and therefore less human than the more 'highly' evolved 'white' races. Such racist eugenics were employed to further justify imperialistic and racist projects throughout world, including the expansion of the British Empire, where in Australia such projects resulted in both the outright slaughter of Indigenous Australians[156] and the removal of Indigenous children from their parents, which continued up until the late 1970s.[157]

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[155] See D. C. Somerville, *English Thought in the Nineteenth Century* (New York: David McKay, 1929, 1965), pp. 131-132.

[156] See Richard White, *Inventing Australia* (Australia: George Allen and Unwin, 1981) for the link between empire-building and race, and for the link between Social Darwinism and the de-

The story of an African man, Ota Benga, placed as an "exhibit" in the Monkey

House at the Bronx Zoo, New York in September, 1906, is another telling example

of the links between Social Darwinism and imperialism. Benga's tribe – including

his wife and two children – were wiped out by the colonising armed forces of

Belgium in what was then known as the Belgian Congo. He was then sold into

slavery to another tribe and eventually bought by a American who placed him on

display at the 1904 World's fair, along with other Indigenous peoples, in a so-called

"anthropology exhibit"[158] (Benga being classified as a "pygmy"). Benga

subsequently travelled to America with the man who had purchased him, where he

was eventually to be "exhibited each afternoon during September" at the Bronx

Zoo.[159] Benga's time as a zoo exhibit was shortlived, however, mainly due to the

immediate protests of African American clergymen. One such was the Rev. James

H. Gordon, who objected both on the grounds that the exhibit "evidently aims to be

a demonstration of Darwin's theory of evolution,"[160] and that it further belittled the

status of African Americans as humans; "We think we are worthy of being

considered human beings, with souls;"[161] showing, once again, Christianity's

variegated use as grounds upon which to both exclude and include marginalised

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humanisation of Tasmanian Aborigines see the SBS archived film series *First Australians*, Episode
Two, "Her Will to Survive" (Director/Writer/Producer) Rachel Perkins, SBS.com.au,
http://www.sbs.com.au/firstaustralians/ 2002-2008.
[157]See National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from
their Families [Australia]. *Bringing Them Home; Report of the National Inquiry into the Separation
of Aboriginal and Torres Strait Islander Children from their Families* (Sydney: Human Rights and
Equal Opportunity Commission, 1997).
[158] See Mitch Keller, "The Scandal at the Zoo" *The New York Times* (August 6, 2006) , p.2.
Accessed at http://www.nytimes.com/2006/08/06/nyregion/thecity/06zoo.htmol?pagewanted=print
on 24/09/08.
[159] Ibid., p. 5.
[160] Ibid., p. 3.
[161] Ibid., p. 1.

peoples. Although Benga then ceased being used an official "exhibit," he still continued to live at the zoo, with a newspaper reporting at the time that the crowds then followed him about "howling, jeering" and "yelling," and that, while some "poked him in the ribs" and "others tripped him up," "*all* laughed at him."[162] Benga was removed from the zoo later that same month but eventually committed suicide in 1916.[163]

Structuralist Thought

While the classic liberal-humanist concept of the subject as autonomous and self-determining has never fully disappeared from western thought, remaining influential within moral and political thought until the present day, the idea that 'man' was shaped and moulded by underlying universal structures beyond his individual control, while not in itself 'new,' now became an increasingly influential (and secular) strand of western thought that was to culminate eventually in the present arguments against a universal concept of human being; namely, postmodernism, poststructuralism and posthumanism.

Darwin's work can be seen as one such example of the growing prevalence of more structuralist modes of thought, in that his theory of evolution was taken as evidence that nature, rather than 'man' – contra Mirandelo – was at the centre of the universe in terms of the shaping of the world. With such a displacement the possibility arose

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[162] Ibid., p. 4, my italics.
[163] Ibid., p. 5.

that man himself might no longer be seen as vastly superior to, or indeed wholly

separate from, animals; having apparently sprung from animals himself.

Contributing to the de-centering of the concept of man as a self-determining,

autonomous being was the work of Georg Wilhelm Friedrich Hegel. Hegel is

significant both in terms of his conceptualisation of history as the teleological self

realisation of the World Spirit and in relation to his concept of the formation of the

subject, often referred to as the master/slave dialectic. In regard to the latter, he

states in the *Phenomenology of Spirit* that; "[s]elf-consciousness exists in and for

itself when, and by the fact that, it so exists for another; that is, it exists only in

being acknowledged."[164] In this regard Hegel is most commonly read as suggesting

that we can only know our own value through the recognition of another, and,

moreover, that this is a process that demands mutual reciprocity and dependency

between equal subjects. In other words, it is a picture of human being as constituted

via a relation of inter-subjectivity, as opposed to a view of the human as self-

constitutive autonomous subject, as previously conceived.[165]

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[164]G.W.F. Hegel, *Phenomenology of Spirit*, trans. A.V. Miller (Oxford: Clarendon, 1977), Section B, Part A, 178, p. 111.

[165] "Now, this movement of self-consciousness in relation to another self-consciousness, has in this way been represented as the action of *one* self-consciousness, but this action of the one has itself the double significance of being both its own action and the action of the other as well. For the other is equally independent and self-contained, and there is nothing in it of which it is not itself the origin. The first does not have the object before it merely as it exists primarily for desire, but as something that has an independent existence of its own, which, therefore, it cannot utilize for its own purposes, if that object does not of its own accord do what the first does to it. Thus the movement is simply the double movement of the two self-consciousnesses. Each sees the *other* do the same as it does; each does itself what it demands of the other, and therefore also does what it does only in so far as the other does the same. Action by one side only would be useless because what is to happen can only be brought about by both." 182, p. 112.

Such a radical conception of reciprocity is somewhat dampened however by the fact that Hegel does not seem to extend such equality of selves to non-Europeans. As part of his teleology of progress – the progress of the Spirit in its complete realisation within the world – Hegel writes in "Geographical Basis of World History" that non-Europeans are "inferior" to Europeans; this apparently being due to "climate."[166] In reference to North America he writes, "[e]ven the animals show the same inferiority as the human beings,"[167] and in describing South America, "[t]heir inferiority in all respects, even in stature, can be seen in every particular; the southern tribes of Patagonia are alone more powerfully constituted although they still live in a natural state of lawlessness and savagery."[168]

In that Hegel so closely tied the outworking of World Spirit to world history, and geographical and climatic influences to the formation of human character, he can also be regarded as having brought 'History' more fully into the picture regarding the formation of the subject. In other words, 'man' might no longer be conceived as simply an essential, ahistorical essence, but as being subject to change; to being formed by history and the social and physical environment and circumstances in which he lives. Such a view was to have an enormous influence on Karl Marx.

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[166] As cited in Eze, *Race and the Enlightenment* p. 110.
[167] Ibid., p. 114.
[168] Ibid., p. 115. Here it is important to note that that which is nocuous regarding Hegel's descriptions of the indigenous peoples of the Americas is their supposed inferiority to Europeans. There are philosophies of place that suggest that the geographical particulars of our environment do shape us, but that such shaping does *not* result in either 'inferior' or 'superior' expressions of human culture. For examples of such a view see Jeff Malpas, *Place and Experience: A Philosophical Topography* (Cambridge: Cambridge University Press, 1999) and Jeff Malpas, *Heidegger's Topology: Being, Place, World* (Cambridge, Mass., London, England: MIT Press, 2006)

Although concern for the common or working people had been raised in the preceding century through the writings of Rousseau and others, Karl Marx and Friedrich Engels can be credited with naming and bringing to the forefront the plight of working classes and the conditions under which they lived on a scale hitherto unprecedented (see, for example, Engels' *Condition of the Working Class in England*).[169] Further, the working classes were not just deemed to be worthy of equal moral consideration, they were to be the emancipators of an unjust society ruled by a corrupt and selfish bourgeoisie. Marx's vision of 'man' was that he was formed and in many ways determined by the deep structures he was enmeshed in. First, these structures can be seen in terms of the outworking of history, through which society had 'naturally' evolved through the tribal, feudal and capitalistic stages and which would in the future develop through Socialism into Communism; a view which owes much to Hegel.[170] Secondly, 'man' could be seen as being shaped by the economic conditions of production within society, and it was these economic arrangements – for example, who owned the means of production — that decided one's class and indeed, one's very cultural and social values. While the extent to which Marx saw the forces of production as determining factors is still a matter of debate, the question of determinism within any fundamentally structuralist universalism, such as Communism, presents a real challenge to the conception of

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[169]Friedrich Engels, *Condition of the Working Class in England* trans. Florence Kelley Wischnewetzky (London: Allen and Unwin, 1952); Engels providing in this book a harrowing description of the lives of the working classes in Manchester. Engels is also well-known as having radically argued that the position of women was the result of patriarchal convenience; tracing a history of women as 'property' and capital to be exchanged and controlled by fathers and husbands in Friedrich Engels, *The Origins of the Family, Private Property and the State* trans. Alick West and Dona Torr (London: Lawrence and Wishart, 1946).
[170]Karl Marx and Friedrich Engels, *The Communist Manifesto* trans. Samuel Moore (Harmondsworth: penguin, 1967).

morality within such a schema. This can be seen both in terms of the priority given the community over the individual, the possibility of dissent, and the possibility of moral responsibility itself; for if we can be see as being determined by forces ultimately beyond our individual control, how then can we speak of being individually responsible for moral acts? Indeed, can we speak of morality at all if there is no real sense of the possibility of either freedom or choice? This is also a problem for those wanting to justify ethics within evolutionary theories, along with the added problem of the is/ought distinction, or naturalistic fallacy. For if we, for example, accept that a process of natural selection or the survival of the fittest has brought about the state of things as they are in the world today – the way the world simply 'is' – we might then be tempted to justify the killing-off of certain races of humans – a certain 'refining' of the human race in the name of evolutionary progress; an argument used by Social Darwinists in colonial Australia to justify the decimation of Indigenous Australians, as noted earlier. In other words, the evolutionary 'progress' of the human race is viewed as being that which simply 'is' – and thus what then 'ought' to be.

Perhaps needless to say Communism was thoroughly communitarian in its conceptualisation of human being and was to present the biggest challenge to liberal-humanism both in theoretical and practical terms as a moral and political philosophy in the following years. However, the eventual disillusionment with Communism in the west – with the revelation of the Stalinist purges in 1956 and its failure to realise the anticipated teleological progress from Socialism to pure

Communism – considerably undermined its credibility as a truly universal representation of human being. This disenchantment, combined with what was seen as the failure of the French Communist Party to capitalise on impact on the May 1968 student uprisings, further contributed to the loss of faith in the universal "grand Narratives" of the west.[171] Further contributed, that is, in that along with the various inadequacies and exclusions already evidenced in the liberal humanist theories described above, both the works Sigmund Freud and Friedrich Nietzsche, among others, also contributed in their respective ways to such disillusionment.

The work of Nietzsche is extremely complex and difficult to interpret, having been variously viewed as displaying both anti-Semitic and pro-Semitic sentiments,[172] as well as both misogynist and feminist tendencies.[173] What is certain, however, is his influence on twentieth century moral scepticism, having famously declared that God is "dead"[174] and having presented a view of morality as merely a misguided and perverted construction of Christianity in *The Genealogy of Morals*.[175] His view of humanity here – as ultimately twisted and deformed by suppressed desires – is in many respects not dissimilar to Freud's, who of course famously suggested that our

[171] Lyotard, *The Postmodern Condition*, p.15.
[172] For a discussion on the former, see Steven E. Aschheim, "Nietzsche, Anti-Semitism, and the Holocaust," in *Nietzsche and Jewish Culture* (ed.) Jacob Golomb (New York: Routledge, 1997), pp. 3-20, and for a discussion on the latter, Yirmiyahu Yoval, *Dark Riddle: Hegel, Nietzsche and the Jews* (University Park: The Pennsylvania State University Press, 1998).
[173] For a discussion on the former, see *Feminist Interpretations of Nietzsche* (eds.) Kelly Oliver and Marilyn Pearsall (University Park: The Pennsylvania State University Press, 1998) and the latter, see Frances Nesbitt Oppel, *Nietzsche on Gender: Beyond Man and Woman* (Virginia: University of Virginia Press, 2005).
[174] See Friedrich Nietzsche, *The Gay Science* trans. Walter Kaufman (New York: Vintage Books, 1974), Sections 108, 125, 343, and Friedrich Nietzsche, *Thus Spake Zarathustra* trans. Walter Kaufman (Harmondsworth: Penguin, 1978), Prologue, Section 2.
[175] Friedrich Nietzsche, *The Genealogy of Morals* and *Ecce Homo* trans. Walter Kaufman and R.J. Hollingworth, (New York: Vintage Books, 1989).

unconscious, sublimated and irrational desires effectively shape and control our conscious lives. In this respect both Nietzsche and Freud can be viewed as having helped undermine the previous belief in the fully autonomous, freely choosing and rational subject. Human beings could not only be regarded as being determined by forces beyond their own volition, but even more disturbingly, such forces were seen as fundamentally primal and, with Freud, sexual in nature, rather than as reassuringly progressive, rational or 'enlightened.' In regards to Freud, however, girls and boys and women and men were again viewed as fundamentally and differently determined in their sexual natures, with little girls being defined in terms of their difference, their *lack* of male sexual apparatus and envy of the same. Freud's psychological view was to be later contested by, among others, feminists, who objected both to being described in terms of a 'lack' and to the suggestion of uniform and universal sexual stereotypes. Proof of such psychological 'truths' are by no means conclusive, moreover, for they rely on the assumption that the unconscious actually does exist. However, as François Meltzer has commented, any such existence is still "nothing more than speculation," as opposed to hard fact.[176] So while Freud can be seen as exploding a certain universal conception of human being, he can also be regarded as having replaced it with another; another equally restricting and equally unprovable conception of 'universal' patterns of behaviour that exclude the possibility of difference. A similar critique can be made of other structuralist theories of the 20th century, such as those of the cultural anthropologist, Claude Levis-Strauss, who himself was influenced by the Swiss structuralist

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[176] See François Meltzer, "Unconscious" in *Literary Terms for Literary Theory* (eds.) Frank Lentricchia and Thomas McLaughlin (Chicago: University of Chicago Press. 1990. 1995) pp. 147-162; p.162.

linguist, Ferdinand Saussure;[177] yet both theorists were also to have an enormous influence on postmodern and poststructuralist thought.

The Twentieth Century

Levi-Strauss famously suggested that cultures were mutually related manifestations of systems; systems of myth, totem and kinship. Following Saussure, Levi Strauss was to insist that no thing within a culture could be said to have *natural* meaning, but rather, only *cultural* meaning. In this sense he was significant in aiding the gradual shift towards theories that were to emphasise the importance of culture over nature. He was also scathing of western humanism, claiming that the whole point of his scholarship was to dismantle rather than build up the very concept of 'man;' resisting the narrative of progress so closely associated with humanism and insisting that the so-called primitive societies were as equally sophisticated as any civilised.[178] However, although his structuralist approach to anthropology emphasised the cultural, as opposed to the natural, aspect of human societies – and this in direct opposition to the liberal-humanist view of humans as the free determinants of their own societal structures – Levi-Strauss' theories could still be seen as universalist in that *all* human cultures, and thus human behaviour, could be seen as structurally similar. It was this sedimentary assumption of universalism, despite Levi-Strauss's ostensibly anti-humanist stance and despite other aspects of his theories that were regarded as useful (such as Derrida's use of bricolage), that

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[177] See Marcel Hénaff, *Claude Levi-Strauss and the Making of Structural Anthropology* trans. Mary Baker, (Minnesota: The University of Minnesota Pres, 1998), pp.11-13.
[178] Ibid., pp. 238-244.

Roland Barthes, Jacques Derrida, Michael Foucault and Francois Lyotard were to ultimately reject. In the late twentieth century it was 'culture' that came to be seen as that which defined humanity, but it was culture set loose from any moorings to a universal nature. As Barthes was to suggest, "Man" was no longer a "Great Family," but rather a disparate collection of relative and localised truths.[179] Indeed, just as Nietzsche had proclaimed that God was dead, now it was "Man" himself who had seemed to have died.[180]

In his book *Humanity: A Moral History of the Twentieth Century* Jonathon Glover suggests that the atrocities of the twentieth century have contributed to a decline in the belief in both the authority of religion and Enlightenment philosophies of progress – the expectation of "the spread of a humane and scientific outlook." Subsequently, these atrocities can be seen, aided by Nietzsche's theories, as further promoting the current 'unfashionable' status of Enlightenment philosophies.[181] Glover's own project is ultimately psychologically based, however, as he hopes via his investigation into the causes of the various massacres, wars and acts of genocide perpetuated in the 20th century to provide what he regards as a better psychological profile of human being, one that can "replace the thin, mechanical psychology of

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[179] See Roland Barthes, "The Great Family of Man" in *Mythologies* trans. Jonathon Cape Ltd. (London: J. Cape, 1972), pp. 100-102.
[180] See Roland Barthes, "The Death of the Author" in *Image-Music-Text* trans. Stephen Heath (London: Fontana Press, 1977), pp. 142-148, and Michel Foucault *The Order of Things (London, New York:* Routledge, 1966, 2002), in particular the last chapter, "The Human Sciences," pp. 375-421.
[181] Jonathon Glover, *Humanity: A Moral History of the Twentieth Century* (London: Pimlico, 2001), p.1-17

the Enlightenment with something more complex, closer to reality"[182] and which

might serve as an ethical platform for better human understanding. As this thesis is

philosophically based and this chapter attempts to provide a philosophical

background to the development of both the posthumanist and critical humanist

perspectives in following chapters, it differs in both method and aim to Glover's,

but certainly Glover's initial claim as to the effect that the wide-scale atrocities of

the twentieth century have had on human thought – both philosophers and non-

philosophers alike – are credible. Along with the disillusionment in Enlightenment

philosophies, the failure of communism, as noted above, as a viable alternative to

liberal humanism in the west has also played a role, and this due in large part to the

horrors of Stalinism, as well as the later atrocities of the Cultural Revolution and

the Khmer Rouge. The aftermath of the Second World War, in terms of the

dropping of two atom bombs and the Holocaust, are also of enormous significance

in this respect. George Steiner, in "Comprehending the Holocaust" reveals

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[182] Ibid., 7. Some objections to psychological explanations to human behaviour have been briefly noted above in the discussion on Freud, and will be brought up again in the discussion on Judith Butler in Chapter 3. Glover's argument is also based on the assumption that the scale of the atrocities speak for themselves in terms of moral force; "The thought at Auschwitz and at other places, 'never again,' is more compelling than any abstract ethical principle…. In reconstructing ethics, revulsion against these things which people have done has a central place." (p.406) However, that that revulsion was clearly not the overriding feeling in some human hearts was surely that which brought about Auschwitz in the first place. In other words, Glover is assuming at the very foundation of his ethical approach that we already have an obligation to respect other humans, and that there are merely certain twentieth century hindrances to that obligation being realised, such as the technological advances in war weaponry, ideology and "tribalism" (p. 408), which, among other things, affect out moral identity and choices; "Robot psychology, defensive hardness and distancing, and the assault on moral identity, all have their limits. Sometimes the old, more human, psychology breaks through the new hard crust" (p. 52). For Glover, the answer is ultimately to be found in the cultivation of "human responses" via "the moral imagination," which are to act as a restraint to the inhumane; "Central to the moral imagination is seeing what is humanly important. When it is stimulated, there is a breakthrough of the human responses, otherwise deadened by such things as distance, tribalism or ideology" (p. 408). But while Glover acknowledges that the Enlightenment is currently not "fashionable" amongst some philosophers (p. 7), he does not deal with their questioning of the very concept of a universal human being, a concept with fundamentally underlies Glover's entire argument.

something of the impact of the latter by writing of the *Shoah* in terms of the silence of God; where the Jewish people "can be seen, understood to have died *for* God, to have taken upon the inconceivable guilt of God's indifference, or absence, or impotence."[183]

Other factors can also be seen as having played a part in the rise of both posthumanism and critical humanism in the twentieth century, not least the influence of the varied strands of philosophical thought itself, including phenomenology and existentialism, among others. But perhaps even more significant are the various large-scale emancipatory movements that occurred throughout the twentieth century. In regards to women, these included what are referred to as the first and second-wave feminist movements; the first wave being the suffragette movement beginning in the late 19th century and the second as that which is generally referred to as the women's liberation movement initiated in the late nineteen-sixties. The twentieth century saw also the gradual (but by no means total) disintegration of colonial powers, with the majority of former colonies gaining independence shortly after the Second World War. Significant, also, were the civil and black rights movement in North America during the sixties and seventies, which were to further encourage the claims of various Indigenous rights movements across the world – including Australia, where in 1967 Indigenous Australians were finally granted full citizenship – and thus political rights – within their own country. Finally, the post-war formation of the United Nations and the

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[183] George Steiner, "The Long Life of Metaphor –A Theological-Metaphysical approach to the Shoah," in *Comprehending the Holocaust*, Asher Cohen et al. (eds.), (Frankfurt on Main: P. Lang, 1988), p. 59.

Universal Declaration of Human Rights in 1949 established the liberal humanist

model of political rights as a standard for human respect on an international scale.

While all of these movements drew, in various ways, upon the concept of a

common humanity and universal rights in their cause, what their protest revealed, in

a very tangible way, was the fact of the history of their practical *exclusion* from

such universal concepts. This led to a questioning of the very terms of inclusion

themselves; a questioning of the supposed universality of what was meant by

"human" and how effective that might be in truly representing the reality of human

difference. Within all the emancipatory movements, including the current

questioning within human rights discourse of the validity of liberal-humanist basis

for human rights,[184] the question of whether a world view constructed from a

white, male, European position of privilege could ever represent anything 'other'

than such a position became a question of vital theoretical and practical

significance. What was more, within the various emancipatory groups themselves,

certain conceptualisations of difference were themselves exposed as exclusionary.

For example, the universal conceptualisation of 'woman' came to refer within the

women's movement, both wittingly and unwittingly, to the experience of white,

middle class, able-bodied heterosexual women alone. As bell hooks pointed out,

American suffragettes made a conscious decision to exclude African American

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[184] See, for example, Joanne, R. Bauer, and Daniel A. Bell (eds.), *The East Asian Challenge for Human Rights* (Cambridge: Cambridge University Press, 1999); Kwame Gyekye, *Tradition and Modernity: Philosophical Reflections of the African Experience* (Oxford: Oxford University Press, 1997); Maria Rodrigues, "Recognising Non-Western Thought in Human Rights Theory," in Julie Connolly, Michael Leach and Lucas Walsh (eds) *Recognition in Politics: Theory, Policy, Practice*, pp. 101-115.

women from their campaign for enfranchisement,[185] and, as Audre Lorde also remarked in 'An Open Letter to Mary Daly,' white women were still practising racism, however unconscious, when they assumed that their experience as women was representative of the experience of all women.[186] Lesbians, working class, disabled, Indigenous and women of colour were all to make similar claims, and the efficacy of *any* universal claims to sameness were seriously called into doubt; both in terms of the conceptualisation of human being and regarding the very notion of 'woman' – along with other equally contested claims to an essential identity.

Finally, the animal liberation movement has had an unprecedented impact on western culture and thought in the twentieth century. As it is mostly utilitarian philosophy that has been used to justify the equal moral consideration of animals, this has brought about a renewal of utilitarian thought within the realm of moral philosophy. It is important to note however that while the other emancipatory movements have been brought about by the groups directly affected by marginalisation themselves – in other words, by humans calling other humans to account over their exclusion from equal moral consideration – the animal liberation movement has not been brought about by animals but rather by humans on their behalf. This may at first seem rather a self-evident observation, but its significance will be drawn out more fully in Chapters 5 and 6.

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[185] See bell hooks, *Ain't I a Woman: Black Women and Feminism* (London: Pluto, 1981), in particular Chapter 5.
[186] See Audre Lorde, "An Open Letter to Mary Daly," in Cherrie Moraga and Gloria Anzaldua (eds), *This Bridge Called My Back: Writings by Radical Women of Color* (New York: Kitchen Table – Women of Color Press, 1983), pp. 101-105.

Summary

The above represents a brief background to the current questioning of universal

claims to a common humanity; both in regards to posthumanist and current critical

liberal and humanist critiques. From it we can begin to see why posthumanism has

gained popularity as an alternative to humanism, in that it is seen to reject

inadequate universalisms in favour of philosophies which emphasise particularity

and difference. For we can see from the previous discussion that universal

conceptions regarding human being in the west have at times intentionally – and at

times unintentionally – resulted in the exclusion and suppression of difference.

These occurred for a number of reasons; at times exclusions were made on the

grounds of sheer cultural or political expediency, as we saw with Locke and the

application of Christianity; Christianity being used at times as an excuse to exclude

women and slaves and at others to *include* both women and slaves within the scope

of moral consideration. Sometimes these exclusions have occurred due to the scope

of application simply not being broad enough; for example, not all beings can be

said to possess rationality. Problems have also arisen over inadequacies in the

philosophical grounds used in order to justify universal respect; for it is difficult to

prove just why rationality should be linked to respect, how we can be said to have

either an immortal soul or natural rights, or indeed even why we should actually

care about the suffering of others. Further, linked to the question of why we should

be morally obligated to respect others is the issue of whether we conceive human

being as either essentially communal or individual in nature, as an over-emphasis

on either aspect has led to further exclusions of difference. All of these issues, among others, explain the existence of current critical humanist scholarship that seeks to re-work humanism in an attempt to address its inadequacies; both in regards to the scope of its application and its foundational justifications.

For the reasons outlined above universalism has as a concept been rejected outright by posthumanist scholars. However, it is also hopefully clear from the discussion that western philosophy has not simply manifested an homogenous promotion of the same, but has itself often raised the question of respect for the particular. In this sense, western philosophy can be seen to have produced its own apparent nemesis in posthumanism. And while the discussion above may show the many inadequacies associated with past conceptualisations of universalism, it does not then necessarily follow that universalism is of itself an intrinsically flawed concept. Rather, it may instead mean that an adequate universal conception of human being is still yet to be conceived, and certainly recent attempts at just such a new conception will be explored in Chapters 4, 5 and 6. But before these are discussed, it is important to first explore the adequacy of current arguments for particularism – as represented by posthumanism – in order to gauge whether they indeed represent a viable alternative to universal arguments for respect. This will be done first by examining in Chapter Two the broad theoretical arguments for particularism as represented in the work of Derrida, Foucault and Lyotard, and then by exploring in Chapter Three the practical implications of such theories in terms of their concrete application to the claims of some of the groups traditionally marginalised by

western universalism; namely, Indigenous peoples, women, gays, lesbians, and

animals.

Chapter Two

Posthumanist Theory: Respect for the Particular

In this chapter we will examine in some detail the broad theoretical arguments

used by posthumanist scholars in their critique of universal concepts of human

being. While posthumanists have objected to western philosophy on a number of

different grounds, one of their major objections to universalism has been its

exclusion or marginalisation of difference, and as such, these theories can

themselves be seen as arguments for particularism; for the recognition of

difference over sameness. While we could examine the work of many scholars

in this respect, including structuralist Roland Barthes, who, as a contemporary,

both influenced and was influenced by Derrida, Foucault and Lyotard, we will

be focusing almost exclusively on the work of the latter three, as it is these

scholars whose work has been most generally drawn upon in the practical

application of postmodernist theories to the concerns of marginalised groups. In

addressing the work of these scholars our focus will be twofold; we will be

highlighting their consistent concern regarding the marginalisation of certain

others within western philosophy as well as ascertaining whether their

arguments actually do validate their prioritisation of particularism over

universalism. Ultimately it will be shown that the moral force of such arguments

rely on universalist assumptions as to the equality, worth and respect owed to

others. But first, while a comprehensive general background has been given to

the causes in the rise in the popularity of posthumanist philosophies in the

preceding chapter, before moving on to examine the work of Derrida, Foucault

and Lyotard in some detail, a further brief description of the specific intellectual and social milieu of these three French thinkers will be given, as this will help contextualise their thinking to a greater degree. This will be followed with a short discussion on Emmanuel Levinas' concept of the 'other.'

The importance of the influence of communism on the French post-war intellectual scene, in terms of being seen as either a viable or unviable political alternative to western liberal humanism, cannot be underestimated. Indeed, the famous quarrel between Sartre and Camus in 1952 was over just this very issue, and while not all French intellectuals were directly involved with communism, it can be said that much of French philosophy at the time was deeply opposed to that which was considered 'bourgeois' (the term itself appearing often in the work of Barthes and Foucault), or either affected by or reacting to Marxist thought in some form or another.[1] Besides the influence of a general philosophical milieu that was deeply affected by communist thought, Foucault was actually a member of the French Communist Party between 1950 and 1953, to which he was introduced by Louis Althusser (one of his teachers at the Ecole Superier) – a structuralist Marxist whose major work is simply entitled *For Marx*.[2] A contemporary also of Barthes and Lyotard, Althusser also influenced

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[1] See also Barry Smart, who says of Foucault, "Although no sustained discussion of Marxist theory and politics is to be found in Foucault's corpus, the analytical focus, methodological orientation, and political thrust of the work may as a number of key references and observations in the text imply, be read as a response to, or in effect as a critique of fundamental elements of both Marxist analysis and socialist political strategy." Barry Smart, "The Politics of Truth and the Problem of Hegemony" in David Couzens Hoy (ed.) *Foucault: A Critical Reader* (Oxford: Blackwell, 1991), pp. 157-173; p.157.
[2] Althusser can be seen as an interpreter of the latter Marx – as opposed to the Marx of the 1849 manuscripts – in that he regarded *all* of human life, its basic structures of production as well as its superstructures of culture and art, as being ultimately determined by economic conditions. See Louis Althusser, *For Marx*, trans. Ben Brewster (London: Allen Lane, 1969).

and acted as supervisor to Derrida.[3] Lyotard himself had been an active member

of the radical Marxist militant group, *Socialisme ou barbarie*, prior to taking up

his philosophical career. The significance of this decided influence of

communist thought is that it made the eventual disillusionment with

communism all the more powerful. As Lyotard has stated:

> I went through this pagan or paganizing phase just at a time
> when all my hopes, all the perspectives, the whole
> organisation of my life and my thought, if I may put it this
> way, were centered on a kind of radical activism. All this I
> saw wiped out. Even before the middle of the Sixties, I was
> persuaded that the perspective of a general alternative to
> society, to reality, was at an end. As a result, Marxism, even
> our very radical Marxism (for I was far from being the only
> one), had been a mistake. It had to be reclassified as another
> of the great metaphysical systems of the West, of Europe in
> particular. It had been their last episode.[4]

So while Foucault and Derrida were not as politically militant as Lyotard, the

loss of faith in communism – both in terms of the Stalinist revelations and the

failure of the 1968 riots – could be seen to be the last straw, the "last episode" in

terms of a general loss of faith in western structures and systems of thought in

general; both political and philosophical. As Emmanuel Levinas notes, although

"men have been sensitive to this alienation for a long time…. Today's angst is

more profound. It comes from seeing revolutions founder in bureaucracy and

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[3] Peter Sedgwick also stresses the important influence of Althusser, both within French academia at the time in general, but also particularly on Derrida, whom he supervised for his *aggregation.* Peter Sedgwick, *Descartes to Derrida: an Introduction to European Philosophy* (Oxford: Blackwell, 2001), p. 194.
[4] Jean-Francois Lyotard and Gilbert Larochelle, "That Which Resists, After All," in *Philosophy Today* (Winter 1992); 36, 4; Academic Research Library, pp. 402-418; p. 403.

repression and totalitarian violence passing for revolution. *Because disalienation itself is alienated in them.*'[5]

But of course this was not the only influence on French intellectuals at the time.[6] As mentioned in the previous chapter, the broad philosophical movements of structuralism, phenomenology and existentialism were also highly influential – whether in terms of being positively embraced or positively rejected. Both Derrida and Lyotard responded and reacted (respectively) to the work of Heidegger, and Foucault, Derrida and Lyotard all acknowledged the influence of Nietzsche and Freud. These intellectuals were also influenced by the wider political, cultural and international milieu, wherein the voices of those traditionally excluded from western concepts of moral consideration – women, blacks and the inhabitants of colonised and former colonised nations – were all demanding to be heard in a manner unprecedented in western history. Awareness of and opposition to colonialism was high, being shaped by both the Algerian war for independence (1954-1962) and the various anti-imperialist and anti-capitalist movements taking place in Vietnam, Cuba and China.[7] Moreover,

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[5] Emmanual Levinas, *Humanism of the Other*, trans. Nidra Poller (Urbana and Chicago: University of Illinois Pres, 2003), p. 60. Italics in the original.

[6] Rick Roderick also places Derrida's political motivations within the context of the "Situationist" movement (a movement which began in 1962 and was influential during the '68 riots), who wanted the concept of revolution "reinvented", the "revolutionary project" having "failed" and been "neutralised" by the ruling society. Rick Roderick, "Reading Derrida Politically (Contra Rorty)," *Praxis International* 6:4 (January 1987), pp. 442-449; p.445.

[7] See Kristin Ross, *May '68 and Its Afterlives* (Chicago: University of Chicage Press, 2002). See also Barthes' analysis of French colonialism in his essay "Myth Today" (*Mythologies*), where he gives a semiotic reading of a black soldier shown saluting the French flag on the cover of *Paris Match*. And as noted in the previous chapter, in his essay entitled 'The Great Family of Man' Roland Barthes also ridicules the assumption of human universality promoted in a photo exhibition of the same name being shown in Paris as part of a world tour during the late 1950s. In the exhibition, photographs of African villagers were shown alongside European city dwellers in an attempt to illustrate the basic premise that, despite our many cultural differences, the 'Great Family of Man' was one, in that we all experience the same essential conditions; birth, love, labour and death. Barthes poured scorn on the idea that such experiences could be

women were also making their voices heard. While Foucault and Lyotard have

not often specifically addressed issues relating to women in their work, that they

both saw the struggle of women within the broader context of the struggle of

those marginalised within western thought is without doubt. As Foucault stated:

> Women, prisoners, conscripted soldiers, hospital patients, and
> homosexuals have now begun a specific struggle against the
> particularized power that is extended over them…the
> generality of the struggle specifically derives from the system
> of power itself, from all the forms in which power is
> exercised and applied.[8]

That Derrida was highly aware of feminist claims can also be seen in his use of

the term "phallologocentrism:"

> The discourses of Nietzsche, Joyce and the women's
> movement which you have identified epitomise a profound
> and unprecedented transformation of the man-woman
> relationship. The deconstruction of phallologocentrism is
> carried by this transformation … But we cannot objectify or
> thematise this mutation even though it is bringing about such
> a radical change in our understanding of the world that a
> return to the former logocentric philosophies of mastery,
> possession, totalisation or certitude may soon be
> unthinkable.[9]

Note here Derrida's identification of the "women's movement" with the project

of deconstruction, and the clear association of "logocentric philosophies" with

"mastery, possession, totalization" and "certitude". In describing European

humanism's conception of itself as representative of "human culture in general"

Derrida writes; "Europe has also confused its image, its face, its figure, and its

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considered universal, claiming that even the experience of death for a poor, disenfranchised
African would be different to the experience of an affluent European.
[8] As cited by Roderick, "Reading Derrida Politically (Contra Rorty)," pp.445-446.
[9] As cited in Jeff Noonan, *Critical Humanism and the Politics of Difference* (Montreal &
Kingston: McGill's-Queen's University Press, 2003), p. 72.

very place … with that of an advanced point, call it a phallus if you will, and thus, once again, with a heading for world civilisation or human culture in general."[10]

Before going on to discuss the work of Derrida, Foucault and Lyotard in more detail, however, it is important to briefly discuss Levinas, as he has given the concept of the 'other' a central place in his work and is often regarded as a posthumanist scholar[11]– although he has actually rejected anti-humanism himself[12] and sums up the movement rather cynically in these terms:

> The end of humanism, end of metaphysics, the death of man, death of God (or death to God!): apocalyptic ideas or intellectual high-society slogans. Typical of such manifestations of Parisian taste, and distaste, these notions take hold with the tyranny of the latest craze, but are soon reduced to bargain prices and downgraded.[13]

In one sense, Levinas' philosophy can be seen as arising out of a concern for the marginalised other par excellence, however he regards such marginalisation as arising out of what he sees as an originary violence done to the other through the

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[10] As cited in Noonan, p. 72. Derrida, born in Algeria and opposed to French colonialism, was also publicly critical of America's involvement in Vietnam (see "The Ends of Man," in *Margins of Philosophy*, trans. A. Bass (Chicago: University of Chicago Press, 1982), pp. 109-136; pp.113-4). And while Derrida can be seen as contributing to the philosophical ideas inspiring the 1968 riots (see V.B Leitch (ed.) *The Norton Anthology of Theory and Criticism* (New York: W.W. Norton and Company, 2001), pp. 1816), he was in turn himself shaped by his cultural and intellectual milieu, which included theorists such as Julia Kristeva and the radical feminist Helene Cixous, with whom Derrida often discussed James Joyce (ibid., p.2036). In his 1968 paper "The Ends of Man" – which he wrote for a philosophical colloquium on "Philosophy and Anthropology" held in the U.S. – Derrida himself also specifically places his own highly critical discussion of western "metaphysical humanism" within the political context of the time of writing, citing Martin Luther's King's assassination, the Vietnam war and the May '68 riots; with the latter actually occurring while he was typing his text. These "historical circumstances," Derrida writes, "appear to me to belong, by all rights, to the field and the problematic of our colloquium." Derrida, "The Ends of Man," p.114.
[11] See Peter Sedgwick, *From Descartes to Derrida*, pp.163-231.
[12] See Levinas *Humanism of the Other*, pp. 45-69.
[13] Ibid., p. 58.

primacy given in western metaphysics to being, presence, and subjectivity; to

"being-in-the-act."[14] In Levinas' attempt to displace the primacy of being – to

claim an "other than being"[15] – *all* become other; other-than-myself, other-than-

subject – "where the ego takes the place of the same and the *Other* takes the

place of the other."[16] This is opposed to the common posthumanist

understanding that only particular others have been excluded from moral

consideration (such as women, the non-European, etc). For Levinas, it is the

subject or the self that represents "the Same," although he still, along with other

posthumanists, gives priority to the other *over* "the Same;" with the other still

representing difference – a pure alterity.

According to Levinas, the western prioritisation given to being is exemplified

through the work of Martin Heidegger, although Heidegger himself attempted to

place attention to Being before what he saw as the damaging tendency within

western metaphysics to prioritise the definition of 'Man;' "[i]n this regard

"subject" and "object" are inappropriate terms of metaphysics, which very early

on in the form of Occidental "logic" and "grammar" seized control of the

interpretation of language. We today can only begin to descry what is concealed

in that occurrence."[17] While Levinas' interpretation of Heidegger's work is not

necessarily reflective of Heidegger's own views on Being, Levinas still insists

that "sociality in Heidegger is found in the subject alone; and it is in terms of

solitude that the analysis of *Dasein* in its authentic form is pursued."[18] Levinas,

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[14] Ibid., pp. 3-4.
[15] Ibid., p. 3.
[16] Ibid, p. 54.
[17] Heidegger, "Letter on Humanism," p. 218.
[18] Levinas, "Time and the Other," in Sean Hand (ed.) *The Levinas Reader*, (Oxford, U.K.: B. Blackwell, 1989), pp. 37-58; p. 53.

then, explicitly rejects ontology, hoping to find a way "beyond being" but also beyond "transcendence;"[19] to prioritise ethics as first philosophy through an "absolute orientation toward the Other"[20] – a "work" that he describes as comprising "ethics itself."[21] In describing this relationship to the other, Levinas uses the notion of the naked face, stripped of all "cultural ornament;"[22] a "desolation" and obligation before which the "Ego" is "banished" and made "infinitely responsible."[23] Levinas regards the Ego as being in fact "unable to escape" from such "responsibility."[24]

Apart from his admirable regard for the other, there are some aspects of Levinas' philosophy that are not only difficult to comprehend, but are particularly disturbing. By rejecting ontology and phenomenology, the other, as represented by the face, becomes an abstraction; "The face is abstract."[25] This effectively erases the cultural specificity, real voices, and lived differences of actual human beings. This is consolidated, moreover, by Levinas' definition of the other as *all* others, in that a white, European male can be regarded as having been as marginalised, as 'different' within western philosophy as a black woman. In this regard, Simone de Beauvoir suggests in *The Second Sex* that Levinas still speaks from "a man's point of view;" "it is striking that he deliberately takes a man's point of view, disregarding the reciprocity of subject and object."[26] Moreover, she reminds us that this is from a position of

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[19] Levinas, *Humanism of the Other*, pp. 40-41.
[20] Ibid., p.27
[21] Ibid., p.28.
[22] Ibid., p.32.
[23] Ibid., p.33.
[24] Ibid., p.33.
[25] Ibid., p.39.
[26] Beauvoir, *The Second Sex*, p. 16. In much of Levinas' work he refers to the other as feminine.

"privilege;" "When he writes that woman is a mystery, he implies that she is a mystery for man. Thus his description, which is intended to be objective, is in fact an assertion of masculine privilege."[27] In other words, Beauvoir is drawing attention to the fact that Levinas assumes that the speaking, thinking subject is a white, middle-class, European male, which has been one of the core problems facing western philosophy in terms of conceptualising others.

Beauvoir is affirming the creation, throughout history, of a *marginalised* other; non-European, non-white, non-male, non-bourgeoisie. It is the history of this other, the marginalised other – as opposed to Levinas' argument that *all* have been systematically, automatically and violently othered due entirely to the construction of the Subject/Object divide – which can be seen to lie at the heart of western philosophy. And this is because *some* 'others' – i.e., those who are not physically myself, have *always* been regarded as equal, while some others have not. The fact that some others have always been recognised as equal subjects, implies that all 'others' have not always been automatically regarded as unequal 'objects.' Moreover, the western tradition has by no means been consistently repressive in its attitude even towards the marginalised or 'different' other, as seen in previous chapter.

Worrying, also, is also the extent of our responsibility and commitment to the other in Levinas' work. For the other is one to whom there must be "no limits" to our submission; one must be completely "vulnerable,"[28] and prepared to

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[27] Ibid., p. 16.
[28] Ibid., p.64.

suffer violence from such an other; [29] to be "beaten" and "slapped" while turning the other cheek,[30] "open" even to the other's enmity[31] and finally, "hostage of everyone." [32] We are in fact conceptualised as being given over in slavery and servitude to the other, which Levinas defends on the basis that one is given over to "the Good:"

> But the enslaving character of responsibility that overflows choice—that of obedience prior to the presentation or representation of the commandment that obliges to responsibility—is cancelled by the bounty of the Good that commands.[33]

In short, Levinas implies that it is this giving over to "the Good" that is the "expiation" of the violence done to one.[34] But if we were to place an actual slave, or a woman in the place of the Ego, such unconditional giving and prioritisation of the other looks, frighteningly, like the all-too-familiar roles expected of women and the subjugated; subordinate yourself to the demands of others, sacrifice all for an other whose needs are always more important. In short, negate yourself; a subject-position which might (albeit still strangely) be seen as redressing the balance somewhat if occupied by a white European male, but which appears as simply more-of-the-same if occupied by an actual slave.

Levinas' position in this regard may be more complicated than Beauvoir suggests, given that he was also a Jew who lost much of family during the Holocaust. And the very nature of his philosophy, which attempts to tread an

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[29] Ibid., p.75.
[30] Ibid., p.63.
[31] Ibid., p.63.
[32] Ibid., p.57.
[33] Ibid., p.53.
[34] Ibid., p.73.

invisible line between ontology and transcendence, makes it exceedingly

difficult to weigh its possible implications for lived existence. But, in the end, it

is this very aspect of Levinas' philosophy that ultimately renders Levinas'

conception of the other untenable, in that it borders on a mystical or "religious"

conception of human being, which Levinas himself admits; acknowledging the

sheer paucity of words that can be found to convey such a complex position.[35]

However, such a mystical and abstract conception of the human as face leaves

the lives of actual, concrete humans exceedingly difficult to grasp, and this is

directly due to the lack of situated particularity in Levinas' notion of the face.

Jacques Derrida

It might be objected from the very outset that it is inaccurate to characterise

Derrida as posthumanist, given Derrida's own claim that we are always working

within the tradition of western humanist philosophy; there being no 'outside' to

philosophy's text.[36] Posthumanist Neil Badmington, for example, agrees with

Derrida that while posthumanism can never fully achieve a complete break from

humanism, posthumanism's task is to nevertheless reveal humanism's

incoherency.[37] However, the coherency of Badmington's and Derrida's own

claims in this matter can be questioned, for, despite his occasional evocative use

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[35] Ibid., p.50. See also Levinas, discussion of "the Good," which he describes as "a value;" "A value that, by abuse of language, is named. A value that is named God." Ibid., p. 54.

[36] Derrida, *Of Grammatology*, excerpt in V.B Leitch (ed.) *The Norton Anthology of Theory and Criticism* p.1825. The following discussion on Derrida is a revised version of my previously published chapter, Kristi Giselsson, "Assessing an Alternative Grammar: Are Identity, Respect and Justice Possible within Posthumanism?" in Julie Connolly, Michael Leach and Lucas Walsh (eds.) *Recognition in Politics: Theory, Policy and Practice* (Newcastle, UK: Cambridge Scholars Publishing, 2007) pp. 65-83.

[37] Neil Badmington, "Posthumanist (Com)Promises: diffracting Donna Haraway's cyborg through Marge Piercy's *Body of Glass*," in N. Badmington (ed.) *Posthumanism* (Basingstoke, Hampshire: Palgrave, 2000), pp.85-97; p.86.

of the word "humanity,"[38] Derrida consistently argued for the overturning and displacement of the whole concept of western humanism; calling for a mode of interpretation which did not repeat "the non-sense or the anguishing absurdity which haunt metaphysical humanism,"[39] and calling instead for a mode which is:

> no longer turned toward the origin, affirms play and tries to pass beyond man and humanism, the name of man being the name of that being who, throughout the history of metaphysics or of ontology – in other words, throughout his entire history – has dreamed of full presence, the reassuring foundation, the origin and the end of play.[40]

Derrida also characterised western humanism in extremely negative terms, seeing "Eurocentric" philosophy and language[41] – which are inseparable within Derrida's schema – as an imperialistic system unjustly imposing itself on the world: "At the moment when the fundamental conceptual system produced by the Greco-European adventure is in the process of taking over all of humanity;"[42] "Nor merely to focus attention on what I shall call logocentrism … which was fundamentally … nothing but the most powerful ethnocentrism, in the process of imposing itself on the world;"[43] "Western thought, the thought

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[38] See Derrida, "Violence and Metaphysics: an Essay on the Thought of Emmanuel Levinas," in *Writing and Difference* (London: University of Chicago, 1978), pp. 278-293; pp. 82; and "Racism's Last Word" *Critical Inquiry* 12 (1), (1985), p. 293.
[39] Derrida, "The Ends of Man," p. 134
[40] Derrida, "Structure, Sign and Play in the Discourse of the Human Sciences" in *Writing and Difference*, p. 292.
[41] Derrida, "The Right to Philosophy from the Cosmopolitical Point of View," in P.P. Trifonas (ed.) *Ethics, Institutions and the Right to Philosophy* (Boulder, New York, Oxford: Rowman and Littlefield, 2002), pp.1-18; pp. 9-11.
[42] Derrida, "Violence and Metaphysics," p. 82.
[43] Derrida, *Of Grammatology*, p. 1822.

whose destiny is to extend its domains while the boundaries of the West are drawn back;"[44] and finally, in "The Ends of Man:"

> This trembling is played out in the violent relationship of the whole of the West to its other, whether a "linguistic" relationship (where very quickly the question of the limits of everything leading back to the question of the meaning of Being arises), or the ethnological, economic, political, military, relationships, etc. Which does not mean, moreover, that military or economic violence is not in solidarity with "linguistic" violence.[45]

The imposition in itself is oppressive, in that it is imperialistic ("the imperialism of the logos"[46]) *and* the conceptual system itself is viewed as inherently nocuous and violent. In fact it is difficult to separate concept from political imposition within Derrida's schema, Derrida stating in his "Afterword" to *Limited Inc* that he sees western concepts not as neutral but as *a priori* political.[47] This is evidenced in the above quote, where Derrida both equates the west's "violent … linguistic relationship' with the philosophical question of 'Being' and implies that 'military and economic violence' *are* in fact 'in solidarity with ""linguistic" violence." Derrida's commitment to opposing humanism is not just characteristic of his early texts but also evident in later work where he writes, for example, in terms of the "entire deconstruction of onto-theological humanism (including that of Heidegger)," which is to include the deconstruction of the nature/culture, human/animal divide.[48] Derrida claims here in fact that his

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[44] Derrida, "Force and Signification" in *Writing and Difference*, pp. 3-30; p. 4.
[45] Derrida, "The Ends of Man," p. 134-135.
[46] Derrida, *Of Grammatology*, p. 1822.
[47] Derrida, *Limited Inc.*, trans. S. Weber (Evanston, IL: Northwestern University Press 1988), p.136.
[48] Ibid., p. 134, see also Derrida, "And say the Animal Responded?" in Carey Wolfe (ed.) *Zoontologies: The Question of the Animal* (Minneapolis, London: University of Minnesota Press, 2003), pp.121-146.

statements should be "valid beyond the marks and society called "human;"" in other words, that they should also be valid for "animals."[49]

However, Derrida's evaluation of western philosophy as inherently defective and nocuous is clearly related to the effect such philosophy has had on human beings; or more specifically, human beings whom he sees as having been excluded and marginalised on the grounds of their being regarded as 'other' – such as the non-European, women and the poor. As noted earlier, Derrida characterises western humanism as "phallologocentric" on the basis that it is a philosophy of "mastery, possession, totalisation or certitude,"[50] displaying an "irrepressible philosophical desire to summarize-interiorize-dialecticize-master-*relever* the metaphorical division between the origin and itself, the Oriental difference."[51] Although Derrida claims that deconstruction is neither conservative nor revolutionary,[52] it is for the emancipation of the marginalised 'other' that deconstruction is to instigate an "*overturning*" and "a general *displacement* of the system" (Derrida's italics);[53] that is, of the entire system of western humanism:

> Our discourse ... uses the strengths of the field to turn its own stratagems against it, producing a force of dislocation that spreads itself throughout the entire system, fissuring it in every direction and thoroughly delimiting it.[54]

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[49] Derrida, *Limited Inc.*, p.134.
[50] As cited in Noonan, p. 72.
[51] Derrida, "White Mytholosphy" in *Margins of Philosophy*, p. 269.
[52] Derrida, *Limited Inc.*, p. 141.
[53] Derrida, "Signature, Event, Context" in *Margins of Philosophy*, p. 329.
[54] Derrida, "Force and Signification" in *Writing and Difference*, p. 20.

This dislocation is implemented by using the tools of the very same system it seeks to overturn, which is why Derrida also writes of wanting to "preserve" certain traditions of western philosophy.[55] Derrida's use of such traditional meaning is, however, strategic alone, as it is "a question of determining the possibility of *meaning* on the basis of a "formal" organisation which in itself has no meaning;" there being no meaning in the "non-sense" and dysfunctional "autism of closure" of metaphysical humanism (Derrida's italics).[56] In this same text, as noted earlier, Derrida writes famously of the impossibility of being "outside" the system of western metaphysics, which entails of course that Derrida is either part of the rhetorical "non-sense" himself and reliant on rhetorical force for meaning alone, or he is attempting to create a metanarrative, which he himself states would result in inhabiting "more naively and more strictly than ever the inside one declares one has deserted."[57] It is because of this conundrum that Derrida insists on claiming that while deconstruction is a "problematization of the foundations of law, morality and politics," this questioning is "neither foundationalist nor anti-foundationalist."[58] He also claims to "never" have "put such concepts as truth, reference, and the stability of interpretive contexts radically into question,"[59] but Derrida in fact only uses the rules of language in describing the stability of contexts in order ultimately to reveal that their stability is provisional.[60] Meaning and truth are provisional tools, a matter of "pragmatics" or "pragrammatology" that, along with

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[55] Derrida, *Limited Inc.*, p.141.
[56] Derrida, "The Ends of Man," p.134.
[57] Ibid., p.135.
[58] Derrida, "Force of Law: the 'Mystical Foundation of Authority,'" in D. Cornell, M. Rosenfeld and D.G. Carlston (eds.) *Deconstruction and the Possibility of Justice* (New York: Routledge, 1992), pp.1-29; p. 8.
[59] Derrida, *Limited Inc.*, p.150.
[60] Ibid., p. 150.

"grammatical or moral rules," such as the ethical "rules of discussion,"[61] are used by Derrida to challenge the foundations of meaning and truth; this is ultimately the "grammar" of deconstruction. Derrida states that his method does not discredit meaning and truth – for this could only be done in the name of a transcendental, metacontextual truth[62] – but despite (or because of?) such awareness, Derrida insists nonetheless that his truth *is* of a different order; "Their "truth" is not of the same order as the truth they question."[63] Such a statement seems to imply, of course, the truth of his own arguments and explain why his concept of "double writing" must necessarily be quasi-transcendental; double writing designating, paradoxically:

> a sort of irreducible divisibility, "quasi-transcendental," as I have said elsewhere, of deconstructive writing. It must inevitably partition itself along two sides of a limit and continue (up to a certain point) to respect the rules of that which it deconstructs or of which it exposes the deconstructability. Hence it always makes this dual gesture, apparently contradictory, which consists of accepting, within certain limits – that is to say, never entirely accepting – the giveness of a context, its closedness and its stubbornness.[64]

This activity of deconstruction is what Derrida describes elsewhere as the workings of justice itself – "Deconstruction is justice"[65] – justice consisting of the exposure of all "mystical foundations of authority."[66] Derrida deliberately uses the Kantian term "unconditional" in describing this ethic,[67] and both Peter

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[61] Ibid., p. 151.
[62] Ibid., p. 136.
[63] Ibid., p. 150.
[64] Ibid, p. 152.
[65] Derrida, "Force of Law," p. 15.
[66] Ibid, p. 12.
[67] Derrida, *Limited Inc.*, p. 152.

Sedgwick[68] and Simon Critchley[69] argue that without such an ethic, deconstruction would have little point. However, another ethical judgement necessarily precedes deconstruction's unconditional ethical duty to uncover the limits of truth. *For, if the system of western metaphysical humanism is not defective and morally wrong, what then is the point of deconstruction?*

It is actually *this* particular ethical judgement, the judgement of western humanism as unjust, which lies prior to and provides the entire rationale for both the concept of the unconditional and Derrida's theory of deconstruction. For although Sedgwick states that it is the ethical imperative of the unconditional that allows Derrida to condemn apartheid,[70] neither this judgement nor his condemnation of western humanism in general can be justified by a recourse to the concept of the unconditional. Derrida actually describes apartheid as "evil" and judges it as such by the empirical effect it has on the living bodies of black South Africans, evocatively voicing a call to:

> save humanity from this evil, an evil that cannot be summed
> up in the principal and abstract iniquity of a system. It is also
> daily suffering, oppression, poverty, violence, torture
> inflicted by an arrogant white minority (16 percent of the
> population, controlling 60 to 65 percent of the national
> revenue) on the mass of the black population.[71]

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[68] Peter Sedgwick, *Descartes to Derrida: an Introduction to European Philosophy*
[69] Simon Critchley, *The Ethics of Deconstruction: Derrida and Levinas* (Oxford: Blackwell, 1992).
[70] Sedgewick, p.216.
[71] Derrida, "Racism's Last Word," p. 293.

Derrida's unconditional is a vigil along the borders or limits of truth alone,[72] not a prescription for how human beings should be treated. But Derrida's judgement of humanism in his texts on apartheid is ultimately based on his belief in humanism's inability to effect any change in the "'crime against humanity'" − apartheid − which is why Derrida concludes that it is imperative to appeal to another law.[73] But it is in the name and appeal of a law that will *stop* such crimes that Derrida speaks; in other words, it is in the name of the universally humane treatment of all human beings that we must judge apartheid and ultimately jettison the concept of "humanity." The concept of the unconditional neither provides the epistemological means to say *why* apartheid is evil, nor why we should care about the other's marginalisation or exclusion. It cannot explain why emancipation is more desirable than slavery,[74] nor why "nonidentity" is preferable to identity.[75] Finally, it cannot justify why knowing the limits of truth is better than believing a "lie."[76] Derrida is not searching for a transcendental truth, "the lost or impossible presence of the absent origin"[77] beyond the alleged lie of western metaphysics; he is looking for a language, a law, a system that is more *just*, one that does not repeat what he sees as being the violent exclusion of

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[72] See Peter Dews for a similar view of Derrida's own conception of the workings of deconstruction; "Derrida's conception of deconstruction as an eternal vigilance, as an incessant attempt to escape the illusion of presence." Peter Dews, *Logics of Disintegration: Post-structuralist Thought and the Claims of Critical Theory* (London, New York: Verso, 1987), p. 37.

[73] Derrida, "Racism's Last Word," p. 298.

[74] Derrida, "Force of Law," p. 28.

[75] Derrida explicitly favours "nonidentity" in the following passage; "To be sure, in order for structures of undecidability to be possible (and hence structures of decisions and of responsibilities as well), there must be a certain play, *difference,* nonidentity. Not of indetermination, but of *différence* or of nonidentity with oneself in the very process of determination." Derrida, *Limited Inc.* p. 149. As Dews also points out, it is logically "impossible" for Derrida within the schema of deconstruction to explain *why* nonidentity should be prioritised over identity (see Dews, pp.27-28), and it is my contention here that this prioritisation can only be traced to back Derrida's prior ethical judgement of western metaphysics as inherently unjust.

[76] Derrida, "Cogito and the History of Madness," in *Writing and Difference*, p. 310.

[77] Derrida, "Structure, Sign and Play," p. 292.

the other imbedded in the very language structure of the west. As such,

Derrida's ethical-political judgments, both of the west in general and apartheid

in particular, are founded on humanistic concepts of human value, respect and

right. In fact without such a humanist appeal, Derrida's thesis would become

meaningless, and, as Derrida undermines the very basis for the humanistic

ethical judgments he makes in his trial of western philosophy, he in fact cannot

help but render his theories either a matter of mere humanistic rhetoric – empty

of meaning – or a metanarrative. Such paradoxes are also evident in other

posthumanist texts, but it is ultimately in Derrida's commitment to condemn and

ultimately overturn western humanism that his work can be described as

posthuman.

To briefly summarise the points that have been made regarding Derrida – which

will help to further frame the following discussion on Michel Foucault – what

has been focused on regarding Derrida's work has been his concern for the

particular; the marginalisation of the different 'other' within western humanism,

his value-judgement of humanism regarding such exclusion and the fact that

Derrida's ethical condemnation ultimately rests on the unacknowledged (and

broadly humanist) assumptions of universal human value. We have also seen

that Derrida's attempt at conceptualising an alternative conceptual framework –

the "unconditional" – was not successful in providing a viable ethical foundation

for his ethical judgements, as such judgements were, in the end, based on a

perception of justice that was inseparable from human being.

Michel Foucault

In regards to Foucault, many prominent scholars, including Jürgen Habermas, Charles Taylor, Michael Walzer and Nancy Fraser, have not only pointed out the humanist assumptions underlying Foucault's work, but also the fact that he has neglected to provide any alternative, 'posthumanist' ethical framework to the humanist paradigm he critiques.[78] While we will be affirming the extremely valuable insights of previous scholars – particularly Fraser's – there are further complementary strands of Foucault's ethics that can be explored in relation to these issues. First, his valuing of particularism as expressed through the valuing of difference, and secondly, his reliance on universalism as manifested through the concepts of autonomy and freedom. We will also be examining some of the ethical consequences of Foucault's prioritisation of autonomy over other values.

In his brief text "What is Enlightenment,"[79] Foucault reflectively engages with Kant's similarly "brief" text of the same name, somewhat tentatively suggesting that it might act as something of a key to, or possible explanation of, Kant's greater oeuvre. Similarly, we might also tentatively see Foucault's own short text as something of an explanatory key to the rest of his work, at least in regards to the issues of ethics, value and autonomy that have been raised above.

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[78]See Jürgen Habermas, *The Philosophical Discourse of Modernity*, trans. Frederick G. Lawrence (Cambridge, Mass.: MIT Press, 1987), pp.266-293, and "Taking Aim at the Heart of the Present," in David Couzens Hoy (ed.) *Foucault: A Critical Reader* (Oxford: Blackwell, 1991) pp.103-108; Charles Taylor, 'Foucault on Freedom and Truth' in *Foucault a Critical Reader*, pp. 69-102 and Michael Walzer, "The Politics of Michel Foucault," in *Foucault: A Critical Reader.* See Nancy Fraser in particular regarding this latter claim in "Foucault on Modern Power: Empirical Insights and Normative Confusions," *Praxis International* 1.3 (1981): pp. 272-87.
[79] "What is Enlightenment" in Paul Rabinow (ed.) *Ethics: Essential Works of Foucault, 1954-1984 Vol. 1*, trans. Robert Hurley and others (London: Penguin Books, 2000), pp. 303-320.

In "What is Enlightenment" Foucault highlights Kant's conception of Enlightenment as an "exit" or a "way out," as "the moment when humanity is going to put its own reason to use, without subjecting itself to any authority."[80] Foucault goes on to use Kant's insights and Baudelaires' perception of modernity to suggest a re-thinking of the Enlightenment and modernity as "an attitude," rather than a temporal period; an attitude that manifests itself as "mode of relating to contemporary reality."[81] This "mode of relating" is a mode of questioning both ones' historical circumstances and ones' self; of transforming and creating ones' self while recognising the historical limits within which our selves are constituted. Such a "transfiguration" entails "not an annulment of reality but a difficult interplay between the truth of what is real and the exercise of freedom."[82] Foucault's description of "modern man" as seen by Baudelaire is particularly revealing of what might be seen to be Foucault's own view of the same, for he is, "not the man who goes off to discover himself, his secrets and his hidden truth; he is the man who tries to invent himself. This modernity does not "liberate man in his own being;" it compels him to face the task of producing himself."[83] Such a description recalls Foucault's consistent (and scornful) condemnation of the constitution of 'man' in modern times via the establishment of the various 'human' sciences in *The Order of Things*.[84] Foucault himself would prefer the "permanent reactivation" of the attitude of the Enlightenment/modernity, which is the "philosophical ethos that could be

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[80] Ibid., p. 308.
[81] Ibid., p. 309.
[82] Ibid., p. 311.
[83] Ibid., p. 312.
[84] Michel Foucault, *The Order of Things*, trans. Tavistock/Routledge (London, New York: Routledge, 1966, 2002).

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described as a permanent critique of our historical era."[85] In other words, we are to reflect *on* our era, not merely reflect it, and indeed one could describe Foucault's own historical/philosophical histories as extended reflections on the present era.

But how are we to "reflect" if there is no "hidden truth" – and no true being who can reflect? How are we to "critique," if there is no transcendental subject with which to objectively view history? The very purpose of Foucault's *The Order of Things* seems to be not only a rigorous exposure of "man" as "an invention of recent date,"[86] but, as Ian Hacking has pointed out, it is also very much "a tract *against* the Human Sciences."[87] Hacking goes on to suggest, nevertheless, that "Foucault said that the concept of Man is a fraud, not that you and I are as nothing."[88] Hacking does not elaborate on what this statement might signify in regards to the rest of Foucault's work, but it can be seen as being consistent with Foucault's own delineation between actual people groups and the "human sciences," between humanism and the Enlightenment, and between the autonomous act of self-creation and the construction of the individual "subject;" more of which will be discussed below.

In *The Order of Things* Foucault claims that that which characterises the human sciences is decidedly *not*

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[85] Ibid, p. 312.
[86] Foucault, *The Order of Things*, p. 422.
[87] See Ian Hacking, 'The Archaeology of Foucault,' in *Foucault: A Critical Reader*, pp. 27-41; p.32. My italics.
[88] Ibid, p. 39.

that privileged and singularly blurred object which is man. For the good reason that it is not man who constitutes them and provides them with a specific domain; it is the general arrangement of the *episteme* that provides them with a site, summons them, and establishes them – thus enabling then to constitute man as their object. We shall say, therefore, that a 'human science' exists, not wherever man is in question, but wherever there is analysis – within the dimension proper to the unconscious – of norms, rules, and signifying totalities which unveil to the unconsciousness the conditions of its forms and contents.[89]

In this passage Foucault seems to be saying that 'man' is indeed an invention of the human sciences, but that they have created 'him' as an object of study; an object consistent with the 'norms, rules and signifying totalities' that have been synonymous with 'his' formation – that in fact compose 'man.' But while there is no natural object that corresponds to such a fiction – cannot be, if the human sciences have invented their object, rather than found it – that does not entail that Foucault was implying that real beings do not exist, nor that we are doomed to exist in a constructed fiction of someone else's making. On the contrary, the very impetus for Foucault's work can be seen to rest on the underlying assumption that beings with some form of autonomy do indeed exist, as it not only makes reflection on our historical circumstances possible, but the existence of a somewhat autonomous subject also provides the grounds as to *why* it is so important to Foucault that we reflect on our historical circumstances – as indicated by Foucault's consistently negative portrayal of humanism. In short, personal autonomy, the freedom to reflect upon and to create oneself, is the standard by which humanism is judged to be nocuous. But such a standard itself assumes both the universal worth of autonomous humans and that such autonomy and freedom *should* be universally respected; assumptions of

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[89] Foucault, *The Order of Things*, pp. 397-398.

universal moral value that clearly contradict his stated anti-humanist and anti-universalist position.

In "What is Enlightenment" Foucault is at pains to distinguish the Enlightenment from humanism, and it his characterisation of both that is particularly revealing regarding his ethical stance. Foucault juxtaposes the homogenising, or, to use one of Foucault's earlier terms, 'normalising' practice of humanism to the creative (Enlightenment) freedom of autonomy; where one is free to create and re-create oneself. Humanism, in Foucault's eyes, is simply a "set of themes" determined by "value judgements" representing "certain conceptions of man" – everything from Christian Humanism to National Socialism and Stalinism – conceptions that have been "borrowed from religion, science or politics."[90] By contrast, Foucault states that

> this thematic, which so often recurs, and always depends on humanism, can be opposed by the principle of a critique and a permanent creation of ourselves in our autonomy: that is, a principle at the heart of the historical consciousness that Enlightenment has of itself. From this standpoint I am inclined to see the Enlightenment and humanism in a state of tension rather than identity.[91]

The general view of Foucault's concept of the autonomous subject is that it appeared rather late on the scene, indeed if at all. Peter Dews (who also cites the above passage), for example, sees the explicit concern with freedom and autonomy in Foucault's latter work as an "abrupt break" from his earlier stance

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[90] Foucault, "What is Enlightenment," *Ethics* p. 314.
[91] Ibid, p. 314.

concerning the apparently constructed and contingent nature of the subject.[92]

But while Dews is absolutely correct in pointing out that the "paradox of a reflexive account of self-construction is that the self must already exist in order to construct itself,"[93] what will be highlighted here is actually the *consistency* of the concept of an autonomous, self-reflexive subject throughout Foucault's work, and just what that might imply in terms of Foucault's general ethical stance.

James W. Bernauer and Michael Mahon suggest that it is within *The History of Sexuality* series that Foucault specifically reveals his ethical stance; this being manifested in terms of his theory relating to the care of the self, as discussed in the two latter volumes.[94] Fraser, however (and later Habermas, who cites Fraser's work), perceptively argues that Foucault's entire oeuvre abounds with normative value judgements, ranging from Kantian-like assumptions of right and inherent worth, to fairly standard Marxist condemnations of bourgeois exploitation of the working classes.[95] While Barry Smart is correct in pointing out that Foucault eschewed what he saw as the totalising interpretative framework of Marxism, Foucault's value judgements were still very much informed, as Habermas also notes, by a moral view that objects to coercive and subjugating power relations.[96] Moreover, despite Foucault's view of power as decentralised, Foucault still very much saw a particular class as responsible for

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[92] Peter Dews, "The Return of the Subject in Late Foucault," *Radical Philosophy* Vol. 51 (1989), pp. 37-41; p. 40.
[93] Ibid., p. 40.
[94]James W. Bernauer and Michael Mahon, "Michel Foucault's Ethical Imagination," in Gary Gutting (ed.) *Cambridge Companion to Foucault* (Cambridge: Cambridge University Press, 2005) pp. 149-177.
[95] See Fraser, "Foucault on Modern Power" and Nancy Fraser, "Michel Foucault: A 'Young Conservative?'" in Susan J. Hekman (ed.) *Feminist Interpretations of Michel Foucault* (University Park: The Pennsylvania State University Press, 1996), pp. 15-38.
[96] Habermas, *The Philosophical Discourse of Modernity*, p. 284.

such domination; "This new type of power, which can no longer be formulated in terms of sovereignty, is, I believe, one of the great inventions of bourgeois society."[97] Similar, and even more condemnatory comments can be found in *Discipline and Punish*;[98] the bourgeoisie being, of course, the class that had the power to subjugate others. Perhaps what Foucault meant was that this new type of power, despite being 'invented' by the bourgeoisie, was not centralised in the sense that it was not neatly contained within their particular class group, but rather woven throughout every stratum and institute (including familial) of society; rendering an old-fashioned Marxist revolutionary coup untenable. Such a view would correspond to Foucault's suggestion that normalising disciplinary power has manifested itself within our very bodies and our very conceptions of ourselves, making it difficult to single out a definite 'enemy' – at least in terms of a definable, culpable person or persons. Of course, Foucault could also just be guilty of flatly contradicting himself. However, he has also consistently defined what he sees as being the *nature* of the enemy or the "danger;"[99] this danger being all attempts at universalisation, normalisation, totalisation and homogenisation. All of these Foucault has also characterised as "fascism" of various sorts – a fascism that is manifested as much within us as externally to us – and which is characterised by the exclusion and marginalisation of all difference, heterogeneity and particularism.[100]

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[97] Foucault, "Two Lectures," in Colin Gordon (ed.) *Power/Knowledge: Selected Interviews & Other Writings 1972-1977* (New York: Pantheon Books, 1972, 1980), pp. 78-108; p. 105.
[98] Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage, 1975, 1995).

[99] Foucault, "On the Genealogy of Ethics: An Overview of a Work in Progress," *Ethics*, pp.253-280; p. 256.
[100] See Foucault's "Preface," in Gilles Deleuze and Felix Guattari *Anti-Oedipus: Capitalism and Schizophrenia*, trans. Robert Hurley, Mark Seem and Helen R. Lane (London: Athlone, 1983/4), xiii-xvi.

Fraser tends to see the volumes of *The History of Sexuality* as consolidating the view that Foucault regards the constitution of the individual 'subject' as simply a constructed tool in the practice of normalisation and subjugation – a practice begun centuries earlier with the self-mastery techniques of Stoic culture and which has now been refined into a self-regulatory, internalised tool of (self)domination. In other words, Fraser reads Foucault as holding that "the conception of freedom as autonomy is a formula for domination tout court."[101] By contrast, what is suggested here is that *all* of Foucault's work – but particularly the latter two *Sexuality* volumes – reveal a concept of ethics that is directly linked to concepts of autonomy and freedom. In Foucault's own words; "Freedom is the ontological condition of ethics. But ethics is the considered form that freedom takes when it is informed by reflection."[102]

It is quite true that Foucault makes no attempt to justify, as Fraser points out, either epistemologically or ethically, his clearly normative judgments regarding humanism; not only failing to provide answers as to *why* domination should be resisted but also exactly why a disciplinary, panoptic society is so abhorrent. [103] But Fraser also points out, when one seeks to find an answer to such questions in Foucault's work, that;

> Kantian notions leap immediately to mind. One cannot help but appeal to such concepts as the violation of dignity and autonomy involved in the treating of persons solely as a means to be casually manipulated. But again, these Kantian

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[101] Fraser, "Michel Foucault: A 'Young Conservative?'" p. 30.
[102] Foucault, "The Ethics of the Concern for Self as a Practice of Freedom," *Ethics*, pp. 281-301; p. 284.
[103] See Fraser, "Foucault on Modern Power" and "Michel Foucault," p. 36.

> notions are clearly related to the liberal norms of legitimacy
> and illegitimacy defined in term of limits and rights.[104]

In fact, Fraser rightly suggests that the "normative force" of Foucault's judgments seem to "depend on a tacit appeal to the notions of rights, limits and so forth."[105] However, Foucault's consistent ethical preoccupation with and condemnation of normalisation and universalisation – in other words, of western humanism – can be seen as due to his underling ethical valuation of creative autonomy, which manifests itself in heterogeneity and difference, but which, ironically, presumes the existence of a condition universal to all human subjects (and intrinsic to liberal humanism); namely, that of autonomy.

Foucault's ethical valuation of autonomy and heterogeneity can be seen to be manifested in the manner in which he implies that western humanism is nocuous; namely, in the way in which it stifles difference. Such stifling of difference is contrasted to what Foucault characterises as the free choosing of one's own lifestyle amongst the "arts of existence."[106] In his 'Introduction' to *The Use of Pleasure*, Foucault reviews his work to date in order to situate and explain his present work in relation to the whole. More than once he emphasises that he sees the "goal" of his overall "project"[107] in terms of a "history" of the "games of truth;" the "games of truth and error through which being is historically situated as experience; that is, as something that can and must be

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[104] Fraser, "Foucault on Modern Power," p. 284.
[105] Ibid., p. 283.
[106] Michel Foucault, *The History of Sexuality: Volume 2: The Use of Pleasure*, trans. Random House (London: Penguin, 1998) p. 11.
[107] Ibid., p. 11.

thought."[108] Foucault summarises his goal, in writing such a history of truth, as

attempting to show

> the problematization of madness and illness arising out of
> social and medical practice, and defining a certain pattern of
> "normalization;" a problematization of life, language and
> labour in discursive practices that conformed to certain
> "epistemic" rules; and a problematization of crime and
> criminal behavior emerging from certain punitive practices
> conforming to a "disciplinary" model.[109]

In this sense, Foucault's work can be seen as an extended reflection on historical

games of truth, showing that such games produce "normalization;" "certain

"epistemic" rules" and "disciplinary" models that are both historically

contingent and inextricably woven by the matrix of knowledge and power. We

are to reflect on the historical circumstances in order to transform ourselves via

the "arts of existence" and the "techniques of self;" techniques that "no doubt

lost some of their importance and autonomy when they were assimilated into the

exercise of priestly power in early Christianity, and later, onto educative,

medical, and psychological types of practices." [110] In other words, when

autonomy was assimilated by the emergence of modern, disciplinary power. It is

important to note in this context that Foucault claimed that he did not see all

truth as merely a "construction,"[111] nor that all power was merely neutral in its

effects, as both conditions – along with autonomy – are necessary in order to

justify the historical critique, reflection and transformation pursued by Foucault.

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[108] Ibid., pp. 6-7.
[109] Ibid., p. 12.
[110] Ibid, p.11. See also "The Ethics of the Concern for Self," *Ethics*, p. 282.
[111] Ibid., pp. 296-297.

At this point it might be suggested that Foucault was simply, and belatedly (and

not wholly adequately), trying to patch up some of the philosophical holes

evident in his earlier work. But if Foucault never believed that some form of

autonomy was possible, why condemn the imposition of normalisation? And

what would be the point of Foucault's work without such condemnation? As

Fraser asked, why resist? As Habermas has noted, Foucault's work can hardly

claim the status of objective descriptions of historical conditions.[112] Foucault

implies throughout his work that the reason why man, humanism, normalisation

and universalism are "dangerous,"[113] and to be resisted, is because they deny the

possibility of difference; of the particular, the marginalised, the local. And

Foucault clearly signals in "Two Lectures" the possibility of *resistance* to such

an imposed knowledge of the self – along with his opposition to all totalising

practices – when describing his own work of genealogy and archaeology.

> By comparison, then, and in contrast to the various projects
> which aim to inscribe knowledges in the hierarchical order of
> power associated with science, a geneaology should be seen
> as a kind of attempt to emancipate historical knowledges
> from that subjection, to render them, that is, capable of
> opposition and of struggle against the coercion of a
> theoretical, unitary, formal and scientific discourse. It is
> based on a reactivation of local knowledges – of minor
> knowledges, as Deleuze might call them – in opposition to
> the scientific heirarchisation of knowledges and the effects
> intrinsic to their power: this, then, is the project of these
> disordered and fragmentary genealogies.[114]

Emancipation from and opposition to the hierarchical order presume the

existence of some form of autonomy; some form of choice that manages to

escape, evade, subvert or free itself from domination and subjugation; otherwise

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[112] See Habermas, *The Philosophical Discourse of Modernity*, p. 269.
[113] Foucault, "On the Genealogy of Ethics," *Ethics*, p. 256.
[114] Foucault, "Two Lectures," *Power/Knowledge*, p. 85. See also p. 83.

it makes no sense to condemn such subjugation. Foucault cannot but help pronounce a value judgement here; the judgement that all universalising is nocuous, and that difference is to be universally valued. Although Foucault claims that a 'natural' transcendental self does not exist, such a concept ironically implies an *a priori*, universal autonomy common to all; prisoners, the mad, the marginalised, juvenile delinquents, ancient Greeks, Romans – in fact, peoples of all cultures.[115] For what Foucault seems to be opposing throughout his work is the naturalisation and imposition of certain homogenous *types* or conceptions of 'man' or being, which he sees as stifling the free act of self-creation and self-stylisation. Foucault's own concept of the 'natural' might therefore be characterised as a belief that nothing is 'unnatural;' it is the naturalisation of certain acts as inherently moral or immoral that Foucault sees as a curtailment of the act of free choice, or personal autonomy.

For example, in *Discipline and Punish*, Foucault begins with quite horrifying and detailed descriptions of the execution and torture methods of what he describes as the period of the "sovereign;" that is, the period before modernity, which he sees as beginning roughly around the second half of the 18th century. As horrifying as such descriptions are, as Foucault's tale unfolds into a description of the changes brought about modern disciplinary practices, one could be forgiven for thinking that Foucault actually preferred the older methods, as they at least allowed some measure of freedom and autonomy amongst the peoples of the lower classes. Foucault saw such freedom as manifesting itself in the unruly and rebellious eruptions that often surrounded

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[115] See Foucault, "The Ethics of the Concern for Self," *Ethics*, p. 300 and "Two Lectures," *Power/Knowledge* p. 93.

the public spectacles of execution, seeming to mourn the passing of a great number of illegalities and crimes practised by the lower classes under the old regime. Foucault gives the impression that these acts of criminality – which could include murder – have no actual moral content, but rather that the real 'crime' is to be found in the disciplinary normalising practices that curtailed and replaced them. In other words, Foucault seems to identify the true crime as lying within the homogenising practices that atrophy true freedom as expressed through personal autonomy. Foucault distinguishes between the illegalities practiced under the Sovereign and those encouraged under the modern disciplinary society by emphasising that only illegalities that ultimately benefit and profit the bourgeoisie and the smooth running of the disciplinary machine were permitted in the latter, whereas in the former the working classes are represented by Foucault as possessing more freedom in choosing and directly benefiting from their own acts of illegality. Foucault makes a strikingly similar distinction in Volumes Two and Three of *History of Sexuality*, where he unfavourably contrasts the investment of Christian morality in the practice (or non-practice) of certain sexual acts, to the Greek and later Roman practice of identifying morality within the attitude or deportment of the protagonist; a transferral of moral significance from the nature or content of an act to the ability or right to choose ones' own actions.[116]

So what seems so nocuous to Foucault in *Discipline and Punish* is what he sees as the insidious and pervasive nature of the modern disciplinary control established through the human sciences, which Foucault portrays as

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[116] Michel Foucault, *The History of Sexuality: Volume 2; The Use of Pleasure* trans. Random House (London: Penguin, 1998) and Michel Foucault, *The History of Sexuality: Volume 3: The Care of the Self*, trans. Random House (London: Penguin, 1998).

comprehensively penetrating and controlling bodies, gestures, personalities and
practices; in other words, every aspect of social life. In this book Foucault
suggests that the establishment of the 'individual' subject was for the purpose of
having a more effective means with which to measure, classify and control
individuals and thus ultimately the entire population; in that each individual
could be measured and subsequently judged according to the standard or norm
set for their respective control group. Given Foucault's positive valuation of the
relative autonomy practiced by the pre-modern lower classes, it can be seen that
Foucault is not conclusively insisting that individual autonomy is merely a
complete fiction created by the disciplines for the purposes of greater control,
but rather that he is objecting to the creation of a concept of the individual
whose only meaning is defined and measured by its conformity (or non-
conformity) to a pre-determined scale of homogenised characteristics; in other
words, to an imposed "form." [117] For it is autonomy, a certain freedom of
choice, that is the condition of possibility for the act of self-creation – for the
possibility of difference – and it is precisely that which is denied by the coercive
imposition of the universalising norms of humanism.[118]

We will now be discussing some of the ethical consequences arising from
Foucault's emphasis on autonomy as a universal moral norm, for, apart from the
fact that Foucault gives no justification as to *why* we should respect the
autonomy of others, it is important to see how Foucault's concept of autonomy
plays out in terms of respect for others. In *The Will to Knowledge* Foucault
describes an incident where an adult male pays a young girl money in exchange

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[117] Foucault, "The Ethics of the Concern for Self," *Ethics,* p. 290.
[118] Foucault, "On the Genealogy of Ethics," p. 262.

for what Foucault blithely dismisses as "a few caresses."[119] As Linda Alcoff has noted in her article "Dangerous Pleasures: Foucault and The Politics of Pedophilia,"[120] for someone who has been so attentive in his work to power relations, Foucault seems surprisingly blind to the possibility of there being anything asymmetrical, coercive, or ethically wrong about a sexual relationship between an adult male and a young girl. Alcoff rightly points out that Foucault, on the contrary, actually trots out familiar, male-oriented, sexist stereotypes regarding sexually promiscuous young girls, extending only sympathy for the 'real' victim; the poor fellow who was taken away after a bit of harmless, and in Foucault's eyes, 'consensual,' fun. What is also striking about Foucault's description here is that it is consistent with his general ethic; if there is no 'natural' sex or sexuality that needs to be discovered or retrieved, then nothing, or rather no particular 'act' can be deemed 'unnatural' or ethically wrong. It seems that, for Foucault, what becomes ethically wrong or dangerous is the denial of the freedom to choose, to practice one's autonomy. As Foucault obviously regards what took place as consensual – that is, as a result of the free practice of both parties' autonomous choice – then what becomes identified as ethically wrong in the situation is that the adult man has been 'falsely' labelled as morally deviant and then carted off to a disciplinary institution as a result. As Alcoff points out, due to the nature of their physical and emotional dependence on adults – for, among other things, their very survival – children are *never* in an equal position of power with adults, which makes it impossible to state unequivocally that they are able to give their free and uncoerced consent to a

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[119] Michel Foucault, *The History of Sexuality: Volume 1: The Will to Knowledge*, trans. Random House (London: Penguin, 1976, 1998), pp. 31.
[120] Linda Alcoff, "Dangerous Pleasures Foucault and the Politics of Pedophilia," in Susan J. Hekman (ed.) *Feminist Interpretations of Michel Foucault* (University Park: The Pennsylvania State University Press, 1996), pp. 99-135.

sexual relationship with an adult. It is in the light of such a power imbalance that Alcoff wisely concludes that such relationships should not be initiated.

Similarly, in the last two books of *The History of Sexuality*, Foucault emphasises that the real difference between Greek, Roman, Christian and later modern practices of self-care lies in their practice, (or repression), of individual autonomy. Foucault writes favourably of what he saw to be the freedom to choose between non-compulsory, non-universalising guidelines for living within Greek and Roman culture, by contrast to the relative loss of autonomy and freedom seen in the imposition of enforced morality within Christian and modern societies.   As noted above, Foucault emphasises that in Greek and (to a somewhat lesser degree) Roman cultures, certain sexual acts or practices, such as pederasty, were not seen as morally wrong in themselves (in contrast to Christian culture and practice), but rather, the ethical focus was instead on the attitude and self-mastery of the protagonist. Therefore, in the practice of "loving boys," as Foucault terms it, neither the sexual object (i.e. a boy), nor the actual practice itself were seen as morally wrong but rather as an expression of natural needs and desires. Foucault emphasises what he sees as being the mutually beneficial and "free" terms of such a relationship; describing a "free" boy's consent (in that he was not a slave) as freely given and the very nature of the courtship as a "game."[121] The "game" (Foucault does not apply this term to any other relationship in *The History of Sexuality*), in fact bears many striking similarities to the dynamics of power involved in many current adult-male/boy relationships, as described in Alcoff's article, where boys are actively pursued

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[121] Foucault, *The History of Sexuality: Volume 2; The Use of Pleasure*, p.197.

and given 'gifts' as the sexual objects of adult male desire. Alcoff discusses Michael Alhonte's essay "Confronting Ageism," where Alhonte writes that as a "boy" he enjoyed such relationships with older men. However, Alhonte also comments negatively on the unequal nature of such relationships, including "the "unpleasant balance" caused by finances," the objectification of boys as sexual objects alone, and of the precarious nature of a relationship that is based on the ultimately ephemeral nature of adolescent beauty.[122]

The Greeks also worried about similar issues, particularly the ethical ramifications of the loss of interest in the boy after he lost his nubile appeal. However, Foucault is persistent in regarding such a relationship as somehow completely free from power imbalances, choosing to interpret the Greek concern for a boy's honour as evidence of the equally honourable regard due an 'equal' citizen and the 'special' nature and status of such a relationship within Greek culture. It is this 'special' status that Foucault, rather regretfully, describes as passing within Roman society, for although "it is true that the love of boys is not completely absent" from Roman romantic literature, Foucault states that it is "during this period" that "one notes that reflection on the love of boys manifests its sterility."[123]Although Foucault writes of one or two exceptions, for example, "Menelaus, for his part, offers a *charming* theory of a boy's kiss – not cunning, or soft, or licentious, like that of a woman; a kiss that is the product not of art but nature: a glaze of nectar become lips, such is the simple kiss of a boy at the gymnasium"[124] – he sees Roman culture on the whole as "clearly far removed

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[122] Alcoff, p. 132.
[123] Michel Foucault, *The History of Sexuality: Volume 3; The Care of the Self*, p. 228.
[124] Ibid., p. 229. My italics.

from an erotics that referred essentially to the temperate love of boys and to its perfection in the lasting form of friendship."[125]

However, many might find it difficult to see anything "charming" about a description that requires both the negative stereotyping of women and the sexual objectification of boys for its effect. Equally difficult is not to see Foucault as somewhat partial in his overall conception of what makes for a free and autonomous choice in regards to sexual relations between adults and children.[126] This is one of the difficulties arising from Foucault's conception of autonomy, freedom and power relations, in that he sees the existence of 'free' subjects as the very condition of their existence; "in order for power relations to come into play, there must be at least a certain degree of freedom on both sides."[127] Even, it seems, if this freedom or "resistance" is as limited as the option of killing oneself or the other person.[128] Viewing both subjects as equally free and powerful in terms of their capacity to make autonomous decisions can in some ways seem to be empowering, but as a general formulation it makes it very difficult to judge between degrees of domination, power, freedom and

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[125] Ibid., p. 228. Here Foucault is referring to the Greek ideal of a friendship surviving the cessation of sexual relations between man and boy, with 'the temperate love of boys' being a reference to Foucault's earlier description in *The Use of Pleasure* of the Greek emphasis on moderation (which was equated with 'mastery') in the practice of ones' desires, as opposed to excessive indulgence or total abstinence; although abstinence was ultimately recommended by Socrates regarding relations with boys, as Foucault also noted. It is this emphasis on temperance and moderation of one's autonomous desires and decisions that seem to be Foucault's only moral consideration in terms of such a practice.

[126] See also "The Danger of Child Sexuality," Foucault's dialogue with Guy Hocquenghem and Jean Danet, produced by Roger Pillaudin and broadcast by France Culture on April 4, 1978, where Foucault further defends adult sex with children The version available online at http://www.ipce.info/ipceweb/Library/danger.htm (accessed 11/12/05) was also published under the title "Sexuality, Morality and the Law" in Lawrence D. Kritzman (ed.) *Michel Foucault: Politics, Philosophy, Culture: Interviews and Other Writings* trans. Alan Sheridan (New York: Routledge, 1988). See also "The Abnormals:" Lectures at the College de France, 1974-1975, in Paul Rabinow (ed.) *Ethics: Essential Works of Foucault, 1954-1984 Vol. 1*, trans. Robert Hurley and others (London: Penguin Books, 2000), pp. 51-58.

[127] Foucault, "The Ethics of the Concern for Self," *Ethics*, p. 292

[128] Ibid., p. 292

culpability; particularly in a sexual relationship. However, Foucault specifically describes sexual relations in terms of power relations; "For example, let us take sexual or amorous relationships: to wield power over the other in a sort of open-ended strategic game where the situation may be reversed is not evil, it's a part of love, of passion and sexual pleasure."[129] If subjects are regarded as possessing equal power in personal relationships, as being equally free to make autonomous choices – as in the case of the young girl molested by an older man and Foucault's descriptions of love for boys – it then becomes extremely difficult to define what might constitute an abuse of power; particularly if the subject concerned has little or no social power. In other words, if the subject is socially marginalised. Yet it is not just children who are in a position of unequal power in society, but women, the disabled, indigenous groups and ethnic minorities are also vulnerable to exploitation and abuse. As Franz Fanon noted, those who are subjugated often suffer from internal colonisation; a self-hatred that makes the insistence on one's worth and respect for ones' wishes, difficult.[130] The practice of autonomy for such people is often qualified or curtailed in terms of the kinds of limited expectations they may have come to identify with their lives, as Martha Nussbaum has also noted.[131]

In fact Foucault differentiates between the sort of power that can be seen to be manifested by one group of people over another – that is, by a class, a government, or a master /slave relationship – and the power that exists in personal relationships; referring to the latter as "relations of power" and

[129] Ibid., p. 298.
[130] Frantz Fanon, *Black Skin, White Masks* (New York: Grove Press, 1967), pp. 152-153.
[131] Martha Nussbaum, *Frontiers of Justice*, p. 73, p. 279, p. 283.

suggesting that "in human relationships … power is always present."[132] Foucault

does not seem to entertain the thought that these differentials of power might

impact upon and influence each other. For Foucault, personal relations are

simply "*strategic games between liberties*–in which some try to control the

conduct of others, who in turn try to avoid allowing their conduct to be

controlled or try to control the conduct of the others;" whereas class or

governmental power are "the states of domination that people ordinarily call

"power.""[133] Foucault equates the freedom to practise such personal "strategic

games" with the degree to which a society regulates "the control of the conduct

of others." This seems to mean for Foucault that, basically, the freer a society,

the more games that can be played, for, "in a society like our own" – as

compared to a society so well-regulated "that, in a sense, the game is already

over" – games can be "very numerous, and the desire to control the conduct of

others is all the greater…. However, the freer people are with respect to each

other, the more they want to control each other's conduct. The more open the

game, the more appealing and fascinating it becomes."[134] Such conceptions of

power and liberty seem consistent with Foucault's earlier critique of the

homogenising and normalising epistemes and disciplines of modern society.

Foucault appears to oppose such disciplines on the grounds that they restrict

personal liberty – with liberty being defined as the freedom to practise one's

autonomy in inevitable and apparently pleasurable games of control with other

individuals. Foucault here is effectively reducing all desire to a universal wish

to control the conduct of others, but more importantly, his separation between

personal and public power mirrors the separation social contract theorists make

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[132] Foucault, "The Ethics of the Concern for Self," *Ethics*, pp. 291-292.
[133] Ibid., p. 292, my italics.
[134] Ibid., p. 300.

in distinguishing the private realm – of personal, familial and domestic relations– from the realm of justice.[135] As noted earlier, this makes it extremely difficult to identify abuses of power, particularly regarding cases of incest or domestic violence.

To conclude, this discussion began with Foucault's reading of Kant's "What is Enlightenment," suggesting that the ethic, or "ethos" Foucault finds there might provide something of a key to understanding Foucault's general ethical stance; this being the idea of "a philosophical life in which the critique of what we are is at one and the same time the historical analysis of the limits imposed on us and an experiment with the possibility of going beyond them."[136] What has been suggested is that Foucault's entire work has been dedicated to an examination of the historical "limits imposed upon us;" these limits being seen as the unjust imposition of the homogenising practices of normalisation. It is work that has consistently contained, at the same time, the implicit assumption of "going beyond" or resisting such practices, as manifested by Foucault's assumption of autonomy and valuing of heterogeneity. However, such standards themselves assume the universal worth of, and respect for, autonomous humans; an assumption of universal moral value at odds with Foucault's anti-humanist and anti-universalist stance. Moreover, the problem with investing autonomy with a higher ethical value than other values is that, isolated from every other ethical principle, autonomy cannot guarantee that difference will be respected. For, among other things, it can make it difficult to identify those who are effectively disempowered and marginalised within society – as we saw regarding sexual

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[135] As noted in the previous chapter, see Nussbaum and Susan Moller Okin (among others), for this particular critique of social contract theory.
[136] Foucault, "What is Enlightenment," *Ethics*, p. 319.

relationships with children – where the existence of a distinct inequality of power in such relationships makes the issue of any autonomous consent highly contentious. Finally, the prioritisation of autonomy cannot ultimately tell us *why* we should concern ourselves over the welfare of others.

Jean-François Lyotard

After his disenchantment with Marxist activism, Lyotard's first attempt at an alternative to what he saw as the totalising systems of western metaphysical thought was to develop what he describes as a paganist approach.[137] Such an approach explored emotional intensities or libidinal responses, an "energy-oriented type of thinking" to events;[138] events being plural, heterogeneous and unsystematic. Lyotard developed the idea of paganism in work such as *Discours, Figure* and *Libidinal Economy*,[139] but later shifted to a preoccupation with language and justice, which came about after Lyotard recognised that some intensities could in fact be "very dangerous."[140] This shift began in *Just Gaming* but became more pronounced in *The Differend*,[141] where Lyotard further developed his Wittgenstinian-inspired conception of language as incommensurable islands or phrases of meaning. But Lyotard is perhaps most well known for *The Postmodern Condition*, which he wrote in 1979, some years

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[137] Jean-François Lyotard, and Gilbert Larochelle, "That Which Resists, After All," in *Philosophy Today* (Winter 1992); 36, 4; Academic Research Library, pp. 402-418; p. 404.
[138] Ibid., p. 404.
[139] Jean-François Lyotard, *Libidinal Economy*, trans. Iain Hamilton Grant (Bloomington, Indiana: Indiana University Press, 1974, 1993). *Discours, Figure* (1971) has yet to be fully translated into English.
[140] Ibid., p. 404.
[141] Jean-François Lyotard, *Just Gaming*, trans. Wlad Godzich (Minneapolis: University of Minnesota Press, 1985); Jean François Lyotard, *The Differend* trans. Georges Van Den Abbeele (Minneapolis: University of Minnesota Press, 1988).

prior to *The Differend.* It was here that he famously made reference to the west's "grand Narratives"[142] and described postmodernism as "incredulity towards metanarratives,"[143] asking further as to

> Where, after the metanarratives, can legitimacy reside? The operativity criterion is technological; it has no relevance for judging what is true and just. Is legitimacy to be found in consensus obtained through discussion, as Jürgen Habermas thinks? Such consensus does violence to the heterogeneity of language games. Postmodern knowledge is not simply a tool of the authorities; it refines our sensitivity to differences and reinforces our ability to tolerate the incommensurable.[144]

Although Lyotard was to later distance himself from the term postmodernism,[145] the major preoccupations underlying his work, as expressed in the passage cited above, remained constant; these being informed by a clear ethical judgement that the west is unjust in its apparent exclusion of heterogeneity and his valuing of difference over universality. For example, in *The Differend* Lyotard declares that the question of justice arises precisely because "a universal rule of justice between heterogenous genres is lacking in general."[146] However, in order to illustrate such injustice Lyotard uses the example of the Holocaust, where he argues that the rules for historical veracity and reason can be seen to exclude or silence other witnesses, other ways of conception and cognition, providing the example of a scholar who insisted that only survivors of the gas chambers could actually prove that the gas chambers existed (and as there were no survivors,

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[142] Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge*, trans. Geoff Bennington and Brian Massumi (Minneapolis: University of Minnesota Press, 1979, 1984) p. 15.
[143] Ibid., xxiv.
[144] Ibid., xxiv-xxv.
[145] See "That Which Resists," pp. 413-414.
[146] Jean François Lyotard, *The Differend*, trans. Georges Van Den Abbeele (Minnesota: University of Minnesota Press, 1988), xi.

then no proof existed).[147] Here we can see that on the one hand, Lyotard wants

very much to insist that the Holocaust did occur and was in fact a terrible

injustice, and on the other, he wants to reject all universal metanarratives on the

grounds that they are the cause of such injustice. So at the very foundation of

Lyotard's philosophy is a moral judgement of western universalisms as unjust

precisely *because* he sees them as inadequate in recognising the universal moral

worth of all human beings. This is clearly a contradictory position to adopt, and

it is one that Lyotard tries to circumvent by making various attempts at creating

'legitimacy' of his own through such concepts as the 'phrase', the

'unforgettable', the 'unpresentable' and the 'inhuman.' Each of these will now

be explored in turn as to their efficacy in providing alternative grounds upon

which to justify respect for difference.

In light of the ethical judgements he makes above, Lyotard obviously wants to

avoid the charge of absolute relativism that can (and has been[148]) levelled

against him. This he attempts to do by insisting that he does not actually state

that "all linguistic islands are incommensurable," but rather that "there are

categories of language that are incommensurable one with the other."[149] He

argues that this is a position that is consistent with Kant's[150] own insistence on

the difference between epistemological knowledge, morality, and the aesthetic –

in that morality cannot be reduced to either "ethical prescription" or to

"knowledge."[151] Lyotard ultimately expresses this difference as being the

difference between value and fact, that "one cannot infer a prescription from a

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[147] Ibid., pp. 3-15.
[148] See "That Which Resists," p. 403.
[149] Ibid., p. 407.
[150] Lyotard cites Kant and Wittegenstein as his "mentors" in writing *The Differend*, ibid., p. 405
[151] Ibid., p. 407.

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description."[152] Lyotard believes that he can also avoid the accusation that he himself is resorting to a meta-narrative in his privileging of difference over universality (and of indeterminancy over determinancy), by describing his discussion of language as an immanent – as opposed to a transcendent – critique. He also insists that while one cannot actually say, following Wittgenstein, that language exists, one can at least say that "phrases" do:

> The only thing that is absolutely certain, and to say this is not to do ontology, is that there are phrases. If you say "No, there are no phrases," you are making a phrase. That there are phrases, that is absolutely certain. I started with that, which is not a cogito, because there is no thought in this matter, there is only what is said. I try to hang out like that in the void.[153]

But while Lyotard acknowledges that *The Differend* can be read as "a negative, privative ontology," he also explicitly rejects ontology; although it is important to state that his particular conception of ontology seems restricted to or associated with Heidegger alone.[154] In his essay "Heidegger and "the jews,"" (sic) Lyotard suggests that just as phrases or language games exclude or silence other phrases, Heidegger –in so emphasising Being as that which has been forgotten by western metaphysics – is himself forgetting or silencing justice. Heidegger does state that Being must precede all value and ethics, and that the association of man with value itself results in the devaluing or objectivising of

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[152] Ibid., p. 406.
[153] Ibid., p. 405.
[154] "I think I would reject the word "ontology". I perceive the threat, and have sometimes given in to the fascination of an ontology. But then, if I have never been a disciple of Heidegger it is not by chance, even though I have read a lot of Heidegger. When I wrote *The Differend*, it was resolutely in a post-Wittgensteinian and post-Kantian perspective, for contrary to Heidegger and to any Kantian or post-Kantian philosophy I do not think there is a Kantian ontology. I think that Kantian criticism is more likely a rejection of ontology. It is a way of thinking that precludes succumbing to ontology." Ibid., p. 405.

man.[155] However, Lyotard himself also rejects a stable, value-laden conception

of man or the human; specifically calling for a rejection of humanist

universalisms.[156] But Lyotard sees Heidegger's actual silence over the

Holocaust as symptomatic of his exclusion of the possibility of justice and ethics

from Being, "which forgets that the Forgotten is not (only) Being, but the

Law:"[157]

> the exclusion of what I have called the event of the Covenant,
> the forgetting of the silent Law that takes the soul hostage and
> forces it to bear witness to the violent obligation it has
> undergone. One can attempt to rid oneself of this thematic of
> the Just (as one might seek to rid oneself of a vestige of
> theology) and of the ethics that accompany it. Heidegger's
> reading of the *Critique of Practical Reason* in 1930 is an
> example of this elimination or exclusion: from the Kantian
> text of the law and obligation, the author of *Sein and Zeit*
> extracts only a commentary on freedom. Where Kant
> emphasised the suffering and the violence that any finite will
> endures by virtue of being seized by an inexplicable and
> empty but inevitable prescription, Heidegger in *On the*

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[155] "To think against "values" is not to maintain that everything interpreted as "value" — "culture," "art," "science," "human dignity," "world," and "God" – is valueless. Rather it is important finally to realise that precisely through the characterisation of something as "a value" what is so valued is robbed of its worth. That is to say by the assessment of something as a value what is valued is admitted only as an object for man's estimation. But what a thing is in its Being is not exhausted by its being an object, particularly when objectivity takes the form of value. Every valuing, even where it values positively, is a subjectivising. It does not let beings: be. Rather, valuing lets beings: be valid – solely as the objects of its doing. When one proclaims "God" as the altogether "highest value," this is a degradation of God's essence. Here as elsewhere thinking in values is the greatest blasphemy imaginable against Being. To think against values therefore does not mean to beat the drum for the valuelessness and nullity of beings. It means rather to bring the clearing of the truth of being before thinking, as against subjectivizing beings into mere objects." Heidegger "Letter on Humanism," p. 251. See also his discussion on ethics, pp. 254-259.

[156] "Humanism always administers lessons to 'us'…. always as if at least man were a certain value, which has no need to be interrogated. Which even has the authority to suspend, forbid interrogation, suspicion, the thinking which gnaws away at everything. What *value* is, what *sure* is, what *man* is, these questions are taken to be dangerous and shut away again pretty fast. It is said they open the way to 'anything goes', 'anything is possible', 'all is worthless'. Look, they add, what happens to the ones who go beyond this limit: Nietzsche taken hostage by fascist mythology, Heidegger a Nazi, and so on…." Jean-François Lyoard, *The Inhuman* trans. Polity Press (Stanford: Stanford University Press, 1991), p.1.

[157] Jean-François Lyotard, "Heidegger and "the jews:" (sic) A Conference in Vienna and Freiberg," in *Political Writings*, trans. Bill Readings and Kevin Paul Geiman (Minneapolis: University of Minnesota Press, 1993), pp. 135-147; p. 147.

> *Essence of Truth* (also 1930) produces freedom a "as an in-sistant ek-sistence of *Dasein*…of the originary essence of truth, of the sign of the mystery of erring." Texts like these set the seal on Heidegger's deafness to the problematic of justice. This deafness governs his silence on great injustice, on Auschwitz. As far as the truth of Being is concerned, the *Shoah* is only a being.[158]

Lyotard uses the concept of the Law as a Jewish and Kantian-inspired reference to justice, ethics and our obligation or liability to others. But while the law is inevitable it is also "empty:" "There is a law and we absolutely don't know what it says, nor even from where it comes to us, but we always have to invent it through our actions."[159] In other words, there is no content to the law. But while we might want to agree that Heidegger was not necessarily correct in prioritising and therefore distancing Being from ethics – in that it relegates value and ethics to relative manifestations derivative of Being – it does not necessarily follow that such distancing resulted in Heidegger's engagement with Nazism, as Lyotard himself admits.[160] Rather, Lyotard sees Heidegger's philosophical position as one that "*allows* or *leaves open* the possibility of such an engagement," and this is precisely due to Heidegger's exclusion of the possibility of justice and ethics from ontology. However, it does not necessarily follow that ontology must then necessarily be separated from ethics *tout court*, as it can be said that Lyotard himself has created problems in so decisively separating ethics from Being, or ontology, as will be argued below.

First, Lyotard insists that Kant's prescriptive obligation to others, the Law, is ultimately "empty," a statement which is not entirely accurate. On the one hand

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[158] Ibid., p. 136.
[159] Lyotard, "That Which Resists," p. 404.
[160] Lyotard, "Heidegger and the "jews,"" p. 144

Kant can be said to have prescribed a particular content and value in the form of the Law of the Kingdom of Ends; on the other hand, as noted earlier, it is a content and value that he cannot ultimately justify in terms of the rational demands of the Categorical Imperative. So in this sense the law can be said to be "empty" of content, particularly as Kant of course himself emphasises that it is something that one must constantly "invent" oneself, in that it is to be the product of an autonomous rationality. And while Stuart Sim does indeed read Lyotard as promoting a law-unto-oneself-autonomy,[161] Lyotard himself consistently (although albeit contradictingly), denies the self as autonomous, in that such autonomy can be seen as one of the ways in which our "immemorial liability" to others is forgotten; "Only the Other is first."[162] For, according to Lyotard, to be autonomous is to be in control of the other; "One frees oneself from the other by locating it as an exteriority and then taking a grip on it."[163] This "grip" is the grip of control, the power by which we are gripped by others from childhood; "we are born of others, but also born to others, delivered into the hands of others without any defenses."[164] Moreover, Lyotard equates such a grip with the west's practice of seeing the exercise of autonomy as synonymous with freedom.

> Emancipation consists of establishing oneself in the full possession of knowledge, will and feeling, in *providing oneself* with the rule of knowledge, the law of willing, and the control of the emotions. The emancipated are the persons or things that owe nothing to anyone but themselves: Freed from all debts to the other.[165]

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[161] Stuart Sim, "Lyotard and the Politics of Anti-foundationalism," in *Radical Philosophy* Vol. 44, 1986, pp. 8-13.
[162] Lyotard, "That Which Resists," p. 402.
[163] "The Grip," *Political Writings*, pp. 148-158; p. 151.
[164] Ibid., p. 149.
[165] Ibid., p. 150.

Lyotard rejects autonomy on the grounds that it results in a lack of consideration for the other via the imposition of an autonomous will, whose only reference point and ultimate centre is itself – its own self-constitution. According to this western conception of the self we do not belong to others, but to ourselves; "It is not an Other that gives us the law. It is our civic community that does, that obliges, prohibits, permits. That is called emancipation from the Other, and autonomy."[166]

In rejecting the self-oriented autonomy of the west, Lyotard turns to the Jewish faith, which acts as a symbol of justice, of the Law (as opposed to civic "law") as a symbol of liability to the other, a law that is unpresentable. For, in order to avoid the objectification of the other, the other must 'be' outside of representation, discourse and language, and yet also act as the reference point guiding and defining all our actions; just as Yahweh, the invisible God who is wholly other, acts as that which defines and is the unrepresented centre and measure of the Jewish people – the Law. So, for Lyotard, such Law can only be found or presented through negative representation, which he likens to the Jewish belief that the image of God shall not be represented, a symbol which Kant himself uses to represent the sublime. Moreover, Lyotard suggests that, in the same way, the other is our Law to which we are liable to, in-debted to:[167]

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[166] "Europe, the Jews, the Book," *Political Writings*, pp. 159-164; p. 161.
[167] "Heidegger and "the jews," *Political Writings*, p. 147. It is also this Jewish orientation to an other, that Lyotard views as the repressed unconscious of Europe and the ultimate cause of the west's anti-Semitism. The west has sought, and is still seeking, to annihilate this reminder of indebtedness to an other, as a people who *belong* to, and are constituted by, an other, a Law, as compared to the west, which has "always thought the opposite of this message, thought its self-constitution." "Europe, the Jews, and the Book," p. 162.

> The difference that is incessantly forgotten is not only ontico-ontological, there is also the difference between good and evil, between justice and tort, no less elusive than the ontico-ontological difference and, like it, always demanding reinscription. One can never settle accounts with this difference even if one is the most pious of believers. This difference cannot in the least be determined within theological or metaphysical doctrine. It requires the recognition of an immemorial liability. It is this liability, so contrary to its (simultaneously archaic and modernist) ideals of virility, control, and empire, that Nazism wanted to exterminate.[168]

As Lyotard stringently rejects autonomy for the sake of the other, then that which we are left with in regards to justify respect for others is the Law itself, the "recognition of an immemorial liability." But if the Law has no content, always demanding "reinscription" and is, moreover, separated from an ontological conception of human being, where does this sense of liability come from? How are we are to know that we are liable, obligated to others – to human beings – at all? Moreover, on what ethical grounds is Lyotard rejecting western autonomy, if not on the very grounds that the other is worthy of a universal respect he sees as lacking in such autonomy? Within Kant's schema we know that we are obligated to others because we assume that others are, like ourselves, rational humans and therefore ends in themselves. Within Jewish law God may be unpresentable, but it is still understood that He is God, the Source of all obligation; indeed He is unpresentable precisely because He is God. Within Lyotard's schema the unpresentable is nebulous in the extreme, as he explicitly rejects the concept of the human as a source of obligation, in that the other, as unpresentable, cannot even be identified as human.

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[168] "Heidegger and "the jews,"" p. 147.

Lyotard, moreover, assumes a realm that exists *outside* of language, culture and convention, which he variously identifies either with Heidegger's own phrase, 'being-in-the-world,' or as the unpresentable,[169] as Kant's 'sublime,'[170] or even as the "real."[171] Emilia Steuerman suggests that Lyotard's theory "is not a matter of providing an unpresentable reality but of inventing allusions not to the unpresentable but to the unpresentabilty of the unpresentable." [172] Steuerman seems to imply that Lyotard eschews any notion of the 'real,' but it is Lyotard's very conception of the unpresentable as that which lies beyond all culture that enables him to judge all discourse, all language games, as relative. The 'real,' in other words, becomes the measure, the judge of that which is cultivated by man. No culture has direct access to the unpresentable, as it lies beyond and cannot be grasped or represented by language – very much in the Kantian sense of the sublime. One cannot represent the other, because one cannot grasp the other's truth – the other's reality – via language games; implying however that the unpresentable might be seen as the real, as truth itself. Justice subsequently lies in the recognition of the equality of all discourses, as none can actually represent the truth. Steuerman suggests that Lyotard's *differend* provides a value free alternative – or rather, necessary complement – to Habermas' apparently value-laden universalism, but such a world view is by no means value free. For despite Lyotard's claims to be judging language immanently, or within language itself, as noted above, his privileging of difference over universality is a value judgement; one that he clearly identifies with the oppression of particular

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[169] Lyotard, "Representation, Presentation, Unpresentable," in *The Inhuman*, pp. 119-128.
[170] See "The Sublime and the Avant-Garde," in *The Inhuman* pp. 89-107 and "After the Sublime, the State of Aesthetics," pp. 135-143 in *The Inhuman.*
[171] Lyotard, "The Grip," *Political Writings*, p. 148.
[172] Emilia Steuerman, "Habermas vs Lyotard: Modernity vs Postmodernity?" in Andrew Benjamin (ed.) *Judging Lyotard* (London: Routledge, 1992), pp. 99-118; p. 114.

humans (such as the Jewish people). And it is his very insistence on the existence of "good and evil" and "justice" that allows him to judge Heidegger, as seen above. In this sense Lyotard's conception of the unpresentable cannot be said to be empty of meaning and value but rather is filled with the assumption that it is not actually language games that have value but that which lies beyond language games; namely, human beings. Moreover, implicit in this assumption is the value judgement that all human beings are equal in worth and that this worth is an end in itself. It is these unspoken assumptions that ultimately provide the grounds for Lyotard's conception of justice and become the measure of injustice – the inhuman.

Lyotard's conception of the inhuman, which, as he explains, has two meanings,[173] very much relates to what he regards as a dichotomy between the indetermined – that which is "inhuman" in the not-yet-human-child[174] or infant, which he likens to an "opacity"[175] – and the determining forces of 'inhuman' culture.

> The inhumanity of the system which is currently being
> consolidated under the name of development (among others)
> must not be confused with the infinitely secret one of which
> the soul is hostage.[176]

But it is the "remainder" of this inhuman indeterminancy[177] that ultimately serves as judge as to the inhumanity of the system; "the anguish of a mind

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[173] "Which would make two sorts of inhuman. It is indispensable to keep them dissociated." Lyotard, *The Inhuman*, p. 2.
[174] Ibid., p. 3.
[175] Lyotard, "That Which Resists," p. 416.
[176] Ibid., p. 2.
[177] Lyotard, *The Inhuman* p. 3 and "That Which Resists," p. 416.

haunted by a familiar but unknown guest which is agitating it, sending it delirious and also making it think…. Discontent grows with this civilization."[178] It is this remainder that provides "the power" with which to criticise the system's institutions, as well as the "temptation to escape them."[179] Lyotard identifies this civilisation of "development"[180] with modernity and modern technological society, which he describes in *The Postmodern Condition* as the "system"[181] and a "machine," due to its "terrorist"[182] effect on other human beings – most notably the poor and powerless[183] – over whom the "decision makers" wield the power to say, "Adapt your aspirations to our ends – or else."[184] Nazism was in this sense for Lyotard also a manifestation of the west's control and suppression of others, now materialised in the "techno-economo-scientific megalopolis in which we live (or survive)," and which "employs these same ideals of control and saturation of memory, directed toward goals of efficiency." [185] It is such development, such modernity, indeed the very "development of modernity," [186] that we must "resist," [187] or "rewrite."[188]

However, the source of Lyotard's critique of the current ethos of "development" is precisely the inhuman remainder; that which exists before the imposition of 'human' culture on the soul; "all education is inhuman because it does not

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[178]Lyotard, *The Inhuman*, p. 2.
[179] Ibid., p. 3.
[180] Lyotard, "That Which Resists," p. 415.
[181] Lyotard, *The Postmodern Condition* p. 65.
[182] Ibid., p.63.
[183] Ibid., p. 45.
[184] Ibid., p. 64.
[185] Lyotard, "Heidegger and "the jews,"" p. 147.
[186] Lyotard, "That Which Resists," p. 415
[187] Ibid., p. 402.
[188] Ibid., p. 414. Lyotard amended his former stance on post-modernity to a "rewriting" of modernity instead.

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happen without constraint and terror."[189] It is also the forgotten, just as Being

was forgotten; "The system rather has the consequence of causing the forgetting

of what escapes it."[190] It is the affected unconscious,[191] the indeterminate, the

unpresentable. It is justice itself, the Law, for it is "what manifests to this

community the lack of humanity it is suffering from, and which calls on it to

become more human." [192] And it is that which ultimately resists:[193]

> And what else is left to resist with but the debt which each
> soul has contracted with the miserable and admirable
> indetermination from which it was born and does not cease to
> be born? – which is to say, with the other inhuman? This debt
> to childhood is one we will never pay off. But it is enough not
> to forget it in order to resist and perhaps, not to be unjust.[194]

So while on the one hand Lyotard, like Heidegger, rejects the association of

'man' with value and highlights the contingency of a being one who must *learn*

to become what he is, as opposed to being born to it,[195] he nevertheless cannot

commit himself to the opinion of "contemporaries" who suggest that, "what is

proper to mankind is its absence of defining property, its nothingness."[196] And it

is precisely Lyotard's commitment to "heterogeneity" that prevents him from

doing so; in other words, his valuing of difference over universality – whether

that be the universality of conceiving the human as a stable conception or as a

complete "nothingness." Lyotard seems to use this inhuman "remainder," like

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[189] Lyotard, *The Inhuman*, p. 4.
[190] Ibid., p. 2.
[191] Lyotard, "Heidegger and "the jews,"" p. 142.
[192] Lyotard, *The Inhuman*, p. 4.
[193] Lyotard, *The Inhuman*, pp. 2-3 and "That Which Resists," p. 416.
[194] Lyotard, *The Inhuman*, p. 7.
[195] "If humans are born human, as cats are born cats (within a few hours), it would not be…I don't even say desirable, which is another question, but simply possible, to educate them. That children have to be educated is a circumstance which only proceeds from the fact that they are not completely led by nature, not programmed." *The Inhuman*, p. 3.
[196] Ibid., p. 4.

the Forgotten, as that which, after having read the "negative lesson" provided by

Heidegger's political life,[197] can preserve a concern for the other that transcends

the vagaries of historical and political contingency; a commitment that "requires

the recognition of an immemorial liability," the "debt" that we owe to the

unpresentable other, to our childhood, to that which resists. But such a

recognition also implies the immemorial and universal *value* of that which is

Forgotten; the other, "the jews," (sic) the inhuman – a value that Lyotard

neglects to provide justification for but seems to take throughout his work as a

given fact in need of no further explication; "I am not saying that there is no

need to get involved in the fate of the most disadvantaged: ethical and civic

responsibility demand that one *should.*"[198] Why do we have "an obligation, a

responsibility, or a debt, not only towards thought, but toward justice?"[199] How

is this obligation connected to the "real Jews" as opposed to "the jews?"[200] In

other words, how are we to connect the silencing of phrases to the silencing of

"real" people in the context of Lyotard's wider stance against ontology? Lyotard

explicitly separates "jews" from "real Jews," but still insists "in reality," that

such "real Jews" have suffered extermination and persecution at the hands of the

west.[201] He also makes frequent references to the "pain"[202] and "terror"[203]

involved in being determined by modern civilisations, and this would seem to

imply a particular bodily subject, a being, subject to both indeterminancy and

determinacy, that somehow bears some connection to phrases, ethics and justice.

But while Lyotard did speak of planning to write on the phraseology of the body

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[197]See above and Lyotard, *The Postmodern Condition*, p. 37.
[198] Lyotard, "Tomb of the Intellectual" *Political Writings*, pp. 3-7; p. 7 my italics.
[199] Lyotard, "Heidegger and "the jews,"" p. 141.
[200] "I use quotation marks to avoid confusing these "jews" with real Jews." Ibid., p. 140.
[201] Ibid., p. 140.
[202] Lyotard, *The Inhuman*, p. 3
[203] Ibid., p. 4.

in an interview a few years before his death,[204] he nonetheless still refused to associate the body with a particular subject, claiming that "a proper name is not a subjectivity, it is an identity–around which many phrases come and go."[205] As noted earlier, if phrases are the only thing of which we can be sure, above all phenomenological evidence or physical objects,[206] then this inevitably ties ethics to phrases rather than to the bodies of living humans. For Lyotard insists on separating ethics from ontology – particularly in regards to "the Other" – for to think in terms of Heideggerian ontology and politics is to experience a "deficiency", a "lack:"

> The lack of a faculty of judgement or a feeling for the Law, to put it in Kant's terms, or the lack of a dependence on the Other and a responsibility that is other than ontological, if we phrase it in Emmanuel Lévinas's terms.[207]

The other is unpresentable and thus necessarily disassociated from being, and silenced by the phrase or language game of another. When so disconnected from ontology, however, ethics becomes a matter of linguistic justice alone. Why, then, should we be concerned whether some phrases are heard, and others are not? Such silencing becomes a matter of justice *only* if the value of equality itself is valued and made synonymous with justice. But if we cannot connect ethics to living humans who suffer from injustice – from unequal treatment – then it becomes difficult to see how Lyotard's ethical judgements have any meaning at all. For such distancing of phrases from living human bodies, from an ontology of human being, makes it impossible for Lyotard to justify his

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[204] Lyotard, "That Which Resists," pp. 410-411.
[205] Ibid., p. 410.
[206] Ibid., p. 410.
[207] Lyoatrd, "Heidegger and "the jews,"" p. 140.

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condemnation of the "great injustice" of Auschwitz.[208] One could even say, to paraphrase Lyotard's own words, that, 'as far as the truth of phrases is concerned, the *Shoah* is only a phrase.' Such a conception of ethics, while seeking to be attentive to difference, ultimately renders impossible the very conceptualisation of respect for difference, which has direct consequences in terms of the political representation of marginalised groups – more of which will be discussed in the next chapter.

In summary, Lyotard rejects universal humanism on the grounds that it does not provide adequate respect for others, yet he himself does not provide sufficient alternative grounds upon which to justify such respect – as we also saw earlier in the work of Derrida and Foucault. In regards to Foucault's theory of care of the self, it is difficult to find within his conception of autonomy any justification as to why we should be concerned for others, or any gauge as to when power imbalances might result in exploitation and abuse. In relation to Derrida and Lyotard's arguments, we have also seen that respect is impossible to justify without some sort of reference to the unjust and unequal treatment of human beings, although both scholars ultimately eschew any metaphysical or ontological arguments that might ground such a reference. In short, these arguments for particularism are ultimately grounded on unacknowledged assumptions of universal moral worth and respect. Indeed, the very force and appeal of their critique of humanism relies on such implicit assumptions; a force that is, in the end, founded on rhetorical appeal alone.

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[208] Ibid., p. 146.

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However, it is important to note that the arguments of all three theorists have been taken up by some of the members of groups traditionally marginalised by western philosophy – although it is equally important to note that such arguments have also been explicitly rejected by other members of the very same groups. Given that Derrida, Foucault and Lyotard have all created theories that are specifically concerned with marginalised others, it is important to explore how such groups themselves have responded to their scholarship, as to not do so could then be seen as a perpetuation of their exclusion from past and current ethical debate. And given that the parameters of this debate have arisen precisely over both the theoretical *and* practical exclusion of certain others from moral consideration, it is imperative that we test the practical application of such theories to the concrete concerns of such others. Therefore in the next chapter we will be examining the practical application of posthumanist theories to the political claims of such groups in order to ascertain their efficacy in representing or promoting their concerns.

Chapter 3

Posthumanism Applied

In the preceding chapter it was suggested that at the very heart of Derrida, Foucault and Lyotard's critique of humanism lay a moral judgement; that universalism is inherently unjust in its apparent exclusion of particular others. It was also argued that this ethical judgement is made without recourse to any justificatory philosophical grounds, but rather relies on the force of its rhetorical – and ultimately humanist – appeal alone. This ethical rejection of universal humanism has in turn had an enormous impact over a wide range of disciplines, but specifically in those areas of scholarship that deal with those traditionally marginalised within western philosophy; such as feminist, queer, indigenous, postcolonial and now more recently, specifically 'posthumanist' studies, which now broadly encompasses animals and machines as excluded 'others.' It is important to note that these areas of study did not arise solely due to postmodernist and poststructuralist influences, but are also the result of an ongoing, immanent critique taking place within the liberal-humanist tradition itself – as shown in Chapter One. This chapter will focus on the way in which posthumanist arguments have been developed and applied either in defence of specific marginalised groups or by members of marginalised groups themselves in order to ascertain the efficacy of such theories in advocating respect for difference. For, as was alluded to at the end of Chapter One, claims for difference must attempt to balance a simultaneous call for respect for particularity *and* avoid the possibility that particular differences might be seen to

be the result of any *essential* conception of difference. The latter concerns are a rejection of any notion of a fixed essence of identity; of there existing any essential 'woman,' 'black,' 'oriental' or 'aborigine,' among others. For to insist that something like an essential 'woman' exists is to risk excluding women who might not 'fit' such a description; as noted earlier at the end of Chapter One with the assumption of woman as white, heterosexual, middleclass and able-bodied. Moreover, it is to risk affirming that all 'women,' 'blacks,' or 'orientals' *are* essentially different, which might again be used as grounds upon which to justify their exclusion from moral consideration. On the other hand, as we saw with reference to Levinas and Lyotard, to state that difference is unique and absolute is then to jeopardise the very grounds upon which to justify respect for difference. For if the 'other' is so absolutely different, how are we then to know that they are worthy of or even want the sort of respect we might want for ourselves? These are issues that again bring up the broader problems of not only universality and particularity, but of the individual and the communal; of political representation and what is commonly referred to as identity politics.

The complexities outlined above have resulted in many scholars turning to posthumanist theory as a possible alternative to universalism. However, the difficulty with which posthumanist scholars have had in being able to justify respect for difference has also, conversely, often resulted in their outright rejection by other scholars (Martha Nussbaum's now infamous critique of Judith Butler being one such example).[1] As it has been argued in the last chapter that such difficulties regarding justification for respect do indeed exist, it might then

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[1] See Martha Nussbaum, "The Professor of Parody," in *The New Republic Online* The New Republic.com http://www.tnr.com./index.html (Feb. 1999).

seem somewhat gratuitous to spend another chapter simply reiterating the claims made in the last. In answer to such a possible critique, it is important to point out that inextricably entwined with the call for respect are the stories and voices of those marginalised and traditionally excluded from moral consideration; the very reasons why such respect has been demanded. These reasons must be considered if we are to provide the basis for any solution to the problem of respect for difference, or else risk the further marginalisation of particular others. Some posthumanist scholars have indeed acknowledged and actively sought to respond to such a critique by seeking to provide alternative grounds for respect, and it is important to consider such alternatives in order to ascertain whether respect for the particular can indeed be justified without recourse to any notion of the universal. Finally, it was suggested in the preceding chapter that posthumanist theories encountered substantial problems in terms of being able to link theory to the actual lives of oppressed humans, which makes it important to see how and if such theories can indeed be successfully used and applied to the concrete lives of human beings.

Having said that, it would be impossible to present here the claims of all marginalised groups, nor even the work of all scholars who have sought to re-conceptualise posthumanism. Therefore this chapter is necessarily selective. Broadly speaking, the areas discussed here encompass the particular claims of indigenous peoples, feminist and queer theory, and to a lesser degree, animals and technology. Work in the area known as postcolonial studies will not be covered, mainly due to the fact that not much attention has been given to philosophical justifications for respect. Indeed, Edward Said, whose seminal

book *Orientalism* provided much of the impetus and groundwork for post-colonial studies, acknowledged the critique that his Foucault-inspired analysis contained humanist assumptions, which helped bring him to a self-declared position of democratic humanism.[2] Gayatri Chakravorty Spivak is another influential scholar within the field of postcolonial theory, her major claim being that the subaltern (initially, Indian colonial subjects), could not speak within the framework of dominant western discourse.[3] However, this is a position for which she has received much critique, in that it effectively excluded the possibility of colonial (or postcolonial) voices being heard at all.[4] While she has now somewhat modified this position and acknowledged the need for strategic uses of identity by marginalised groups in order to further their political claims,[5] Spivak has still neglected to provide adequate grounds on which to justify respect for difference; implicitly relying upon while still explicitly rejecting the universalist assumption that all human beings deserve equal moral consideration.[6]

Within the context of gender and queer studies, on the other hand, Judith Butler has indeed actively sought to grapple with such grounds for justification, which is why a discussion of her work is included here. In regards to scholars calling

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[2] See Edward Said *Humanism and Democratic Criticism* (New York: Columbia University Press, 2004).

[3] Gayatri Chakrvorty Spivak, "Can the Subaltern Speak?" in Patrick Williams and Laura Chisman (eds.) *Colonial Discourse and Post-Colonial Theory: A Reader* (New York: Harvester Wheatsheaf, 1993), pp. 66-111.

[4] See, for example, Benita Parry's critique of Spivak in Benita Parry, "Resistance Theory/Theorizing Resistance, or Two Cheers for Nativism," in Padmini Mongia (ed.) *Contemporary PostcolonialTheory* (London: Arnold, 1996), pp. 84-109.

[5] See Gayatri Chakrvorty Spivak, "Subaltern Studies: Deconstructing Historiography," pp. 203-236; p. 214 and "Subaltern Talk: Interview with the Editors," pp. 287-308, in Donna Landry and Gerald Maclean (eds.) *The Spivak Reader* (New York, London: Routledge, 1996).

[6] "There can be no universalist claims in the human sciences." Gayatri Chakrvorty Spivak, "Poststructuralism, Marginality, Postcoloniality and Value," in Padmini Mongia (ed.) *Contemporary PostcolonialTheory* (London: Arnold, 1996), pp. 198-222.

for the recognition of the animal or machine as excluded other, Donna Haraway, whose work explores the intersection between women, animals and technology, can be seen as providing both a catalyst for discussion in this area and for a reconsideration of the grounds needed for respect, which is why her work will also be discussed.

Finally, as a non-indigenous Australian scholar living on lands traditionally occupied by Indigenous Australians, I see it as imperative that a discussion on marginalised groups should include a consideration of the claims of Indigenous Australians. The discussion below includes the work of indigenous scholars, both human and posthuman, who are acutely aware of the complexities involved in claiming respect for particular communal identities. As posthumanism suggests that difference is also suppressed within and by the very the notion of homogenous group or cultural identities, as noted above, it is important to evaluate the force of posthumanism's critiques within such a context. This chapter begins, then, with a consideration of Bill Readings' application of Lyotard's theories to Indigenous Australians – which includes a discussion on Indigenous Australian perspectives – followed by a discussion on Māori scholar Manuhuia Barcham, who argues from a broadly posthumanist perspective. We will then discuss the work of Butler and Haraway, respectively. Finally, it will be suggested at the close of the chapter that claims for particularism and universalism are mutually dependant, rather than mutually exclusive, and that some form of universalism needs to be retained in order to justify respect for difference.

As I will be discussing indigenous politics in this chapter,[7] I want to acknowledge that, as a non-indigenous person, it is an extremely sensitive matter discussing such issues, as much damage has been done by scholars and commentators claiming to speak on behalf of indigenous peoples. However, I agree with Linda Alcoff that, if those of us who occupy privileged positions in society remain silent, choosing not to speak *with* marginalised peoples (as opposed to *for* them), then we risk jettisoning our political responsibility to speak against injustice.[8] It becomes imperative then, that in order to speak with, we need to listen to and respect indigenous perspectives on these issues.

Bill Readings' application of Lyotard's justice

Bill Readings, in applying Lyotard's concept of the *differend*, argues that Indigenous Australians should *not* be regarded as 'human.'[9] His concern is that,

> by considering them as "human" (exemplars of an abstract
> nature that we share) we victimize them, make them more
> like us than they are. Their identity remains radically
> untranslatable, heterogeneous to western modern
> rationality.[10]

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[7] My discussion on indigenous politics in this chapter is a slightly revised version of my discussion in Kristi Giselsson, "Assessing an Alternative Grammar: Are Identity, Respect and Justice Possible Within Posthumanism?" in Julie Connolly, Michael Leach and Lucas Walsh (eds.) *Recognition in Politics: Theory, Policy and Practice* (Newcastle, UK: Cambridge Scholars Press, 2007) pp. 65-83.

[8] Alcoff, Linda. "The Problem of Speaking for Others," *Cultural Critique* 20 (Winter: 1991, 1992) 5-31.

[9] Bill Readings, "Pagans, Perverts or Primitives? Experimental Justice in the Empire of Capital" in Neil Badmington (ed.) *Posthumanism* (Houndmills, Basingstoke, Hampshire and New York: Palgrave, 2000) pp. 112-128: p.115.
[10] Ibid., p. 115.

Despite claiming that justice neither resides with Indigenous Australians nor with Australia's liberal capitalist democracy on the grounds that neither side's claims are truer than the other's, the main appeal of Readings' argument actually lies in his moral condemnation of Australia's treatment of its indigenous peoples. He rightly describes this mistreatment in terms of "victimisation" and "terror," "murder" and "annihilation," "domination," "exploitation" and "genocide."[11] While such moral indignation is admirable, for all Readings' protests to the contrary, his indignation still implies a universal standard regarding the just treatment of Indigenous Australians. For, if we cannot assume that 'they' are 'like us,' how are 'we' to know that murdering, exploiting, suppressing and annihilating them is actually wrong? How can 'we' know that 'they' feel pain 'like us,' or have the same right to life and liberty that 'we' claim? Moreover, although Readings argues that the use of 'we' is "imperialist"[12] and "integrationist,"[13] by insisting on referring to Indigenous Australians as 'they' – a 'they' moreover, who are not 'like us' – Readings still implies an 'us' and 'them' dichotomy. Readings' moral condemnation necessarily rests on the assumption that Indigenous Australians *do* have certain inherent rights that should be respected, but although he declares that "(t)he problem of averting genocide demands a respect for difference, a deconstructive ethics, that is prepared to relinquish the concept of the human, to separate liberty from fraternity,"[14] he fails, nonetheless, to provide any normative grounds upon which the concepts of liberty and respect can be justified.

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[11] Ibid., pp.112-128.
[12] Ibid., p. 126.
[13] Ibid., p. 117.
[14] Ibid., p. 128.

Readings also makes a number of false assumptions regarding indigenous experience in Australia. First, he assumes that Indigenous Australians have been seen as equal under common law in Australia; something which did not actually occur until the Wik decision in 1996 when native title was granted fully equal status at common law.[15] Secondly, he sees Australian common law as synonymous with universal human rights. However, as Gary Foley points out, the first all-Aboriginal political organisation – the Australian Aborigines League – was formed precisely "to gain for Aboriginal people those civil and human rights denied since occupation."[16] That those rights have still to this day not been realised is evidenced by the fact that Indigenous Australians have been forced to attempt to seek justice at an international level, as "peoples of the world who are the subjects of universal human rights," rather than simply as Australian citizens.[17]

Thirdly, Indigenous Australians have themselves described their oppression as resulting from being consistently placed *outside* of humanity – as subhuman or even animal – in order that the theft of their land might be justified.[18] To this

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[15]R.H. Bartlett, "Native Title in Australia: Denial, Recognition and Dispossesion," in P. Haveman (ed.), *Indigenous Peoples Rights in Australia, Canada and New Zealand* (Oxford: Oxford University Press, 1999), pp.408-427; p. 425.

[16] Gary Foley, "Whiteness and Blackness in the Koori Struggle for Self-determination," *The Koori History Website*. <http://www.kooriweb.org/foley/essays/essay_9.html> Gary Foley's Koori History Page – Essay 9 (1999), accessed 27 June 2005, pp. 1-19; p.3.

[17]Michael Dodson, "Linking International Standards with Contemporary Concerns for Aboriginal and Torres Strait Islander Peoples," in S. Pritchard (ed.) *Indigenous Peoples, the United Nations and Human Rights* (Leichhardt, NSW: The Federation Press, 1998), pp.18-29; p.19. See also C.J.I. Magallenes, "International Human Rights and their Impact on Domestic Law on Indigenous Peoples' Rights in Australia, New Zealand and Canada," in P. Haveman (ed.) *Indigenous Peoples Rights in Australia, Canada and New Zealand.* (Oxford: Oxford University Press, 1999), pp. 235-276,and S. Pritchard, "The Significance of International Law," in S. Pritchard (ed.) *Indigenous Peoples, the United Nations and Human Rights* (Leichhardt, NSW: The Federation Press, 1998), pp. 2-17.

[18] See Michael Dodson, *The End in The Beginning: Re(de)finding Aboriginality.* The Wentworth Lecture (1994); Gary Foley, "Whiteness and Blackness"; Marcia Langton,*"Well, I heard it on the Radio and I saw it on the Television:" an Essay for the*

end, Aboriginal peoples were classified, among other things, as "vermin to be cleared off the face of the earth," as Ruby Langford Ginibi puts it.[19] Michael Asch describes a similar phenomena in Canada, where, after colonists found they were unable to apply the concept of *terra nullius,* Canadian Aborigines were characterised as not civilised enough to possess laws capable of being recognised by the colonists.[20] In other words, they were caricatured as too savage to be recognised as human beings possessing universal rights; a recognition that would then require the colonists, according to their own laws, to enter into a treaty with an equal and sovereign nation. Although Readings does state that Indigenous Australians have also been viewed as "animals and plants," even suggesting that such a view results from "the limited universality of the concept of the human,"[21] this actually contradicts his claim that Indigenous Australians have been oppressed on the grounds that they have been seen to be "like us."[22]

Furthermore, Readings makes no reference to Indigenous Australians' own claims regarding their identity, presumably on the grounds that he sees Aboriginal identity as inaccessible and ultimately unrepresentable. Readings is

Australian Film Commission on the Politics and Aesthetics of Filmmaking by and about Aboriginal People and Things (Woolloomooloo, NSW: Australian Film Commission, 1993); Peggy Patrick, "Statement of Peggy Patrick," in R. Manne (ed.) *Whitewash: on Keith Windshuttle's Fabrication of Australian History.* (Melbourne: Black Inc. Agenda, 2003), pp. 215-217; and Sonia Smallacombe, "On Display for its Aesthetic Beauty: How Western Institutions Fabricate Knowledge about Aboriginal Cultural Heritage," in D. Ivison, P. Patton and W. Sanders (eds.) *Political Theory and the Rights of Indigenous Peoples* (Cambridge: Cambridge University Press, 2000), pp. 152-162.
[19]Anne Brewster, *Reading Aboriginal Woman's Autobiography* (Melbourne: Sydney University Press, 1996), p. 2.
[20]Michael Asch, "From Calder to Van der Peet–Aboriginal Rights and Canadian Law, 1973-96," in P. Haveman (ed.) *Indigenous Peoples Rights in Australia, Canada and New Zealand* (Oxford: Oxford University Press, 1999), pp. 428-46.
[21] Readings, "Pagans, Perverts or Primitives?" p. 120.
[22] Ibid., p. 115.

attempting to avoid, in one sense quite admirably, western conceptions of what 'real Aborigines' should be like, but his initial premise – that Australian Aborigines are so utterly different – is of course in itself already a prescriptive representation of Aboriginal identity. Moreover, in the attempt to justify how very different and unrepresentable 'they' are, Readings manages to represent Aboriginal identity nonetheless as homogenous, immutable and fixed; confidently stating, among other things, that "they" are "a community that is not modern, that doesn't think of itself as a people."[23] Such a fixed characterisation of Indigenous Australians is not an isolated incident but has occurred amongst a number of scholars influenced by posthumanism, who have tended to dismiss some Aboriginal identities and texts as too influenced by 'white' language, narratives and discourses to be considered authentically Aboriginal.[24]

The political claims of Indigenous Australians

Readings' descriptions of Aboriginal identity, both in respect to their status as human beings and their Aboriginality, is often at odds with the political claims of Indigenous Australians themselves. Geoffrey Stokes has identified these

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[23] Ibid., p. 126. Readings argues that he is not talking about real Indigenous Australians here; "I am not talking about Australian Aborigines at all" (p.115); just as Lyotard separates "jews" from "real Jews." However, this again begs the question as to how the incommensurable phrases of the Differend relate to the actual oppression of political subjects, if at all? Is Readings speaking here of the actual oppression of Indigenous Australians, which he seems to do by constantly referring to the nature of their political and historical oppression, or simply a question of linguistics or language phrases? This again raises the question of the viability of any separation of ethics from ontology.

[24] See Arlene Elder, "Silence as Expression: Sally Morgan's *My Place*," *Kunapipi* XIV (1) (1992), pp.16-24; Wenche Ommundsen, "Engendering the Bicentennial Reader; Sally Morgan, Mark Henshaw and the Critics," *Span* 36 (1993), pp. 251-262; Eric Michaels, "Para-ethnography," *Art and Text* 30 (1988), pp. 42-51; Stephen Muecke, "Aboriginal Literature and the Repressive Hypothesis," *Southerly* 4 (1988), pp. 405-418; Santosh Sareen, "Aboriginal Identity and Representation: Ruby Langford's *Don't Take Your Love to Town*," in B. Bennet et al. (eds.) *Resistance and Reconciliation: Writing in the Commonwealth.* (Canberra: The Association for Literature and Language Studies, 2003), pp. 278-287.

claims as based on two fundamental principles; the universal claim to a common

humanity and the particular claim to Aboriginality.[25] For example, Marcia

Langton, Foundation Professor of Australian Indigenous Studies at Melbourne

University, articulates the need for the recognition of both these aspects of

Aboriginal identity in the process of reconciliation:

> It is the challenge for settler Australians of recognising that
> Aboriginal people are fully human beings and the further
> challenge of recognising the value in the differences between
> our cultures and societies in such a way that everyone can
> own the civil society we share and, if you like, the "national
> identity" we yearn for with an equal cause and an equal
> commitment. This challenge goes under the label of
> "Reconciliation."[26]

Michael Dodson, along with many Indigenous Australians, forcefully challenges

the notion of a stereotypical or 'fixed' Aboriginal identity, insisting that the right

to self-representation allows for the possibility of expressing the diversity of

Aboriginal identity – the fact that Aboriginalities can be both "ancient" and

"modern," "essentialist" and "shifting."[27]

> Aboriginalities of today are regenerations and
> transformations of the spirit of the past, not literal
> duplications of the past; we re-create Aboriginality in the
> context of all our experiences, including our pre-colonial
> practices, our oppression and our political struggles. It is only
> narrowness of vision, or misconception of culture as a frozen
> state, which leads people to limit expressions of essential
> Aboriginality to the stereotyped pristine.[28]

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[25]Geoffrey Stokes, "Citizenship and Aboriginality: Two Conceptions of Identity in Aboriginal
Political Thought," in G. Stokes (ed.) *Politics of Identity in Australia* (Cambridge, Melbourne:
Cambridge University Press, 1997), pp. 158-174.
[26] Marcia Langton, "Correspondence Regarding Germaine Greer's Whitefella Jump Up,"
Quarterly Essay 12, (2003), pp. 77-83; p.82.
[27] Dodson, "The End in the Beginning," p. 10.
[28] Ibid., p. 10.

Nyoongar author, Kim Scott, is also highly aware of how stereotypical representations of Indigenous Australians perpetuate the concept of an "exotic "other"" and attempts in his work to 'deconstruct' such notions by representing the diverse nature of Aboriginal identity.[29] While he uses the classic Derridean term "deconstruction" and agrees that identity is "fluid and shifting," Scott still insists that such claims do not "deny the power of spiritual essences."[30] Dodson and Scott express concerns common to many Aboriginal Australians regarding the challenge to represent the diversity of Aboriginality, while yet maintaining a common identity. While the concept of a pan-Aboriginality is relatively recent, it has nonetheless evolved out of the political necessity for Aboriginal people to unite under a common identity, as a people, in order to further their political claims.[31]

Moreover, Dodson, along with other Indigenous Australians, retains the claim to a common humanity; specifically linking the right to self-definition to the right to self-determination and claiming both as fundamental to "our rights as peoples."

> Indigenous peoples throughout the world recognise that, at
> the core of our violation of our rights as peoples, lies the
> desecration of our sovereign right to control our lives, to live

[29] As cited in J. Buck, "Trees that Belong Here: an Interview with Award-winning Author Kim Scott." *Boomtown Magazine* (Online) <http://www.boomtownmag.com/articles/200101/benang.htm> (2001), pp. 9-10; see also Susan Midalia, "Kim Scott talks about Benang," *Notes for Reading Groups*. (Fremantle: Fremantle Arts Centre Press, 1999), p. 6.

[30] Kim Scott, "Disputed Territory," in A. Brewster, A. O'Niell and R. Van der Berg (eds.) *Those Who Remain Will Always Remember: An Anthology of Aboriginal Writing* (Fremantle: Fremantle Arts Council Press, 2000), pp. 162-171; p.171.

[31] See Brewster, "Reading Aboriginal Women's Autobiography," p. 27, and Robert Ariss, 'Writing Black: the Construction of an Aboriginal Discourse', in J.R. Beckett (ed.), *Past and Present: the Construction of Aboriginality* (Canberra: Aboriginal Studies Press, 1988), pp. 131-146; p. 136 and p. 138 in particular.

according to our own laws and determine our futures. And at
the heart of the violation has been the denial of the control
over our identity, and the symbols through which we make
and remake our cultures and ourselves.[32]

Note that Dodson uses the concept of universal human rights as the normative grounds upon which to justify respect for indigenous difference. While he recognises elsewhere that international law has its faults, he also urges the use of such tools in order to redress injustices within Australia.[33] Similarly, Asch argues that while the Canadian Government's recent acknowledgement of indigenous difference has brought about their recognition as "distinctive" citizens of Canada, this has actually been to the exclusion of their recognition as the subjects of universal rights, denying them the possibility of claiming rights as self-determining, sovereign and equal nations before international law.[34] As noted earlier, some theorists have questioned the validity of the use of western discourses and practices by indigenous peoples, but Stokes has argued to the contrary that, although Australian Aborigines may be drawing upon western concepts, they do so both consciously and critically – selectively adapting different strategies to suit their own particular political needs.[35] Moreover, while Scott sees the use of the "tools" and the language of the coloniser as a constraint, he does not see such use as an absolute determinant of meaning. He explains rather that it is:

as if there's a presence outside of and greater than the
language, greater than the story. It's as if using the tools of

[32] Dodson, "The End in the Beginning," p. 5.
[33] Dodson, "Linking International Standards," p. 22.
[34] Asch, "From Calder to Van der Peet," p. 436.
[35] Stokes, "Citizenship and Aboriginality," p. 170.

the colonising society, but writing from a different motivating impulse or spirit, means you end up with something else.[36]

This also applies to the issue of self-representation, Dodson emphasising that maintaining control over self-representations is in itself an act of political significance:

> The insistence on speaking back and retaining control are highly political acts. They are assertions of our right to be different and to practise our difference. They refuse the reduction of Aboriginality to an object, they resist translation into the languages and categories of the dominant culture.[37]

Dodson is well aware of the danger of public self-representations being reduced to a single expression of 'real Aboriginality' and even speaks in terms, as we see above, of Aboriginalities resisting translation into the colonising culture's languages and frameworks. In this respect he seems to echo Readings' and Lyotard's suggestion regarding the untranslatable nature of Aboriginal identity, but Dodson is insistent on the importance of self-representation nonetheless, for, "without our voices, Aboriginality will continue to be a creation for and about us."[38] Posthumanist theory argues that any claim to subjectivity is simply a continuance of oppressive epistemological practices, that within such a metaphysical framework any reversal of hierarchical dichotomies becomes merely an inversion.[39] By contrast, Dodson believes that Aboriginality goes

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[36] Scott, "Disputed Territory," p. 170.
[37] Dodson, "The End in the Beginning," p. 10.
[38] Ibid., p. 10.
[39] See Manahuia Barcham, "(De)Constructing the Politics of Indigeneity," in D. Ivison, P.Patton and W. Sanders (eds.) *Political Theory and the Rights of Indigenous People* (Cambridge; Cambridge University Press, 2000), pp. 137-151; p. 139 and p. 147, and P.M. Rosenau, *Post-Modernism and the Social Sciences* (New Jersey: Princeton University Press, 1992) pp. 49-50.

beyond being merely a repetition of the dominant culture's definitions and

restrictions, as Aboriginal self-representations differ to non-Aboriginal

representations. Dodson explains that the

> relationship we draw with our past is not to be confused with
> the relationships with the past that have been imposed on us.
> One is an act of resistance, the other is a tool in the politics of
> domination and oppression.[40]

bell hooks expresses similar views in 'Postmodern Blackness.'[41] While agreeing

that essentialist notions of blackness have been used to maintain white

supremacy and indeed welcoming the postmodern critique of essentialism,

hooks argues nonetheless that the critique of essentialism should enable positive

re-constructions of self and agency:

> This critique should not be made synonymous with a
> dismissal of the struggle of oppressed and exploited peoples
> to make ourselves subjects. Nor should it deny that in certain
> circumstances this experience affords us a privileged critical
> location from which to speak. This is not a re-inscription of
> modernist master narratives of authority which privilege
> some voices by denying voice to others. Part of the struggle
> for radical black subjectivity is the quest to find ways to
> construct self and identity that are oppositional and
> liberatory.[42]

Langton suggests that Aboriginality needs to be understood not only in terms of

Aboriginal histories, but also within the framework of intersubjective

relationships, where Aboriginal and non-Aboriginal are *both* regarded as

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[40] Dodson, "The End on the Beginning," p. 10.

[41] bell hooks, "Postmodern Blackness," in V.B Leitch ed. *The Norton Anthology of Theory and Criticism* (New York: W.W. Norton and Company, 2001), pp. 2478-2484.

[42] Ibid., pp. 2482-2483.

subjects, rather than objects.[43] Langton believes this not only prevents the

stereotyping and mythologising of Aboriginal people, but also the stereotyping

of whites; effectively circumventing the posthumanist critique that the retention

of the subject by oppressed peoples can only result in a reversal of the black =

bad/white = good dichotomy. There is in fact considerable diversity amongst the

Aboriginal community regarding concepts of Aboriginality and accompanying

many such concepts is the expressed desire to challenge the stereotypes of the

dominant culture. For example, in Eva Johnson's powerful poem we can read

both the desire to not be seen as a stereotype and the definite link of 'my

culture' to "true identity:"

"Right to Be"

Don't stereotype an image of what you want me to be
I'm a Woman and I'm Black and I need to be free
I'll give you back your sense of values you bestowed upon me
And regain my pride, my culture, and true identity.[44]

Readings' claim that Indigenous Australian difference should demand respect is

highly admirable, but respect is tacitly assumed to take place from the

recognition of difference alone. Moreover, the posthumanist claim that a

humanism that excludes certain peoples from the realm of the human is

necessarily unjust is an unequivocally valid criticism, but it is a criticism that

has not only been made by humanists themselves (such as those who argued for

the emancipation of slaves, women and colonial subjects), but is one that can

only been made from *within* a universalist framework. The main danger inherent

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[43] Marcia Langton, *"Well, I heard it on the Radio and I saw it on the Television,"* pp. 31-32.
[44] Eva Johnson, "Right to be," in Kevin Gilbert (ed.) *Inside Black Australia: An Anthology of Aboriginal Poetry* (Ringwood: Penguin, 1988), p.23.

in Readings' characterisation of Indigenous Australian difference as *not* human is that no ethical grounds are given upon which to guarantee that they will not again be regarded simply as "vermin;" as either sub-human or inferior in status to 'us.' In other words, Readings gives no ethical justification as to *why* we should respect, rather than denounce, difference.

Manuhuia Barcham: Deconstructing Indigeneity

Turning the argument around somewhat, if the indigenous call for self-determination and self-definition is to be respected, would this then necessitate an unequivocal endorsement of posthumanist theory when it is employed by an indigenous person? Would such use deflect some of the criticisms that have been directed against the use of posthumanism when applied to indigenous politics? Are there limits to self-definition and if so, how are they to be gauged?

Like Dodson and Scott, Manuhuia Barcham is highly aware of the importance of recognising difference within the indigenous community, but sees Derrida's posthumanist theory of deconstruction as a means of facilitating such recognition.[45] Barcham argues that deconstruction can circumvent the hierarchical and exclusory "dichotomy of being/non-being," which he believes is reinforced by the "politics of difference" and leads to the increased oppression of the marginalised groups such politics were initially designed to benefit.[46] The whole context of Barcham's argument, however, is concerned with the need to recognise difference within communal conceptions of identities. He sees the

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[45] See Barcham, "(De)Constructing the Politics of Indigeneity," pp. 137-151.
[46] Ibid., pp. 139.

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need for a *broadening* of what he sees as the restrictive concept of Māori as iwi-Māori alone to include urban Māori, rather than the annihilation of Māori as subject position, which is the inevitable result of Derridean logic. For despite stating that identity is contingent, Barcham still insists that the modern day descendants of different people groups are nonetheless no less authentic:

> For just as the shifting and fluid nature of groups is not to deny their reality, so too neither should the contingent nature of identities act to deny their moral worth, or undermine claims of rights based upon those identities.[47]

Furthermore, Barcham insists that "recent changes in the shape and form of indigenous identities do not necessarily signal the demise of their indigeneity," but rather that the problem "lies in accommodating transformations of indigenous society without losing the distinctiveness of indigenous culture."[48] These are important articulations of the various problems involved in defining modern day indigenous identity, but it is difficult to see how such indigeneity can be retained within a theoretical framework that undermines the very possibility of human identity. As Barcham himself writes, the endless play of Derrida's *différance* entails the concept that "meaning can never come to rest on an absolute presence,"[49] precluding any possibility of an affirmation of being. However, by affirming "reality" and the "real" world of concrete political situations and peoples,[50] Barcham cannot help but affirm being; even insisting, regarding urban Māoris, that "no-one can deny their Māori-ness, as their physical characteristics and day-to-day interactions confirm their Māori

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[47] Ibid., pp. 274 (Barcham's footnotes).
[48] Ibid., p. 146.
[49] Ibid., p. 148
[50] Ibid., p. 151.

identities."[51] Such statements indicate that Barcham in fact sees Māori identity as an indisputable, physical reality, with the meaning of what constitutes Māori resting on the actual, concrete presence of Māori subjects.

Here it might be argued that surely, as an indigenous person, Barcham should have the right to use whatever critical framework he chooses in defining himself. The point is that Barcham is indeed arguing from the basis of his right to self-definition, but that posthumanism undermines the very basis of the concepts of self and rights, ultimately undermining his own arguments. Even Barcham's claim to Māori identity – which acts to authorise his discussion on indigeneity – can only be supported by a critical framework that upholds claims to human subjectivity. Barcham's claim that self-definitions, even indigenous self-representations, should not be made at the expense of others' self-definitions – as in the valorisation of iwi-Māori over urban-Māori – necessarily rests on the concept of common rights belonging to all. The ethical limit here is the assumption of an equal 'moral worth' pertaining to *all* identities, and it is this assumption – along with his use of such terms as 'oppression' and 'rights' throughout his paper – that reveal that Barcham's argument for the recognition of difference, of particularism, is actually founded upon the assumption of universal value and universal rights that demand respect.

From the above discussion we can see that calls for respect for difference – whether post-human or inherently humanist – are necessarily based upon universal assumptions of equal value and universal respect for such value. However, such assumptions – even those based on classic liberal-humanist

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[51] Ibid., p. 148.

arguments – still continue to lack adequate justification, as we saw in Chapter One. Indeed, scholars within current human rights discourse write of what can be referred to as something of a crisis within the field caused by challenges to traditional conceptualisations of human being.[52] Much of this critique has arisen out of the challenge to the human subject as conceived within traditional liberal humanism; i.e., as an autonomous, rational, European male individual. While such critique shares much in common with, and indeed in some cases can be seen as directly influenced by, post-humanist discourse, it is important to recognise that it is by no means synonymous with posthumanism. Rather, it has arisen as an immanent critique within the humanist tradition itself; indeed, one can say the same of posthumanism, given its humanist ethical foundations. As Algerian scholar Marnia Lazreg has noted, the post-war anti-colonialist and anti-imperialist movement used the very conceptual and political tools of their oppressors, i.e., the discourse of universal human rights, in arguing for their liberation.[53] Other scholars more specifically engaged in human rights discourse, such as Zehra F. Kabasaskal Arat,[54] have also noted this legacy; Arat further emphasising the fact that it is the marginalised who are particularly vulnerable and in need of the legal institution of universal human rights in order to combat exploitation. Such legal protection is particularly pertinent in regards to current

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[52] See Geneviève Souilliac, *Human Rights in Crisis* (Lantham, Boulder: Lexington Books, 2005); Zehra F.Kabasakal Arat, "Forging A Global Culture of Human Rights: Origins and Prospects of the International Bill of Rights," *Human Rights Quarterly* 28 (2006): pp. 416-437; Joanne R. Bauer and Daniel A. Bell, (eds.) *The East Asian Challenge for Human Rights* (Cambridge: Cambridge University Press, 1999); Kwame Gyekye, *Tradition and Modernity: Philosophical Reflections of the African Experience* (Oxford: Oxford University Press, 1997); Maria Rodrigues, "Recognising Non-Western Thought in Human Rights Theory," in Julie Connolly, Michael Leach and Lucas Walsh (eds.) *Recognition in Politics: Theory, Policy, Practice*, pp. 101-115.

[53]Marnia Lazreg, "Feminism and Difference: the Perils of Writing as a Woman on Women in Algeria," in Marianne Hirsch and Evelyn Fox Keller (eds.) *Conflicts in Feminism* (New York: Routledge, 1990), pp. 326-348.

[54] Zehra F.Kabasakal Arat, "Forging A Global Culture of Human Rights," pp. 416-437.

international covenants relating to human rights. As Seyla Benhabib notes, even some of the countries that have no internal laws preventing discrimination have become signatories to such covenants, offering some legal recourse to the citizens of such nations.[55] Moreover, the increase in global human tracking and sexual slavery, and the increasing number of stateless persons, refugees and asylum seekers, make such laws increasingly relevant. Benhabib further comments, with reference to Hannah Arendt's views on rights and postwar statelessness, that "to be stateless was basically to become a complete pariah, and that to be a stateless person was also to be rendered in a way rightless. But the whole notion of universal human rights is rights that accrue to us or belong to us in virtue of our humanity, not in virtue of our citizenship or membership."[56]

Therefore, while on the one hand the importance of universal human rights is recognised, there is also much awareness within the human rights scholarship, as Arat and Richardson T. Peterson show, that the lines of what constituted human being were also drawn in order to *justify* exploitative, oppressive and murderous actions towards other humans.[57] Many Asian and African scholars have moreover highlighted the inappropriateness of a conception of the human as individualistic and autonomous alone; arguing for a need to recognise a more inclusive and communal conception that is reflective of their particular societal structures and beliefs, with some scholars suggesting that a conception of duties,

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[55] Seyla Benhabib, "Philosophic Iterations; Cosmopolitanism, and the "Right to Rights:" Conversation with Seyla Benhabib," by Harry Kreisler, *Conversations With History: Institute of International Studies, UC Berkeley* (March 18 2004), http://globetrotter.berkeley.edu/people4/Benhabib/

[56] Ibid.,
[57] See Richard T. Peterson, "Human Rights and Cultural Conflict," *Human Rights Review* April-June (2004), pp. 22-32, and Arat, "Forging A Global Culture of Human Rights."

rather than rights, being more culturally appropriate.[58] The need to avoid

exclusive and culturally homogenous definitions of the human has led to the

widespread acceptance within human rights discourse of human rights as

political, historical and social in origin, as opposed to being grounded on any

ontological understanding of human being.[59] However, as Anthony Langlois has

argued, this simply avoids the issue, as ontological grounds, while never

explicitly argued, are nonetheless always implicitly assumed within human

rights discourse.[60] Moreover, such avoidance leaves both the philosophical and

legal justification of human rights increasingly vulnerable to political and social

contingency, which subsequently would leave politically marginalised and

oppressed peoples more vulnerable to exploitation and neglect. What is further

worrying regarding the acceptance of such contingency is that the political,

social and technological climate of the present day is so rapidly undergoing

change, particularly within the field of bioethics (more of which will be

discussed in the next chapter). This entails that any changes to the status,

definition or worth of human being within such arenas will directly affect – for

better or worse – the conceptualisation and justification of human rights.

We also saw via the discussion on Aboriginal identity that, contra posthumanist

claims, communal representations of identity need not be essentially

homogenising. However, as we also saw within Barcham's arguments, the

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[58]See Bauer and Bell, *The East Asian Challenge for Human Rights*; Gyekye, *Tradition and Modernity*, and Rodrigues, "Recognising Non-Western Thought in Human Rights Theory."
[59] See, for example, Jack Donnelly, "The Relative Universality of Human Rights," *Human Rights Quarterly* 29 (2007), pp. 281-306; Richard T. Peterson, "Human Rights and Cultural Conflict," *Human Rights Review* April-June (2004), pp. 22-32, and Zehra F. Kabasakal Arat, "Forging A Global Culture of Human Rights."
[60] Anthony Langlois, "Conceiving Human Rights without Ontology," *Human Rights Review* January-March (2005): pp. 5-24.

possibility of excluding individual or sub-group differences within such communal identities still exists; as with the case of the exclusion of urban Māori from iwi-Māori. In this sense, we can see that communal claims must not be allowed to over-ride or exclude the possibility of individual claims to difference or respect, and here it is important to recall that Barcham's claims not only rested on the fact that he saw urban-Maori as just as 'authentically' Māori as iwi- Māori, but that urban Māori had the same "moral worth;" with such worth guaranteeing their inherent "rights" to claim the same respect afforded other indigenous peoples. For Barcham's arguments are not resting on the claim that *only* indigenous groups deserve respect, but rather his arguments gain moral force only on the background assumption that indigenous groups have the same moral worth as non-indigenous groups. For if Barcham were to make the former claim, his argument would look very different indeed. In short, respect cannot be entirely based on communal identity alone, but must include the possibility of dissent or difference in regards to even communal identities and norms. This is turn can only be guaranteed by a universal conception of worth; one however, that does not preclude difference and which is amenable to both communal and individual claims. We will now turn to posthumanist scholars who have, to some degree, recognised the need to balance these apparently competing claims.

Gender and Queer Theory: Judith Butler

Judith Butler's book *Gender Trouble* had an enormous impact within feminist

scholarship and was instrumental in establishing the field of queer theory. Butler

herself describes the book as being profoundly influenced by poststructuralist

theories,[61] being based on Foucault's premise that all subjects, including

gendered subjects, are constructs of societal power relations.[62] From this

premise Butler goes on to question the validity of the subject "woman," both as

a political subject – being "produced and restrained by the very structures of

power through which emancipation is sought"[63] – and as an essential identity.

Butler argues that the usual attributes or social signs that we associate with

gender – dress, manner, comportment, style – are therefore not *expressive* of an

essential core of either masculine or feminine identity, but rather can be seen as

performative of socially constructed and enforced views of genders. In other

words, we 'do' rather than 'are' a particular gender. Moreover, given the link

between heterosexuality and normative genders, Butler raises the question of

how non-normative sexual practices might work to challenge gender. For Butler,

such insights have political implications in that they open up "the performative

possibilities for proliferating gender configurations outside the restricting frames

of masculinist dominations and compulsory heterosexuality."[64] She explicitly

states in the Preface to the 10th Anniversary Edition (1999), that she wanted to

show "that the naturalized knowledge of gender operates as a preemptive and

violent circumscription of reality," establishing the boundaries of that which is

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[61] Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York and London: Routledge, 1990, 1999), xi, x, xxxii.
[62] Ibid., p. 4.
[63] Ibid., p. 5.
[64] Ibid., p. 180.

considered "human" and "real."[65] Moreover, if the book has a "positive normative task," it is in her attempt to counter such violence by legitimising bodies previously viewed as "false, unreal and unintelligible."[66] However, she neglects in *Gender Trouble* to provide any normative grounds upon which to justify such a task, although she can be seen as attempting to wrestle with the need for such grounds in her later work, which will now be discussed below.

While insisting that she was involved in an "immanent critique"[67] of feminism rather than its total abolition, Butler has received much critique from feminist scholars for effectively undermining the very concept of a female subject position and therefore any possibility of political representation.[68] Butler attempted to answer such critique by conceptualising woman as "unbounded" in "Contingent Foundations," although the success of such a broad conceptualisation (broad enough to perhaps even include 'man'?) is debatable.[69] Butler herself has also admitted to having to "revise some of my positions on *Gender Trouble* by virtue of my own political engagements," engagements which included time as a member and chair of the International Gay and Lesbian Human Rights Commission. As a consequence, she has revised her stance on claims to "universality," which she had previously viewed "in exclusive negative and exclusionary terms."[70] Such revision has resulted in Butler exploring the concept of the human, universality and ethics in her subsequent

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[65] Ibid., xxiii
[66] Ibid., xxiii
[67] Ibid., vii.
[68] See, for example, the article cited earlier by Nussbaum in *The New Republic*.
[69] See Judith Butler, "Contingent Foundations: Feminism and the Question of 'Postmodernism,'" in Judith Butler and Joan Scott (eds.) *Feminists Theorize the Political* (New York: Routledge, 1992), pp. 3-21.
[70] Butler, *Gender Trouble*, xvii.

books, *Contingency, Hegemony, Universality* (co-authored with Laclau and Zizek), *Undoing Gender* and *Giving an Account of Oneself.* [71] We will now discuss Butler's treatment of these themes in the latter two books.

In both the Introduction of her book *Undoing Gender*, "Acting in Concert," and a chapter entitled "Beside Oneself: On the Limits of Sexual Autonomy,"[72] Butler explicitly deals with the concept, or rather the question, of the human, placing such a question within the context of the need to recognise and combat violence towards marginalised groups, in particular the transgendered. Her concept of the human and later the subject in *Giving an Account* is much informed by the need to recognise the violence often done to those who are different in the name of an exclusionary concept of the same (humanism), and the recognition of the need to retain some version of a universal concept of the human in order to justify an ethical concern for the marginalised. Thus, her project becomes a "rethinking of the human" rather than "a return to humanism."[73]

In *Giving an Account*, Butler specifically focuses on trying to answer the claim that a poststructuralist conception of the subject as wholly constructed negates the possibility of ethical responsibility or accountability, and, in doing so, outlines an alternative conception as to the formation – and thus ethical obligation – of the human subject. As opposed to the traditional conception of

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[71] Judith Butler, Ernsto Laclau and Slavoj Žižek, *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left* (London and New York: Verso 2000); Judith Butler, *Undoing Gender* (New York and London: Routledge, 2004);Judith Butler, *Giving an Account of Oneself* (New York: Fordham University Press, 2005).
[72] Butler, "Acting in Concert," pp. 1-18; "Beside Oneself: On the Limits of Sexual Autonomy," pp. 17-39, in *Undoing Gender*.
[73] Butler, "Acting in Concert," p. 13.

the human as a fully autonomous – and thus able to give a full 'account' of oneself – Butler argues instead for the recognition of partial accountability and thus partial responsibility. She suggests that we can never present a fully 'coherent' account of ourselves, as we can never know who we really are, given that we cannot narrate our own origins. Indeed, Butler suggests that we cannot even confidently say "I," because we can never know the origins of that "I;" how "I" came to being. For Butler, such incoherency is meant to provide the basis for understanding and forbearing with others; if we recognise that they are also incoherent, as we are, then we are in a position to be humble and patient with each other. Crucial to Butler's argument is not just our unknowingness regarding our origins and subsequent incoherence, but her own account of human origins as necessarily dependant on an 'other,' or others. To this end she expands her argument of bodily dependency in *Undoing Gender* to include a scene of primal dependency in infancy, drawing on the theories of Levinas and the psychologist Jean Laplanche, but also on Hegel's basic theory of recognition. Here Butler argues that our very being as infants is not possible without the constituting recognition of an 'other;' for it is only through the address, touch and the presence of an 'other' that we actually come into being. This interaction is primal and cannot be narrated, in that it is prior to the speaking of "I." In this sense, we are incapable of being able to discern any difference between the other and ourselves, but are enmeshed with their life to the extent that we are utterly dependent on them. For Butler, this provides even more reason for us to see our connectedness to others, which she hopes will then

provide a further "ethical resource" – along with our recognition of mutual

incoherency – for ethical responsibility towards others.[74]

Butler's theory, however, rests on the assumption that because we don't know

our primal origins in infancy, we cannot say that we fully know ourselves and,

subsequently, are unreliable as narrators of our own stories. She seems here to

be trying to undermine the concept of narrative ethics, but in doing so

effectively conflates the very different ethical concepts relating to

accountability, confession, and narrative autobiography. According to Butler (or

perhaps narrative ethics?), giving an account of oneself in an autobiographical

sense becomes synonymous to being made to be accountable for a moral wrong

done. She indeed, following Nietzsche, equates the beginning of "I" with the

demand placed upon one to confess or give an account of ones actions in

response to an accusation, i.e., "Did you do this?"[75] According to Butler,

because we are unreliable narrators, we can never give a coherent account of our

actions (which then, as noted, become the grounds for mutual empathy, as we

are all similarly unreliable). However, there are surely many occasions when we

do know without doubt *why* we have committed a certain action or indeed that

we have not committed a certain act; e.g., I lied because I wanted to avoid

punishment; I stole because I wanted food; I did not break the window but I

know who did, etc. There are also times when our stories can be related in both

positive, accurate and even beneficial ways to others; as when, for example, the

survivors of violence or sexual abuse can identify with others struggling with

similar traumas. Butler acknowledges such possibilities in one respect, but does

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[74] See Butler, *Giving an Account,* pp. 41-82.
[75] Ibid., pp. 9-16.

not in any way attempt to bridge the huge gap created by her claims of ultimate incoherency to sometime-coherency. And the main reason why she seems to want to avoid any surety, coherency or self-identity in regards to an "I," is that she consistently associates such claims with highly negative effects. In Butler's eyes, the insistence on a confident "I" equals an insistence on an apparently fictional self-mastery and identification with sameness, which in turn can only result in a vociferous self-righteousness and judgementality towards difference.[76] Further, any injury received by such a person provokes, for Butler, only two reactions; either violent revenge or "narcissistic" self-blame.[77] It is her assumption that such responses are wholly inevitable and wholly nocuous that ultimately seems to compel her to favour incoherency over coherency. For Butler's negative characterisation of sameness reflects an extremely negative – and necessarily universal – conception of human being. That is, the impetus Butler's rejection of incoherency seems based on a rather simplistic reduction of coherency (sameness) to that which is morally bad, as opposed to incoherency (difference), as that which is subsequently identified as morally good. This leaves Butler open to the charge of creating a universalism that is simply an inverted or reversed homogenisation of difference and sameness. Moreover, Butler's arguments are heavily reliant upon psychoanalytic theory, which, if one is not convinced as to the general valency of psychoanalytic theories in the first place, is extremely difficult to prove; as she herself seems to acknowledge.[78] We will now examine these weaknesses in more detail.

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[76] Ibid., pp. 101-111.
[77] Ibid., pp. 99-103.
[78] Ibid., p.135.

Butler insists on giving her own account or description of the non-narratable primal scene of dependency in infancy, which, however, contradicts both her claim that we cannot know our origins and that we cannot narrate them. She admits that this may seem like a contradiction, but justifies her claims on the grounds that we can still attempt to give a philosophical or fictional account nevertheless, and that the credibility of her theory is not just proved by the occurrence of a past primal scene, but by the re-occurrence of the incoherency of the "I" throughout our lives;

> On the contrary, that pre-history interrupts the story I have to give of myself, makes every account of myself partial and failed, and constitutes, in a way, my failure to be fully accountable for my actions, my final "irresponsibility," one for which I may be forgiven only because I could not do otherwise. This not being able to do otherwise is our common predicament.[79]

Butler does not, nevertheless, place psychoanalysis on the same grounds as either fiction or philosophy (that is, as similarly unreliable), for apparently "(w)e *can*, meta-theoretically, reconstruct the scenario of primary repression, but no subject can relate the story of a primary repression that constitutes the irrecoverable basis of his or her own formation."[80] However, as mentioned above, any doubt as to the truth-claims of psychoanalysis immediately throws into doubt not only her claims as to our common origins but also her very grounds for theorising an alternative common origin; these grounds being the apparently nocuous nature, the "ethical violence" of a coherent "I."[81] For if we cannot know that Butler's claims are true, how can we then rely on the apparent

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[79] Ibid., pp.78-79.
[80] Ibid., p. 72, my italics.
[81] See Butler's discussion in Chapter Two; "Against Ethical Violence," pp. 41-82.

fact of our commonality? Butler's claims to dependency on others relies completely on the efficacy of this primal account; "I find that my very formation implicates the other in me, that my own foreignness to myself is, paradoxically, the source of my ethical connection with others."[82]

As noted, Butler's insistence on "I am" as mastery and judgement of others does not allow for the fact that not all such statements are negative. As seen in the preceding discussion, the statement "I am an Aborigine" can be seen as a statement of identity that is neither primordially or essentially fixed but can be directly tied to a socially and culturally lived experience. The use of "I" can relate specifically and quite consciously to choices made regarding identity that have no need of origins initiated at birth, e.g., "I am a Christian, I am a Muslim, I am a feminist, etc." Nor does such a statement of identity automatically entail a hatred of difference – of all those who do not conform to the 'same.' Butler neglects to entertain the possibility that identities can be positive and indeed life-affirming, or indeed that her restricted account may actually be exclusive of other conceptions of the human. In *Undoing Gender* Butler writes that:

> The category of the "human" retains within itself the workings of the power differential of race as part of its own historicity. But the history of the category is not over, and the "human" is not captured once and for all. That the category is crafted in time, and that it works through excluding a wide range of minorities means that its rearticulation will begin precisely at the point where the excluded speak to and from such a category.[83]

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[82] Ibid., p. 84.
[83] Butler, *Undoing Gender*, p. 13.

Nonetheless, Butler's own theory of incoherency – by universally undermining attempts at self-narration and demonising the claim to "I" – itself seriously undermines the ability of minorities to lay claim to the veracity and particularity of their own stories and identities. It is understandable that Butler might want to place her account of the source of our commonality as primal – that is, as pre-history and pre-social – as any other grounds could then be seen as being vulnerable to social and historical contingency. So on the one hand, Butler seems to recognise that the grounds for respect lie in commonality – we all experience this, we are all similarly constituted, etc., – and yet on the other hand, the very basis for her thesis rests on the assumption that the impulse to recognise sameness actually results in a hatred of difference. Butler attempts to circumvent this paradox by suggesting that incoherency is our common ground; the recognition that I am as incoherent as you being a recognition that is ultimately based on sameness. However, it is a recognition that relies on the assumption of good will; 'I am just as incoherent as you, therefore I will be patient and humble instead of being arrogant and hateful.' But such a positive reaction does not *necessarily* follow from the recognition of incoherency; one could just as easily argue that patience, empathy and humility can result from the recognition of a mutual coherency. In other words, from a recognition of sameness; a 'yes, I have heard your story, I have felt as you have felt, I realise I am not alone/singular/unique, and you have my empathy.' This is not to say that this response is in itself completely unproblematic, but rather to suggest that the positive results Butler describes as arising from an identification with incoherence are by no means a given. Confusion and mis-identification, or mis-recognition, can just as easily result. One could also mis-identify another as an

animal – or conversely – identify an animal as human; for what markers exist, within a theory of incoherency, that would differentiate between the two? What markers exist within Butler's theory that would then explain how such a creature is to be responded to; with the same degree of ethical responsiveness, even though a common primal constituency cannot be proved (or can it?) What difference might animality make? Butler writes with an underlying and unexplained assumption of what the human consists of; for, despites our incoherency, we apparently recognise each other as human nonetheless. Even, apparently if we claim that we are animals:

> For the human to be human, it must relate to what is nonhuman, to what is outside itself but continuous with itself by virtue of an inter-implication in life. This relation to what is not itself constitutes the human being in its livingness, so that the human exceeds its boundary in the very effort to establish them. To make the claim "I am an animal," avows in a distinctly human language that the human is not distinct. This paradox makes it imperative to separate the question of a liveable life from the status of a human life, since livability pertains to living beings that exceed the human. In addition, it would be foolish to think that life is fully possible without dependence on technology, which suggests that the human, in its animality, is dependent on technology, to live. In this sense, we are thinking within the frame of the cyborg as we call into question the status of the human and that of the liveable life.[84]

Butler goes on to cite Franz Fanon's statement that the black man is not human, pointing out that such a statement actually does not place Fanon outside of the human, but that it re-defines the human.[85] However, if the statement 'I am an animal' avows that the human is "not distinct," what is then left of the human?

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[84] Ibid., pp. 12-13.
[85] Ibid., p. 13.

Is the human then re-defined? Butler might be thought to be claiming that it is the use of language that defines us, but she does not make this claim. Moreover, she has stated that we cannot trust assertions regarding ourselves within language, within narrative, or indeed with any assertion of the "I;" particularly regarding our origins. In short, how do we know we are not animals? Butler does not make this difference clear, either in her concept of mutual bodily dependency and vulnerability,[86] or in her account of primal dependency.[87] In one sense she seems to suggest that her definition of the human is one of bodily dependency and porousness; that it is our common dependency and vulnerability that provide the grounds for non-violence and respect – for respecting that a life is worthy to be lived. In regards to her theory of mutual bodily dependency, however, we could argue that many animals are brought up by humans and in rare cases, some humans by animals; does this make animals, human, or conversely, humans, animal? Animals also experience bodily vulnerability, even more so than humans perhaps, given that we kill and eat them more than they do us. Butler also seems to suggest, as noted above, that we know ourselves as humans by recognising our difference to that which we regard as *not* human. But if we do not know what is human, how then can we be sure that we are not excluding other humans in their difference? Butler recognises the challenge to the limits of recognisability (which she has linked, in a Hegelian sense, to the ability to be constituted as human), but not in regards to animals, or technology – which she does not deal with at all apart from her introductory note, cited above. What saves us from un-recognisability, apparently (and impossibly,

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[86] Ibid., pp. 17-39
[87] See Butler, *Giving an Account*, pp. 41-82.

given Butler's neglect in defining the human) is, finally, "the name of the human:"

> What might it mean to live in the anxiety of that challenge, to feel the surety of one's epistemological and ontological anchor go, but to be willing, in the name of the human, to allow the human to become something other than what it is traditionally assumed to be? This means that we must learn to live and embrace the destruction and rearticulation of the human in the name of a more capacious and, finally, less violent world, not knowing in advance what precise form our humanness does and will take. It means we must be open to its permutations, in the name of nonviolence.[88]

As we can see in the above passage the "name of the human" turns out to be empty of all meaning and significance; a rhetorical flourish after all. For exactly *how* the values that Butler insists are still possible – values that are "non-violent," "antiracist" and "democratic"[89] – are to be realised or argued for *without* recourse to ontology or epistemology, Butler does not explain. This is a serious oversight, particularly given that some new "permutations" of the human have already arisen and can be used to justify violence towards particular humans, as we shall see in the next chapter. Ultimately, Butler, despite an admirable attempt at a conception of the human that shows a critical awareness of many of the issues at stake, cannot justify how or why we should value humans, and this directly due to her unwillingness to associate the human with any ontological or epistemological understanding of human being. Such an 'open' or broad conception of the human in the end undermines just what the human might consist of or 'be,' raising the question of the existence of any boundaries between human, animal and machine; indeed, of anything 'human'

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[88] Butler, *Undoing Gender*, p. 35.
[89] Ibid., p. 36.

after all. The questioning of such boundaries has been the subject matter of much current posthumanist discourse, with the work of Donna Haraway acting as a catalyst in this area; indeed it is to her work Butler alludes in her reference above to the "cyborg." We will now turn Haraway in order to further explore this area and to assess the efficacy of Haraway's own claims in relation to respect for difference.

Women, Animals and Technology: Donna Haraway

Like Butler, Haraway shows a strong affiliation with postmodern and poststructuralist thought by associating unitary identity – which she characterises as "One" as compared to Butler's "I" – as a "universalizing, totalizing theory," and therefore the source of all western oppression.[90] For Haraway, "One" represents the self; "One" who always dominates the subjugated other in all western binary oppositions, "male/female," "nature/culture," "civilized/primitive," "agent/resource;" binary dualisms that have "been systemic to the logics and practices of domination of women, people of colour, nature, workers, animals – in short domination of all constituted as others, whose task is to mirror the self." [91] It is Haraway's condemnation of such domination that provides the impetus for the creation of her ironic myth, the cyborg. Haraway wants to avoid any repetition of the pain produced by western humanism ("We have all been injured, profoundly"[92]), by conceptualising a non-unified alternative to human identity. In her famous "Cyborg Manifesto,"

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[90] Donna Haraway, "A Cyborg Manifesto: Science, Technology, and Socialist Feminism in the Twentieth Century," in *Simians, Cyborgs, and Women* (New York: Routledge, 1999), pp. 149-182; p. 181.
[91] Ibid., p. 177.
[92] Ibid., p. 181.

however, Haraway neglects to provide any grounds to explain exactly *why* we should care about these dominated women, people of colour, or animals. Perhaps they do not exist any more, now that cyborgs have taken their place, but exactly why we should respect or care about cyborgs is also not explained; unless it is assumed that we care about their former oppression as equal human subjects with inherent value, which indeed Haraway implicitly assumes. Why else would such people need to be "saved" by the cyborg? (as Lucy Tatman points out, Haraway's manifesto is redolent with salvation imagery[93]). As with the other posthumanist texts discussed earlier, the force of Haraway's ethical appeal in this manifesto still relies very much on humanist rhetoric and assumptions. She does, however, attempt to address this lack in later texts, by re-introducing the concept of humanity, as Butler has done. Before we go on to discuss these texts, there are other aspects of Haraway's Manifesto that should be considered first, as these inform her latter work.

Haraway insists that her cyborg myth is not relativistic but answers the need to find "new" patterns of unity and connection in a technologically dominated world. Haraway claims that her myth is not appropriating of others (as opposed to the appropriating strategies of western humanism), but strangely, women of colour, along with Asian women working within technological sweatshops, are disturbingly assimilated and appropriated into Haraway's myth. Even Audre Lorde, who insisted on variously and quite consciously naming herself as radical/lesbian/black/feminist, is within Haraway's schema not only a cyborg, but someone who is denying her true cyborg nature by wrongly insisting a little

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[93] Lucy Tatman, "I'd Rather be a Sinner than a Cyborg," *The European Journal of Women's Studies* Vol.10 (1) (2003), pp. 51-64.

too much on the organic.[94] Disenfranchised Asian women, are, moreover, urged to love the machines they are working on because these machines "are themselves."[95] Even gender itself can be seen as obsolete.[96] What is disturbing about Haraway's myth is that one cannot name oneself; there is no choice about whether one is a cyborg or not, one just is. Haraway gives us three reasons as to why this *is*, actually and inevitably so – despite her apparent abhorrence of universalising and totalising theories – for now "three crucial boundary breakdowns" have occurred that make her analysis "possible;" the boundaries between animal and human, between human-animal and machine, and the boundary between physical and non-physical.[97] In other words, the myth is apparently based on facts. Regarding the animal-human boundary, Haraway states that:

> By the late twentieth century in the United States scientific
> culture, the boundary between human and animal is
> thoroughly breached. The last beachheads of uniqueness have
> been polluted if not turned into amusement parks – language,
> tool use, social behaviour, mental events, nothing really
> convincingly settles the separation of human and animal. And
> many people no longer feel the need for such separation;
> indeed, many branches of feminist culture affirm the pleasure
> of connection of human and other living creatures.
> Movements for animal rights are not irrational denials of
> human uniqueness; they are a clear-sighted recognition of
> connection across the discredited breach of nature and
> culture. Biology and evolutionary theory over the last two
> centuries have simultaneously produced modern organisms as
> objects of knowledge and reduced the line between human
> and animals to a faint trace re-etched in ideological struggles
> or professional disputes between life and social science.
> Within this framework, teaching modern Christian
> creationism should be fought as a form of child abuse.[98]

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[94] Haraway, "A Cyborg Manifesto," p. 174.
[95] Ibid., p. 180.
[96] Ibid., p. 181.
[97] Ibid., p. 151-153.
[98] Ibid., p. 152.

So "faint" is the "trace" between animals and humans – one that is dismissed as "ideological" in any case – that Haraway goes on to states that "cyborgs signal disturbingly and pleasurably tight couplings. Bestiality has a new status in this cycle of marriage exchange." [99] So the cyborg not only signals a breaching of boundaries, but indicates that there are no boundaries at all; indeed, it makes its appearance where "the boundary between animal and human has been transgressed."[100] The cyborg is apparently "our ontology;" our very being, along with "our politics." [101] This is perhaps why Haraway insists that she is not promoting relativism, given her insistence on evolution as absolute fact. Haraway seems to see "United States scientific culture" as holding the truth regarding human origins, but such a view would then seem to contradict Haraway's promotion of "infidel heteroglossia;"[102] that is, the alternative creation stories of Native Americans, Inuits, Black American Muslims and American Hindus and Buddhists (along with other world religions – although the cyborg is apparently a global phenomena). With such a view Haraway is effectively excluding, of course, the views of any Chicanas, African-Americans and women of colour who also choose be Christian.

Haraway also often states in the Cyborg Manifesto that being a cyborg entails "responsibility;" responsibility, moreover, *for* boundaries, although she has also stated, as seen above, that the absence of boundaries is a fact;[103] "The machine is not an *it* to be animated, worshipped and dominated. The machine is us, our

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[99] Ibid., p. 152.
[100] Ibid., p. 152.
[101] Ibid., p. 150.
[102] Ibid., p. 181.
[103] Ibid., pp. 152-153.

processes, an aspect of our embodiment. We can be responsible for machines; *they* do not dominate or threaten us. We are responsible for boundaries; we are they."[104] However, with the absence of boundaries, exactly *who* is it that we are responsible for, and who is it that we are ultimately to fear domination from? Indeed, who are "we"? For now, "female embodiment" is no longer a "given," no longer "organic" or "necessary;" now, gender "might not be global identity after all," for it seems Haraway ultimately hopes for a world "without gender."[105] Haraway here is by no means simply celebrating technology *tout court* (she can be also quite critical of misused technology), but urges the embracement of technology as a means of empowering…women? Cyborgs? Who exactly is the subject here? This is, of course, Haraway's intention; to confuse boundaries and create a new political identity. But it is also part of the problem. Haraway dismisses Catherine McKinnon's radical feminism on the grounds that she sees MacKinnon as theorizing *away* the female subject,[106] but Haraway herself effectively does the same and in so doing, undermines the political efficacy of both the female and the human subject. As mentioned earlier, she does attempt to revise this position in her later work – eventually abandoning the concept of the cyborg and re-introducing the human, but nonetheless retains her promotion of non-essentialised representations of difference in regards to both gender and animals.

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[104] Ibid., p. 180.
[105] Ibid., p. 180.
[106] Ibid., pp. 158-159.

In *How Like a Leaf,* Thyrza Nichol Goodeve's book-long interview with

Haraway published in 2000,[107] Haraway explicitly state that there *are* definite

differences between animals and humans, in that it is *humans* who are

accountable and must take responsibility. After Goodeve points out the

importance of the theme of responsibility in throughout her work, Haraway

states quite categorically that:

> **DH:** Well, it is people who are ethical, not these non-human
> entities.
>
> **TNG:** You mean romanticizing the non-human?
>
> **DH:** Right, that is a kind of anthropomorphizing of the
> nonhuman actors that we must be wary of. Out relationality is
> not of the same kind of being. It is people who have the
> emotional, ethical, political, and cognitive responsibility
> inside these worlds. But nonhumans are active, not passive,
> resources or products.[108]

This is a far cry from Haraway's human-animality argument in the Cyborg

Manifesto. Haraway even admits during the interview that she is not against

using animals for laboratory research, although such use should be "very

carefully limited."[109] It is very difficult to see how Haraway justifies such a

huge paradigm shift, however, particularly given the parameters of her

biological approach to the 'real.' The very title of the book, *How Like a Leaf* is

Haraway's comment on how much the biological structure of a leaf is like that

of a human's, and that her own work is full of references to biological

descriptions that are intended, quite literally, to 'speak' her theories. In her own

words,

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[107] Donna J. Haraway, *How Like a Leaf: An Interview with Thyrza Nichols Goodeve* (New
York: Routledge, 1998).
[108] Ibid., p. 134.
[109] Ibid., p. 147.

> It's almost like my examples *are* the theories. Again it's that
> my sense of metaphor is drawn from literal biological
> examples and my theories are not abstractions. If anything,
> they are redescriptions. So if one were going to categorize my
> way of theorizing, it would be to redescribe, to redescribe
> something so that it becomes thicker than it first seems.[110]

And yet exactly *how* any "ethics," "responsibility" and "accountability" are to

be "redescribed" from biological facts, Haraway does not make clear, even

assuming that such things *can* even be made clear from biology, in that such

arguments are always vulnerable to the charge of succumbing to the 'naturalistic

fallacy;' that is, of imputing values from facts or nature, as noted earlier.

Goodeve herself queries Haraway on what the "bottom line" might be in terms

of the separation between "story" and "science," but Haraway's answer does

anything but resolve the issue.

> **TNG:....** When, or how, does one draw the line so as not to
> fall into epistemological relativism? For instance if the
> immune system can be read as a "story" or construction, as it
> is in "The Biopolitics of Postmodern Bodies," where is the
> practice of "science," of the facts of the immune system that
> do not respond to interpretation? Isn't there a bottom line?
> And if so, how do you resolve this?
>
> **DH:** Understanding the world is about living inside stories.
> There's no place to be in the world outside of stories. And
> these stories are literalized in these objects. Or better, objects
> are frozen stories. Our own bodies are a metaphor in the most
> literal sense…[111]

Haraway's answer seems to actually confirm "epistemological relativism" rather

than refute it. In describing even our bodies as literal 'metaphors,' she leaves the

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[110] Ibid., p. 108.
[111] Ibid., p. 107.

interpretation of such metaphors absolutely wide open, in that nothing can yield

a stable interpretation or even claim to being 'real.' On such openly

metaphorical "biological" grounds, it is difficult to find any convincing

foundations upon which to justify the existence of universal human

accountability, responsibility and ethics; despite the fact that Haraway's theories

rely so fundamentally on such concepts. As has been noted above, this thesis

will argue that human ethics, as manifested through communal accountability

and value, is that which differentiates humans from animals, and so in one sense

Haraway's claims regarding such differences can be seen as insightful and

important. But it is Haraway's lack of adequate grounds upon which to justify

such differences – along with the fact that she also at times effectively

undermines such differences – that render her arguments ultimately untenable;

as also evidenced in her latest manifesto, *The Companion Species Manifesto:*

Dogs, People, and Significant Otherness.[112]

In some ways *The Companion Species Manifesto* attempts to deal explicitly with

the differences in animal/human relations, but in many ways it actually serves to

obscure such differences. Haraway repeatedly suggests that the relationship she

and other dog-enthusiasts have with their dogs in "dogland,"[113] or "in the

kennel,"[114] might actually serve as a paradigm for our relationship with *all*

others; whether animal or human.[115] This is the most bewildering aspect of

Haraway's manifesto; are we to relate to dogs as we relate to humans, and vice

versa? Is the difference of dogs actually an example of the difference we find in

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[112] Donna Haraway, *The Companion Species Manifesto: Dogs, People, and Significant Otherness* (Chicago: Prickly Paradigm Press, 2003).
[113] Ibid., p.63.
[114] Ibid., p. 9
[115] Ibid., p. 3, p. 7, p. 50, p. 62, p. 64.

human others? For Haraway seems to imply *and* deny both possibilities. For example, in some respects Haraway is quite unequivocal regarding human and animal difference; she pours scorn on animal rights liberationists and the concept that the Holocaust might be compared to animal farm-factories[116] – indeed, on the very concept that humans and animals might be seen as equal.[117] On the other hand, Haraway often emphasises the blurring of distinctions between human and animal; "[i]nstructed by evolutionary population biologists and bioanthropologists, I know that multidirectional gene flow – multidirectional flows of bodies and values – is and has always been the name of the game of life on earth. It is certainly the way into the kennel."[118] We are, Haraway suggests, constituted in our very being by our "relatings" with to animals,[119] and further,

> (t)he scripting of the dance of being is more than a metaphor;
> bodies, human and non-human, are taken apart and put
> together in processes that make self-certainty and either
> humanist or organicist ideology bad guides to ethics and
> politics, much less to personal experience.[120]

Here our bodies are no longer a "metaphor," but are apparently so mingled with animal bodies that we can no longer be certain that we are human. On the one hand, Haraway wants to declare, quoting Butler, that all foundations are "contingent,"[121] and yet on the other, that the facts of evolution, species difference[122] and species intermingling[123] are incontrovertible; in fact , no longer

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116 Ibid., p. 51.
117 Ibid., p. 45.
118 Ibid., p. 9.
119 Ibid., p. 6.
120 Ibid., p. 8.
121 Ibid., p. 6.
122 Ibid., p. 15.

the "metaphor" she claimed them to be in *How Like a Leaf*. Haraway further

affirms that animals as "worldly actors"[124] and that they "hail" us to account for

the regimes in which they and we must live,"[125] implying that animals can in

fact make us accountable to them – despite having claimed the opposite earlier.

So despite the fact that foundations are contingent and non-trained dogs bite and

kill, Haraway's foundational ethic of non-violence and respecting difference[126]

remains (paradoxically) consistent; both in regards its continual re-appearance in

her work and her neglect in providing any adequate grounds upon which to

justify such an ethic. Haraway might be said to be intentionally trying to

confound any attempt to create any legitimate 'foundation' for her theories, but

the result is simply a mass of contradictory and confusing statements regarding

the nature of relations between humans and animals. Finally, the ethical appeal

of her arguments still ultimately relies on universalist assumptions of universal

respect for and the equal value of, others.

Since the publication of Haraway's Cyborg Manifesto in 1985 there has been a

proliferation in posthumanist arguments either promoting the concept of the

human/machine or the end of animal/human dichotomies. These can be further

divided into posthumanisms that, as Neil Badmington puts it, can either be

described as "critical" posthumanisms – those that seek to use human, animal

and machine amalgamations as a means of critiquing the notion of the classic

liberal-humanist subject (as opposed to celebrating technology or animality

strictly in themselves); or as "non-critical" posthumanisms – which cover

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[123] Ibid., p. 9.
[124] Ibid., p. 7.
[125] Ibid., p. 17.
[126] Ibid., p. 7.

numerous posthumanists and transhumanists who celebrate the possibility of

transcending the human from within a still roughly 'liberalist' and individualist

perspective.[127] In the latter case machines and technology are seen as providing

the opportunity to 'enhance' life; to live longer and better with the freedom to

develop and purchase as many prosthetic attachments and body-modifications as

possible. Some scholars, like Carey Wolfe, also attempt to combine traditional

animal rights arguments with Derridean deconstruction in order to argue for

animal liberation.[128] Others, such as prominent continental scholar Giorgio

Agamben, argue instead that it is the classic division between human and animal

that provides the primary impetus to all exclusionary definitions of the human;

as opposed to specifically championing the cause of animals.[129] In the next

chapter we will be discussing the current use of utilitarian philosophy as a

means with which to justify respect for animals and humans.

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[127] See Neil Badmington, "Theorizing Posthumanism" in *Cultural Critique* 53 (Winter 2003), pp. 10-27.

[128] See Carey Wolfe, *Animal Rites* (Chicago: University of Chicago Press, 2003); Carey Wolfe (ed.) *Zoontologies: The Question of the Animal* (Minneapolis, London: University of Minnesota Press, 2003).

[129] Giorgio Agamben, *The Open: Man and Animal*, trans. Board of Trustees of the Leland Stanford Junior University (Stanford, California: Stanford University Press, 2004). As such, Agamben can be seen as merely extending the general postmodern and poststructuralist assumption that the whole concept of the human is nocuous, rather than providing any new grounds upon which to reject or judge humanism. Like Foucault, Agamben sees the definition of man as a human subject as simply the result of a political and social strategy; the only real difference being that Agamben locates this political construction at the point where man is defined as separate from the animal (p. 16). Agamben sees the examination of this separation as "more urgent" than taking "positions on the great issues, on so-called human rights and values"(p. 16), and yet the only reason we are given as to *why* such a question might be seen as being urgent is in the implied value Agamben gives to human beings – who have, he suggests, suffered as a direct result of the apparently constructed difference between animals and humans: "When the difference vanishes and the two terms collapse upon each other—as seems to be happening today—the difference between being and nothing, licit and illicit, divine and demonic also fades away, and in its place something appears for which we seem to lack even a name. Perhaps concentration and extermination camps are also experiments of this sort, an extreme and monstrous attempt to decide between the human and the inhuman, which has ended up dragging the very possibility of the distinction to its ruin." (p. 22) Again, for Agamben, as with so many other posthumanist scholars, the concept of the human is characterised as providing the impetus for all oppression; with humanism's demise being therefore equated with the cessation of all oppression.

To conclude, in the last two chapters we have seen that posthumanist theories offer no grounds as to *why* difference should be respected, but rather that their ethical claims for respect for difference rest ultimately upon the force of humanist and universalist assumptions. So while posthumanist arguments ostensibly eschew the concept of a universal conception of human being in favour of anti-foundationalist arguments for respect for the particular, they nevertheless still rely on unacknowledged humanist assumptions of universal human worth for their appeal. That this appeal is therefore ultimately rhetorical in nature makes for an extremely unstable ground for respect, being then vulnerable to the contingencies of social persuasion and sentiment. Moreover, posthumanist philosophy tends to either deconstruct the very concept of subjectivity and identity or characterise identities as pure, fixed and immutable; impeding the very possibility of self-definition and political representation amongst marginalised groups. And if respect for different identities cannot be substantiated, then posthumanism can be said to have failed its very reason for being.

Implicitly, as with posthumanist claims and explicitly, as evidenced by the political claims of indigenous peoples, the claim for particularism is reliant upon the claim to universalism. Indeed, we can suggest further that the claims to universalism and particularism are actually *mutually* dependant. For, just as posthumanists, indigenous theorists and indeed some humanists have suggested, a humanism that does not represent the many differences that exist between us is neither an accurate nor just conception of humanity; this is in fact

posthumanism's quintessentially humanist judgement of humanism. It is in this sense that universal humanism is necessarily dependent on particularism, in that in order to warrant its function as a representation of humanity it must necessarily reflect the heterogeneous nature of humanity, while at the same time reflecting that we are in some way the *same*.

We can therefore now conclude after the discussion in the preceding three chapters that some form of universalism is needed in order to ground respect for difference, in order to justify just *why* we should respect others. This universalism needs to be broad enough in its conceptualisation so as not to exclude particular others, but not so broad that it can then no longer provide adequate justification as to the worth of others. The next three chapters will focus on exploring current re-conceptualisations of universal moral consideration, raising the question, among other things, as to whether such conceptualisations should be broad enough to include animals. As seen above, many posthumanist scholars have actively argued for the inclusion of animals, but it is mainly due to the resurgence in utilitarian philosophies that has brought about the recent success of the animal liberation movement; which in turn has brought about a re-conceptualisation of the grounds needed to justify respect for humans. These broadly utilitarian arguments will now be considered in the next chapter in regards to their efficacy in providing such universal respect. The current use of utilitarianism can also be seen as one of the many contemporary re-conceptualisations of liberal and liberal humanist philosophy by scholars attempting to address liberal humanism's past inadequacies in relation to the exclusion of particular others. Again, the scholars discussed in the next two

chapters represent a necessarily selective section, chosen because they have

sought to deal specifically with either the challenges raised by posthumanist

theory or with the issue of moral consideration as viewed within the context of

the issues raised within this thesis.

Chapter 4

Contemporary Utilitarianism: Animals and Humans

At this stage in the thesis, we have seen that posthumanist or post-universalist
claims for respect for difference are necessarily dependant upon humanist and
universal concepts of equality of respect, worth and value. There are of course,
theories of particularism or relativism that do not demand respect for *all*
difference, but rather only for a particular group. As Niall Lucy has pointed out,
Benito Mussolini was quite consciously a relativist who unashamedly promoted
respect for only particular persons or groups of people and the disrespect of
others.[1] However, as seen in the preceding chapters, posthumanist scholars
reject all manifestations of such a selective view of respect – whether as
displayed within fascist ideology or humanist philosophy – arguing instead for
the universal and equal respect of particular persons and groups.

In short, it seems clear that some form of universalism is required in order to
justify what could be described as a universal respect for particularism. As we
have shown that posthumanist theories fail to provide adequate justification for
such universal respect, in the rest of the thesis we will be exploring the efficacy
of current liberal and critical humanist concepts of the universal in terms of their

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[1] Lucy, himself writing very much from a post-structuralist or Derridean viewpoint, notes that
"the principle of an absolute relativism, having forsaken all normative critical standards and
values of judgement, cannot be opposed to fascism," going on to quote Mussolini as having
argued that, given that relativism expressed "contempt" for "an objective, immortal truth," then
"the modern relativist infers that everybody has the right to create for himself his own ideology
and to attempt to enforce it with all the energy of which he is capable." See Niall Lucy,
Postmodern Literary Theory (Oxford: Blackwell, 1997), p. 204.

ability to justify respect and value without either precluding some forms of difference or undermining the grounds needed for respect altogether. In this chapter, this assessment will be applied to claims to universalism as conceptualised through contemporary forms of utilitarianism, with a particular focus on the inclusion of animals within the scope of moral consideration. Attention will also be given to the current application of utilitarian theory to humans, along with a more traditional 'rights' approach to animal liberation.

As discussed in Chapter One, utilitarianism attempts to provide a new foundation upon which to base moral consideration, this being the consideration of pleasure and pain, with utilitarianism often characterised as promoting the principle of 'the greatest happiness for the greatest number.' As noted earlier, however, there are several problems with utilitarianism's internal justifications, most notably as to why we should actually care about the happiness of others. Moreover, although pleasure or the desire for happiness might exist, it doesn't then automatically follow that we ought then to pursue them as ethical goals or principles (the is/ought distinction). The major points of Rawl's critique of utilitarianism were also noted, these being the equation of the right with the maximisation of the good and the neglect of the individual in favour of the majority; points taken up, as we shall see later in Chapter Five, by Martha Nussbaum.

We also saw how classical utilitarianism advocated, on the basis that animals also felt pain, that humans should then cease to cause animals pain by unnecessarily or wilfully torturing them. This did not rule out the killing or

eating of animals, as these were judged to provide more human pleasure then any pain caused to animals; indeed, the killing of animals by humans were characterised by Bentham as less painful than death by natural means. Animals, moreover, did not feel the anticipated fear that humans would feel at the threat of being killed and this difference is to explain why we have laws against the murder of other humans, as such laws go a long way to assuaging the painful fears we might feel if we were to live in the constant expectation that we might be killed at any moment. This claim plays an important role within current utilitarian philosophy and is connected to arguments relating to the human ability to anticipate pleasure and plan for the future; with both abilities being directly linked to our capacity for rationality. We will be discussing such claims later in this chapter, but first a brief sketch of the breadth and impact of utilitarian theory on current thought and practice will be given, along with a description of how it differs from past conceptualisations.

Most obviously the biggest impact that utilitarian theory has had recently has been in the area of extending the scope of moral concern to animals, and this due directly to the measure of consideration being placed upon the ability to experience pleasure and pain – or, as it is most often termed, sentience. However, it has been the insistence on the *equality* of animal and human interests that has led not only to claims to the equal moral worth of animals, but to the questioning of traditional liberal-humanist concepts of *human* value and worth; indeed, to the very question of human identity and uniqueness itself. It is difficult, given the increasing emphasis placed on scientific and secular descriptions of human being within the western world, to know how much

utilitarianism can be said to have caused or contributed to such conceptions, but we can say that utilitarian and scientific explanations are being used to complement and reinforce one another. This has often resulted in the concept of human being reduced to the scientific classification of *Homo sapiens* or a set of biological or genetic differences alone, which has just as often resulted in the dismissal of the concept of human dignity as irrelevant or simply unprovable. As Jeff Malpas, Norelle Lickiss and Daniel P. Sulmasy note, such dismissal is becoming increasingly common within the field of medical and bioethics, where Ruth Macklin has declared that "dignity is a useless concept," in an article that bears the very same title.[2] While Malpas and Lickiss note that the term dignity itself is difficult to precisely define, they suggest nonetheless that it is inextricably linked to the very meaning and worth that we associate with human being.[3] This link is quite clearly illustrated, in a rather negative sense, by the arguments for the creation of chimeras, as seen below.

In a paper entitled "On the Moral Status of Humanized Chimeras and the Concept of Human Dignity,"[4] authors An Ravelingien, Johan Braeckman and Mike Legge present a number of utilitarian-based arguments (citing, among others, Peter Singer), as to why they view the concept of human uniqueness as untenable. After highlighting the significance the concept of human dignity has for the foundation of universal human rights, in that the term is used to convey

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[2] See Jeff Malpas and Norelle Lickiss, "Introduction to a Conversation," pp. 1-8; p. 2 and Daniel P. Sulmasy, "Human Dignity and Human Worth," pp. 9-18; p. 9 in *Perspectives on Human Dignity: A Conversation* (Dordrecht: Springer, 2007).
[3] Malpas and Lickiss, pp. 4-5.
[4] An Ravelingien, Johan Braeckman and Mike Legge, "On the Moral Status of Humanized Chimeras and the Concept of Human Dignity," (2006) http://cla.calpoly.edu/~jlynch/ravelingien.htm pp 1-18. IEET – Institute for Ethics and Emerging Technologies website, http://ieet.org/index.php.IEET/more/812 Accessed 14/11/06.

both the uniqueness and moral value of human being over other beings,[5] the authors then go on to describe how the term is also being used within the field of bioethics as a defence against the creation of chimeras. Chimeras are described as the authors as, "entities characterized by the side by side presence of both animal and human cells in embryonic, fetal, or adult individuals;" entities that the authors regard as being "of great utility for many research and prospective therapeutic purposes."[6] The authors contend that the term human dignity is too vaguely defined to warrant justification as a defence and, moreover, that an alternative definition – clusters of capabilities pertaining to "functional and psychological characteristics,"[7] such as "reasoning, choosing freely, acting for moral reasons and on the basis of self–chosen purposes" – also lacks argumentative proof, in that such characteristics are only grasped "intuitively."[8] They further argue that animals themselves share many of the above traits and conclude that; "[i] we do not know how to define a human, surely we cannot resolve the question whether or not a future chimera expresses a distinctively human trait. Nor can we even begin to discuss whether it challenges our notion of human dignity."[9] So clearly, these authors conclude, if we cannot define the human, then we cannot define or conceptualise the concept of human dignity. And while the concept of human worth can be defined apart from the concept of human dignity – as shall be argued in Chapter Six – what is important to note here is that when these and other scholars who use utilitarian concepts, such as

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[5] Ibid., p. 6.
[6] Ibid., p. 4.
[7] Ibid., p. 6.
[8] Ibid., p. 7.
[9] Ibid., p. 10.

David DeGrazia,[10] do challenge the concept of human dignity, they are equating human dignity with the notion of human worth and uniqueness.

So challenges to the notion of that which is human is resulting in the questioning of that which is worth valuing in humans (and vice versa). Such questioning has only intensified with the rapid pace at which modern technology has been impacting on medical and scientific research. With the recent endorsement of the Human Fertilisation and Embryology Bill in British Parliament which allows, among other things, for the creation of human-animal hybrids for medical research purposes,[11] hybrids are not only a current reality, but, as William Saletan, writer on bioethics for the Washington Post has remarked, represent "the future of medicine."[12] The inability of the British Joint Committee to come to agreement over just what percentage of human or animal cells would need to be present in order to correctly identify whether a hybrid was conclusively animal or human was both instrumental in its decision to approve the draft and indicative of some of the questions being raised in regards to the nature of human uniqueness.[13] Further, just as some groups oppose the use of human embryos within stem cell research on the grounds that it both devalues human life and deprives embryos of life, so too have British Catholic Bishops not surprisingly already insisted upon hybrids being permitted the right to life.

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[10] See David DeGrazia, "Human-Animal Chimeras: Human Dignity, Moral Status, and Species Prejudice," in *Metaphilosophy* Vol. 38, Nos. 2-3 (April 2007).

[11] The United Kingdom Parliament, "Joint Committee on the Human Tissue and Embryos (Draft) Bill" First Report, http://www.publications.parliament.uk/pa/jt200607/jtselect/jtembryos/169/16902.htm This Draft Bill was endorsed without changes and came into effect in Nov. 2008 as the Human Fertilisation and Embryology Bill 2008.

[12] William Saletan, "Animal Farm: The recombination of man and beast," *Slate* (June 22, 2007) http://www.slate.com/toolbar.aspx?action=print&id=2168932

[13] "Joint Committee on the Human Tissue and Embryos (Draft) Bill – First Report;" see in particular Section 4A(5)(e).

The questioning of the value of human being has also been raised by the application of utilitarian theories to the areas of stem-cell and human embryo research, cloning, abortion, infanticide, euthanasia and the boundaries of moral personhood in terms of intellectually and cognitively disabled humans; more of which will be discussed below. Most obviously, however, evidence of the current questioning of human uniqueness and value can of course be seen in the current animal liberation movement. This includes both the questioning of the pain caused to animals by the methods used in the raising and keeping of animals for human consumption and vivisection, but also includes the very questioning of the ethical validity of eating animals or using animals as means to human ends. It is in this latter sense that the major departure from classic utilitarianism can most clearly be seen. To this end, animal liberation groups further argue for the recognition of the moral personhood of primates through organisations such as the Great Ape Project. One such example is the case currently before the Austrian courts for the recognition of legal personhood on behalf of the chimpanzee Hiasl; a ruling that would effectively grant the ape 'human' rights and a legal guardian to protect his interests. While New Zealand has already granted protective rights to great apes in 1999 and Spain is presently considering similar protective measures, Hiasl's case, if successful, would represent, "the first time the species barrier will have been crossed for legal 'personhood.'"[14]

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[14] Jan Creamer, chief president of Animal Defenders International, as cited in ""Monkey In The Middle:" Animal Rights Activists Wage Court Fight To Get Chimpanzee Declared A "Person,"" Vienna, Austria, (May 4, 2007), by Joel Roberts, CBS News, http://www.cbsnews.com/stories/2007/05/04/tech/main2761586.shtml

What all of the above issues highlight is the widespread debate over the boundaries of moral personhood; exactly who should be given moral consideration and why? Such questions have further challenged standard liberal-humanist definitions regarding the human and whether human being can be said to have intrinsic value. As utilitarian Peter Singer has been and remains highly instrumental in not only bringing the issue of equal moral consideration for animals into the wider public forum but also in promoting the use of utilitarian theory within the field of bioethics, it is appropriate to begin with a discussion of his work.

Peter Singer

In his first major book, *Animal Liberation*, first published in 1975, Singer clearly situates his arguments for animal equality very much within the tradition of western liberalism by placing the demand for animal liberation on a continuum of western political history, beginning with the emancipation of slaves and concluding with the liberation of women.[15] Species discrimination, or "specieism," is equated with being on par with discrimination based on gender, race or ethnicity – that is to say, as based on groundless preference and prejudice; "[i]t should be obvious that the fundamental objections to racism and sexism made by Thomas Jefferson and Sojourner Truth apply equally to speciecism."[16] Meat eaters are compared to slave holders,[17] and animal

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[15]See Peter Singer, "Preface to the 1975 Edition," and "All Animals Are Equal," both republished in *Writings on an Ethical Life* (London: Fourth Estate, 2000, 2001), pp. 21-27 and pp. 28-46, respectively.
[16] Singer, "All Animals Are Equal," p. 33.

liberation to a revolution,[18] but Singer is not actually arguing that all human and non-human animals are equal, but rather that equal consideration should be given to comparable interests; the bottom line being that all animals have an interest in avoiding pain. In regards to the minimisation of suffering, Singer's arguments are a quite straightforward adoption of Bentham's recommendations, but it is on the issue of killing that Singer directly challenges traditional conceptions of human worth.

Singer states that, "[w]e need to begin again, with a different approach to the original problems, one which breaks out of the intellectual straightjacket of the traditional belief that all human life is of equal value."[19] As stated earlier, for Singer, moral consideration is given in regards to perceived interests. Animals are thus to be given moral consideration based on the fact that they are sentient – that is, capable of experiencing pain – and the more capability an animal has to experience pain, the more consideration given. It is on the basis of this consideration of pain that Singer has argued against vivisection, animal experimentation and methods of rearing animals that cause physical pain and restrict their natural movements, such as battery hen farming. In relation to the killing of animals, the arguments Singer directs against the institutionalised rearing and killing of animals for food are – the question of a painful existence aside – based on the damage done to the environment and the cost to society as the result of such damage, as opposed to being based on any moral objection to the act of killing itself; although he does also challenge the concept of a

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[17] Singer, "Preface," p. 25.
[18] Ibid., p. 26.
[19] Singer, "Is the Sanctity of Life Ethic Terminally Ill?" Ibid., pp. 170-185; p. 178.

"painless" death in factory farms.[20] Moreover, the interests of such animals may also be outweighed by the interests of society; recently Singer said in a BBC documentary that some forms of experimentation on animals could be permitted, if the beneficial consequences of such experiments could be seen as outweighing the costs.[21] While drawing the fire of those in the animal rights movement who argue for equality on the grounds that animals have inherent worth, Singer rightly pointed out that his statement was consistent with his utilitarian position, citing his previous claim in *Animal Liberation* where he suggested that, "a test for whether a proposed experiment in animals is justifiable is whether the experimenter would be prepared to carry out the experiment on human beings at a similar mental level – say, those born with irreversible brain damage."[22] The salient moral problem for Singer here – aside from the consideration of pain – is the question of whether the experimenters are specieist in choosing animals rather than humans in their experiments. Singer does not regard all humans as having the same interests or the same worth; stating quite bluntly that "the worth of human life varies."[23] Such worth for Singer is directly related to the perceived capacity of a being – whether animal or human – to be self-conscious, to be able to reason, and to be autonomous. Therefore, infants, the cognitively disabled and elderly people suffering from cognitive illnesses such as dementia are among those whose lives can be judged as not worth living.

> The fact that a being is a human being, in the sense of a
> member of the species *Homo sapiens*, is not relevant to
> wrongness of killing it; it is rather, characteristics like

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[20] Singer, "A Vegetarian Philosophy," ibid., pp. 66-71.
[21] Inside Higher Ed., "Did Singer Back Animal Research?"
http://insidehighered.com.news/2006/12/04 (Dec. 2006), pp 1-2.
[22] Ibid., p. 2
[23] Singer, "In Place of the Old Ethic," *Writings on an Ethical Life*, pp; 209-238; p. 212.

rationality, autonomy, and self-consciousness that make a difference. Infants lack these characteristics. Killing them, therefore, cannot be equated with killing normal human beings, or any other self-conscious beings. This conclusion is not limited to infants who, because of irreversible intellectual disabilities, will never be rational, self conscious beings." [24]

It is this sense that Singer makes his claim in regards to the equal consideration of interests; infants are judged on same level as animals – as equal in consideration to animals – since their species is irrelevant to moral consideration and their interests are judged to be similar. Humans and animals that are rational and self-conscious are, by contrast, seen as persons, and, as their lives are viewed as having more worth, they therefore should not be killed. This is justified in terms of utilitarian arguments made against the viability of killing self-conscious beings, these arguments being that; killing them would cause other self-conscious beings to fear their own death (a classical utilitarian approach); they might prefer to go on living, and it would be wrong to deny such a preference (a preference utilitarian response); a "rights" approach in which the right to something is dependant on having the ability to desire that good; and finally, out of respect for the "autonomous decisions of rational agents."[25] Therefore, because infants and non-rational humans such as those suffering from cognitive damage or disability cannot be said to be rational enough to have either preferences, to fear their own death, or to exercise autonomy, then such lives are seen as being of lesser worth. Singer further argues that an infant is not unique[26] but replaceable,[27] and that respect cannot be

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[24] Singer, "Justifying Infanticide," ibid., pp. 186-193; p. 186.
[25] Singer, "Justifying Voluntary Euthanasia," pp. 195-200; p. 195.
[26] Singer, "Taking Life; The Embryo and the Fetus," ibid., pp. 146-162; p. 159-160.
[27] Singer, "Justifying Infanticide," p. 189.

defended on the grounds of it being a *potential* rational being.[28] Despite this,

Singer argues that the possibility of an infant's potential future happiness can

somehow be confidently calculated nonetheless:

> When the death of a disabled infant will lead to the birth of
> another infant with better prospects of a happy life, the total
> amount of happiness will be greater if the disabled infant is
> killed. The loss of happy life for the first infant is outweighed
> be the gain of a happier life the second.[29]

So while Singer might admit that a disabled infant – such as an infant suffering

from Down syndrome – may have a happy life,[30] it can still be justifiably killed.

Deterrents to killing an infant, even without disabilities, can within Singer's

schema only be justified on the grounds that the parents might want it to live.

Should the parents not desire that the child live, Singer would then see

infanticide as justifiable; "[p]arents may, with good reason, regret that a disabled

child was ever born. In that event the effect that the death of the child will have

on its parents can be a reason for, rather than against killing it." [31] In other

words, it is the parent's interests, or society's interests, that take precedence over

the infant's, who is not seen as having an interest in its own present (beyond a

desire not to feel pain), or future life. "Therefore, if killing the hemophiliac

infant has no adverse effect on others, it would, according to the total view, be

right to kill him."[32] The logical implications of Singer's arguments are that

disabled lives are less worth living than the lives of able-bodied people; an

implication that has resulted in the picketing of his public lectures in Germany

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[28] Singer, "Taking Life; The Embryo and the Fetus," p. 158.
[29] Singer, "Justifying Infanticide," p. 189.
[30] Ibid., p. 190.
[31] Ibid., p. 187.
[32] Ibid., p. 190.

by disabled groups. However, while Singer insists that he has been

misunderstood by such groups,[33] he states quite unequivocally elsewhere that

this is indeed the case;

> It may still be objected that to replace either a fetus or a
> newborn infant is wrong because it suggests to disabled
> people living today that their lives are less worth living than
> the lives of people who are not disabled. Yet it is surely
> flying in the face of reality to deny that, on average, this is
> so.[34]

Singer's arguments rely very much on pointing out the logical discrepancies in

commonly accepted practices of abortion, where, for example, the testing for

and subsequent abortion of Down syndrome children is now seen as standard.

Within Singer's schema, there is no valid dividing line between a fetus and a

new-born infant, or even a young child, as all can be said to be members of the

species *Homo sapien*, but only qualify for moral consideration once they

become self-conscious and rational and therefore potentially aware of their own

deaths – or of themselves as "distinct entities existing over time."[35] However, it

is extremely difficult, as Singer himself notes, to gauge just when such cognitive

awareness might take place; acknowledging that it might not even occur until a

child is two or three years old. He suggests, therefore, that for convention's sake

the time at which an infant might be killed could be limited to, "perhaps a

month" after its birth.[36] In Singer's eyes, if we are willing to condone the

abortion of a fetus with Down Syndrome, and if we accept there is no real

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[33] See Singer, "On Being Silenced in Germany," in *Writings on an Ethical Life*, pp. 303-318.
[34] Singer, "Justifying Infanticide," pp. 191-192.
[35] Singer, "Taking Life; The Embryo and the Fetus," pp. 162.
[36] Ibid., pp. 162-163.

dividing line between a fetus and an infant, why not also then admit that we should kill an infant for the same reasons we might abort a fetus?

For Singer, in such a case it is the consideration of the pleasure or pain of the parents, along the monetary costs to the greater society,[37] which should take precedence in deciding whether such a child should live or not. Many fear, however, that, given the prevailing negative attitudes towards people with disabilities, more parents may be encouraged to abort a fetus with even a non-life threatening disability; as illustrated by the controversy over the late-term abortion of an eight-month old fetus suspected as being affected by dwarfism in Melbourne in January, 2000. A spokesperson for the Short Statured People of Australia, Megan Lily, is quoted as having said that, while we need to approach the case with "compassion," there is, nonetheless:

> a fairly significant degree of concern where there is a non-life
> threatening disability that the termination was performed at
> that late stage of pregnancy. There are many, many short-
> statured people who have gone on to have very long,
> fulfilling, totally normal and fantastic lives. Dwarfism does
> not need to be an impediment. [38]

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[37] See Singer, "What's Wrong with Killing?" in *Writings* pp.125-145; p. 126; "The Ethics and Economics of Heroic Surgery," *Peter Singer* www.utilitarian.net/singer Peter Singer and Peter Ratiu, *The Hastings Centre Report* Vol. 31, No.2 (March/April 2001), pp. 47-48, http://www.utilitarian.net/singer/by/200104--.pdf ; and "Treating (or Not) the Tiniest Babies," *Peter Singer* www.utilitarian.net/singer *Free Inquiry* (June/July 2007) http://www.secularhumanism.org/index.php?section=library&page=singer_27_4   Accessed 2.2.2006.

[38] Australian Associated Press (Australia), "Dwarfism not the end of the world – SSPA." (3 July 2000) As cited from the website *Short Statured People of Australia Inc.* http://www.sspa.org.au/sspa.htm Media Reports http://www.sspa.org.au/media.htm#2000 Accessed 30/10/2008. In the end, it was found that the aborted infant did not have dwarfism after all; see P. Gerber, "Late-term Abortion: What Can Be Learned From *Royal Women's Hospital v Medical Practitioners Board of Victoria?*" *MJA*, 186, (7), (2007), pp.359-362.

Ms Lily went on to conclude that, "[t]he only disadvantage that short-statured people suffer is a lack of reach and other people's attitudes."[39] It is precisely the importance given to the contingency of "people's attitudes" within Singer's schema – attitudes that are ultimately reflected in a parent's choice over whether to keep a child – which risk confirming prejudice and exclusionary practices against disabled peoples. This issue is not restricted to disabled fetuses alone; in Australia parents wanting to adopt children can reject a child on the basis that they have a disability – even after having officially adopted the child.[40]

Singer's arguments are for the most part consistent and do point out the logical inconsistencies in much current thought on abortion and infanticide, but only if we accept his basic premise that human being can be defined as a matter of biological data alone and that the measure of a life worth living is the projected calculated pleasure or pain – or monetary cost – that being might entail to either its parents or society as a whole. However, in attempting to justify the killing of infants Singer also makes reference to the fact that other cultures have practised infanticide; cultures such as the "civilized" and "sophisticated urban communities" of the ancient Greeks – having being recommended by the "best

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[39] Ibid.

[40] As was the case with a Chinese child who was adopted by Australian parents but sent back to China after being found that she had a disability; a case that subsequently reached the NSW courts. See James Wood, *Special Commission of Inquiry into Child Protection in NSW*, a transcript of which can be found out at http://www.lawlink.nsw.gov.au/cpsinquiry Previous Announcements http://www.lawlink.nsw.gov.au/lawlink/Special_Projects/ll_splprojects.nsf/pages/cpsi_announcements   Transcript of Public Forum: Heath and Disability, 14 April 2008 http://www.lawlink.nsw.gov.au/lawlink/Special_Projects/ll_splprojects.nsf/vwFiles/Health_and_Disability_110408_Public_WEBSITE.pdf/$file/Health_and_Disability_110408_Public_WEBSITE.pdf
Accessed 27-02-2009.

Greek and Roman moralists," such as Plato and Aristotle.[41] Singer gives the impression that such cultures were actually morally superior to modern western culture and that the belief regarding the sanctity of human life is merely an outmoded and irrelevant Christian doctrine. Singer seems to forget at this point his own frequent references to the emancipation of slaves and the importance such emancipation plays in his own arguments against specieism, and that the "civilized" ancient Greeks – no less one of the "best" of Greek moralists, Aristotle – actively practiced and philosophically justified slavery; moreover, that the Christian belief in an immortal soul played a major role in the abolition of slavery. We might remember, too, that in principle, utilitarianism has no real moral argument against slave-owning societies. In this sense, Singer can be seen to be basing his arguments more on rhetorical appeal than logical consistency.

Worrying, too, is the fact that Singer seems to regard the abolition of slavery as simply a matter of course, as something 'reasonable' people could no longer accept; just as he seems to think that Nazi ideals regarding racial purity – indeed, the very idea of a life "not worthy to be lived" – is something that is definitely "dead and buried."[42] Singer seems to believe that there is absolutely no question of such ideas returning again; insisting that utilitarianism speaks of lives that are not "worth" living in terms of paucity of pleasures or the presence of pain, as opposed to lives that are "not worthy to be lived;" although this distinction is very difficult to maintain given that both concepts are consistently linked to disabled lives. He in fact states that today such ideas are regarded as

[41]Singer, "Taking Life; The Embryo and the Fetus," *Writings on an Ethical Life*, p. 163.
[42] Singer, "Euthanasia: Emerging from Hitler's Shadow," ibid., pp. 201-208; p.203.

"simply absurd,"[43] but does not then account for the rise in neo-Nazi and ultra-right groups in former East Germany and France.[44] Moreover, he declares that no-one would now countenance anyone suggesting that black people are inferior,[45] but again this does not account for the present day struggle many African-Americans still face against racism – as seen in the discovery of a plot by white neo-Nazis to kill black presidential candidate (now President-elect) Barack Obama.[46] Singer seems to regard the racial purity arguments of the Nazis as an historical anomaly, rather than as a part of an ongoing continuum of racism, prejudice and discrimination.

It is also important to note that Singer does not give adequate justification as to *why* we should care about the suffering of either humans or animals. As with Bentham, Singer's argument is apparently based on the assumption that we feel – and that it is morally right to feel – benevolence and compassion for the suffering of others. This would seem to be his justification for equating certain forms of human life with animal life; if we feel compassion for certain humans, then we should feel the same compassion for animals, given that they are the 'same' as us in certain respects. This merely begs the question; namely, why *should* we feel compassion for humans? Moreover, reliance upon compassionate feelings, as noted earlier, makes for an unstable and contingent foundation for moral principles. In *How Are We to Live? Ethics in an Age of Self-interest*

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[43] Ibid., p. 203.

[44] See, for example, Rand C. Lewis, *The Nazi Legacy: Right-Wing Extremism in Postwar Germany* (NY: Praeger, 1991); Jerry Bornstein, *The Neo-Nazis: The Threat of the Hitler Cult* (Englewood Cliffs, NJ: Julian Messner, 1987); Zeev Sternhell, *Neither Right Nor Left: Fascist Ideology in France* (Jerusalem, Israel: Shazar Library, Vidal Sassoon International Center for the Study of Antisemitism, The Hebrew University of Jerusalem, 1986).

[45] Singer, "Euthanasia: Emerging from Hitler's Shadow," p. 203.

[46] Along with numerous other African Americans. See Elana Schor, "Neo-Nazis Accused of Plot to Assassinate Obama" *The Guardian* guardian.co.uk (28 Oct 2008) http://www.guardian.co.uk/world/2008/oct/28/neo-nazis-barack-obama-assassination-plot

Singer does pose the question, "Why do people act ethically?" but merely insists that people already *can* and *do* act ethically; that is, regardless of either self or group interest. As proof, Singer cites the example of Oscar Schindler, a German businessman who protected Jews during the Second World War, and the fact that some people will regularly act as blood-donors. However, rather than provide a reason as to why some people choose to be ethical (or why some do not), Singer concentrates instead on arguing for an Aristotelian virtue ethics; i.e. if we simply keep practising virtuous acts, such as giving blood, then in the end we will develop the appropriate ethical feelings.[47] Such a view does not account, nevertheless, for how Schindler changed from being a self-interested gambler, womaniser and initial Nazi-enthusiast, to a person with the sorts of ethical feelings required to even make the decision to protect Jewish lives. In other words, why make the decision to do an ethical act in the first place? It also does not tell us *which* acts are to be considered virtuous or why, apart from Singer's general stance that it is ethical to consider the interests of others. However, an ethical action for Singer is also that which can be justified as acceptable to "any reasonable being,"[48] and although Singer states, following R. M. Hare, that such justifications should be "universalizable,"[49] in reality "reasonable" for Singer means that which is considered "reasonable" within the terms of utilitarianism. In other words, the "reasonable" is relative to a utilitarian scale.

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[47] Peter Singer *How Are We to Live? Ethics in an Age of Self-interest* (Melbourne: The Text Publishing Company, 1993), pp. I67-170.

[48] "To live ethically is to think about things beyond one's own interests. When I think ethically I become just one being, with needs and desires of my own, certainly, but living among others who also have needs and desires. When we are acting ethically, we should be able to justify what we are doing, and this justification must be of a kind that could, in principle, convince any reasonable being. That this is a fundamental requirement for ethics has been recognized since ancient times, and in different cultures." Singer, *How Are We to Live?* p. 174.

[49] Ibid., p. 174.

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For example, in regards to bioethical issues, Singer makes frequent references to the fact that medical technology is constantly challenging and changing the boundaries of life and death; therefore, as a consequence, our ethical standards also need to adjust in response to such changes. Singer has, consequently, applauded the decision to use brain-death as a new medical criterion for death, as this has resulted in the greater availability of fresh organs for transplanting.[50] Within Singer's schema, then, ethics is seen as the contingent response to changing cultures. However, if a conception of the human or human worth is similarly malleable and contingent, then it can always be argued that it is "reasonable" that some groups of humans be excluded from equal moral consideration. And of course, this is exactly what Singer argues in relation to non-rational humans, as we saw above in relation to disabled infants and as shall be seen below in regards to the elderly who suffer from cognitive damage.

Leila Toiviainen has documented the fact that Alzheimer and dementia are not only widely prevalent, but that the number of people they affect is rising sharply. In Australia alone this number is expected to rise from 162,000 in 2002, to 500,000 by 2040; with dementia becoming "the primary cause of major chronic illness" by 2016.[51] She also points out that care for these elderly is chronically understaffed and adversely affected by attitudes of ageism that undervalue elderly lives, with Australian research showing that "particularly women with confusion and frail emotional health are vulnerable to physical,

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[50] Singer, "Is the Sanctity of Life Ethic Terminally Ill?" *Writings on an Ethical Life*, p. 170.
[51] Leila Toiviainen, "Home Care for Older People," *The Journal of the British Menopause Society* Vol.11, No. 2, (June 2005), pp. 57-60; p.57.

emotional/psychological, financial/material abuse, abandonment and neglect."[52]

Such attitudes reflect the fact that the elderly – particularly elderly people who suffer from dementia – are increasingly regarded as being of little worth and therefore of little moral consideration. Katrina George, lecturer in criminal law and researcher on euthanasia has stated:

> When euthanasia is tolerated or even legal, the message that "some lives are not worth living" rings loud and clear. There will be elderly, lonely or distressed people who feel pressure – real or imagined – to "do the right thing" and request death. Sometimes family members will have financial and personal motives for supporting suicide.[53]

The reality of George's view is confirmed by the recent case she cites, where an Australian woman, Shirley Justins, was convicted as being an accessory to the unlawful death of her de-facto husband, GraemeWylie, who was suffering from dementia and who had just the week previously changed his will – leaving her more than two million dollars. Justins was also alleged to have had a lover a Germany, and, despite the fact that the pro-suicide group Dignitas had declined Wylie's request for assisted suicide on the grounds that they had uncertainties concerning his mental state, was able to receive support from Philip Nitschke's group Exit International. Even after the case verdict was given, Nitschke still defended the death; despite not having any knowledge of Wylie's medical records. Nitschke went on to unequivocally endorse assisted suicide for the "troubled" or "depressed" and to encourage the elderly not to test for Alzheimer's or dementia. As George notes, other experts, such as psychiatrist

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[52] Ibid., p. 59. See also Toiviainen's article, "The Role of Older People in Our Communities," *Nursing Ethics* 10, (1), (2003), pp 4-17, for a further discussion on ageist attitudes to the elderly and those suffering from dementia.
[53] Katrina George, "Laws are Needed to Save the Voiceless," *Canberra Times* (25/06/2008), p.13.

Professor Brian Draper, have been highly critical Nitschke's approach, Draper stating that; "[t]he vast majority of [Alzheimer's sufferers] are able to enjoy their lives for years and those opting to end it early are a tiny minority who don't have the support, care and comfort they need."[54]

Dismissive views of the elderly and those suffering from dementia are only affirmed by utilitarian principles that emphasise the greater good of society and the comparative worthlessness of a cognitively impaired life. Recently Singer wrote on the "cost to the community" of keeping dementia and Alzheimer patients alive; the cost of which was apparently some 91 billion dollars in America in 2005 and which was predicted to rise to 160 billion by 2010.[55] Singer, while initially acknowledging that the interests of the patient should be of first priority, states that family wishes, along with monetary costs, should also be considered. However, during the course of the article Singer refers to the case of 84 year old Canadian Samuel Golubchuk, a man suffering from both cognitive and physical damage. Singer contests the desire of Golubchuk's Jewish family, who, against the wishes of the doctors, want to keep their ailing father alive in accordance with their own religious beliefs. Golubchuk's family also insist that their father, despite his poor state, still interacts and communicates with them. While Singer, as he himself admits, would normally support the wishes of the family in such cases, he states here that it is actually the doctors who know what the patient's "best interests" are. However, research has shown to the contrary that:

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[54] Ibid.
[55] See Peter Singer "No diseases for old men," guardian.co.uk (March 2008) http://commentisfree.guardian.co.uk.peter_singer/2008/03/no_diseases_for_old_men.html pp. 1-2. Accessed 17/04/2008.

> Medical and nursing professionals *consistently* rate the
> quality of life of their patients lower than patients do
> themselves and they base such judgements on medical or
> disease criteria rather than 'non-medical' criteria, such as
> happiness, relationships and financial security, that their
> patients consider more important.[56]

Moreover, for Singer, the "other important issue" in the case is apparently, "how far a publicly-funded health care system such as Canada's has to go to satisfy the family's wishes;" despite the fact that a court had already ordered in favour of keeping Golubchuk alive.[57] The case illustrates again not only the importance Singer places on monetary costs to society, but also the high priority he gives to doctors' opinions; in this case both over Canada's legal system and the family of the patient on question. In short, the individual's interests in the case are neglected in favour of that which Singer interprets or calculates as being to the greater good of society. This is by no means an isolated case; as noted earlier, Singer frequently brings up the cost of medical treatment as a major factor as to whether to continue to medically treat sick or disabled humans. While Singer elsewhere also tries to emphasise the pain that patients and their families might feel over the prolonging of life,[58] the real difficulty is in how quality of life is to be judged. As shown in the example above, the views of families, doctors, the state and interested philosophers can vary dramatically. And as Martha Nussbaum points out, sometimes the sick and elderly prefer to keep living, despite the fact that they are in pain.[59] If decisions regarding the ending of their lives are taken out of the elderly's own hands or is complicated by dementia,

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[56] Ian Kerridge, Michael Lowe and John McPhee, *Ethics and Law for the Health Professions* Second Edition (Sydney: The Federation Press, 1998, 2005), p. 260, my italics.
[57] Singer, "No diseases for old men," p.2.
[58] See Singer, "What's Wrong with Killing?" p. 126.
[59] See Nussbaum, *Frontiers of Justice*, p. 385.

then the risk of making a wrong decision is substantially increased. As seen by the research cited by Toiviainen and George above, with negative attitudes towards the elderly already widespread, Singer's schema leaves older people – particularly women and those suffering from dementia – increasingly vulnerable to further moral exclusion, neglect and manipulation. Further, the consequence of emphasising monetary considerations is that not only are the interests of the individual waived in favour of the perceived interests of society, but the *value* of human life is measured in monetary terms alone.

Singer's views do not represent an isolated case but can be seen as one of the prevailing standards to which much work that explores the question of moral personhood refers. For example, David DeGrazia has written widely on the subject of human-animal distinction and moral personhood[60] and is heavily influenced by Singer's theories regarding the possibility of personhood being granted to non-humans; and, as a consequence, to personhood being denied to some humans. DeGrazia's definition of the characteristics he believes necessary for personhood are only slightly broader than Singer's. Beginning with the argument that certain hominid ancestors of humans should be regarded as possible persons, he then suggests that personhood span a "cluster of properties without being precisely definable in terms of any specific subset: autonomy, rationality, self-awareness, linguistic competence, sociability, the capacity for

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[60] See David DeGrazia, *Human Identity and Bioethics* (Cambridge: Cambridge University Press, 2006); David DeGrazia, "Human-Animal Chimeras: Human Dignity, Moral Status, and Species Prejudice," *Metaphilosophy* Vol. 38, Nos. 2-3, (April 2007), pp. 309-329; David DeGrazia, "Moral Status, Human Identity, and Early Embryos: A Critique of the President's Approach," *Journal of Law, Medicine and Ethics* (Spring 2006), pp. 49-57.

intentional action, and moral agency."[61] It is on the basis of this definition that

he argues that Great apes and dolphins should be regarded as border-line

persons, while language-trained apes and dolphins should be given full status as

persons with full legal rights and protections. He also affirms Singer's equal

consideration in regards to comparable interests policy, stating that the

distinction between the interest for humans in staying alive is generally regarded

by those in the animals rights movement as being worthy of stronger moral

consideration than that of sentient animals. However, DeGrazia also clearly

identifies the status of personhood as being commensurate with full moral

consideration and suggests two different models for the differing degrees of

consideration. One model is a "sliding scale of moral status," where

consideration is given appropriate to one's place on the continuum up to full

personhood, and the other is a "two tiers" approach; with one tier being "that of

persons, whose interests are generally not to be sacrificed in the name of utility;

and the tier of sentient non-persons, whose interests are subject to

consequentialist tradeoffs."[62] Elsewhere DeGrazia states that human infants are

not to be considered persons,[63] and therefore their interests are considered

among those "subject to consequentialist tradeoffs." Here it is important to

emphasise that the ultimate outcome of such consequentialist classificatory

systems is that inevitably some classes of humans are classified as not worthy of

full moral consideration. Both Singer and DeGrazia do not doubt that infants, or

even fetuses, are unequivocally human in that they belong to the species *Homo*

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[61] David DeGrazia, "On the Question of Personhood Beyond *Homo sapiens*" in Peter Singer (ed.) *In Defense of Animals: The Second Wave* (Malden, MA: Blackwell, 2006) pp. 40-53; p. 42.
[62] Ibid., p. 51.
[63] DeGrazia "Moral Status, Human Identity, and Early Embryos: A Critique of the President's Approach," *Journal of Law, Medicine and Ethics* (Spring 2006), p. 50

sapien,[64] rather it is their moral worth that is under question. Moreover, as such systems are contingent rather than universal in regards to their justificatory grounds, there is no guarantee that such grounds will not shift to exclude further categories of human beings in the future.

Jeff McMahan applies similar theories to the moral status of those humans with severe cognitive disabilities, suggesting that animals with higher cognitive ability be treated preferentially over humans with less cognitive ability.[65] As Eva Feder Kittay states in her article "At the Margins of Moral Personhood," this means that those falling below a certain cognitive threshold are not subject to justice claims, nor is their killing or death to be considered as having the "same moral significance" as those above the threshold.[66] Kittay presents a moving and admirably respectful argument contesting Jeff McMahan's theories, as the application of such criteria would effectively place Kittay's own severely cognitively damaged daughter on the same cognitive level as a dog; and therefore outside the bounds of moral personhood. For Kittay, then, these are

> real-life stakes, for personhood marks the moral threshold
> above which equal respect for the intrinsic value of an
> individual life is required and the requirements of justice are
> operative and below which only relative interest has moral
> weight.[67]

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[64] See for example, Singer, "What's Wrong with Killing?" pp.127-129, and DeGrazia, "Human-Animal Chimeras," pp. 312-314 and p. 318.
[65] See Jeff McMahan, "Cognitive Disability, Misfortune and Justice," *Philosophy and Public Affairs* 25 (1996), pp. 3-35; Jeff McMahan, *The Ethics of Killing: Problems at the Margins of Life* (New York: Oxford University Press, 2002).
[66] Eva Feder Kittay, "At the Margins of Moral Personhood." *Ethics* 116, 1 (Oct 2005), pp 100-131.
[67] Ibid., p. 101.

In defending the moral personhood of her daughter Sesha, Kittay argues against previous and current philosophical arguments that place reason and autonomy as the prerequisite for equal moral consideration.[68] For, as seen above, although utilitarian arguments are based on the consideration of pleasure and pain, one's cognitive ability and reason are seen to play a pivotal role in one's ability to experience both – resulting in the gradated scale of moral consideration favoured by scholars such as Singer, DeGrazia and McMahan. Kittay suggests that, "to exclude those with severe cognitive disabilities from the moral consideration of persons… [is] as morally repugnant as earlier exclusions based on sex, race, and physical ability have been."[69] Kittay argues instead for moral recognition on the basis of human ties as conceived as family ties, rather than the absence or presence of certain desirable or intrinsic properties, seeing the emphasis on properties as the source of exclusionary practices – such as racism – as opposed to the group specieist claims of McMahan.[70] Following feminist and communitarian philosophers, Kittay suggests that human identity is constituted within the matrix of human "social relations," and that consequently recognition of moral personhood could be based on the grounds of group membership, rather than on individual capabilities or properties.[71] In describing the nature of human relations as being analogous to "family membership," Kittay hopes that such an analogy might provide an example of group membership that "could have the moral significance that would justify belonging to the group as reason for privileged moral status."[72] Kittay's suggestion of human ties as analogous to family ties or species membership

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[68] Ibid., p. 100.
[69] Ibid., p. 100.
[70] Ibid., pp. 119-124.
[71] Ibid., p. 111.
[72] Ibid., p. 124.

does provide a rich conception of how those humans who are most vulnerable might be provided with the sort of unconditional support and care they need, but this does not provide the necessary link needed to tie species membership to the imperative that all humans deserve equal moral consideration. MacMahan (among others) is objecting that biological difference or species membership alone is not sufficient grounds for giving moral preference for humans over animals, and Kittay's concept of family ties does not provide grounds beyond biological difference or species membership, in that families are entities that we are biologically *born* into.[73] Animals can also have family structures and relations, and, moreover, are often included as domestic pets into human family structures; indeed, they are often treated with the sort of unconditional love normally reserved for humans. As Kittay also admits, we can even adopt family members, which means that technically there would be no impediment to humans adopting animals; apart, that is, from species prejudices against animals (or so might an animal liberationist argue).

In other words, Kittay's analogy of family ties does not describe a difference that could be said to be unique to humans, and which could then be used to justify their differential treatment from animals. Moreover, for many, families do not provide either the picture or the reality of the sort of unconditional acceptance Kittay equates with the family. Singer himself has used a similar argument to justify a family's decision to have their cognitively impaired child undergo radical surgery and hormone treatment in order to prevent her growth;

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[73] "Family membership is conditional on birth lines, marriage, and (under particular conditions), adoption, not on having certain intrinsic properties…. I propose that membership in a group of moral peers based solely on species membership has as its appropriate moral analogue family membership, not racism and not pernicious nationalism. As humans we are indeed a family." Ibid., p. 124.

making her, among other things, more easy to lift and handle.[74] Singer argues

that it is not only in the child Ashley's interests that her family are happy, but

that Ashley's preciousness and worth is in fact dependent on her family's

opinion that she is of value to them. Such arguments are dangerously contingent,

as they suggest not only that a person's interests can be decided by and

subordinated to others' interests, but that a person's worth is conditional on

whether or not somebody cares for or has emotional ties with that person. The

unloved, orphans and those whose worth is deemed less than the money needed

to sustain their lives all become, within Singer's schema, vulnerable to social

and political contingencies. Kittay's suggestion regarding family ties might be

seen to be vulnerable to the same conclusions, in that, apart from species

membership, Kittay still does not give reasons as to why we should consider all

and only humans as family – and therefore worthy of equal moral consideration

and care – nor how biological ties alone can justify such care.

In her article, Kittay cites Cora Diamond, who, in her paper "Eating Meat and

Eating People,"[75] also argues against the "moral shallowness" of the reduction

of both humans and animals to lists of capabilities or properties.[76] Kittay's

reference to Diamond is limited to this point alone, but Diamond, herself a

vegetarian, states that she has written her paper "as a response to a certain sort

of argument defending the rights of animals;" specifically naming Peter Singer

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[74] See Singer, "A Convenient Truth," *The New York Times* (Jan 26 2007)
http://www.nyties.com/2007/01/26/opinion/26singer.html pp. 1-3. Accessed 19/02/2007.
[75] Cora Diamond, "Eating Meat and Eating People," in her book *The Realistic Spirit:
Wittgenstein, Philosophy and the Mind* (Cambridge, Mass., London, England: MIT Press, 1991)
pp. 319-334.
[76] Kittay, "At the Margins of Moral Personhood," p. 117, p. 123.

and Tom Regan, "amongst a number of other philosophers."[77] As the main thrust of Diamond's argument is to critique the suggestion that that which is of significance to us in humans can be reduced to a mere list of abilities, she quite understandably refrains from giving a precise definition of that which she sees as human, but rather alludes to such differences via the use of analogy and poetry. However, Diamond does clearly state that Singer and Regan ultimately undermine the significance of humans ─ as opposed to raising the significance of animals[78] ─ in that Diamond believes that the just treatment of animals can only really result from a feeling of empathy or "pity" for animals,[79] and that maintaining such empathy depends on maintaining the moral significance we impart to our own lives.[80] What Diamond seems to be suggesting here is that that which is at stake in the debate over animal and human difference *is the very nature of human morality itself,* and that our moral life is woven through the multifarious strands of our relations with each other. So in a sense Diamond can be read as suggesting that the very nature of morality depends on the distinction we make between humans and animals. What she can also be seen to be suggesting is that, just as Martin Buber, Martin Heidegger, Jeff Malpas and Ludwig Wittgenstein have all suggested – each in their specific ways – human being is not a matter of biological or species data alone, but rather has to do with our very ontology; our way of being. And for Diamond, that way of being is seen to be inextricably linked to the nature of morality itself.

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[77] Cora Diamond, "Eating Meat and Eating People," p. 319.
[78] Ibid., p. 325
[79] Ibid., pp. 328-330.
[80] Ibid., p. 333

Although Diamond does not elaborate on the ways in which morality might linked to human ontology, defining human being as ontologically based, rather than biologically based, might provide a way in which to avoid both the claims of mere specieism and the exclusion of certain human beings on the grounds that they lack the requisite properties required for moral consideration. However, any such ontological conception must needs then show not only grounds for human uniqueness but also that equal moral consideration is founded on such difference. In other words, it needs to be shown that the grounds for the possibility of ethics are inextricably linked to human being; whether that might be an ontological conception of human being or a conception that is based on characteristics seen as peculiar to humans alone. Alternatively, grounds need to be established that are broad enough to include *both* animals and humans and yet which do not exclude particular individuals; such as the cognitively impaired, disabled infants or other non-rational humans. There are of course some within the animal liberation movement who do argue for the radical equality of animals and humans, such as Tom Regan; who abandons a comparative consideration of interests and capabilities altogether in favour of a more deontological conception of human and animal value. His views will now be considered – albeit briefly – below.

In "The Radical Egalitarian Case for Animal Rights," Regan critiques the utilitarian approach on the grounds that the moral rights of all individuals are *not* seen as equal, but rather, as differentiated.[81] Moreover, Regan objects to the utilitarian insistence on placing value on the *interests* of an individual, rather

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[81] Tom Regan, "The Radical Egalitarian Case for Animal Right,s" in Louis P. Pojman (ed.) *Environmental Ethics: Readings in Theory and Application* (Belmont CA: Wadsworth, 2001), pp. 40-45; p. 43.

than on the individual themselves, and to utilitarianism's "aggregative" nature, where it is assumed that an individual's "satisfactions and frustrations" can be measured or totalled to produce the best possible result for all concerned. As Regan points out, "the best aggregate consequences for everyone concerned are not necessarily the best for each individual."[82] Regan's own solution, to grant each and every animal (and human) inherent worth and equal value, is nonetheless not without its own problems. First, rather than raising the level of animals to humans, such an approach can be seen, as Diamond suggests, as actually reducing the value of a human; in this case to the value of a chicken or a laboratory rat. The organisation People for the Ethical Treatment of Animals (PETA) have very publicly likened animal farm-factories to the murder of Jews during the Holocaust, and the suffering of cows and chickens in such factories to the suffering endured by African American slaves. Jewish and African American organisations alike have expressed outrage at having their suffering so minimised; the African American community in particular objecting to their pain being so publicly used as simply a means to PETA's own ends.[83] So here the inclusion of animals at the same level of value as humans effectively insults and further marginalises groups of oppressed humans. Furthermore, to extend inherent value to all animals is to effectively demolish conditions and

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[82] Ibid., p. 43.

[83] "Once again, black people are being pimped. You used us. You have used us enough." Scott X. Esdaile, president of the Greater New Haven NAACP, who demanded the removal of the PETA exhibit comparing the suffering of African American slaves to animal suffering in its project "Are Animals the New Slaves?" July, 2005. "PETA Rethinks Slavery Exhibit," Tolerance in the News, *Teaching Tolerance: A Project of the Southern Poverty Law Centre* http://www.tolerance.org/news/article_tol.jsp?id=1266 (Aug 15, 2005) Accessed 21/2/2009. In 2003 PETA also launched the "Holocaust on Your Plate" campaign, for which it formally apologised, two years later, after much protest by the American Jewish community. See "PETA Apologizes for 'Holocaust on Your Plate Campaign," http://www.tolerance.org/news/article_tol.jsp?id=1207 (May 2-6, 2005).

boundaries regarding the grounds needed for respect. Regan writes that "we are all the experiencing subject of a life, each of us a conscious creature having an individual welfare that has importance to us regardless of our usefulness to others."[84] As Regan extends the experience of consciousness to all living creatures – rats, prawns and presumably mosquitos alike – it seems difficult to see what grounds are really being advocated here, apart from a respect for life itself, which would then need further metaphysical or meta-ethical justification. Regan does not explain exactly *why* all living creatures should be considered as having moral worth, however. A form of Spinozism, or Buddhism, might provide such grounds, but then there would be difficulty in providing logical grounds upon which to justify such beliefs in themselves; just as there are difficulties in proving the existence of an immortal soul or God.

Finally, there is currently much speculation over the possibility of creating robots or forms of artificial intelligence that would be human-like enough to grant personhood status; indeed, some argue already for the recognition of the current agency of machines[85] and creation of legal rights for robots.[86] Such arguments generally rely on traditional liberal humanist definitions of personhood that specify certain characteristics as criterion for personhood; such as rationality, autonomy or agency. If the conclusions of this thesis are correct, such definitions tend only to reinforce potentially exclusive concepts of human being and may not even accurately reflect the nature of human being. Therefore,

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[84] Regan, "The Radical Egalitarian Case for Animal Rights," p. 44.
[85] See, for example, Hans Moravec, *Mind Children: The Future of Robot and Human Intelligence* (Harvard: Harvard University Press, 1989); Hans Moravec, *Robot: Mere Machine to Transcendent Mind* (Oxford: University Press, 1999); and R. Kurzweil, *The Age of Spiritual Machines: When Computers Exceed Human Intelligence* ((New York: Vintage, 1999).
[86] See BBC News, "Robotic Age Poses Ethical Dilemma," http://news.bbc.co.uk/2/hi/technology/6425927.stm (March 7, 2007) Accessed July, 2008.

it makes no sense to further discuss here whether or not artificial intelligence can be regarded as human, given that such traditional notions of the human are themselves under question here.

In summary, the discussion in this chapter has shown that current conceptualisations of utilitarianism are actually far from universal in their practical application, in that the scope of their application excludes non-rational humans from moral personhood and therefore equal moral consideration. This is apparent in the lack of consideration to humans who fall outside the threshold of equal moral consideration; where the fate of such humans is dependant upon either monetary considerations or the contingent and arbitrary interests of either their direct families or the society in which they live. It is in this sense that utilitarianism can be critiqued, as Rawls suggests, on the grounds that it ultimately neglects the individual in favour of the greater good of the majority. But as we have also seen, the current-day utilitarian emphasis on defining moral personhood on the basis of abilities also tends to perpetuate an atomistic account of moral personhood, in that emphasis is placed on the *individual* fulfilling certain conditions or possessing certain capabilities in order to gain consideration or respect; inevitably resulting in the exclusion and devaluing of those individuals who simply do not fit such criteria, such as Kittay's daughter. If the individual does happen to qualify for moral consideration, their interests are still nevertheless ultimately subordinate to the aggregate good. So in this sense, within the current utilitarian schema the individual can be seen to be doubly disadvantaged.

On the other hand, if human individuals such as Sesha are to be included within the scope of moral consideration, then a relational or communal conception of human being would seem to be more appropriate than one that emphasises individual over group needs. However, any such communal conception must needs then be broad enough to not exclude the reality of particular or individual difference. Moreover, any such conception of human being must provide reasons as to *why* we should value human being, as well as explain how such reasons can be seen as being distinct from animal being. Alternatively, if it is to be argued that animals should receive the same degree of moral consideration as humans then the problem of value and the justification of such value needs to be adequately dealt with, as seen from the discussion on Regan and PETA. In the next chapter we will be exploring current liberal humanist or critical humanist conceptions or re-conceptions of universal grounds, paying particular attention to those scholars within the liberal humanist tradition who attempt to provide answers to some of the issues raised in the preceding chapters. That is, who attempt to solve the tension between particularity and universality, or who provide new grounds upon which to justify respect for others.

Chapter Five

Current Critical Humanist Theory

In this chapter we will be exploring current liberal humanist or critical humanist theories. While such theories are many and varied, we will be focusing only on those that attempt either to respond directly to the critique of posthumanist theories, to reconceptualise traditional grounds for respect, or to broaden the scope of moral consideration to those who, as we have seen in the preceding chapters, have been excluded from such consideration; such as non-rational humans and animals. Even after having narrowed the field somewhat by such criteria, there still remain many theorists that the constraints of time and space simply do not allow us to cover, and so the following scholars have been chosen on the grounds that they deal more directly with the issues raised within this thesis. Jeff Noonan, for example, specifically critiques postmodernist denials of universality and attempts to provide a critical humanist approach to respect through the recognition of self-determination,[1] while Stephen Darwall tries to reconceptualise a link between rationality and respect through the human practice of accountability.[2] Christine Korsgaard, who, like Darwall, also works within the Kantian tradition, argues that autonomy is morality; attempting to justify our moral obligation to both humans and animals through a re-

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[1] Jeff Noonan, *Critical Humanism and the Politics of Difference*.
[2] Stephen Darwall, *The Second Person Standpoint: Morality, Respect and Accountability* (Cambridge, Massachusetts/London, England: Harvard University Press, 2006). I am grateful to Dr. Kim Atkins for bringing this text to my attention.

conceptualisation of Wittgenstein's private language argument.[3] Finally, Martha Nussbaum argues for the inclusion of animals within human structures of justice in her book *Frontiers of Justice*,[4] but rejects rationality as a criterion for respect on the grounds that it excludes non-rational humans and non-humans; favouring instead an intuitively-based conception of inherent dignity. We will now discuss the perspectives of each of these scholars in turn, beginning with Jeff Noonan.

In his important book *Critical Humanism and the Politics of Difference*, Noonan focuses his discussion on the postmodern claim that the concept of a homogenous and universal human nature is a construction designed to justify the exclusion and domination of difference. Critically engaging with the work of postmodern scholars – most notably Derrida, Foucault and Lyotard – he also argues, as has been argued in this thesis, that their own critiques of western humanism are founded on implicit humanist assumptions. Whereas the focus in this thesis has been on showing that these humanist underpinnings reveal unacknowledged assumptions regarding universal human value and respect, Noonan concentrates on the theme of subjecthood.[5] He suggests that the claim for "the politics of difference" in the work of Derrida, Foucault and Lyotard "ultimately makes sense only if it is set upon the ground of self-determining subjecthood,"[6] and that it is ultimately this capacity for self-determination that defines or is the essence of human being itself.[7] Noonan is attempting to find a common feature of humanity that does not obscure or negate difference and yet

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[3] Christine M. Korsgaard, *Sources of Normativity* (Cambridge: Cambridge University Press, 1996).
[4] Martha C. Nussbaum, *Frontiers of Justice*.
[5] Noonan, *Critical Humanism*, p. 5.
[6] Ibid., p. 157.
[7] Ibid., p. 157, p. 160.

at the same time provides sufficient grounds for respect – which is also the aim

of this project.[8] However, while Noonan's work provides much valuable insight

into this problem, there is some doubt as to whether self-determination can

indeed provide adequate grounds for universal respect, as shall be discussed

below.

Noonan views self-determination both as the essence of human being and as

providing sufficient grounds for solidarity, for bringing about a "coalition of the

oppressed" (and here Noonan consciously refers to Ernesto Laclau and Chantal

Mouffe's term, although he disagrees with their rejection of an essential human

nature[9]). Moreover, Noonan suggests that we know that the oppression of that

self-determination is wrong through the very struggles of the oppressed

themselves. For Noonan, self-determination is evidenced or manifested through

the fact that slaves, women, gays, lesbians and the disabled have risen up to

contest their subjugation and exclusion,[10] providing a universal standard both in

terms of what it means to be human and the grounds for the critique of the

suppression of that essence. Noonan in fact claims that the "wrong of

domination can be explained *only* by reference to its effects on the self-creative

capacity of the dominated human being,"[11] and it is this recognition that

provides the basis for our solidarity with others.

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[8] Claes Ryn also emphasises human creativity as a universal common ground, but with a
different focus to Noonan. See Claes G. Ryn, *A Common Human Ground: Universality and
Particularity in a Multicultural World* (Columbia and London: University of Missouri Press,
2003).
[9] Ibid., p. 84.
[10] Ibid., pp. 130-133.
[11] Ibid., p. 130, my italics.

> They are all the same struggle, but with different content.
> They are all struggles for the freedom to realize the self-
> creative, self-determining capacity of human being in specific
> ways. If we can understand this metaphysical common
> ground, a framework – but only a framework – emerges for
> the construction of a political common ground, an alliance of
> the marginalised, the oppressed, the exploited, and the
> brutalised against the homogenizing, life-denying dynamics
> of the global corporate agenda and its political servants.[12]

The struggle for self-determination then, is a struggle for a "particular identity," which entails that one understands oneself as a "subject."[13] Resistance to oppression also provides evidence that the oppressed is a "self, an active, self-determining force."[14] Noonan also argues that this recognition is, citing Fanon, the recognition that one is human; "The native…laughs every time he spots an allusion to the animal kingdom in the other's words. For he knows he is not an animal, and it is precisely when he recognizes his humanity that he begins to sharpen the weapons with which he will prove his victory."[15] Noonan sees this recognition of humanity specifically as a recognition that one is a self-determining subject rather than an object, and it is precisely through such self-determination that the coloniser also comes to regard the colonised as a subject.[16] Noonan writes that oppressed peoples have effectively "risen up" and said to their oppressors, "No, we are not *what* you say we are, and we will prove it to you, by force if necessary."[17] But the fact of the continuous uprising of oppressed peoples can also be interpreted as being evidence of other aspects of human being, for implicit in such demands is a sense of accountability; the possibility of calling other human beings to account for their actions. For, when

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[12] Ibid., p. 160.
[13] Ibid., p. 131.
[14] Ibid., p. 118.
[15] Fanon, as cited by Noonan, p. 119.
[16] Ibid., p. 120.
[17] Ibid., p.161, my italics.

we, in Fanon's terms, recognise our humanity, we can also be said to be recognising the humanity of the other through our very assumption that they are beings whom we can call to account.

For Noonan, our humanity can only be recognised in terms of the oppression of our self determination, and while Noonan may speak in terms of *groups* of people bringing other groups of people to account, due to the fact that he defines humans as having the capacity to be self-determining, one can assume that individual humans must actually possess such a capacity in order to be considered human. However, there are of course some humans who do not have this capacity; namely, non-rational or incapacitated humans, as noted above. Noonan's emphasis on the presence of certain capabilities means that humans lacking such capabilities are then necessarily excluded from humanity; including those humans who are so oppressed or demoralised that they cannot insist on their self-worth, such as those suffering from internal colonisation – a concept Fanon himself described.[18] Here it might be objected that the ability to hold others accountable is also not universal amongst humans, but if can be shown that accountability is a communal rather than an individual practice, as shall be argued in the next chapter, then the onus on the individual to possess such a capacity is then removed. It is not clear in Noonan's work, where the self-determining or self-creative powers of the subject form such a central part of his argument, just how those humans who lack such capacities are to be regarded as subjects, or how they are to seen as worthy of moral consideration. Noonan states that "struggles against oppression…. Must recognise that the particular

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[18] See Frantz Fanon, *Black Skin White Masks* (New York: Grove Press, 1967), pp. 152-153.

identity for which they struggle is in fact one manifestation of the universal capacity for self-determination."[19] But if a human does not have the capacity to insist on the validity of their identity, to "struggle" or "fight" for self-determination – a capacity that seems closely linked to autonomy – then we have to assume that they cannot then be recognised as an equal moral subject. In Noonan's own words, "one must also *really possess this capacity to fight against the situation*."[20]

Moreover, how we are to recognise other human beings as self-determining, and therefore as worthy of respect, is not clear. Noonan places the struggle for self-determination in terms of Hegel's "struggle to the death," where, "[o]nce the struggle has been joined, the underlying equality in essence, the fact that each proves himself or herself a self, an active, self-determining force, emerges and breaks down the apparent difference between the two."[21] Although Noonan admits that this is an "abstract characterization," he still insists that it is one of "profound metaphysical importance."[22] But this is a highly combatative notion of self and self-determination, consonant with Noonan's comment regarding the use of the "force" the oppressed might use in order to prove their identities; "[b]y proving itself in *victory* the formerly oppressed side proves itself to be in essence human, that is, the same as what the oppressive side asserted itself to be: a subject capable of ruling itself."[23] It seems that what is meant by "victory" here is that the oppressor recognises the self-determination or subjecthood of the oppressed, but if this does not take place, does this then undermine any claims to

[19] Ibid., p.131.
[20] Ibid., p. 130; my italics.
[21] Ibid., p. 118.
[22] Ibid., p. 118.
[23] Ibid., p. 120, my italics.

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humanity on the part of the oppressed? In other words, is the humanity of the oppressed dependant upon the recognition of the oppressor? What if this does not take place? It is also not clear how such a concept might provide us with a moral imperative; that is, why the oppressed should respect rather than kill their oppressor; particularly if the oppressor refuses to recognise their humanity. One could argue that the coalition of the oppressed might think they have very good reasons *not* to value their oppressors; that they are quite justified in simply using their "force" in order to kill them off as enemies to true self-determination, as has frequently occurred in the brutal class wars that have taken place in Russia, China and Cambodia.

Noonan suggests that the recognition of another's self-determination is synonymous with seeing them as a subject rather than an object, and thus worthy of respect, but Noonan's argument is based on the assumption that the oppressed *already* recognise the self-determination of their oppressors; for they are fighting to prove that they are, as noted above, "the same as what the oppressive side asserted itself to be: a subject capable of ruling itself."[24] However, as we can see from the examples cited above, this recognition does not necessarily result in any respect towards their oppressors; in fact, often quite the contrary. In short, it is not clear why such recognition *should* automatically result in respect. Further, as the grounds for mutual recognition and support are only based on the free expression of self-determination, it may well occur that once a group had achieved self determination they might well think that there are no other grounds upon which to recognise or cooperate with other groups.

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[24] Ibid., p. 120.

One seems justified, in fact, in viewing and using another group of people in the coalition of the oppressed as simply a means to the end of one's own self-determination. In other words, beyond the self-interest of uniting with another oppressed group in order to escape one's own oppression, Noonan gives us no real reason as to why we should respect or value others (especially oppressive others), apart from the grounds that they are self-determining. As noted, recognition of the characteristic of self-determination alone does not necessarily equate with respect for that characteristic. We might recognise another human as either self-determining or rational, but such recognition does not then automatically entail that we respect them, unless that quality can be shown to be intrinsically or necessarily linked to such respect. Moreover, it could even be argued, in Aristotelian fashion, that animals are also self-determining, in that they can be seen to be fulfilling their own natures.[25] Here we are again faced with the problem of linking specific characteristics to respect, just as we saw earlier with Kant's attempt to link rationality with respect.

Further, one could argue that if humans are so essentially self-determining, then they would hardly need the recognition of another human to become so, in that self-determination implies both autonomy and self-sufficiency. Why, then, would we need the recognition of another, beyond, that is, the sheer fact of forcing them to cease their oppression, which could simply be done by violent means? Our human sense of justice cannot be reduced to the demand for self-determination alone, in that we often demand that others be held accountable for their actions over wrongs and injuries that go beyond self-determination.

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[25] I am grateful to my supervisor, Prof. Jeff Malpas, for pointing this out to me.

Injuries occur over the breach of many different standards of value –and therefore wrongs – and our understanding of justice is intimately bound up with the sense that those who have injured us *should* to be held to account for that wrong. This may explain (but not justify) the vindictive violence the oppressed at times mete out towards their oppressors, even after they have gained the "victory" over them, as seen in the examples given above. The Truth and Reconciliation Committee of South Africa was set up for this very purpose, not to specifically further self-determination, but rather to deal with the pressing matter of how to best adjudicate past injustices; that is, how to bring white South Africans to account over their actions without the need for retributionary violence.[26] When Korean women attempted to formally sue the Japanese Government over the fact that they were used as military sex slaves by Japanese soldiers during the Second World War, they were insisting on the fact that the Japanese needed to be held accountable for the wrong they had committed against them. This wrong was not just seen in terms of their present self-determination, as their demands were also on behalf of women who had already died.[27] Certainly such claims are related to an insistence on their value and worth as human beings, but Noonan does not convincingly link human worth and value to self-determination, and even if he could, this would still leave the question of the worth of non-self-determining humans unanswered.

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[26] See Sam Garkawe, "'Amnesty for Truth:' A Violation of Human Rights by South Africa's Truth and Reconciliation Commission?" in Elisabeth Porter and Baden Offord (eds.) *Activating Human Rights* (Bern, Switzerland: Peter Lang AG, 2006), pp. 89-108.
[27] See Hee Soon Kwon, "The Military Sexual Slavery Issue and Asian Peace," *The Korean Council for the Women Drafted for the Military Sexual Slavery by Japan.* First presented as a paper at "The First East Asian Woman's Forum" (October 20-22, 1994), Japan. http://www.vcn.bc.ca/alpha/learn/KoreanWomen.htm Accessed 8.12.2008.

The above examples show, moreover, that the utilitarian suggestion that laws that pertain to justice are a result of mutual fear – i.e., we make laws against murder so as to avoid living in fear of being murdered – are also not entirely accurate. In the case of the Korean women, it is clear that the women are not bringing their case before court in the fear of perhaps being raped by the same men again; rather they want to see a past wrong righted. The same could be said of the other examples; whilst an element of preventability may well be present – the hope that through public recognition these things might never occur again – the main goal seems to be that the perpetrators of the wrongs be made accountable for past wrongs, rather than the need to immediately prevent the injury from occurring again in the present. When the families of murder victims struggle to have the perpetrator of the crime brought to justice, they are often motivated not out of fear that others might be in danger of being similarly killed, but rather by the desire to see the perpetrator made accountable for what they have done. In the words of the father of presumed-murdered backpacker Britt Lapthorne; "The main relief will be when it's all over. Hopefully, hopefully someone will be held accountable for this. But nothing will ever bring Britt back."[28] This is not to deny the necessity of preventative laws, but rather to state that an emphasis on prevention – or self-determination – does not give a full picture of our understanding of justice, more of which will be discussed later.

This is not to deny the importance of self-determination, which, as we saw in Chapter 3, forms a vital part of indigenous political claims, but rather to highlight the fact that self-determination can not be said to be the only issue of

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[28] AAP, "Britt's parents travel to Croatia" (December 10, 2008) http://au.news.yahoo.com/a/-/mp/5202353/britts-parents-travel-croatia/ Accessed 2008-12-10.

importance in regards to our understanding of human being – and therefore of human wrongs or injustice – for the assumption of human accountability might be said to pre-empt or precede the recognition of self-determination. That is, *we would not insist on self-determination if we did not regard other humans as accountable to us in the first place.* By contrast, Noonan insists that the recognition of self-determination is that which makes humans accountable to other humans; a claim he does not conclusively prove. Stephen Darwall, however, does argue for the recognition of reciprocal accountability as a necessary condition for the very possibility of ethics, and it is his claims in *The Second Person Standpoint: Morality, Respect, and Accountability* that will be considered next.

Accountability and the Second Person Standpoint.

In *The Second-Person Standpoint* Stephen Darwall presents a compelling argument for the recognition of reciprocal accountability as the basis of morality; or rather, as he states himself, "morality as equal accountability."[29] Darwall's argument is very much grounded within a Kantian framework, which, as noted earlier, views human dignity as founded on the ability to be rational and respect for such dignity as arising from our ability to "exact" respect from other rational humans.[30] In this sense our humanity is seen as being defined and expressed through our capacity for rationality,[31] as opposed any other feature of our being. For the very possibility of accountability, for Darwall, depends directly upon our *competency* in regards to accountability, and this competency

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[29]Stephen Darwall, *The Second Person Standpoint*, p.101.
[30] Ibid., p. 243.
[31] Ibid., p. 304.

is in turn directly linked to our ability to be rational; our rationality being that which ultimately confers authority to hold others accountable within a second-person framework. Darwall defines a second-personal standpoint as an I-You relationship, which he characterises in terms of Martin Buber's I-Thou address,[32] as opposed to a first or third-person relationship ('I' or 'they,' respectively). Our competency within such a relationship depends on our ability to see things from the other person's perspective, to place ourselves 'in their shoes,' so to speak. Darwall describes such a phenomenon as having empathy – as opposed to sympathy – with empathy referring simply to understanding another's thinking processes, rather than having any reference to emotional identification;

> I must be able to see the other's response to my address as more or less rational from her point of view. I must be able to see my address through her eyes. Similarly, for her to make sense of my address, she has to see it as something that makes sense from my perspective.[33]

When we hold another accountable, we presuppose both our own autonomy along with theirs; we assume that they have the ability to act otherwise, and that we ourselves could be held equally accountable under the same standards; "we must presuppose that we have the standing to lay claims on one another as free and rational, where this means both that we cannot treat one another as mere means and that we are accountable to one another for not doing so."[34] Darwall argues that it is the "reciprocal recognition that is always already implicit in second-personal address that gets us into the space

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[32] Ibid., pp. 39-40.
[33] Ibid., p. 44.
[34] Ibid., p. 318.

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of the reasonable and justification to one another."[35] We commit ourselves to accepting equal second personal standing, and thus respecting the "dignity of persons," whenever we address another second-personally.[36] In this sense, respect is not just seen as something that we should do because it is seen as something good or desirable to do, but rather, respect is implicit in the very form of second-person address itself, in that we are always already committed to recognising the other's autonomy and rationality – and therefore our ability to hold them, and reciprocally, they us, accountable – whenever we address them second-personally.[37] As such, Darwall concludes, it provides the perfect foundation for contractualism, which Darwall sees as an interpretation of[38] or development on Kant's ideas regarding the equal dignity of persons, whereby we "treat rational nature, whether in ourselves or in others, as an end in itself by holding ourselves and each other responsible for complying with principles that we and they could will (or not reasonably reject) as universal law."[39] However, while within Darwall's schema accountability might well be imagined as being relatively easily acknowledged between two individuals, such accountability is not as easily recognisable between an individual and a community (and vice versa), given the lack of a direct I-You or second-personal relationship.

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[35] Ibid., p. 318.
[36] Ibid., p. 318.
[37] Ibid., p. 318.
[38] Ibid., p. 306.
[39] Ibid., p. 308. However, while within Darwall's schema accountability might well be imagined as being relatively easily acknowledged between two individuals, such accountability is not as easily recognisable between an individual and a community (and vice versa), given the lack of a direct I-You or second-personal relationship.

Moereover, Darwall stresses that respect for others has nothing to do with esteem for another's qualities or characteristics, but rather is something that is due to another, "simply by virtue of being a person."[40] Darwall defines a person, however, as a "free and rational agent," and respect is shown through "acknowledging our mutual accountability" to each other.[41] As Darwall himself admits, such a definition of personhood, and indeed humanity, excludes human beings who are not rational; such as infants, children and the cognitively impaired, along with animals.[42] Darwall does suggest that non-rational beings may still be accounted for within his framework, in that morally accountable persons can hold each other accountable over their welfare, but he does not in any way attempt to provide any real justification as to *why* we who are rational should hold each other responsible for – or even care about the welfare of – non-rational beings, beyond suggesting that we can perhaps think of our moral obligation towards the non-rational in terms of being their "trustees;" that is, speaking on their behalf – or by imputing them with a "proto- or quasi-second-personality, for example, as when we see an animal's or an infant's cry as a form of complaint."[43] Darwall himself admits that such arguments cannot prove our moral accountability or obligation to non-rational beings and acknowledges the importance of such questions or omissions, but nevertheless states that he will not specifically address such considerations within his book. But if, as Darwall suggests, mutual accountability provides the very basis for morality, then on what other grounds can we then justify concern for the non-rational? Non-rational humans, defined within Darwall's schema as non-persons, are

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[40] Ibid., p. 137.
[41] Ibid., p. 137.
[42] Ibid., p. 28, p. 29, p. 33, p. 43, p. 318.
[43] Ibid., p. 29.

subsequently disqualified from respect, equal dignity and indeed, humanity itself.

Darwall states quite rightly that we do not engage in relationships of reciprocal accountability with animals,[44] but his position regarding non-rational humans leads him, in effect, to holding the same position on non-rational humans as the utilitarian arguments of Peter Singer, in that non-rational humans are not regarded as persons and subsequently excluded from equal moral standing with persons. As seen above, an infant's cry is considered to be on the same level as an animals' cry; and this despite the fact that Darwall devotes much of his book to opposing consequentialist arguments. Granted, Darwall does not deal specifically with Singer's arguments in this book, but rather with consequentialist arguments regarding the value of outcomes in general,[45] and Darwall's conclusions are actually simply the logical result of a systematic Kantian approach to ethics. In other words, all Kantian approaches that define rationality as the hallmark of humanity must needs then exclude non-rational humans from its definition of humanity. While there is much to admire in Darwall's approach – for indeed, it is one of the major contentions of this thesis that accountability is one of the necessary conditions for the possibility of ethics – it will be suggested here that it is not its *only* component, and further, that accountability need not necessarily linked to rationality, as such linking results in the exclusion of particular humans, for reasons outlined below.

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[44] Ibid., p. 43.
[45] Ibid., p. 103.

First, if we define humanity in terms of rationality alone, and respect, dignity and accountability as necessarily dependant on the capacity for rationality, we are then committed to excluding, as noted above, non-rational humans from the realm of the human and thus from equal respect and dignity. This means that even a formerly rational person who becomes cognitively impaired or incapacitated through either illness, accident, or age is no longer, logically speaking, entitled to the same respect as they once were. They are not entitled to the same respect because they are no longer in a position where they can rationally "exact" such respect from others. Accountability, when couched in second-personal terms alone, becomes something that individual rational beings demand of other individual rational beings; the capacity to demand such accountability is in fact the prerequisite for second-personal competency and authority. This places the onus for demanding accountability on an individual's capacity for rationality, which ultimately emphasises an atomistic rather than communal practise of ethics, despite Darwall's final emphasis on the moral community in the form of social contract agreements over communal norms. For, within Darwall's schema, one must first *prove* one's second personal competence and authority in order to become part of the moral community – in order to partake in "mutual accountability as equals"[46] – in the first place.[47] It is this emphasis on rationality, first as the condition for participation within the

[46] "The fundamental idea of the dignity of persons, to which I have claimed we are committed from the second-person standpoint, is mutual accountability as equals. And this commits us to regulating our conduct by principles that are acceptable, or not reasonably rejectable, to each as free and rational agents. When we attempt to hold anyone accountable by addressing second-personal reasons of any kind, we presuppose that the authority and principles we implicitly invoke are ones our addressee can be expected to accept, or not reasonably reject, as a free and rational agent who is apt for second-personal address." Ibid., pp. 300-301.

[47] Gary Watson also notes that although the moral community may act as a source for norms, ultimately within Darwall's schema "these obligations must eventually ground out in second personal authority." Gary Watson, "Morality as Equal Accountability," *Ethics* 117 (Oct 2007) pp. 37-51; p. 49.

moral community and then as the standard upon which to decide upon moral norms in the form of rational consensus, that ultimately limit the scope of Darwall's theory in terms of its universality.

In one sense Darwall, in specifically linking accountability to rationality, can be seen as attempting to provide what has been referred to above as the missing link between Kant's equation of rationality with the respecting of each person as an end rather than a means. For Darwall, it is our inherent ability for reciprocal accountability that marks the limit to another being used as a means to our ends. By holding another accountable, even when that accountability is expressed through the reactive attitude of resentment (which Darwall suggests as being also expressive of a second-person competence and authority[48]), we presuppose the limits of another's will; our own freedom marking the limit, or end, to that will.[49] But it is not clear how, or on what principle – apart from being a possessor of the ability to hold another accountable – we can hold others accountable for their actions towards another person. Darwall continually emphasises the role of individual competency in regards to accountability, where second-person competency is described as having the ability to gauge if another person is aware that I am looking at them, while they are looking at me; in other words, of being conscious that a mutual awareness is taking place. How this is to take place on *behalf* of another, even when that other is rational, is not so clear, despite the fact that Darwall states that other members of the moral

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[48] Darwall, *The Second-Person Standpoint*, p. 17.
[49] Darwall refers to this as "Fichte's point," which he characterises as, "I must in all cases recognize the free being outside me as a free being, i.e., I must limit my freedom through the concept of the possibility of his freedom." Ibid., p. 252.

community can intercede on another's behalf.[50] For this can only take place if a moral community has previously and jointly agreed upon norms, as with a contractual society, and this is indeed what Darwall ultimately suggests.[51] But that a contractual society will automatically arise to fulfil such a role, however, is not so certain; particularly if reciprocal recognition between persons has not taken place, as in the case of slave-owning communities. Darwall's argument in this case seems to very much hang on the possibility that a slave's will is not so subjugated to the extent that they will not resent or oppose the treatment meted out by their owners; keeping in mind that the existence of reactive attitudes is a presumption on the part of the person reacting that the person to whom they are resentful is capable of choosing otherwise and that they effectively regard themselves as ends rather than means. While Darwall does admit that there may be some cases of subjugation so dire that even this presumption may not exist, he does not seriously consider it as a viable possibility.[52] It could be suggested, however, that one's expectation of actually being able to hold another accountable for their actions, in reality, does have an enormous impact on whether we are able to demand accountability.

As touched upon earlier, since Frantz Fanon's groundbreaking work on the subject in *Black Skin, White Masks*, many studies have confirmed that this is particularly crucial in the case of marginalised, oppressed and subjugated people who internalise their colonisation or oppression, as in the case of the African

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[50] Ibid., pp. 60-61.
[51] Ibid., pp. 300-320.
[52] See Darwall's discussion on slavery, ibid., pp. 263-268.

Diaspora, colonised and indigenous peoples.[53] Such colonisation often produces an internalisation of the derogatory images propagated by the subjugating peoples, resulting, in Koori Lisa Bellear's words, in "self-hatred,"[54] or, as Fanon himself puts it; "I do not know why I am guilty. I only know that I am no good."[55] Such feelings can result in the belief that one somehow deserves the oppression or lowly position in society meted out by the colonising power, making demands for accountability difficult. That such feelings can be overcome is demonstrated by the various liberation movements of subjugated groups, but it is important to note that such liberation movements were made on *behalf* of all members of the group, not just for those capable of demanding accountability. Had these demands of accountability been made on an individual level, on the grounds of individual capability and authority – in other words, on a second-person standpoint – then universal emancipation for such groups would not have been a possibility. Indeed the crucial point is that they are *communal* claims, rather than individual claims; individuals speak on behalf of a community and those not able individually to hold others accountable – including the elderly and rationally incapacitated, infants and cognitively

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[53]See Frantz Fanon, *Black Skin, White Masks*; Cherrie Moraga and Gloria Anzaldua, eds. *This Bridge Called My Back: Writings by Radical Women of Color* (New York: Kitchen Table – Women of Color Press, 1983); bell hooks, *Sisters of the Yam: Black Women and Self-Recovery* (Cambridge, MA: South End Press, 1993); Ngugi Wa Thiongo, *Decolonising the Mind: The Politics of Language in African Literature* (London: James Currey, 1986); John Boncore Hill, *The Autobiography of Dacajeweiah, Splitting the Sky, John Boncore Hill: from Attica to Gustafson Lake* John Pasquale Boncore: 2001; Ann Laura Stoler, ed. *Haunted by Empire: Geographies of Intimacy in North American History* (Durham, North Carolina: Duke University Press, 2006); Kagendo Mutua, Beth Blue Swadener, eds., *Decolonizing Research in Cross-Cultural Contexts: Critical Personal Narratives* (Albany, New York: SUNY Press, 2004); Hilary N. Weaver, "Indigenous Identity" in *American Indian Quarterly*, 0095182X (Spring 2001), Vol. 25, Issue 2; Lilian Comas-Diaz and Beverly Greene, eds., *Women of Color: Integrating Ethnic and Gender Identities in Psychotherapy* (New York: Guilford Press, 1994).This last piece of research also includes battered women as subjects of internalised hatred.
[54] See "Seven Australian Poets: Lisa Bellear interviewed by John Kinsella" Thylazine No.4, Sept. 2001. *The Thylazine Foundation: Arts, Ethics and Literature* http://www.thylazine.org.archives/thyla4/binterview.html Accessed 5/11/08.
[55] Frantz Fanon, *Black Skin White Masks*, pp. 152-153.

disabled, and even the dead[56] among them – are included within the scope of their common political claims. What is important to note is that these are not the sorts of moral communities envisioned by Darwall, in that members of these particular moral communities do not have rationality as a basis for membership in their communities, but rather, membership is predicated on affective, cultural and/or ethnic ties. It is the possibility of and need for different forms and practices of accountability, of accountability both within and importantly *between* communities, that Darwall's theory does not cover, being very much restricted by its reliance on the classic conditions associated with social contract theories, more of which will be discussed later.   It is in this sense that we can see that Darwall's theory not only leaves out the possibility of accountability to the non-rational, but also to those, who, while rational, are nevertheless unable for various reasons to hold another accountable through the appropriate second-personal responses or the moral community, more of which will be explored below.

Within Darwall's schema, the rights of a rational agent can also be defended on contractualist grounds, as noted earlier.[57] Darwall uses the example of a person stepping on your foot; one can either demand that the other person remove their

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[56] In 1976, Tasmanian Indigenous Australians successfully petitioned for and received Tasmanian Aborigine Trugannini's remains in order to carry out her final wish to be cremated and have her ashes strewn over the D'Entrecasteaux Channel. Trugannini had feared that her body would be used by white scientists for their own purposes and she was correct in her fears; her body was exhumed after burial and her skeleton put on public display by the Royal Tasmanian Society. The issue here, as pointed out by historian Professor Lyndall Ryan, was that Trugannani was quite consciously "stripped of her humanity" by the white community, whom it suited to turn Trugannani and other Australian Aborigines into scientific specimens rather than human beings to whom they would then have to admit accountability over their mistreatment of them. Other Indigenous Australians have sought to recover the bodies or body parts of their people taken from Australia for "scientific" purposes, including the head of resistance leader Pemulwey, which was initially taken to the Museum of London and which has never been recovered. See *The First Australians* SBS, Episode One, "They Have Come to Stay," in relation to Pemulwey and Episode Two, "Her Will to Survive," in relation to Trugannini's story.
[57] See his discussion regarding this on pp. 300-320.

foot with one's own second-person competence and authority (i.e., individually),

or another member of the moral community can do so on your behalf.[58]

However, the only reason within Darwall's schema for demanding

accountability on behalf of another is if the moral community has already agreed

to that particular norm; that it is agreed upon is an appropriate standard or

relationship to uphold as a moral community. Not only does much then depend,

in instances of non-compliance, upon the possibility of having wrongs redressed

via agreed-upon contractual grounds, but the norms themselves are decided via

the usual processes of the social contract. This of course places the burden for

moral standards and practices ultimately upon the efficacy of social contract,

but, as many feminists have pointed out, social contract theories themselves can

be critiqued for their inattention to difference and inequalities within societies;

both in regards to power imbalances between men and women and in relation to

the exclusion of the private or domestic sphere from consideration within the

realm of justice.[59] Darwall tends to presume, too, when discussing reactive

attitudes that such reactive attitudes will be on the part of those who are

wronged, rather than those who are wronging others by presuming

accountability over norms that may be endorsed by the moral community but

which can nonetheless be oppressive or restrictive to individual freedom. For

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[58] One can also make a direct appeal to their sympathy, but this is not a second-personal reason. Ibid., pp. 5-9 andp.17. See also Darwall's general discussion on communal moral responsibility, pp. 300-320.

[59] See, for example, Susan Moller Okin *Justice, Gender and the Family* (New York: Basic Books, 1989); Virginia Held, *Feminist Morality: Transforming Culture, Society and Politics* (Chicago: The University of Chicago Press, 1993); Christine DiStefano, *Configurations of Masculinity: Feminist Perspective on Modern Political Theory* (Ithaca, NY: Cornell University Press, 1991); Annette Baier, *Moral Prejudices: Essays on Ethics* (Cambridge: Harvard University Press, 1994); Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988). See also Nancy Fraser's critique of Jürgen Habermas' discourse ethics – which has many similarities to Rawls' social contract theory – in the chapter entitled "What's about Critical Theory? The Case of Habermas and Gender," in Nancy Fraser, *Unruly Practices: Power, Discourse, and Gender in Contemporary Social Theory* (Cambridge: Polity Press, 1989), pp. 113-143.

example, until only quite recently in western society it was considered immoral for a woman to have a child out of wedlock; in many cases the woman in question might actually have agreed that she had committed an immoral act and thus held herself morally accountable; berating and blaming herself for such a "wrong." Such cases bring up the issues of moral relativity and coercion within moral communities, as to what can be agreed upon as reasonable or rational. Although Darwall does name coercion as being in opposition to accountability, for traditionally oppressed groups such as women, the line between coercion and consent is not so clear cut. This can be seen to be illustrated in the present awareness over the issue of coerced consent in regards to sex, or 'date-rape,' where many young women feel that they 'should' consent to sex at another's bidding, but also on a larger scale within western society, specifically in relation to how women feel they 'should' look in order to gain acceptance. Should the escalating rise in cosmetic surgery, breast implants and eating disorders amongst women and girls be seen as activities they freely consent to participating in? In one sense, one could argue that yes, no-one is forcing a woman to agree to signing a consent form to have her breasts enlarged. On the other hand, one could argue that such a woman had little choice in regards to the grounds for the conditions by which her worth was measured by her society. Indeed, the widespread objectification and sexualistion of girls and women is an ethical issue precisely because their worth is viewed as conditional on their appearance; in other words, they are viewed as means – to sexual gratification and commercial exploitation – rather than ends in themselves.[60]

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[60]The physical and psychological toll on women and girls over issues related to self-image should not be underestimated. Not only has there been a documented rise in the eating disorders anorexia and bulimia nervosa – both of which can result in death– but research has shown that the psychological effects of objectification and sexualisation are widespread and significant,

Such issues raise the question of whether the moral rightness of a norm can be vindicated by rational consensus alone, given that, among other things, our rational choices are often affected and limited by the scope of possibilities we see as actually being available to us, as Nussbaum rightly notes.[61] It is this perception of the scope of possibilities open to us that also limits that which we feel we can hold others accountable over, as in the case of slaves or other subjugated and marginalised peoples. Moreover, conceptions of that which is considered reasonable change over time and differ between societies. We are not always accountable to others in the ways they demand of us, nor are their demands always respecting of persons within a society. Darwall tries to circumvent such problems by insisting that only those norms that are rationally acceptable or agreed upon are to be considered valid, but as shown above, this neglects the question of unequal power relations and coercion amongst rational agents in society. In short, not all rational members of society are always able to make the sorts of demands necessary in order for their needs be taken sufficiently into account, as suggested by Darwall's model. These are rational members who are already marginalised within society.

R. Jay Wallace makes a similar point in regards to Darwall, critiquing what he sees as being the overemphasis within Darwall's theory on an individual's

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including lack of confidence, low-self esteem, depression, anxiety and self-hatred; all of which can lead to self-harm and suicide. See Selena Ewing, *Faking It* (ed.) Melinda Tankard-Reist (Canberra: Women's Forum Australia, 2007). Moreover, the majority of those currently trafficked for the purpose of sexual slavery are also women and children; see "Trafficking" http://www.antislavery.org/homepage/antislavery/trafficking.htm Anti-Slavery Homepage http://www.antislavery.org/ Accessed 24. 2. 2009.
[61] Nussbaum refers to these as "adaptive preferences," see *Frontiers of Justice,* p. 73, p. 282, p. 341, pp. 343-344.

capacity to make claims. He notes, using Darwall's and Hume's stepping-on-

someone's-gouty-toe example, that perhaps the victim of the toe-stepping might

be so "demoralized" as to not object, but that he also might also live in a moral

community that might not regard such toe-stepping as immoral.[62] Wallace's

point is that moral obligation cannot rest alone on individual, or even

community claims being made; that surely one would want to say that "the

obligation is independent of the explicit demands that your victim might make

on you to desist, but it is also independent of the claims that might be implicit in

the tendency of people in your "community.""[63] Darwall's reply to this specific

critique is that his idea of moral obligation is ultimately independent of whether

individual claims are made or not; that his moral community is an *ideal*

community, similar to Kant's Kingdom of Ends, rather than an "actual

community" made up of "actual human beings."[64] This is a very different

emphasis to the one Darwall provides in his book; an emphasis that can

ultimately open him to charges of both relativism and constructivism. Darwall

now seems to insist that demands are "made by the "moral community" and by

all of us insofar as we are members,"[65] and in this sense

> moral demands are "in force" if no one could reasonably
> reject principles that would warrant them, or if these
> principles would be chosen by representatives from a point of
> view that expressed the idea of respect for all persons as
> having equal second-personal authority.[66]

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[62] R. J. Wallace, "Reasons, Relations and Commands; Reflections on Darwall," in *Ethics* 117, (Oct, 2007), pp. 24-36; p.27.
[63] Ibid., p. 27.
[64] See Darwall's "Reply to Korsgaard, Wallace and Watson," in the same issue of *Ethics* 117 (Oct, 2007), pp. 52-69; p.64.
[65] Ibid., p. 65.
[66] Ibid., p. 65.

However, much depends on Darwall's description of what can be "reasonably" demanded of others when we hold them accountable.[67]

Darwall's standard of value is that, if rational agents might be expected to agree that the standards of behaviour demanded of themselves and others are reasonable, then morality and respect for persons is assured. But as accountability can only be justified in regards to that which is rationally acceptable – either as a norm which one ideally imagines other rational beings could consent to, or as norms that might actually be agreed to within a contractual society (the conclusion Darwall seems to reach in his book) – then morality cannot be defined as equal accountability alone. For, as noted in the preceding discussion, reasoned consent or consent to what is 'reasonable' or sensible[68] is in itself not enough to ensure that the actual *content* of the standard to which one is being held accountable over is indeed morally justified. In other words, a moral community can have standards of behaviour to which all its members hold themselves morally accountable, but that does not necessarily make such standards morally just.

Let us take Darwall's example of a community that has a member that dissents from the moral standard that is generally accepted; they like stomping on gouty toes, but refuse to acknowledge accountability for committing such an act. According to Darwall, they are accountable anyway and presumably the moral community will hold them to account in some way, perhaps by punishment. But here the standard of value to which another is held accountable over is

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[67] Ibid., p. 67.
[68] Ibid., p. 59.

something like 'not wilfully causing another community member pain;' it is a standard of behaviour to which the community has agreed to be accountable over. Or is it the fact that they are wilfully breaking a reasonable norm that is actually immoral? Can we still speak of an *accepted* norm if someone flouts it or disagrees with it, or does such a norm then become *imposed* rather than agreed upon?

We might imagine a community that agrees to a standard of behaviour that is not necessarily moral, like deciding to commit suicide together at the command of their leader (Jonestown comes to mind). In such an instance, the community member who changes their mind and decides not to commit suicide and save their children might possibly be seen as immoral, given that they have previously agreed to a communal norm. Here it might be argued that the people involved in the Jonestown mass suicide were perhaps not fully rational, or perhaps that they were they coerced, but the question still remains as to whether rational agreement alone makes a norm morally acceptable. Given the realities of societal change and dissent, it becomes difficult to tell when a person who dissents from the standards of a moral community is morally justified, or simply a moral dissident. Is the woman who refuses to conform to the agreed standards of dress in her community a moral maverick, or an immoral whore?[69] It might be then said that this was not a standard agreed to by all rational members, given the presence of dissent, but then, following that same rationale, we would not have people treading wilfully on other's gouty toes. In others words, this would

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[69] In this regard it is interesting to note the recent crack down on "satanic" clothes in Iran, where police arrested 49 people for wearing western-influenced clothing, including women in "tight trousers and high boots." See Reuters, "Iran cracks down on satanic clothes," 4.12.2008 http://au.news.yahoo.com/a/-/odd/5192175/iran-cracks-satanic-clothes/ Accessed 4.12.2008.

be to presume that nobody would be making any moral transgressions; that we would all just keep to the rules we agree on. In this sense, accountability alone cannot be seen to encompass morality, for we are sometimes brought to account unjustly, as not all of the norms our moral communities agree to are *necessarily* just, simply by virtue of the fact that they are – however hypothetically and rationally – agreed upon. This is to presume that absolute consensus and conformity is possible and further, that absolute consensus and conformity equals morality; making all dissidents and non-conformists immoral.

It is in this sense that a universal standard of value is necessary in order to escape the pitfalls of relativity that might result from Darwall's schema. In regards to our relations with other moral communities, such a standard is actually necessary in order to arbitrate between communities of differing moral standards who are calling other communities to account regarding their behaviour towards them. For in reality, we are, whether we like it or not, always already born into moral communities who daily make us accountable to them for our actions. And we, in return, presume that others in our community are similarly accountable to us. But sometimes we feel that the demands placed on us are unjust, and sometimes we demand accountability from others over issues that they consider to be similarly unjust. Further, the presence of subjugation and coercion within communities are not the rare occurrence that Darwall seems to suggest. Given such pitfalls, the only way we can decide what is just in situations where accountability is contested or questionable is by appealing to *another* standard of value. Accountability, when conceptualised as inseparable from reason, is not enough in itself to provide that standard.

In regards to the fact that different communities have different standards of what is reasonable, Darwall might argue that his theory encompasses all rational humans and in that sense is universal. As pointed out earlier, however, some humans are automatically excluded from such a moral community, in that they do not qualify as rational, so in this sense Darwall's definition of the human can be seen as contingent, rather than universal. Moreover, it could be added that Darwall's conception of a community is very much one that is amenable to western, liberal-humanist ideas of social consensus and rationality, which effectively excludes all communities run on different social and political lines. In this sense Darwall's theory is vulnerable to the general critique Nussbaum makes of social contract theories within the context of globalisation and inter-nation relations; that is, that contracts are made within and with relevance to a particular (western) community and do not account for relations *between* communities. So it is also in this respect that Darwall's theory is not able to be truly universalised, an issue which will be discussed more fully below in the discussion on Nussbaum's work.

Despite the critiques just made, there is much that is extremely valuable within Darwall's account; the most important aspect being Darwall's recognition of reciprocal accountability as an essential component of morality. As Darwall puts it, when we exclaim, "Hey, you can't do that to me!,"[70] we are presuming that that person can and should be held accountable to us; although whether we are justified in holding them so accountable – that is, in regards to the particular

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[70]Darwall, "Reply," p. 53.

norm over which they are being held to account – is not adequately dealt with in Darwall's theory. But the fact that we presume that they are beings to whom we can claim accountability, and that such beings are actually accountable in their behaviour to us, is a crucial point; for, as it is only other humans to whom we claim such accountability, we can then perhaps conclude that it is a human practice to hold each other accountable. Although Darwall doesn't make the extension himself, assumptions of accountability do seem to take place between different moral communities as well, in that nations and communities can also be characterised as constantly saying to one another "Hey, you can't do that to us!" Putting the question of the normative content of the claim aside, the presumption that the other community is accountable is evidence that they believe that they are dealing with a community that *can* and *should* be viewed as morally accountable over their actions towards others; in other words, another human community. It is in this sense then that we might be able to speak of reciprocal accountability as morality, but only if its form and content are separated from the condition of rationality, which limits both the scope of its application and morality itself to that which can be rationally agreed upon alone. If we separate accountability from the condition of rationality, we might still be able to regard accountability as a necessary condition for morality. We might then be able to say that the practice of accountability is a universal human practice, although we would need to show that it is practiced on a communal, rather than an individual level, so as to lift the condition of rationality that Darwall places upon the individual as a condition of acceptance into the moral community; more of which will be discussed in the final chapter.

Another positive aspect of Darwall's theory is that he links accountability to the question of human value, of seeing an other as an end in themselves, in that the very demand of accountability presumes that one considers oneself as end, not to be used as another's means. Moreover, if one recognises that one is accountable to another, then one is recognising that they, too, are an end in themselves. He unfortunately links this value, and practice, to individual rational humans alone, in that the rational will of another marks the limit to my will. However, if it could be shown that the practice of accountability is communal, rather than individual, then the standard of value, or universal norm upon which to judge the validity of accountability claims, might then be simply as to whether a person or community is being treated as ends in themselves – as opposed to what an agent or a community might contingently decide as reasonable. As we saw above, communities can make presumptions of accountability on behalf of all the members of their communities, without there being any condition of rationality in order to qualify for membership to that community. The crucial point is, of course, the conditions under which we define acceptance into a community, or to humanity itself. In terms of the objections raised above, in order to include the marginalised and subjugated, non-rational humans, infants, children and inter-community (or global) relations within such an obligation, we need a standpoint that *all* humans can share and from which we can see another's perspective, not just the standard of rationality. Nussbaum addresses many of these issues in *Frontiers of Justice*, but before discussing her work we first need to turn to Christine Korsgaard, who, although retaining a Kantian basis of rationality as a foundation for moral consideration,

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does attempt to include animals and justify respect for others through a re-conceptualisation of Wittgenstein's private language argument.

Christine Korsgaard: Sources of Normativity

Christine Korsgaard can be seen, like Darwall, as attempting to provide the missing link in Kant's identification of rationality as the grounds upon which we can respect persons as an end. To this end, Korsgaard turns, among other things, to Wittgenstein's private language argument in order to justify the claims others in the Kingdom of Ends have upon us; or rather, their ability to obligate us morally. For although she claims that autonomy is morality – "reflective endorsement…is morality itself"[71] – just as Darwall claims that accountability is morality – and even though she attempts to prove that universality is inherent in any autonomous law-making activity (which she does not succeed in proving, as she collapses generality with universality), she does admit that such autonomous law-making is without content. It is what she refers to as the moral law, or the law of the Kingdom of Ends, that supplies law-making with its moral content and obligates us to others. This is associated with the way in which, according to Korsgaard, we come to make our autonomous laws; this being a process whereby we, via our capacity to make free and rational choices, reflect and make choices based on principles that are grounded on our practical identities. Through a further process of reflection – which Korsgaard admits is in itself a choice, i.e. not a reflection we must *necessarily* engage in[72] – we can come to see that all of our contingent, historical identities are ultimately based on our

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[71] Christine M. Korsgaard, *Sources of Normativity*, p. 89.
[72] Ibid., p. 256.

ability to construct such an identity via the reflective law-making process.[73] This identity in turn is a product of our human nature, whose defining feature for Korsgaard is the ability for reflective, moral choice.

Korsgaard agrees that other Kantian based arguments that try to justify obligation to others on the basis of being logically consistent fail, in that logical consistency can hardly be said to be morally binding, i.e., I might value myself as an end, but why should I then value others? While she tries to distance herself from such arguments, her own argument rests very much on the premise that if we value ourselves, then we are valuing our own humanity, and thus, as a consequence, will value the humanity of others. However, we can only do this if we first agree to follow the same reflective process as Korsgaard; "[g]uided by reflection, we may be led to see that our tendency to treat our contingent practical identities as the sources of reasons implies that we set a value on our own humanity and humanity in general. This realisation leads us to the moral principle of valuing humanity as an end in itself."[74] But it is precisely the leap from valuing our own humanity to the humanity of others that Korsgaard has difficulty in justifying.

According to Korsgaard, when we value our identities, we are then really valuing our humanity, which is the source of our identity. We apparently come to value others as well due to the fact that our *reasons* – the principles by which we make autonomous laws – are not private but public, which is where Korsgaard brings Wittgenstein's argument into play. Korsgaard argues that just

[73] Ibid., p. 242.
[74] Ibid., p. 250.

as a private language would be incommunicable to others, so too must our reasons be able to be communicated to others, and so in this manner are 'shared.' This would tend to imply that the public nature of language and reasons would lead to general public moral consensus; i.e. my obligations are your obligations, your reasons are mine, and this is exactly what Korsgaard seems to imply. She gives the example that when someone calls your name in the street, they then obligate you to stop; *for they are a law to you*. It seems that simply by speaking and understanding the same language, another person of the same language community is justified in making demands of you and that these demands are then morally obligating.[75] In some respects, of course, as shall be argued in the next chapter, we do always already belong to communities that obligate us in many ways, but it does not necessarily follow from that fact that I am therefore necessarily obliged to do that which you demand of me, or that your reasons might obligate me, simply on the grounds that I understand them. Moreover, Korsgaard does not restrict such demands to particular language groups (or, as shall be seen, even humans). As Raymond Geuss notes, Korsgaard leaps from the possibility of sharing reasons to an insistence that we then *must* share reasons with all of humanity,[76] neglecting to explain how we might move from the particular reasons of a shared language group to sharing common understandings or reasons with the rest of humanity.

Much of Korsgaard's argument rests on the appeal to shared public reasons, as she herself states,[77] for it is just such shared public reasons which are meant to justify why the humanity of others should matter or be of value to me. However,

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[75] Ibid., pp. 138-143.
[76] Ibid., p. 198.
[77] Ibid., p. 233.

Korsgaard also seems to rely very much, as seen above, on the apparent fact of obligation; obligation simply seems to spring naturally from demands. And this in turn seems to rely very much on our apparent *feelings* of obligation; if someone calls our name, we feel compelled to stop; if an animal cries out in pain, we feel compelled to relieve its pain. But if we were so naturally obligated to each other in the first place then surely the very question of morality would not arise at all; we would all be responding naturally and morally to each other without prompting. It would seem that the reverse is generally true, however; it is because humans often *are* deficient in feeling or responding in a morally appropriate way that we have scholarly discussions on the desirability of moral obligation in the first place. Korsgaard is arguing that we are already morally obligated, even necessarily so, both to animals and humans, simply due to the fact we are human and whether we recognise such obligation or not. This is not to say that any argument that suggests that we are morally obligated by virtue of the nature of our human nature is in itself wrong, but rather to say that Korsgaard's arguments are not sufficient in making that tie convincing. Geuss further challenges the fact that Korsgaard's stance implies that we must *either* see ourselves as part of the "Party of Humanity" *or* merely regard each other's reasons as mere noise.[78] As he notes, "it seems to me an elementary fact of life of the late twentieth century that we are constantly encountering people whose reasons for action we understand perfectly well and which we see are genuinely good reasons for them, without in the least endorsing these reasons or sharing their values."[79]

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[78] Ibid., p. 196.
[79] Ibid., p. 197.

Korsgaard places much onus on valuing our identity, and thus our humanity, but we must then be able to agree with her conception of what makes for human being, which is ultimately, as Nagel argues, egoistic.[80] Korsgaard also leaves dangerously open the whole question of obligation, which, as noted, seems to entail being obliged to have the same reasons as others *and* being willing to submit to their demands; demands that seem at times to veer towards outright domination. For Korsgaard makes no distinction here between obligation and domination; indeed, domination seems indistinguishable from the power others have to obligate us. She even likens it to the domination we have over animals such as dogs; when we command them, they come, however reluctantly, just as we are to respond to other humans, apparently, when they command us.[81] It is curious that Korsgaard does not comment on or seem to see the ramifications such an argument might have for subjugated and oppressed peoples – people already dominated by others – as it would seem to only affirm their domination and suppression, in that any demand made on them can be seen obligatory and binding, something they simply *must* obey, just as a dog obeys its master.

Indeed, for all her emphasis on morality as the province of human nature, Korsgaard insists that our obligations to animals are just as binding. Her argument here is that they feel pain and value themselves just as we do,[82] and so, as their cries of pain are as obligating to us as a human voice – on the grounds that we cannot dismiss them "as mere noise"[83] – then we are just as obligated to animals as we are to humans; "Another animal can obligate you in exactly the

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[80] Ibid., p. 208.
[81] Ibid., p. 157.
[82] Ibid., p. 145, pp. 149-150, pp. 152-153.
[83] Ibid., p. 153.

same way another person can. It is a way of being *someone* that you share."[84]

Just how far such obligation is meant to be taken (are animals then as important as humans? Can they at times be morally preferred over humans?), Korsgaard does not say. Moreover, her valuing of animals and insistence on our own animal nature confuses her argument that morality, and value, are based solely on our human nature. How are we then to distinguish between the value we place on our human nature, and that of our animal nature? For Korsgaard insists that we carry both within us. But if the distinction between animals and humans is that animals cannot reflect and the definition of human being is that we cannot help but reflect (as Korsgaard suggests), how then are we still animals? That we might make a choice to value our animal nature over our human nature, particularly given Korsgaard's sympathy with Nietzsche's views regarding the perverted emergence of morality from our animal instincts via punishment, is also not considered. Korsgaard sees our identification with human being as necessary and inevitable, as a recognition of "simply the truth,"[85] but only *if* we accept her argument; that is, her particular definition of that which makes us human, a "conclusion," which as Korsgaard herself admits, "only emerges from a course of reflection, a course which may never be undertaken, or may be only partially carried out, and this does give rise to a problem."[86]

Korsgaard also attempts to define a concept of evil within her schema. This applies to those who neglect to identify with their human identity in favour of their particular contingent identities. For example, "someone who deliberately decided or anyway consciously thought of being Aryan or white or male

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[84] Ibid., p. 153.
[85] Ibid., p. 123.
[86] Ibid., p. 256.

mattered *more* than being human or *rather* that being human would be evil."[87]

Korsgaard is attempting here to create (or maintain) a universal standard of what might count as the humane treatment of others, but surely there is a problem with classifying certain humans as "evil." As evil people can still, within Korsgaard's schema, call our names and dominate us, when does our obligation to them stop, if ever? Can we, because they are evil and therefore can be seen as posing a threat to true humanity, perhaps be justified in killing them? How then would such an argument be different to the claim that certain savages and sub-humans posed a threat to true civilised humanity and therefore could be disposed of? Why should those who do not prioritise their human identity over all other identities be regarded as evil, rather than simply malfunctioning or misguided? In other words, how does a specifically *moral* judgement emerge from Korsgaard's argument? It emerges only through what turns out to be Korsgaard's real definition of morality, for although she claims that morality is autonomous reflection, she also stipulates, as noted earlier, that the true content of morality only comes about through the law of the Kingdom of Ends; that we each treat the humanity in ourselves and others as an end in itself. It might be said that this is actually Korsgaard's true definition of morality, but it is a standard that she tries to make the law of autonomous reflection conform to, rather than naturally emerge from. She is, of course, trying to achieve what Kant himself could not; make the humane treatment of others morally binding. As she begins by defining morality as autonomous reflection, her argument that the content of morality essentially concerns our treatment of others might be seen as beginning from the wrong premise. Certainly, as seen above, her arguments as

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[87] Ibid., p. 250, Korsgaard's italics.

to why we should be (or already are) obligated are not wholly convincing, given that they are based on being obligated by our shared language, reasons and feelings, and do not take into account the reality of dissent. We might agree with Thomas Nagel when he states that Korsgaard's use of Wittgenstein's private language argument actually does not help her case,[88] but such a conclusion does not mean that Wittgenstein's argument cannot be used to clarify our understanding of the basic structure of morality at all, as shall be explored in the next chapter.

While Korsgaard is not wrong in suggesting that autonomy – our ability to reflectively choose rather than simply be driven by determining forces – is an important aspect of morality, from the preceding discussion we can conclude that it only plays a *part* in our conception of morality, rather than its defining role. According to Korsgaard, as our autonomy is the source of our practical identities, it is also then identified as the very source of morality, but as Nagel states; "some values are adopted or created but morality, in its basic outlines, is not among them. Our practical identity is its product, not its source."[89] We cannot assume or prove that the source of morality lies categorically with humans, whether individually or communally, however, it will be suggested below that we can perhaps say that the form or structure of morality as we know it does lie with humans, but that these forms are linked to the communal structure of our human communities, rather than to the individual alone. We do not choose morality – in that we can be seen to be creating it, in Korsgaard's sense, via autonomous reflection – but rather we could say that it is morality that

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[88] Ibid., p. 208.
[89] Ibid., p. 208.

has chosen *us*, in that we are always already born into an ethical structure or form that we have not chosen. Our different human communities can produce differing or relative norms, but the basic form or structure of ethics might be seen to remain constant in our practice of communal accountability and the existence of social standards of value, more of which will be discussed in the final chapter. And yet, as Korsgaard quite rightly states in her own response to Darwall's *Second Person Standpoint* in *Ethics,* we are not just accountable to others, but often can and do hold ourselves accountable.[90] Moreover, as Gary Watson also points out, we can also be in a relation of accountability to God.[91]

Korsgaard's account is also vulnerable to Nussbaum's critique of moral personhood conceived as rational autonomy in her book *Frontiers of Justice.* We will now turn to Nussbaum's discussion on the three 'frontiers' neglected within social contract theory – disability, globalisation and species membership; a critique to which Darwall's account also becomes vulnerable, given the importance rationality and the social contract play in his moral theory.

Nussbaum: **Frontiers of Justice.**

Nussbaum explicitly situates her project within a humanist-liberal framework,[92] her book being both an important critique of and complement to western social contract theories, with a particular focus on John Rawls. She highlights three areas of human experience traditionally neglected by social contract theory;

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[90] See Korsgaard, "Autonomy and the Second-Person Within," in *Ethics* 117 (Oct, 2007), pp. 8-23.
[91] See Gary Watson, "Morality as Equal Accountability," in *Ethics* 117 (Oct, 2007), pp. 37-51.
[92] Ibid., p.221

mental and physical disability, global relations between nations and human relations to animals. At the same time she also acknowledges the important role classic liberalism and social contract theories have played in seeking to include those traditionally excluded from the realm of justice; keeping in mind that such theories had their origins in heavily hierarchical and feudalistic societies, and as such, were originally designed to include the vast majority of disenfranchised, common people.[93] However, she also notes, as Susan Okin has done, that such contracts tend to neglect the particular circumstances of women, in that the traditional realm of unpaid women's work ─ caring for children and household ─ is not recognised as residing within the realm of justice. Nor is the family itself recognised as the subject of justice but rather as a private realm separate to the public.[94] These constitute areas of classic liberalism that Nussbaum sees as being in need of critique and revision, however her main focus in *Frontiers of Justice* are the specific exclusions that result from some of liberal humanism's "most traditional starting points;"[95] these exclusions being disability, nationality and species membership.

Nussbaum identifies the grounds for such exclusion to be the way in which social contract theorists conflate the makers of the social contract ─ those who decide the social principles ─ with those who benefit from it; those for whom are they designed.[96] The problem with such a conflation, as she points out, is that the ideal contracting group – that is, the representative citizens of such societies – are uniformly imagined as rational, materially productive and self

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[93] Nussbaum, *Frontiers of Justice*, p. 221.
[94] Ibid., pp. 105-106, p. 405.
[95] Ibid., pp. 220-221
[96] Ibid., p. 16.

interested adults who are "free, equal and independent;"[97] who, moreover,

decide on social principles to their "mutual advantage."[98] This effectively

excludes all those who are not party to the contract making process from

becoming direct beneficiaries of the social contract itself; those who are neither

rational nor materially productive, including mentally and physically impaired

humans and animals. A further limitation is that such contracts are conceived as

being made by an independent nation-state or society, which neglects to address

relationships and issues of justice that inevitably arise *between* nations and

states.[99]

It is important to note here that Nussbaum is not trying to replace social contract

theories, as she herself stresses,[100] rather she is seeking to extend such theories

by expanding the scope of those who benefit from social contracts to include

those traditionally excluded from its benefits; the "for whom" social contracts

are made, so to speak.[101] Nussbaum seeks to do this by applying a modified

version of a "capabilities" approach to the areas of exclusion in question; an

approach she first developed in her book *Women and Human Development*,

building upon the work of economist Amartya Sen.[102] Nussbaum is also careful

to stress that the capability approach – basically a list of 10 conditions seen

necessary for human flourishing – is a political theory, rather than a

"comprehensive moral doctrine,"[103] and that she specifically avoids giving any

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[97] Ibid., p. 25.
[98] Ibid., p. 34.
[99] Ibid., pp. 18-19.
[100] Ibid., p. 69 and p. 94.
[101] Ibid., p. 17.
[102] See Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2001).
[103] Nussbaum, *Frontiers of Justice*, p. 155.

metaphysical justification for her theory on the grounds that it might limit its use

by peoples of differing religious or cultural traditions.[104] So while the capability

approach is intended to be "fully universal" (as opposed to relativistic) and can

be seen as "one species of a human rights approach," it is also intended to be

broad enough to still include "respect for pluralism."[105] However, the grounds

upon which such capabilities are based are *intuitive* notions, which, as she states,

she shares with Rawls;[106] these being intuitive notions of "human dignity" and

"the inviolability of the person,"[107] including the concept that each individual is

to be "treated as an end."[108]

Although Nussbaum wants to specifically avoid metaphysical justifications for

her assumptions regarding inviolable worth and dignity, such assumptions act as

a crucial basis to her critique of aggregate utilitarianism and her justification for

not only cross-cultural respect, but also in terms of respect for the disabled and

animals.[109] Moreover, as Nussbaum's list of capabilities is directly tied to her

concept of human dignity ("we begin with a conception of the dignity of the

human being, and of a life that is worthy of that dignity"[110]), such claims

provide the foundation for her entire argument. Yet despite such reliance on an

intuitive approach, Nussbaum still believes that "the process, and the list, can

gather broad cross-cultural agreement."[111] However, leaving such a core idea

regarding the inviolable nature of worth unjustified leaves Nussbaum's theory

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[104] Ibid., p. 79.
[105] Ibid., p. 78.
[106] Ibid., p. 58.
[107] Ibid., p. 80.
[108] Ibid., p. 78.
[109] Ibid., p. 80.
[110] Ibid., p. 74.
[111] Ibid., p. 78.

particularly vulnerable to critique, for, as we saw in the previous chapter, it is

precisely the concept of the inviolability of human dignity that is currently under

fire from utilitarian theories, and this precisely because it is seen as being

unsupported by any comprehensive arguments. Moreover, Nussbaum's

Rawlsian intuitions can easily be accused of being inherently western in their

conceptualisation; indeed, Nussbaum herself explicitly links such intuitions to

the political practices of liberal societies.[112] But while Rawls recognises that

such intuitions can be seen as cultural in origin,[113] and therefore limited in

application, arguing ultimately for the internal sovereignty of nations in *The

Law of Peoples*,[114] Nussbaum takes issue with Rawls on this very point; arguing

to the contrary that these particular intuitions can nonetheless provide a basis for

international cross cultural agreement.[115]

While we might agree with Nussbaum that a basis for cross-cultural agreement

is desperately needed, Nussbaum nevertheless does not take into account the

critiques made by East-Asian and African scholars within current human rights

discourse; despite the fact that she regards her capability theory as a species of

human rights theory. That is, the critique that the liberal-humanist assumptions

underpinning human rights theory neglect communal and non-Western

conceptions of human being, subsequently leaving the very notion of human

rights open to charges of relativism and social and political contingency (as

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[112] "I identify a list of *central human capabilities*, arguing that all of them are implicit in the idea of a life worthy of human dignity. The capabilities are then presented as the source of political principles for a liberal pluralistic society; they are set in the context of a type of political liberalism that makes them specifically political goals and present them in a manner free of any metaphysical grounding." Ibid., p. 70. Nussbaum's italics.
[113] "But not only are our everyday ideas of justice influenced by our own situation, they are strongly colored by custom and current expectations." Rawls, *A Theory of Justice*, p.35.
[114] See John Rawls, *The Law of Peoples with "The Idea of Public Reason Revisited"* (Cambridge, Mass.: Harvard University Press, 2000).
[115] See Nussbaum, *Frontiers of Justice*, pp. 224-270.

discussed earlier in Chapter Three). So while there is much that is valuable in Nussbaum's project, she makes the mistake of assuming that her grounds for universal respect – the inviolability of human dignity and worth – do not require metaphysical or ontological justification. Indeed, as will be argued below, it is the very lack of such justification that makes her account less amenable to universalisation. Moreover, while Nussbaum may claim that her arguments are free from metaphysical grounding, it does not then necessarily follow that they actually are free of either metaphysical assumptions or culturally specific intuitions. Her main contention that our relationship to animals can be justified on grounds of justice rather than compassion or benevolence will also be questioned, but before moving on to the issue of species membership we shall first discuss the application of her capability approach to disability and nationhood, respectively.

Disability

Nussbaum's definition of disability includes both physical and mental (or cognitive) impairments and identifies the ground for their traditional exclusion from social contract theories as being due to three foundational liberal concepts; (1) the Kantian conception of moral personhood as based on the capability of rationality alone; (2) what Nussbaum identifies as the "Humean account of the Circumstances of Justice,"[116] which is the presumption of rough equality in capabilities between the contracting parties; and (3) the assumption that

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[116] Ibid., p. 220.

contracts of social cooperation are made for the purpose of mutual advantage.[117]

Such conditions effectively exclude all societal members not able to contribute

materially to society, such as the physically impaired and dependant (as opposed

to the liberal ideal of "independent" and self -supporting), but also all non-

rational, or mentally impaired, members of such societies. In order to include

such people as full and equal citizens Nussbaum proposes a different conception

of political personhood, one that is neither dependant on rationality nor the

possibility of equal material productivity. To this end Nussbaum suggests what

she calls an Aristotelian, as opposed to a Kantian, conception of human dignity;

Kant's conception of dignity being of course linked directly to rationality, as

noted earlier. Instead, she focuses on Aristotles' conception of the human as a

"political and social animal,"[118] adding Marx's definition of the human as a

being needful and expressive of many different activities.[119] While not denying

that we are rational animals, she suggests instead that *all* animals are rational

and that human rationality is merely "garden-variety;" that is, of being only one

aspect – "one way animals have of functioning"[120] – as opposed to being our

defining characteristic. Nussbaum sees our need for sociality as being "equally

fundamental and equally pervasive" as our animal rationality, and further, that

animality is actually inseparable from rationality.[121] Crucially, Nussbaum views

all animals as having dignity and specifically emphasises that the "animal" part

of our nature – our temporality, mortality, bodily needs and dependencies on

one another – are an essential aspect of *both* our rationality and our dignity.[122]

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[117] Ibid., p. 220.
[118] Ibid., p. 158
[119] Ibid., p. 159.
[120] Ibid., p. 159.
[121] Ibid., p. 160.
[122] Ibid., p. 158-160.

However, while Nussbaum suggests that there are "many different types of animal dignity, all of which deserve respect and even awe,"[123] it is difficult, given her broad definition and emphasis on *human animality*, to discern just what she means by her expression "truly human functioning."[124] For, given such a definition, it becomes difficult to see how animals might possess a "different" type of dignity to humans, or even seen to be "different" in any substantial way from animals at all. Moreover, as stated earlier, Nussbaum gives no justification whatsoever for the assumption of inviolable human dignity, which defines humans as ends in themselves rather than means to another's ends.[125] She reiterates again that she is "explicitly nonmetaphysical" in order to allow for "overlapping consensus" in a pluralistic society,[126] but she also gives no justification as to *why* she defines human bodily needs, among other things, as suddenly possessing "dignity." It is one thing to say that human beings need to be treated with dignity when they are experiencing need in regard to the mortal nature of their bodily functions (for example, when they are dying), but it is a very different thing altogether to state, as Nussbaum does, that *because* human beings have bodily needs, they *therefore* possess dignity. Nussbaum is attempting to change the very basis for human dignity, but without giving us reasons as to why having bodily needs are to be necessarily equated with having dignity. And reasons are important, particularly given the fact that her whole argument is meant to replace not only Kant's rational basis for dignity, but in effect the very definition of human being as distinct from animal being.

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[123] Ibid., p. 159.
[124] Nussbaum, *Frontiers of Justice*, pp. 159-160.
[125] Ibid., p. 221.
[126] Ibid., p. 182.

Moreover, as noted above, Nussbaum needs to answer the current utilitarian challenges to the concept of dignity, particularly as she further claims that we can similarly intuitively know that animals also have dignity. In short, we are to simply accept human dignity as an intuitive notion and then, it seems, apply it to all areas of human life – including bodily needs. Further, we are to – as equally simply – apply it to all animal life. Nussbaum states that, "it is by design that the capabilities list starts from an intuitive idea, that of human dignity, that is already basic to constitutional framing in many nations of the world;"[127] claiming further, in a footnote to this passage, that such a general, international understanding is merely "indeterminate" between a Kantian conception and her own. However, Nussbaum's suggestion of mere indeterminacy is highly misleading, given the vast intuitive (and, we could argue, metaphysical) leap that is required in order to admit that both animals and human bodily needs are inherently dignified, as these are certainly not common interpretations of the concept of dignity. Nussbaum here might point out that she is speaking only of nations with "constitutional framing," but in that case they can hardly be called "many," given that Nussbaum herself only refers to three such nations throughout her book; the US, India and South Africa.

Nussbaum also insists that her capabilities list is merely a way of "fleshing out" the intuitive ideas of respect and dignity;[128] to "render politically concrete" what a life might look like when conceived "in accordance with human dignity."[129] But as some of the capabilities on the list include freedom of speech, the

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[127] Ibid., p. 155.
[128] Ibid., p. 174.
[129] Ibid., p. 177.

freedom to vote, "liberty of conscience" and freedom of religious association, it is difficult to see how such deeply American interpretations of human dignity can be justified as cross cultural intuitive notions.[130] Moreover, being treated with respect and as a "dignified being whose worth is equal to that of others,"[131] are also listed as part of the capabilities list themselves, which makes it difficult to see how they can be seen simply as a "fleshing out" of their own foundational assumptions.

As Nussbaum herself admits, such a list becomes in a sense prescriptive, or as Nussbaum puts it, in effect an "ethically evaluative" description of "human nature;"[132] implying that if one is not mentally or physically able to live out the capabilities, one therefore cannot be called human. However, the whole point of Nussbaum's attempt at re-defining dignity and insisting on capabilities is to include those excluded by more restrictive definitions; that is, the disabled, animals and other human communities. In this sense, Nussbaum does make an admirable attempt to argue for the inclusion of the severely cognitively impaired within her definition of human, such as Eva Kittay's daughter, Sesha, whom she actually uses as an example. Nussbaum suggests that Sesha's form of life is human rather than another "form of life,"[133] in that her capabilities do "link her to the human community, rather than some other;" arguing that Sesha can and does participate in relationships with other humans (this being covered under the rubric of "emotions" on the capabilities list[134]). Consequently, Nussbaum goes on to suggest that, "the fact that she is the child of human parents matters; her

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[130] Ibid., pp. 76-78.
[131] Ibid., p. 77.
[132] Ibid., p. 181.
[133] Ibid., p. 187.
[134] Ibid., pp. 76-77.

life is bound up in a network of human relations, and she is able to participate actively in many of these relations, albeit not all."[135]

This is in many ways an important attempt at inclusion, but Nussbaum then goes on to claim, based on such a definition, that there are some beings – such as anencephalic infant humans and humans in a vegetative state from certain forms of coma[136] – of whom it would be merely "sentiment" to call human.[137] This would go against the fact that we actually do not call such beings, even dead human beings who have lost all capacity for relations, by another name; dead human remains are still *human* remains, rather than biological remains or simply waste. This is evidenced by the way in which human remains are almost uniformly treated with a special regard across the human world, as shown through our various funeral ceremonies. As mentioned in the previous chapter, part of the practice of denying the humanity of the indigenous peoples of Australia – along with other indigenous peoples of the world – was to classify them and their remains as scientific specimens, which would then act as a justification for the removal of such remains from burial sites and as a further justification of their inhumane treatment of such people. The desecration of human graves or remains are widely seen as a mark of disrespect – and sometimes specifically undertaken as a sign of that disrespect – while the importance of the retrieval of desecrated remains also speaks of the cross-cultural nature of such respect; as shown by the claim for, and subsequent return of, Trugannani's remains to her people.[138] Part of this respect is manifested by

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[135] Ibid., p. 188.
[136] Ibid., p. 181.
[137] Ibid., p. 187.
[138] As noted above. See *The First Australians*, Episode 2, "Her Will to Survive."

the fact that, as Cora Diamond points out, "[w]e do not eat our dead;" on the grounds that our dead have special significance to us as humans.[139] For when we do eat the remains of humans, as in the case of cannibalism, it is precisely *because* human flesh is regarded as having a special significance that it is eaten.[140] In other words, it is not undertaken for nutritional purposes, say, as a viable choice between pork or chicken, or if so, it is usually only undertaken in cases of extreme need; that is, as a choice between life and death.

So absence of life, or a greatly reduced life, does not seem to change the fact that such bodies are still regarded as human, and this cannot simply be dismissed as "sentiment," but rather seems a deeply held cross-cultural belief. How we treat our dead or those close to death, seems as much a part of "truly human functioning" as we how we treat our living. Here Kittay's discussion on how a woman might feel differently knowing that she was carrying an anencephalic child as opposed to finding out that she had a tumour might also help illustrate this difference;[141] it has to do with seeing the child as human, rather than as a collection of cells, and is not sentimental in precisely the same way in which seeing Sesha as human is not sentimental. Not because she is capable of being in a relationship with humans – for frankly, domestic animals also have the same capabilities ─ but because she belongs to a human community, and , as a human, is born into a structure of communal being and moral significance that differs to animal being, as shall be explained more thoroughly in the next chapter.

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[139] Cora Diamond, "Eating Meat and Eating People," p. 321.
[140] See Peggy Reeves Sunday, *Divine Hunger: Cannibalism as a Cultural System* (Cambridge: Cambridge University Press, 1986, 1989, 1995).
[141] See Kittay, "At the Margins of Moral Personhood," p. 110.

So while Nussbaum's insistence on conceiving human relations as "non-symmetrical" – as opposed to the social contract assumption of mutual advantage – is far more inclusive and universal in its scope that any of the models of moral consideration hitherto discussed, her insistence that "non-symmetrical relations can still contain reciprocity and truly human functioning,"[142] does not fully reflect human practice, in that some human relations do not contain reciprocity and yet can still be defined as human; as evidenced by our relation to our dead and those who have extremely limited capabilities, such as those who are comatose. Moreover, there are further difficulties concerning Nussbaum's justifications for such inclusion, as shall be discussed below.

In order to justify the inclusion of non-symmetrical relations Nussbaum suggests that benevolence, the "love of justice for its own sake"[143] and the inter-dependant nature of human relations be acknowledged as some of the reasons as to why "people get together to form a society;"[144] as opposed to economic advantage alone, as suggested by classic social contract theories. In arguing for "moralized compassion" and "a love of justice for itself" as a basis for social cooperation,[145] Nussbaum is specifically challenging what she describes as a Humean description of the social circumstances that give rise to justice, which are also held by Rawls; these being characterised by the assumption of "rough

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[142] Nussbaum, *Frontiers of Justice*, p. 160.
[143] Ibid., p. 157
[144] Ibid., pp. 222-223.
[145] "(The capabilities approach)…envisages human beings as cooperating out of a wide range of motives, including the love of justice for itself, and prominently including a moralized compassion for those who have less than they need to lead decent and dignified lives." Ibid., pp. 156-157.

equality" existing between the contracting parties. Again, Nussbaum's critique

of such a position is absolutely correct, but, as noted earlier, benevolence is an

insecure foundation for political principles. While Nussbaum herself is quite

aware of this charge,[146] this does not prevent her from still using the assumption

of benevolence as a support for her arguments for the inclusion of the disabled

and other nations within the realm of moral consideration. Similarly,

Nussbaum's appeal to the 'love of justice for its own sake' is insecurely based

on an altruistic sentiment that is difficult to identify as universal; indeed,

Nussbaum herself identifies it as a characteristic that has grown in "recent

years" in "Western societies," which only tends to affirm its contingent

nature.[147] The contingency of such an altruistic sentiment is also emphasised by

Nussbaum's reliance on education as a tool for increasing benevolence; "[r]eal

people often attend to the needs of others in a way that is narrow or arbitrarily

uneven. But education can do a great deal to make these ties deeper, more

pervasive, and more even handed"[148] (and here Nussbaum seems to promoting a

schema of teleological advancement that bears a strong resemblance to Mill's,

as seen in Chapter One).

While we might well want to say that the concept of justice is a condition of our

ethical understanding as humans, forming part of the basic structure of human

society in that we demand, expect, need and want justice to be done (as shall be

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[146] "There is no reason to think that such a society would be unstable." Ibid., p. 157. See also pp. 408-415.

[147] "I would argue, indeed, that the changes we have seen in recent years toward the greater social inclusion of people with impairments give us strong evidence that the decency of human beings does aim at justice for its own sake, frequently enough to make a large political difference. If this is so, even in Western societies, dominated as they are by typically economic motives and considerations of efficiency, how much more might we expect of human beings in a society that truly supported the human capabilities of all citizens, and devised a system of education to reproduce these values over time." Ibid., pp. 157-158.

[148] Ibid., p. 157.

argued in the final chapter), this is quite a different notion to Nussbaum's

conception of idealistic altruism, as Nussbaum herself distinguishes the "love of

justice" from the "need" for justice.[149] For, while Nussbaum recognises such a

need and emphasises the intertwined nature of human life, it is ultimately the

love of justice for its own sake that bears the burden of providing justification

for the moral consideration of unequal others.[150] While in one sense the pursuit

of justice can indeed be seen as being done for its own sake – in that it does not

necessarily have to be seen as serving any other end, purpose or outcome – this

is very different to loving something *altruistically* for its own sake. Nussbaum

also attempts to extend justice to our relations with animals, but before

elaborating on this further, we will first discuss Nussbaum's treatment of the

problem of global relations within the context of the social contract.

Global Relations and Nationality

Nussbaum first rightly establishes the urgent need to address global inequalities

by both stressing the huge disparity existing between developing and developed

nations and the extent to which all nations of the world are inextricably linked to

each other due to the current nature of global relations. These links include the

workings of a global economic market and the existence of various

multinational and international corporations, agencies, treaties and

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[149] Ibid., p. 157.
[150] "[H]uman beings as held together by many altruistic ties as well as by ties of mutual advantage…. The good of others is not just a constraint on this person's pursuit of her own good; it is a part of her good…. She cannot imagine living well without shared ends and a shared life. Living with and toward others, with both benevolence and justice, is part of the shared public conception of the person that all affirm for political purposes." Ibid., p. 158.

organisations.[151] In short, no nation can be said to exist independently of other nations, making the need to address the relations between different nations paramount – although to Nussbaum's considerable list it is important to add that the extensive international trafficking of human beings also calls for international moral consideration and preventative action.

As with disabilities, Nussbaum points to the deficiencies within social contract theories for dealing with relations between nation-states. These are (1) that the social contract is itself conceived as taking place within a nation-state, rather than between nation-states; (2) the fact that contracting parties are seen as roughly equal in status in regards to power and resources – which is clearly not the case between the richer and poorer nations of the world; and (3) the concept of cooperating for mutual advantage, which again, would be impossible given present inequalities. As Nussbaum notes, Rawls does attempt to deal with inter-nation contracts in *The Law of Peoples* but, among other things, he restricts such to relations of war and peace rather than the complex economic relations now extant.[152] Nussbaum has other criticisms of Rawls but as some of these are not directly relevant to the current discussion, we will leave them aside; along with her general discussion of the finer points of other social contract attempts at dealing with inter-nation relations, as our main concern here is with Nussbaum's own attempts at solutions to the above-named problems.

Along with her critique of social contract theories in this area Nussbaum also rightly points out the inadequacies of current economic utilitarian approaches to

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[151] Ibid., p. 225.
[152] See John Rawls, *The Law of Peoples with "The Idea of Public Reason Revisited"* (Cambridge, Massachusetts.: Harvard University Press, 2000).

the measurement of a nations' overall economic well-being. These are normally measured in aggregate terms such as the Gross National Product, ignoring discrepancies in the actual distribution of wealth and the individual well-being and opportunities of its citizens.[153] Nussbaum is admirably sensitive to the need to address inequalities *within* nations – such as the position of women – which is why she rejects Rawls' approach in the *Law of Peoples*. In this book Rawls favours maintaining the status quo within nations and contracts are envisioned as being drawn up between 'representatives' of nations alone, which tends to obscure existing inequalities within the nation-states themselves. It is here that she sees her version of the capabilities approach as providing solutions to such problems, in that it overwhelmingly emphasises the importance of individual citizens within nations as having the opportunity to realise the 10 basic capabilities Nussbaum identifies on her list. Leaving aside her ideas regarding the autonomy of nations and the possibility of such capability testing and implementation, we will instead be focusing our discussion on Nussbaum's highly liberal conception of the individual and her insistence on a lack of metaphysical foundation for her theory, as these directly affect her claim that she is providing a broad basis for overlapping consensus between plural nations.

On the one hand, Nussbaum offers a very good critique of utilitarianism throughout her book, both in regards to its neglect of the individual in its commitment to calculating the aggregate sum of overall utility and also in regards to preference utilitarianism. It is in this context that Nussbaum points out the danger of "adaptive preferences," whereby the marginalised in society

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[153] Nussbaum, *Frontiers of Justice*, pp. 225-226.

lower or adapt their expectations and preferences to the limited options available to them.[154] This is a point similar to one made above in regards to Darwall's conception of communal moral consensus over norms, and indeed, we could extend such a critique to encompass most contract-style consensus theories, including Jürgen Habermas' discourse ethics, which Nancy Fraser has critiqued for its lack of attention to unequal power relations within society; specifically in regards to the position of women.[155] It is in this sense that Nussbaum contests Rawls' reference to groups rather than individuals in *Law of Peoples*, which he justifies by stating that not all societies adhere to "Western individualism."[156] Nussbaum fiercely contests this claim, insisting that "there is nothing particularly Western about the idea that each and every person has basic rights," but, as noted earlier, nevertheless only cites India and South Africa as examples of other societies (apart from the US), with a similar conception of constitutional rights.[157]

Nussbaum calls, moreover, in a footnote to her discussion, for a "moratorium" on the word "individualism" due to its "multiple ambiguities;" preferring instead to see the term used to refer to the concept that each person be regarded "as an end" – a concept that she thinks is a "good view" to have and which she still insists has not just been held by "Western thinkers" alone.[158] Nussbaum repeatedly insists throughout her book that respect for the individual is foundational to her list of capabilities, but that the list is nonetheless broad and basic enough to provide overlapping consensus across a plurality of cultures.

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[154] Ibid., p. 73, p. 282, p. 341, pp. 343-344.
[155] As cited earlier, see Fraser, "What's Critical about Critical Theory?"
[156] As cited by Nussbaum, *Frontiers of Justice*, p. 254.
[157] Ibid., p. 254.
[158] Ibid., p. 441.

Likening it to a species of human rights, she also argues that it should receive the same broad acceptance given to human rights, if not more, given that she does not try to justify her theory with foundational claims, in contrast to other claims based on sentience or rationality. However, she also admits that her hopes for overlapping consensus are based on the hopes of *future* consensus, brought about over time,[159] and that the principles inherent in her capabilities list – which of course includes an absolute focus on the individual – are actually principles characteristic of a "liberal constitutional democracy" and "political liberalism."[160] Despite such a patently liberal political foundation, she still insists that her capabilities theory can attain wide acceptance, as it apparently, as with the Universal Declaration of Human Rights, "allows metaphysical matters to remain on the outside of the political." She therefore sees "no barrier of principle or argument against pursuing the central capabilities as goals for every nation, and also for international society."[161]

However, Nussbaum simply does not give enough evidence that her views would indeed meet with such wide acceptance. As noted earlier, Nussbaum does not acknowledge the heavy critique that the predominantly western liberalist assumptions implicit in the very notion of human rights has received in recent years, particularly from Asian and African scholars who contest such an atomistic concept of the individual and argue instead for the acknowledgement of persons as members of communities rather than individuals.[162] Of course

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[159] Ibid., p. 304.
[160] Ibid., p. 304.
[161] Ibid., p. 305.
[162] See, as cited earlier, Bauer and Bell, *The East Asian Challenge for Human Rights*; Gyekye, *Tradition and Modernity*, and Rodrigues, "Recognising Non-Western Thought in Human Rights Theory."

even communitarian scholars within the western tradition, such as Charles

Taylor, have challenged this emphasis, and to an extent Nussbaum might be

seen to answer such critique (although she never explicitly states that she is

doing so), by the way in which she conceptualises the human in Aristotelian

terms as a social and political animal, even insisting that

> The good of others is not just a constraint on this person's
> pursuit of her own good; it is a part of her good…. She
> cannot imagine living well without shared ends and a shared
> life. Living with and toward others, with both benevolence
> and justice, is part of the shared public conception of the
> person that all affirm for political purposes.[163]

Nussbaum intends for such a description to act as justification for moral

consideration towards others, but it does not sit easily with her emphasis on the

absolute priority of the individual over the communal in terms of discussions of

national sovereignty. It could just as easily be argued that the good of others – of

having shared ends and a shared life – might also be regarded as an argument for

the prioritisation of the community over the individual. Nussbaum needs to do

more work here in order to explain this apparent contradiction between the good

of the individual and the good of the community. She might answer that she is

actually only arguing in terms of the shared ends of politically liberal and

altruistic societies, but this would again further restrict the cross-cultural appeal

of her theory and beg the question as to justifications regarding the desirability

of liberal humanist values and societies in general. Such emphasis on the

individual, moreover, makes the conceptualisation of group rights, such as

Indigenous Australian calls for group recognition and land rights, extremely

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[163] Nussbaum, *Frontiers of Justice*, p. 158.

difficult. Further, Nussbaum does not acknowledge the threat to human rights discourse posed by postmodernist and posthumanist theories (as discussed above in earlier chapters), which have also contributed to what has been described as a 'crises' in human rights.[164] The very notion of human dignity, the foundational concept for both Nussbaum and the Universal Declaration, has itself also come under increasing attack by utilitarians, as noted previously. In short, the concept of human rights is currently being undermined precisely *because* of its western and individualistic orientation *and* due to its lack of metaphysical or ontological grounds upon which to justify its pivotal concept; the existence and inviolability of human dignity. It is in this sense that a very real "barrier of principle or argument" does indeed exist "against pursuing the central capabilities as goals for every nation, and also for international society;" to quote Nussbaum's own words, as cited above.

While we might agree with Nussbaum that the concept of regarding each person as an end in themselves is "good," to say the very least, given the present controversy over the concept, more explanation and consideration needs to be given to both the communal nature of human being, as suggested by Asian and African scholars, and to providing an ontological basis for the concept of human being as an end in itself; both of which will be explored in the final chapter. Furthermore, just as Anthony Langlois has suggested, although an ontological or metaphysical concept of human being is often explicitly denied within human rights discourse, it is still often implicitly assumed, and such a critique can certainly be made of Nussbaum's own work within *Frontiers of Justice.* For,

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[164] See, as cited earlier, Souilliac, *Human Rights in Crisis.*

despite her many claims to the contrary, Nussbaum does indeed make metaphysical assumptions about and actual arguments for a particular conception of human being, as shall be discussed below.

Nussbaum, as we saw, seeks to create a conception of human being that is Aristotelian in origin, in that it draws on his description of the human as the political animal; Nussbaum emphasising, quite literally, humanity as animality and sociability ─ with our dignity deriving from both.[165] As also noted earlier, Nussbaum's assumptions regarding dignity are not argued but rather stated, being seen as intuitive in nature. In regards to international relations, Nussbaum continues this emphasis, now citing the natural law theories of Grotius (and the Stoics), who emphasised the inherent "dignity and sociability of the human being;"[166] summing up her approach as "a version of the old natural law approach: the requirements at the world level are moral requirements, not captured fully in any set of coercive political structures."[167] However, Nussbaum's concept of the human here as inherently social clashes with her prioritisation of the individual – just as her insistence on natural law clashes with her emphasis on the role choice and education play in why we would want to *choose* a society based on a capabilities approach.[168] Nussbaum states that the advantage that her capabilities approach has over other approaches is that it is not based on the requirements of sentience or rationality, nor even on capabilities (although, as noted above, she does exclude comatose and encephalitic infants), but rather on membership of the human race alone; one

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[165] Ibid., pp. 159-160.
[166] Ibid., p. 230.
[167] Ibid., p. 315.
[168] Ibid., pp. 222-223.

need simply to be born into the human race.[169] Nevertheless, her description of

the human race comes fully loaded with the assumption of inviolable dignity,

which is why she actually describes her conception of rights or entitlements as

prepolitical.[170] These entitlements are ultimately based on what Nussbaum

declares to be "three central facts about human beings;"[171] claiming positively

not only that humans have dignity, but that we respect the dignity of others as

part of our "moral intelligence;" moral intelligence being Nussbaum's

interpretation of Grotius' statements relating to human intelligence:[172]

> The three central facts about human beings that this moral
> intelligence apprehends are the dignity of the human being as
> an ethical being, a dignity that is fully equal no matter where
> humans are placed; human sociability, which means that part
> of a life with human dignity is a common life with others
> organised so as to respect that equal dignity; and the multiple
> fact of human need, which suggest that this common life
> must do something for us all, fulfilling needs up to a point at
> which human dignity is not undermined by hunger, or violent
> assault, or unequal treatment in the political realm.[173]

From the above quote it is clear that Nussbaum does actually assume much in

terms of her conception of human being, not least that it is apparently a "fact"

that we are equal (Peter Singer specifically critiques Nussbaum on this point,

stating that: "Equality is a moral idea, not an assertion of fact"[174]); and that the

very presence of human need suggests that we *should* do something to address

that need. So while there is much that is valuable in Nussbaum's account – such

as the concept that we are ethical beings, that we are morally equal, and that we

[169] Ibid., p. 285.
[170] Ibid., p. 285.
[171] Ibid., p. 274.
[172] Ibid., p. 274.
[173] Ibid., p. 274.
[174] See Peter Singer, "A Response to Martha Nussbaum" *Peter Singer* www.utilitarian.net/singer
(Nov 13, 2002) http://www.utilitarian.net/singer/by/20021113.htm Accessed 12/04/2008.

share a common life – her great weakness is her lack of justification for such claims. The only response that Nussbaum might be seen to indirectly make of the current critique regarding the nature of human dignity (at least in terms of the animal liberationist critique), is simply to extend such dignity – and therefore consideration – to animals, which she does in her the last sections of her book. So given the by no means uncontroversial nature of the claim to dignity, which provides the basis for Nussbaum's claims as to *why* we need to respect others, Nussbaum's alternative is hardly less contestable than the suggestions of sentience and rationality, and can actually be seen to be even less justified by argument, given that her claims rest on culturally-relative intuitive statements alone.

Further, in arguing for the extension of moral consideration to animals Nussbaum endorses an evolutionary reading of human origins; going so far as to actively discredit an understanding of human moral nature as divinely given.[175] Such a statement *against* a metaphysical understanding of human being can be seen as meta-ethical and metaphysical in itself, and Nussbaum's foundational assumption that human beings *are* animals, *tout court*, based on such an evolutionary worldview, is likely to further restrict the possibility of Nussbaum's theories achieving overlapping consensus amongst diverse nations and communities. As one example, within Christianity, while the Catholic Church has recently been more accepting of scientific accounts of evolution, humans are still viewed as unique beings within creation who, by virtue of the spiritual nature given to them by God, have a distinct relationship to God that is

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[175] Ibid., p. 363.

not experienced by animals.[176] As the basis for Nussbaum's insistence on respect for animals is grounded on the claim that humans are the *same* as animals, it is difficult to see how such differing accounts can be reconciled, or indeed how Nussbaum herself might respect such a differing view. And certainly respect is needed; even Habermas, in his famous debate with Joseph Ratzinger (now Pope Bendedict XVI), has emphasised the need for the respecting the non-secular beliefs of faith communities as an essential part of cross-cultural relations.[177] In short, there is a need for theories of moral consideration that do not actively exclude – but do not necessarily rely on – the possibility of the divine; as such theories would be more inclusive and reflective of the actual diversity of human belief systems.

Finally, Nussbaum suggests that a change in the objective or goal of international relations is needed, that "[h]uman development rather than economic development" be emphasised. Such an admirable sentiment relies, however, both on her particular conception of the person, as discussed above, and on the feeling of compassion; which itself is to be directed towards the (unproved) assumption of dignity; "love for the human dignity in all people."[178] So while Nussbaum makes a good case for the inter-related nature of global

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[176] As affirmed by Pope Benedict XIV, speaking at a Vatican sponsored plenary session on "Scientific Insights Into the Evolution of the Universe and of Life" in 2008; "every spiritual soul is created immediately by God" and "science has helped deepen the church's understanding that humanity has a unique and distinctive place in the cosmos…. Only the person, a spiritual being, has a hunger and capacity for God." Carol Getz, "Pope Benedict says 'first being' created the world intentionally" *Catholic News* The Church, Evolution and Creation *American Catholic.org* October 31, 2008, http://www.americancatholic.org/News/newstoprint/newsreport.aspx?id=221 Accessed 28/06/2009.
[177] See Jürgen Habermas and Joseph Ratzinger, *The Dialectics of Secularisation: on Reason and Religion*, trans. Brian McNiell, C.R.V. (San Francisco: Ignatius Press, 2006). I am grateful to Dr. Ingo Farin for alerting me to this text.
[178] Nussbaum, *Frontiers of Justice*, p. 324.

relations, less well justified is exactly *why* richer nations should help the poorer, rather than just exploit them; as these rely ultimately on the appeal to dignity and compassion. Nussbaum does make the argument that better educated workers make better workers, but of course better educated workers will inevitably demand better conditions and thus raise production costs and lower profits, so the richer nations really do need compassion and fellow feeling if they are to be willing to give up such profits. Fellow feeling and love for our fellow human are, however, are so obviously lacking in current (and past) global relations that compassion ultimately makes for an unstable foundation for respect; more of which will be discussed below in relation to Nussbaum's arguments for the equal moral consideration of animals.

Animals

Nussbaum's arguments for the extension of capabilities to include justice for animals stretch even further her claims that she provides a broad, non-metaphysical base for overlapping consensus. She begins with and endorses a citation from the Kerala High Court in India, which ends with the question/claim, "…*If* humans are entitled to fundamental rights, why not animals?"[179] The initial objection to such a suggestion is of course that Nussbaum has not successfully established that humans are entitled fundamental rights, let alone animals.

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[179] Ibid., p. 325, my italics.

Nussbaum contests the traditional exclusion of animals from social contract theories, which see "such obligations as we might have either as derivative from obligations to humans or as simply different in kind, as duties of charity and not of justice."[180] Animals have been excluded as "subjects of justice," she suggests, because they, as with the mentally disabled, cannot be parties to, or framers of, the social contract.[181] Nussbaum insists that "the extent of intelligence of many nonhuman animals" has not been traditionally recognised,[182] however this insistence seems more to prove that animals can also been seen as worthy subjects or *recipients* of justice, rather than as proof that they can be framers of contracts themselves; which Nussbaum rightly recognises that they cannot become. Nussbaum presents a clear argument as to why, even if animals could contract with humans, there could be no incentive under the schema of mutual advantage; this being directly due to the "*asymmetry of power between humans and nonhumans*."[183] For example, "they are certainly not equals of humans in power and resources,"[184] and further, should any animal attempt to threaten us in any way, "we can just kill them, as we do."[185]

Such arguments are meant to prove the inadequacy of contract theories in being able to "represent the interests of animals," but Nussbaum neglects to apply such insights to her own attempt to apply capabilities to animals; for by her own definition, our relationship to animals is inherently unequal and therefore can hardly be said to be within the realm of justice. Nussbaum does admit later that

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180 Ibid., p. 327.
181 Ibid., p. 335.
182 Ibid., p. 327.
183 Ibid., p. 334, my italics.
184 Ibid., p. 335.
185 Ibid., p. 334.

her view is an anthropomorphic point of view, but attempts to avoid further discussion by insisting that any other attempt at justification for such a view would be metaphysical and therefore beyond the scope of her argument.[186] Whether any such justification is actually possible is doubtful, given that any point of view other than a human point of view is impossible for us to entertain. We can and do extend justice to mentally disabled humans because they *are* human; that is, we are still in a situation where humans are making laws for other humans, rather than humans imposing laws on other animals. But Nussbaum actually argues for the imposition of human laws on animals; stating that, wherever possible, predatory animals *should* be physically prevented from eating other animals.[187] However, not only are we unequal in terms of the fact that we can simply kill off animals should we so wish to, we are also fundamentally unequal in terms of accountability; an issue that Darwall rightly acknowledges but which Nussbaum does not consider at all. It is in this sense that we can suggest that it is fundamentally unjust to impose laws on animals and thereby make them accountable to us, in that they never will be in the position where they can make *us* accountable to *them*. For, as Nussbaum herself admits, if we don't like what they do, we can simply kill them. In human relations with animals, it is only humans who call the shots, so to speak.

Nussbaum does suggest that we can attempt to imaginatively sympathise[188] or put ourselves into the place of animals, but it is here that her argument backfires. For, while she admits that there is the "risk of getting things wrong through

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[186] Ibid., p. 389.
[187] Ibid., p. 379.
[188] Ibid., p. 355.

anthropomorphic projections,"[189] she also claims that this risk exists even with humans, and that, moreover, we cannot even put ourselves into the place of other humans without imagination. But if we can get this wrong even with humans, if other humans represent "an opaque area of mystery that even the most refined other mind can never fully penetrate" (here Nussbaum is citing Proust[190]), and, moreover, if our entire "ethical life" requires such "projection," then the entire basis for her ethical theory for humans, let alone animals, is seriously at risk. In other words, rather than strengthening her argument, Nussbaum has seriously undermined it. For this is the very criticism that posthumanist scholars have made of humanist theories, in that it is claimed that theories of universal commonality erase or ignore the distinct difference and particularity of each individual being; that indeed, other beings are utterly unknowable in their difference, as argued by Lyotard and Readings in Chapters Two and Three. This is one of the reasons that sympathetic understanding or compassion presents an extremely unstable ground on to which to justify equal respect. But of course, the main fault with posthumanist theories, as argued earlier, is that if we have no common ground at all, how then can we say anything in regard to either to harm caused or of entitlements to respect? In the case of cognitively impaired humans, as compared to animals, we can recognise that they are human and that to be human entails living in a particular human structure of being – an ethical structure of accountability, justice and value – which is common to all humans; as will be argued more fully later. It might be objected here that the cognitively disabled cannot enter into a relationship of reciprocal accountability with other humans, just as animals cannot, but if it can

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[189] Ibid., p. 354
[190] Ibid., p. 354.

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be shown that human communities practice accountability on a *communal* rather than individual basis, then individuals do not need to possess the personal ability to hold another accountable, as shall be argued in the final chapter.

Important as compassion or sympathy is to her argument, Nussbaum wants in the case of animals to raise our treatment of them into the realm of justice, as she sees compassion as too "indeterminate to capture our sense of what is wrong with the treatment of animals."[191] To this end she defines justice in terms of entitlements, "[t]he sphere of justice is the sphere of basic entitlements,"[192] in that Nussbaum wants to be able to say that we are unjust when we treat animals wrongly; both in terms of it being "wrong *of us*" but also in terms of animals having "a right, a moral entitlement, not to be treated that way. It is unfair *to them*."[193] To justify such a moral entitlement Nussbaum suggests that animals can be seen as having a "good" and that they can therefore can be seen as being "entitled to pursue that good" as "agents pursuing a flourishing existence;" an agent who is both a "subject" and an "end."[194] Nussbaum sees her theory as superior to utilitarian arguments based on sentience, in that she believes she encompasses a greater variety of species within her broad concept of flourishing.

However, it is highly doubtful that animals can actually either be seen as ends in themselves, or as agents or subjects, when it is human beings, such as Nussbaum, who decide what their 'good' and 'end' actually consists of. In short,

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[191] Ibid., p. 335.
[192] Ibid., p. 337.
[193] Ibid., p. 337, Nussbaum's italics.
[194] Ibid., p. 337.

animals cannot be agents or subjects if they have such definitions of their good and flourishing imposed upon them. And Nussbaum, as mentioned above, while admitting that there may be limits, does actually suggest that we impose a policy, wherever possible, of not painfully killing or harming on *both* domestic and wild predatory animals.[195] It is very difficult to then see how animals can still be regarded as subjects and ends, when, as Nussbaum herself states, should tigers raise any physical objection to the fact that their hunting of gazelles is being curtailed, we "can always control them." In other words, we can simply stop them from doing what they want to do and make them do that which *we* what them to do.[196] An animal *cannot be an end in itself when it is being used for someone else's end*, no matter how ethical or paternalistic that end may be (and here Nussbaum actually uses the word paternalism herself[197]). As animals cannot hold us accountable over whether they are treated as either ends or means, a relation with them based on justice is actually impossible.

In order to justify human intervention in the environment Nussbaum cites research that has apparently shown that humans are actually good for the environment; but this is again gives further evidence of the imposition of *human* values on the environment, which further undermines her claims to be respecting animals as ends in themselves.[198] On the other hand, she also advocates the imposition of more laws on humans concerning their treatment of animals, even to the extent of having the killing of butterflies for school projects

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[195] Ibid., p. 379.
[196] Ibid., p. 390.
[197] Ibid., p. 375 and p. 378.
[198] Ibid., p. 368.

banned.[199] The only limits to such moral consideration are whether some

creatures can be seen to be causing more harm to others than the harm

experienced by their own death – such as in the case of disease carrying

mosquitoes or rats; although Nussbaum states that even these should, in

principle, if they are not causing harm to others, be allowed to flourish in their

own way.[200] Here it might seem that Nussbaum is taking a more utilitarian

judging-the-greater-good-stance and certainly Singer has made a similar critique

of Nussbaum, claiming that she, too, for all her quite strident critique of

utilitarianism is ultimately following utilitarian principles herself.[201] Nussbaum

does at times endorse sentience as a measure for minimum thresholds,[202]

however, she does not condone even the painless killing of sentient animals and

subsequently the loss of jobs of meatworkers is "no part of our concern" (as it

might be for utilitarians), as such workers "have no entitlement to jobs that

exploit and tyrannize."[203] So Nussbaum shifts rather contradictingly between

acceding that some animals do need to be painlessly killed for the greater good

and adamantly defending the rights of all individual animals (and even insects)

to lead flourishing lives;[204] just as she bewilderingly shifts between advocating

paternalism and respecting animals as "ends."

How Muslim and Jewish meatworkers might react to having their work in

preparing halal and kosher meat described as exploitative and tyrannical, may

itself present something of a stumblingly block to Nussbaum's hope for cross-

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[199] Ibid., p. 393.
[200] Ibid., p. 387 and p. 393.
[201] See Singer, "Response to Nussbaum."
[202] Nussbaum, *Frontiers of Justice*, p. 361.
[203] Ibid., p. 394.
[204] Ibid., pp. 357-362.

cultural consensus. Nevertheless she still insists that none of the teachings of the major religions can be seen as opposed to such views[205] and will only admit to the concept of *equal* cross-species dignity as providing a possible barrier to consensus – and this only because Nussbaum views this question as metaphysical (and therefore divisive) in nature.[206] Again, because she sees the question as metaphysical, she decides to leave any attempt to answer such a question aside – on the grounds that providing such answers would hinder overlapping consensus;[207] opting instead for "the looser idea that all creatures are entitled to adequate opportunities for a flourishing life."[208] However, such a "looser idea" is hardly uncontroversial in itself. Nussbaum again uses Darwin-inspired arguments here to insist that "the world is not the way the Stoics, and the Judeo-Christian tradition, see it, with human beings sharply set off from the rest of nature."[209] Such a worldview is to apparently, among other things, help us to see "reason as an animal capacity whose dignity is not opposed to animality, but inherent in it."[210] We are in fact to view ourselves as "a needy, often dependent animal being," in order to be able to extend justice via the capability approach to animals.[211] This further renders Nussbaum's distinction between animals and humans extremely unclear; just as it makes it difficult to see how such descriptions of human being cannot but be regarded as not only metaphysical, but as ultimately exclusive; not just of the Judeo-Christian tradition, but of every other world view that does not advocate an evolutionary conception of human being.

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[205] Ibid., p. 391.
[206] Ibid., p. 391.
[207] Ibid., p. 384, p. 391.
[208] Ibid., p. 384.
[209] Ibid., p. 363.
[210] Ibid., p. 363.
[211] Ibid., p. 356.

Further, despite her claims to the contrary, Nussbaum nevertheless constantly implies and argues for the *equal* dignity of animals. For example, she boldly states that "[i]t seems that there is no respectable way to deny the equal dignity of creatures across species,"[212] and this stance is particularly evident in her arguments in regards to domestic animals. For it is also in relation to domestic animals that her arguments for the inclusion of the mentally impaired within the human community are very much tested. Nussbaum has argued that Sesha should be included within the human community (and not, say, a community of chimpanzees), because she lives her life in relation *with* other humans and forms relations of affection with humans. This can also be said, of course, of domestic pets, and so the only distinction between Sesha and domestic dogs and cats on Nussbaum's terms is that she is born of human parents, which are thin grounds indeed, in that they are ultimately biological alone. For such grounds could hardly escape the charge of specieism levelled against her by David DeGrazia, given that Sesha's capabilities – as measured on Nussbaum's own scale – are extremely limited. Nussbaum, moreover, does actually speak of domestic animals in the same terms as she speaks of humans, in that she describes domestic animals as living inter-dependently with humans. So if they are disabled, then Nussbaum suggests that we should provide them with the appropriate wheelchairs.[213] Moreover, she continually likens their training and education to the training and education of human children; so often stating that they are "like" children,[214] that there seems to be no doubt about the fact that

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[212] Ibid., p. 383.
[213] Ibid., p. 365.
[214] Ibid., p. 395 and p. 397.

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they are to be treated, in practical terms, as equally valuable.[215] So Kittay's own

objection to her daughter being effectively placed at the same level as a dog,

which is the logical result of Jeff McMahan's theory, is in the end actually

affirmed by Nussbaum's theory as well; at least in terms of domestic dogs, who

live and have dependant relations with human beings. For Nussbaum has

already admitted that Sesha's capabilities can be seen to be at the level of an

animal, but argues against her living with chimpanzees because she is used to

living with humans; but then, so are domestic dogs. This makes arguments

against euthanasia and sterilisation in Sesha's case difficult, given that her

interests are actually based on her capabilities, and Nussbaum does take up the

controversial utilitarian conception of interests in her discussion regarding the

extension of capabilities to animals; despite having critiqued it earlier in her

book. For, in Nussbaum's discussion on sterilisation, castration and euthanasia,

it actually becomes very difficult to see any difference between capabilities and

interests.[216]

Nussbaum does state that a human may have more interest in staying alive,

despite pain, than an animal, but the danger here is that cognitively impaired

humans cannot express their desires, just as animals cannot express theirs. For,

despite Nussbaum's insistence on species norms, if Sesha is given an equal

dignity of a dog, and if she is given, like a dog, a guardian who will speak for

her (which is actually what Nussbaum recommends, in both cases), then it is

difficult to see how a difference in treatment can be justified; particularly if it

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[215]Although Nussbaum does make some reservations regarding castration (pp. 395-396) and euthanasia (p. 385), these caveats have to do with what would be appropriate treatment in terms of an animal's capabilities for flourishing, rather than expressive of any difference in its inherent or equal worth to humans.
[216] Ibid., pp. 395-396 and p. 385.

can be shown that she has neither the capabilities or interests of a 'normal' human adult. Nussbaum concedes that even though we are to strive to maintain species-specific norms for the mentally disabled, this is to be done *solely through a guardian*. So Sesha is given the right to vote through a guardian, but of course the guardian has to guess or imagine what their ward might want to vote; a case very similar to the imaginative sympathy Nussbaum insists we require with animals. But of course, this places much paternalistic power in the hands of the individual guardian. What if such a guardian were to decide that it was in their ward's particular interests that they be assisted to die because they were in too much pain – just as one might make a similar decision concerning the life of a dog?

Nussbaum is dangerously blurring the line between humans and animals in her descriptions of dignity and 'ends,' for if a 'guardian' can kill a dog who is ostensibly an agent, a subject and an end, in the interests of its own 'good,' how then can a cognitively impaired adult avoid the same fate? If personhood and a guardian are granted by the Austrian courts to the chimpanzee Hiasl, then there should be no real reason (in Nussbaum's schema) why dogs cannot be granted a similar status – or why Sesha's life might not be seen as on par with the life of an ape. If there is no real difference between domestic dogs and humans, apart from some species-specific capabilities like voting, then we are at risk of applying theories of paternalistic 'good,' such as Nussbaum's, to human beings themselves. This has of course happened throughout human history, where one group of humans have declared another to be subhuman or not quite civilised enough to know their own good; hence the paternalism of White Man's Burden

and other pernicious excuses for slavery and oppression. When a group of humans has classified another as sub-human, then what they have effectively done is deny that they are accountable in their actions to that group. In other words, they can treat them as they wish; without regard for the others' own wishes, interests or desires.

In this sense reciprocal accountability can be seen as *the* crucial difference in respect to relations between animals and humans and between humans and other humans, in that the possibility of reciprocal accountability is essential for justice to take place. Deciding for another without the possibility of the other contesting that decision or of holding you accountable for your actions is not just. Therefore, to classify humans on the same level as animals under Nussbaum's schema is to risk perpetrating the same injustices of the past, where we regard some humans as those to whom we are not accountable in our behaviour. Here it might immediately be objected that humans with cognitive disabilities, like animals, do not have the ability to personally hold other humans accountable in regard to their decisions and actions towards them; but a rational human who is beaten senseless or murdered by another human also does not have the ability to hold others accountable to them; it is their community who holds others accountable on their behalf. Such an objection would apply only if it can be established that holding other humans accountable is an individual practice and therefore dependant on individual capabilities, rather than a communal practice, as shall be concluded in the following chapter. Before arguing for this conclusion it is important to first summarise the major points made in this current chapter.

In exploring current critical- and liberal-humanist conceptions of foundations for universal respect or moral consideration we saw first that Jeff Noonan's identification of self-determination as a common human ground did not acknowledge that the expectation of accountability precedes the demand for self-determination – nor was he able to effectively link self-determination to respect for others. We then considered Stephen Darwall's *Second-Person Standpoint*, which does recognise the concept of reciprocal accountability; importantly viewing accountability as morality itself. However, Darwall insists on rationality as the condition for the possibility of accountability, and therefore, morality; effectively excluding all non-rational humans from both the moral community (and subsequently, moral consideration) and making rational consensus as conceived under a social contract the standard and measure of morality. Such ramifications ultimately render Darwall's schema for moral consideration exclusive of particular humans and relative to the consensus of particular communities, rather than universal. We then discussed another re-conceptualisation of Kantian ethics, as conceived in Christine Korsgaard's *Sources of Normativity*. Korsgaard attempts to justify our moral obligation to others through emphasising the demands that a shared language places on us, but her view of language – which includes even the cries of animals and the demands we make of animals – does not differentiate between legitimate and illegitimate demands, in that *all* demands and reasons are regarded as shared and thus morally obligating. In this sense there is no moral limit to the demand of accountability, as we are as similarly obligated to the animal that cries to us as

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the person who demands our submission, which seriously calls into question the possibility of justice and value within Korsgaard's schema.

Finally, Martha Nussbaum rightly critiques rationality as a condition for moral consideration within classic social contract theory, but on the grounds that it not only excludes non-rational humans and other nation-states, but also animals. However, the grounds upon which Nussbaum argues for universal moral consideration contain several weaknesses, the first being that her foundational claim in regards to the inviolable dignity and worth of humans is presented as an intuitive notion that can find broad, cross-cultural approval. In insisting that this claim is intuitive and by refusing to provide any metaphysical justification, Nussbaum leaves herself open to the charge that such intuitions are culturally relevant to liberal-humanist societies alone; particularly as such claims have indeed already received critique by utilitarian scholars and those working within human rights discourse for this very reason. It may well be that a cross-cultural concept of inviolable human worth might exist – and an attempt to argue for just such a concept will made in the next chapter – but given its highly contentious nature and the charge of cultural relativism, it needs to argued for in a much more comprehensive manner than Nussbaum is willing to provide. In other words, it needs to be justified on an ontological or metaphysical basis in order to be able to gain the universal scope and acceptance it needs. The challenge is to provide an ontological conception that is broad enough to encompass all humans without excluding or erasing difference, while still maintaining the unique nature of human value. That Nussbaum further extends the concept of dignity to animals only stretches the credibility of such claims being amenable to cross-

cultural consensus; along with stretching the very validity of the concept of dignity itself.

Nussbaum's emphasis on benevolence and an altruistic love of justice for its own sake also proves an unstable foundation upon which to base respect for others; along with other moral theories that rely on emotions as a foundational premise. Lastly, Nussbaum's attempt to extend justice to animals on the grounds that they are to be regarded as agents and subjects who are ends in themselves ignores the fact that animals cannot hold humans accountable for their actions. In recommending that humans hold animals accountable by imposing our laws upon them, Nussbaum is effectively introducing a concept of justice that reduces justice to one-sided paternalism, which, if re-introduced to our relations with other humans, would see a repeat of the worst forms of cultural and moral imperialism. As Darwall has rightly suggested, reciprocal accountability plays an essential role in our concepts of morality, equality and the notion that human beings are ends in themselves. It now remains to be seen whether reciprocal accountability can be proved to be both intra- and inter-communal – rather than individual – in nature, as this would then lift the onus on individual rationality as a requirement for inclusion into the moral community and subsequently, equal moral consideration. Such a concept of communal accountability could then be regarded as truly universal in both its scope and application, but whether such a concept is viable will now be explored in the next and final chapter.

Chapter 6

Communal Accountability

It has been argued throughout this thesis that respect for others needs to be grounded on an ontological conception of human being. It was shown that posthumanist arguments that ostensibly eschew the concept of a universal conception of human being in favour of anti-foundationalist arguments for respect for the particular nevertheless rely on unacknowledged humanist assumptions of universal human worth for their appeal. That this appeal is therefore ultimately rhetorical in nature makes for an extremely unstable ground for respect, being then vulnerable to the contingencies of social persuasion and sentiment.[1] It was further shown in relation to Nussbaum – who also bases her arguments in part on sentiment – that a reliance on intuitive conceptions of human dignity and worth do not provide an adequate foundation for either the concept of human rights or her own capabilities theory. As argued in the previous chapter, such intuitive notions can be shown to be influenced by western – as opposed to universal – assumptions in regards to human being and thus are similarly vulnerable to charges of social contingency and political relativism.

It has also been argued that current western liberalist and humanist theories that attempt to re-address the foundations needed for universal respect still

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[1] I am using the word sentiment here in Hume's sense of the word; that is, as another word for emotions, as opposed to sentimentality.

conceptualise these grounds in terms of what characteristics an individual must possess in order to qualify for equal moral consideration. These grounds still revolve around traditional notions of moral personhood, these being self-determination, rationality and autonomy; inevitably excluding all humans not possessing such qualities. We saw that this was so even in the case of utilitarianism, which, while based on sentience, still reserves moral personhood and therefore equal moral consideration for those beings capable of rationality and autonomy. Moreover, while Darwall does rightly identify the concept of reciprocal accountability as foundational to ethics, he still links the practice of accountability to rational humans alone.

In the light of these deficiencies in conceptualising respect, it has been the aim of this thesis to argue that what is needed is an ontological conception of human being and value that is universal and yet which allows for particularity and emphasises a communal conception of human being. As Matthias Kettner writes, it is objected by animal liberationists that biological difference is not sufficient grounds for giving moral preference for humans over animals; but it is not biological difference alone that separates us.[2] As many other philosophers have suggested, as noted earlier, human being is not a matter of biological data alone, but rather has to do with our *way* of being. Mattias Kettner suggests that this is manifested by the way in which we impart moral value to ourselves and others, which in terms of the argument presented in this thesis can be seen as a valid claim, but which represents a part, rather than the whole of the total picture, so to speak. For, if the basic premise of this thesis is correct, then we

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[2] Mattias Kettner, "Apes and Human Dignity," in Louise S. Röska-Hardy and Eva M. Neuman-Held (eds.) *Learning from Animals? Examining the Nature of Human Uniqueness* (East Sussex, New York: Psychology Press, 2009), pp. 203-208.

also need to recognise the importance of communal accountability as a human practice that is inextricably entwined to our understanding of ethics. In the following discussion it will be suggested that the communal practice of reciprocal accountability can be seen as an integral part of the very structure of our way of being, ethically, with other humans; that it is the way we practice ethics that can contribute to our understanding of both human uniqueness and the conditions for the possibility of morality. However, as shall be seen, it does not automatically follow that we can then conclusively claim that the practice of communal accountability in itself represents the complete ontological picture of what it means to be human. As Diamond has suggested, that which separates human being from animal being is linked to the differing ways in which we relate to each other, and while it will be argued that part of these differences are bound up with the very nature or structure of human morality –as indeed, Diamond herself also suggests – it will be seen that the practice of communal accountability can only account for a part of what it means to be human. The human practice of communal accountability, then, can be viewed as just one of the ways in which these differences are manifested; although it will be argued that such a practice is inseparable from our understanding of ethics. What follows, then, is only a partial account of human ontology and therefore, of human uniqueness.[3]

As it has been argued that an emphasis on the individual possession of certain qualities as a condition for equal moral consideration inevitably excludes certain humans, the onus then falls upon proving that the practice of accountability is

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[3]For other accounts, see, for example, the papers contained in the publication cited above.

thoroughly communal, as opposed to practice that ultimately takes places between individuals. Although Martin Buber, whose work Darwall refers to, does emphasises a relational conception of human being, he writes in terms of relations between two individuals alone;[4] as does Darwall himself in explaining his own conception of accountability. Even when Darwall insists that accountability encompasses an idealised moral community, inclusion within the moral community itself still depends on an individual's capacity for rationality (and therefore, accountability). This results in the subsequent exclusion of all non-rational humans from moral consideration and the reduction of that which is moral to that which is decided by social consensus. In order to expand the scope of moral inclusion and avoid moral relativity what is needed is a standard of value and inclusion that does not rely on rationality, and a conception of accountability – and indeed, morality – that is communal rather than individual. To this end it will be suggested that ethics as we understand it is incomprehensible without a community and that this comprehensibility entails a specifically human community. This is so not only in the sense that ethics can be seen as inescapably anthropocentric, but also in the sense that ethics cannot exist without reciprocal accountability and such accountability is only practised within and between human communities. It is communal in that accountability to a person does not depend on their personal ability to hold others accountable to them, as it is the community in general that calls its members to account over breaches to their communal standards of value.

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[4] See Martin Buber, *I and Thou*, trans. Walter Kaufman (New York: Scribner, 1970).

For it can be argued that even the standard of value to which we can draw others to account is thoroughly social, as opposed to individual; that is, it is not a standard of value autonomously decided by a rational individual alone. Just as Wittgenstein has suggested that a private language is an impossibility, so too, might the idea of a private ethics be similarly impossible. What is suggested here is not a communal standard of value in the sense that Darwall imagines it; that is, as a community who consensually decide together on their moral norms *after* having already established that they are capable of making their own autonomous, rational, moral choices. Rather, a standard of value can be seen as social in the same way that Wittgenstein describes language as inevitably social in nature; it is so by its very structure, by the very condition of its coming into being. As with language, in order to have the possibility of ethical meaning, we cannot help but have an understanding and practice of ethics that is always already social.

However, as suggested earlier, justice is not reducible to social standard of value alone, even if that standard has been communally agreed upon. Moreover, an idealised community – and therefore the concept of an ideal moral consensus as suggested by contract theories – is impossible given the nature of actual human communities, which are riddled by power imbalances. This is not to suggest that contract theorists are naïve in their conception of human societies, but rather to suggest that theories that rely upon imagining an ideal community are inadequate in their application to actual human communities. This is particularly true in regards to ethical consensus, in that by its very nature, ethics has to do with calling to account those who *transgress* ethical norms. In other words,

dissent in some form is a given. But without a standard of value outside of or transcending any particular communal standard, it would be impossible to tell whether such transgressions were simply immoral or actually contesting an immoral norm. As we can see just from the history of people that have drawn other humans to account over their actions and attitudes towards them – women, slaves and the colonised (to name a few) – norms are indeed contested and change over time. This is by no means to suggest that all norms are therefore merely relative; on the contrary, it will be argued that this history speaks instead of the universal human practice of accountability and a universal standard of justice and value that lies beyond particular social norms; this universal standard being the concept that human beings are an end in themselves. Finally, it will be concluded that these practices and concepts provide the conditions for the possibility of ethics and that ethics itself can be seen as being its own end. We will now discuss each of these concepts in some detail, beginning with the social nature of ethical norms.

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The Social Nature of Ethical Norms

Just as Wittgenstein suggests that there is no such thing as a private language, so too might we imagine that there are no such things as private ethical norms. This does not mean that an individual cannot have principles that they consider to be personal and attempt to uphold themselves – as opposed to imposing them on others – as in the sense of having personal moral standards. A person can indeed have personal moral principles, but only after or *through* having been socialised and learnt what it means to be ethical; just as a person can only have a concept

of language *through* being socialised and learning a language with other humans. That is, there is no possibility of creating a language, or ethics, in isolation from other humans, and this is what is meant by "private;" both language and ethics are always already very much public understandings.[5] A short discussion on why Wittgenstein describes the possibility of a private language as ultimately incoherent can help illustrate this point.

To put it simply, in order to speak a language we must have the possibility of being wrong. Mistakes in language are mistakes as to meaning, rather than about mistakes pertaining to verifiable facts.[6] When Wittgenstein suggests that the idea of a person writing "S" in their diary every time they had a pain or sensation is incoherent, he is suggesting that it is incoherent due to the fact that they cannot be *wrong*, rather than suggesting that they might not remember properly whether they had "named" the pain correctly or accurately every time. What Wittgenstein is pointing out by using such an example is that there is no concept of being correct or incorrect here;[7] one can simply be right every time one writes "S." The making of such a mark therefore has no meaning whatsoever; as Wittgenstein himself states, "in the present case I have no

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[5] In *Sources of Normativity* Christine Korsgaard takes the unusual approach of suggesting that Wittgenstein did actually state that private languages were possible, but merely incoherent to others, while at the same time attempting to argue (as seen in the previous chapter), that the social nature of language entails that both humans and animals can morally obligate us merely through their vocalised demands. As shall be seen, the view presented here rejects both of these interpretations of Wittgenstein.
[6] As Rush Rhees also argues; see his chapter, "Can There be a Private Language?" in his book *Discussions on Wittgenstein* (London: Routledge and Kegan Paul, 1970), pp. 55-70; 68-69.
[7] As Rhees also suggests, ibid., p. 60.

criterion of correctness. One would like to say: whatever is going to seem right to me is right. And that only means here that we cannot talk about 'right.'"[8]

When we understand the meaning of a word, there is already an implicit assumption that we could have misunderstood it as well. So in order to have language we must have words whose *meanings* are "independent" of their speakers, simply for the fact that if other people are to speak them, they must be able to be learned.[9] Words must have a meaning that is independent of their speaker in order for a language to exist. This is why Wittgenstein associates language with rules; words have regular meanings that we attach to them, that we agree upon as to their meanings; "[i]f language is to be a means of communication there must be agreement not only in definitions but also (queer as this may sound) in judgements."[10] In the section just prior to this Wittgenstein further poses the question, ""So you are saying that human agreement decides what is true and false?"– It is what human beings *say* that is true or false; and they agree in the *language* they use. That is not agreement in opinions but in their form of life."[11] As Wittgenstein states, "(t)he word "agreement" and the word "rule" are *related* to one another, they are cousins. If I teach anyone the use of the one word, he learns the use of the other with it."[12] Words are things humans agree over as to their meanings, and their meanings are verifiable by the way they are understood to be used publicly.

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[8] Ludwig Wittgenstein, *Philosophical Investigations*, The German Text, with Revised English Translation, Third Edition, trans. G.E.M. Anscombe (Malden, MA: Blackwell, 1953, 1958, 2001), Part I, Section 258, p. 78e.
[9] This is Rhees' term, see his discussion on this topic in "Can there be a Private Language?" pp. 67-69.
[10] Wittgenstein, *Philosophical Investigations*, Part I, Section 242 p. 75e.
[11] Ibid., Part I, Section 241, p. 75e.
[12] Ibid., Part I, Section 224, p. 73e.

Wittgenstein's statements above do not necessarily commit him to a denial of facts, or that facts are just what humans agree upon. He states that his suggestion that human agreement on definitions and judgements "seems to abolish logic, but does not do so.–It is one thing to describe methods of measurement, and another to obtain and state results of measurement. But what we call "measuring" is partly determined by certain constancy in results of measurement."[13] Whether Wittgenstein can be described as a realist or an idealist is not of major concern here, as the main point of significance is that words have meanings that are publicly agreed upon. In recalling the argument as to the fact/value divide, in relation to ethics the question of meaning and value can be seen as even more obviously separable from fact than language. That is, if language can be seen to be a public agreement on meaning and rules, then how much more so ethics? Not because ethics can be reduced to language, or can be said to be the same or equivalent to language, but because ethics is, irreducibly, about public or social understandings concerning value. Ethics cannot be conceived without the possibility of being wrong; indeed, the very definition of ethics rests on the assumption that a course of action is either morally right or wrong. And in order to have the possibility of being wrong, we need a human community to provide us with a public standard, rule or norm as to that meaning; otherwise we could indeed say, to quote Wittgenstein again, that "whatever is going to seem right to me is right."[14]

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[13] Ibid., Part I, Section 242, p. 75e.
[14] Ibid., Part I, Section 258, p. 78e.

In this way Wittgenstein's private language argument might be viewed as not just about the conditions necessary for the possibility of language, but as an argument as to the very conditions for the possibility of normativity and therefore, ethics. That is, that the conditions for the possibility of ethical norms are irreducibly social in nature, as opposed to being the province of an autonomous individual alone. We could then also say that this shows that local human communities who produce such social norms are then moral or ethical communities. However, this is not to suggest that ethics is reducible to language alone, or that ethics consists solely of socially agreed norms. As argued earlier in regards to Darwall's theory, communal consensus does not guarantee ethical justness. Moreover, as noted with reference to Noonan's theory of self-determination, the assumption of accountability in a sense *precedes* or is foundational to the upholding of standards of value, as standards of value vary, but the presumption of accountability is necessary to every call to accountability over a breach to a value or norm.

This can be seen most clearly if we consider the case of inter-communal accountability. Human communities of different localities who do not share the same language can and do see each other as accountable, as evidenced by the fact that if a human community attacks another, they will regard their attackers – their enemies – as accountable for their actions. That is, they will hold the other local human community accountable despite the fact that they *do not have the same social norms*. Despite the fact that they have differing social norms, the fact that they regard the other community as morally accountable to them is evidence that they see them nonetheless as belonging to the same moral

community as they do; a community that transcends the localised communities of both, which we can call a universal human community. Moreover, they are holding them to a standard that transcends the local social norms of both particular communities; by insisting that they are beings to whom others are morally accountable they are insisting that they of the same or equal moral worth and therefore worthy of the same moral consideration as their enemies. It is in this sense that we might be able to speak of the recognition of equal or reciprocal accountability as a universal standard of value that transcends particular standards or norms. It is a standard beyond their relative standard *because it also applies to others outside their localised communities.* It is a standard, moreover, that transcends the localised or particular norms of their enemies. To again quote Fanon, the "native…laughs" when he is likened to an animal, because he knows that he is human, despite the fact that colonial powers might regard him as otherwise.[15] He regards himself as human, even though his enemy does not, but in doing so he *also* recognises that his enemy is human. That is, he recognises that his enemy is accountable to him and it is due to that very presumption of accountability that reveals that they belong to the same universal moral community. Reciprocal or equal accountability, in the sense that is meant here, does not mean that accountability has to be recognised by *both* parties; for, in this case the coloniser and the colonised, as noted above and as was evident in the case of Indigenous Australians, often the coloniser attempted to deny accountability through classifying the colonised as sub-human. However, those denied humanity insisted nonetheless that the coloniser was as equally and reciprocally accountable to them; that the coloniser *should*

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[15] Fanon, as cited by Noonan in *Critical Humanism and the Politics of Difference*, p. 119.

recognise that accountability is not one-sided. That is, that the coloniser should recognise that they cannot use others as a means to their own ends and not then be held morally accountable – just as they themselves would presume that the colonised would be morally accountable should they use the colonisers as means. Whether the coloniser actually recognised such accountability as one-sided or not does not mean that the colonised were not then human, nor that the coloniser was not then morally accountable. In other words, it the very *assumption* or expectation that accountability should be reciprocal – I or my community should be able hold you or your community accountable for injuries you do to me, just as you hold me accountable for wrongs I do to you – that is of crucial importance. For it is the very presumption of accountability on the side of those denied humanity that clearly attests to the fact that they consider that both they and those injuring them belong to the same moral community. This universal moral community therefore has a standard of value beyond localised or particular norms; the standard that humans are of equal moral worth and are ends in themselves – a standard implied in the assumption reciprocal accountability; more of which will be discussed later.

Just as with language, ethical rules or norms are things that we learn. A human community not only provides us with an independent or public standard in the form of a moral norm from which we might begin to know about the very concept of being morally right or wrong, but it is also due to the fact that we *can* be held accountable that we can be said to be wrong in the first place. In other words, in order to be found morally wrong, we need to be held accountable for our actions, and this can only take place in a human community. For we must

have the possibility of being more than just physically opposed, as an animal might oppose us; there must be the expectation that the being opposing us is a being who *can* be held accountable for their actions; that is, it is possible for them to live and choose differently, to actually *be* morally wrong. As suggested earlier, self-determination alone cannot be that which makes us human, as we only insist on our self-determination to those beings whom we see as being able to be held accountable for their actions. We do not insist on our self-determination with animals if attacked by them; we simply oppose them, or perhaps try to tame or curtail them if we can. Sometimes we simply kill the humans that hinder us, like animals, but what is then born in the minds of any survivors is an assumption that our killers are accountable to us for what they did; that is, that they were wrong to slaughter our people like animals and treat us as mere hindrances to their wills. Sometimes this will play itself out in violent retribution, sometimes in political protest; but common to both responses is the assumption of accountability; these beings are *wrong* and they are accountable to *us*; which in turn informs our conception of justice.

Without the possibility of a social standard of value and the presumption of accountability, a "no, you are wrong, and this is why," ethics is not possible. This is why the practice of ethics requires a human community, in that the very possibility of conceiving something as ethical requires other humans.[16] Social

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[16] The case of a human infant who has been reared by animals should perhaps be noted here. Such children, reared in a state of utter dependency on and physical vulnerability to animals, adopt the behavioural standards or codes of the animals they have been reared with and find it difficult to interact with humans once taken out of such an environment. Noam Chomsky might suggest that this shows that human children are hardwired to learn language by a certain age and that failure to do so results in an inability to communicate with human language thereafter; see Noam Chomsky, *Syntactic Structures* (The Hague: Mouton, 1969). It could also be viewed as indicating that humans need other humans in order to maintain human ethics as we know it.

standards must also be applied communally, in that they apply to all within the same ethical community. They can be seen as communal in the sense that disputes can only be judged in accordance with a standard that cannot be reduced to a particular (or individual) viewpoint; that is, they are judged in accordance with a common standard from which particular viewpoints can be judged. They are also communal in that they must *apply* to all, rather than just to a single individual; in the sense of a standard applied to all, communally and impartially – as opposed to having separate standards for each individual within that community. All are judged by the same standard of value.

Human beings practice ethics according to social standards of value, but we also continually appeal to standards that are greater, in that they are beyond and cannot be reduced to the particular standards of our localised communities. This is shown by the existence of dissent – in the form of non-compliance to standards – that is evident in all particular moral communities; human beings fail or actively oppose their moral standards continually. If we did not, there would be no necessity for accountability. The only way we can tell whether such dissent is immoral or highly moral is to apply a standard of value greater than the particular social standard of the community. Similarly, when two particular communities oppose each other, each believing that the other is wrong, the only thing that can judge between them is a greater standard of value; one that is beyond the particular viewpoint of each community**,** which is why a universal standard of value is ultimately required. So the conditions for the possibility of ethics as we understand it require not only an acknowledgement of our practice

of socially agreed standards of value, but also our need for and constant appeal

to, a standard greater than our particular communities. We shall be further

discussing this need for a greater standard below, after the discussion on the

possibility of communal accountability.

The irreducibly social nature of ethical norms, along with the presumption and

practise of accountability, can be seen as that which defines the human

community as a moral community; it is part of that which gives us a significance

which is not based on biology alone. As Cora Diamond puts it in her discussion

on the differences between human beings and animals;

> These are all things that go to determine what sort of concept
> 'human being' is. Similarly with having duties to human
> beings. This is not a consequence of what human beings are,
> it is not justified by what humans beings are: it is itself one of
> the things which go to build our notion of human beings.[17]

Accountability is part of that which creates and sustains moral value, a part of

that which creates the human community; a community included within and

spanning beyond particular human communities, in that the presumption of

accountability occurs both on an inter-and intra- communal level; that is, on a

universal level. Here it might be suggested that there are some humans that live

in human communities that cannot, like animals, individually hold other humans

accountable, which is why it needs to be shown that accountability is practiced

on a communal rather than individual basis, as shall now be argued below.

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[17] Cora Diamond, "Eating Meat and Eating People," p. 324.

Communal Accountability

In the previous section it was suggested that ethics, like language, is thoroughly social in regards to the ascription of values and norms and further, that the possibility of accountability contributes to both the establishment of the human community and ethics itself; suggestions that will be further developed as the chapter progresses. In this section we will be addressing the issue of whether accountability can also be said to be a communal rather than an individual practice; that is, whether only those humans who have the *personal* ability to hold or presume that another is accountable should be regarded as members of the moral community alone, as argued by Darwall.

The individual capacity to presume or hold others accountable for their actions is actually not required as a condition for becoming a being to whom others are accountable, for even rational members are at times incapacitated and unable to either presume accountability or hold others to account over injuries towards them. Even Darwall concedes that included in the concept of a moral community is the possibility of others enforcing norms on your behalf, although implicit in Darwall's conception of course is the caveat that this is a norm that you have agreed to as a rational being. At such times – for example, if you had been beaten senseless or knocked unconscious through an accident – other members of the moral community are expected to act on your behalf, simply because you are a member of that moral community. As stated, for Darwall, this automatic inclusion and therefore, care, relies on the capacity to be rational, but in reality, moral consideration often rests simply on the fact that one is a

member of a particular or localised human community, rather than on the possession of rationality, and so moral consideration in the form of drawing others to account over their actions to others takes place regardless of whether the injured party has the personal ability to presume accountability or hold others to account or not. For example, human communities will draw their members to account over an unjustified killing of another of its members; the injured party is dead, and so cannot actually call anyone personally to account, but the members of their community will still act on their behalf. It is the community who calls its members to account over the breaching of communal norms, rather than individuals, for, as argued in the last section regarding social value, it is the community who holds these laws or norms in common and will apply them communally to all in that community. The vital question, of course, is on what grounds one qualifies for membership within any particular human community.

The practice of communal accountability might be thought to be most apparent in communities that are more communitarian in structure, such as African, tribal, or Asian communities, where individuals can be seen to be more obviously responsible, at times even subservient, to the greater good of the community.[18] But the fact that it is the community that brings its members to account over social norms, as opposed to rational individuals alone, can clearly be seen even in western cultures, despite the fact that political and moral theory has continued to emphasise the individual over the communal. *For even rational individuals cannot often successfully hold other rational individuals*

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[18] See Bauer and Bell, *The East Asian Challenge for Human Rights*; Gyekye, *Tradition and Modernity*, and Rodrigues, "Recognising Non-Western Thought in Human Rights Theory."

accountable over injuries, which is precisely why we have communal law enforcement. When we personally fail to hold another accountable, most often because they refuse to acknowledge accountability over an injury to ourselves, we turn to our communal law enforcers – the police, the legal system of solicitors and lawyers and the court system, among others – who act as our advocates and represent us, demanding accountability on our behalf. Even those communities who traditionally do not have an official police force, such as those based on tribal kinship systems, still have groups of tribal elders or councils who oversee the enforcement of the community's laws.[19] We are simply not expected to individually and autonomously hold other individuals to account over breaches to social laws or norms, so we actually do not need to personally possess the ability to hold another accountable; our community does that for us. Our representatives argue on the grounds that a communal law has been breached; a law that applies to all in the community. They do not, and in fact cannot, take up an individual, private rule that applies only to a single individual. They represent us on our behalf precisely because they can do exactly the same for others in the community, as what is being contested is a breach to the community's standards of value.

It might be thought here that such an argument precludes the possibility of individuals contesting their community's norms, or indeed of any contestation at all occurring, given the intrinsically social nature of norms argued for above. Rather, what this implies is that what is needed to produce change to a community's norms is communal consent to a change in those norms. When

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[19] For example, Indigenous Australian communities, North American Indigenous communities and Māori communities, among others.

women and other marginalised groups within western society contested

prevailing social norms that excluded them from equal moral consideration, they

contested them on the grounds that they were of equal moral value or worth; in

short, that they beings to whom others were accountable to. Obviously, the

concept of equal moral value was a standard of value that already existed within

the community – a standard delineated by the recognition of reciprocal

accountability – the problem was, however, that it was only applied selectively

to certain members of that community. Women were seen as accountable to

prevailing social norms, in that they were expected to perform certain tasks and

fulfil certain obligations on the pain of punishment (for example, it was deemed

legal within Victorian England for a man to "lock up his wife and beat her in

moderation"[20]). What women were denied was the possibility of *reciprocal*

accountability; that they could hold others to account over injuries done to them.

The denial of reciprocal accountability, then, is a denial of equal participation in

the moral realm of a community; a denial that one is of equal moral worth.

Again, this shows that the practice of reciprocal accountability carries implicit

within it, both on an intra- and inter-communal basis, its own standard of value

that is independent of particular or contingent norms; this standard of value

being the recognition of equal moral worth via the recognition of reciprocal

accountability.

As argued earlier in regards to the phenomenon of internal colonisation and the

oppression of women, at times even rational humans are so convinced of their

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[20] See Marjorie Bloy, "Timeline of Legislation, Events, and Publications Crucial to the
Development of Victorian Feminism," http://www.victorianweb.org/history/wmhisttl.html
The Victorian Web http://www.victorianweb.org/. (2000) Accessed 23.2.2009.

own lack of worth that they will not presume that others are accountable to them. However, even the claim for equal moral consideration is made on a communal basis. Not all women could be said to possess either the requisite presumption of self-worth or the personal ability to hold others morally accountable to them, but these claims were still made and subsequently granted, nonetheless, on their behalf. What is at stake here is not whether individuals are able to pursue their own individual laws, but rather whether all individuals can receive equal moral consideration before the same communal laws. What is at issue is not whether one has the personal ability to hold or presume that others are accountable, as that is not actually necessary given the communal nature of our norm enforcement. What is at issue, rather, is whether one is considered as being worthy of equal moral consideration; of being regarded as having equal moral worth and therefore entitled to be included the practice of communal and reciprocal accountability. In short, whether one is considered as a member of the moral community.

It might be objected that such norms cannot and are not commonly applied to all; children and non-rational members of the community are often recognised as not being fully accountable for their actions. But again, whether or not one can be held personally accountable for their actions or hold others accountable is not to be confused with the question of whether one has moral worth, and therefore regarded as a member of the moral community. Communities generally recognise the difference in accountability (or responsibility) between children, non-rational humans and adults; what is at issue is whether children or other non-rational humans are still accorded equal moral worth. That is, if a child or a

non-rational human is injured or killed, whether other members of that

community will still hold others to account over that injury or killing. And of

course the great majority of communities do hold others to account over the

killing of their children; indeed, the killing or torture of defenceless young

children and infants is often used as a measure of that which is morally

abhorrent, as illustrated by Ivan Karamazov's impassioned indictment of God in

The Brothers Karamazov, where, among other stories of the abuse of children

by adults, the bayoneting of infants features prominently as a mark of moral

depravity.[21]

Here it might be argued that some communities have actively practised

infanticide, as Singer does when attempting to defend the practice. However,

this can be seen as just as much an example of the contingent exclusion of

certain humans from moral consideration as Singer's claim that the exclusion of

slaves and women was completely arbitrary. Singer attempts, as noted earlier, to

justify infanticide by claiming that it was practised by people as civilised and

educated as the Ancient Greeks; with philosophers of the ilk of Aristotle

supporting it. However, the Ancient Greeks, including Aristotle, also actively

practised and supported sexism and slavery, which Singer elsewhere actively

condemns.[22] Singer further argues that such infants were either sick or disabled,

which apparently justified their killing, but what Singer does not mention is that

the concept of disability, or abnormality, was very broadly interpreted within

Ancient Greek and Roman societies, often simply meaning "abnormal" or

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[21] See Fyodor Dostoyevsky, *The Brothers Karamazov*, trans. David McDuff (London: Penguin, 1880, 1993, 2003) pp. 309-321.
[22] See Singer, "All Animals Are Equal" in *Writings on an Ethical Life.*

"weakly."[23] That is, the choice to kill a weak or abnormal infant could rest

entirely on the subjective distaste a parent might have for having a deformed or

weakly child. Moreover, the killing of female infants, simply because they had

the misfortune to be female (a practice which continues to this day in some

cultures),[24] was also explicitly practised and moreover legally condoned in

Greek and Roman societies; further proof that the question of just which infants

were killed was based on selective and entirely relative moral norms and

preferences.[25] The practice of infanticide was by no means universal in the

Ancient world, either, in that Jewish communities were noted for *not* partaking

in the practice.[26] Nussbaum has also pointed out that we have made such

advances in medicine that sick and disabled infants now have much better

chances of survival,[27] and, as noted earlier, Nussbaum further confirms the fact

the that human beings often have an interest in living that goes beyond

considerations of pain and suffering alone.[28] Here it might also be objected that

some communities have also practised the killing of their elderly, such as Inuit

communities, who, in accordance with a nomadic lifestyle have in the past left

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[23] "[W]e drown even children who at birth who are weakly and abnormal." Seneca, *On Anger* I.xv. in *Seneca: Moral Essays*, Vol. I, trans. John W. Basmore (Cambridge, Massachusetts: Harvard University, 1928, 1958, 1963, 1970), pp. 106-355; p. 145.

[24] See , Malavika Karlekar, "The Girl Child in India: Does She Have any Rights?" in *Canadian Woman Studies*, 15 (1995) (2 & 3): pp. 55-57; Sten Johansson and Ola Nygren, "The Missing Girls of China: A New Demographic Account," *Population and Development Review*, 17: 1 (March 1991), pp. 35-51; Ansley J. Coale and Judith Banister, "Five Decades of Missing Females in China," *Demography*, 31: 3 (August 1994), pp. 459-479.

[25] See Rodney Stark, *The Rise of Christianity* (Princeton: Princeton University press, 1996), pp. 97-98, and p. 118; R. J. Rummel, *Death by Government* (Edison, N.J.:Transaction Publications, 1997), pp. 65-66; Susan Scrimshaw, "Infanticide in Human Populations: Societal and Individual Concerns," in Glenn Hausfater and Sarah Hardy (eds.) *Infanticide: Comparative and Evolutionary Perspectives* (Edison, N.J.: Aldine Transactions, 2008), pp 439-462; p. 439.

[26] "It is a crime among them to kill any newly-born infant." Cornelius Tacitus, *The History,* Book 5, 5 in Moses Hadas (ed.) *Complete Works of Tacitus*, trans. Alfred John Church and William Jackson Brodribb (New York: Random House, 1942), p. 657-676; p.660.

[27] See Nussbaum, *Frontiers of Justice*, pp. 99-100

[28] Ibid., p. 385; as cited earlier.

those too elderly or sick to travel behind to die. However, as Mike Brogden,

author of *Geronticide* states;

> The elderly inuit may have been cast aside on an ice-floe after
> a ritual chant, but his experience was not that different from
> the pauper forced into the Victorian poor house on a less-
> than-subsistence diet or the older female resident of a modern
> nursing home starved of life-maintaining medicine because of
> a rationing process that discriminates against the elderly. The
> fact is that old age itself has been one *criterion for selecting
> people to die.* [29]

The practice of geronticide, as Brogden further argues, was by no means

universally condoned; on the contrary, it was "often the crude determinism, the

exigencies of economic survival – often mediated by cultural patterns – which

determined the degree of acceptance of life termination for older people."[30] It is

in this sense that we can see that old age as a condition of exclusion from equal

moral consideration is as arbitrary and discriminatory as racism or sexism. Such

examples only confirm the fact that *the exclusion of particular humans from*

moral consideration is utterly contingent and culturally relative; whereas the

practice of communal accountability is universal. In other words, all human

communities practise communal accountability on both an intra-and inter-group

level; it is the specific exclusion of certain *types* of human individuals from

moral consideration within that community that is wholly contingent or

arbitrary.

Darwall's insistence on the rational, individual nature of reciprocal

accountability and normative consent can be seen as an attempt to build in the

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[29] Mike Brogden, *Geronticide: Killing the Elderly* (London and Philadelphia: Jessica Kingsley, 2001), p. 11; italics in the original.
[30] Ibid., p. 60.

possibility of a very Rawlsian conception of fairness and justice into his ethical theory; where that which is morally just is defined as that which is consensually (and reasonably) agreed upon. Certainly, having rules imposed upon one, without reciprocal accountability, consent or choice, is what we commonly regard as ethically unjust; as the grounds for tyranny and dictatorship. It is in this sense that we can say that a tyrant who imposes his own ethical standard onto a community is not just, for he is not applying a standard that is either reciprocal or common to all. Hannah Arendt's distinction between power, violence and brute strength in *On Violence* is useful here, for, just as she states that political power can only exist with consent and that violence, brute strength and tyranny is that which is done without consent and therefore cannot be equated with power, so too can ethics be seen as that which takes place beyond the realm of violence, brute strength and tyranny. [31] Such things cannot be equated with ethics, as the assumption of a complete lack of accountability inherent within such actions attempts to foreclose the very possibility of accountability and therefore the possibility of negotiation over the appropriateness of the standard of behaviour; just what could be considered an ethical norm. For indeed, we enter into the realm of ethics when we attempt to judge such actions by a standard other than sheer brute force. However, as noted earlier, ethics cannot be reduced to communal consent upon a standard alone, which would then leave each individual at the mercy of its respective communal (and ultimately particular) majority; hence the need for an absolute or universal standard – a standard beyond or greater than any particular communal viewpoint – in order to ensure the possibility of justice. This standard is provided by the

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[31] See Hannah Arendt, *On Violence* (San Diego, New York, London: Harcourt Brace, 1969, 1970), pp. 44-56.

practice of reciprocal accountability itself; the recognition of which confers full

moral consideration and the acknowledgement of equal moral worth. Before,

however, going on to discuss more thoroughly the nature of inter-communal

accountability – a phenomena, it is suggested, that displays the universal nature

of the human community – more needs to be said about the nature of

membership within particular human communities.

It has been argued above that membership within particular human communities

does not need to rely on being personally able to hold others accountable, as it is

the community that holds its members (and other communities) accountable

over breaches to communal norms. However, this of course raises the question

of who belongs to the particular human community in the first place; to merely

say that it is humans that belong to human communities is of course to merely

beg the question; who, then, is human?[32] In one sense we might be able to say

that it is the practice of communal accountability that forms or defines human

communities, and certainly we could say this of the practice of inter-communal

accountability, but such recognition still very much places the onus of

membership even more thoroughly within the local or particular human

community. Can we say that the practice of intra-communal accountability

establishes local human communities? Much depends, of course, on the nature

of that community and therefore the nature of inclusion into such a community.

As argued above, both in the establishment of social norms and the practice of

moral accountability, particular human communities are not only thoroughly

social and communal in nature, but also thoroughly ethical. What inclusion into

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[32] I am grateful to my supervisor, Professor Jeff Malpas, for pointing this out to me.

a particular human community effectively means, then, is that a being is included into a *moral* community; one is granted equal moral consideration in the form of reciprocal accountability which will then be taken up on one's behalf by other members of the community. So we can say that the human community is a thoroughly moral community; a moral community that is defined by the practice of reciprocal accountability, rather than a community that is based on biological characteristics alone. We can further say that what time and history have shown us is that those arbitrarily excluded from equal moral consideration within particular human communities have effectively and successfully contested their exclusion, and that they have contested such exclusion *communally*; that is, as a sub-community within their larger community, further alleviating the need for individuals to posses the capabilities needed to hold or presume that others are accountable.

However, the question of just who might then belong to these sub-communities still remains unanswered; if humans practise accountability on a communal basis, acting on behalf of those not personally able to call others to account, then why could not animals also be included within such a moral realm? As will be argued more fully below, human communities clearly do not have a relationship of reciprocal accountability with wild animals on either a group or individual basis, but what of domestic animals, who can be said to live within human communities? For, if some humans can act on behalf of infants and non-rational humans, might they also then act on behalf of animals, thus effectively including them within the human community? And, if it is a community that is defined by its practice of morality alone, can such animals then, be regarded as human?

Here it can be seen that something more needs to be said about the nature of what it means to be human; that the practice of reciprocal accountability is perhaps not the only relational practice or characteristic that separates the human from the animal – although it will still be argued here that it does constitute a major relational difference between us, as well as a foundational aspect to our understanding and practice of ethics. On the other hand, as seen in the discussion on utilitarian arguments earlier, the question of whether equal moral consideration should be given to animals is not a question of *who* might be considered human and who might be considered animal; that there are beings that are humans and beings that are animals is already assumed as a given fact. Even when humans are described as animals, there is still a distinction made between human animals and non-human animals.[33]

So the question of just who is human is actually already assumed and quite uncontroversial; the real question is whether the differences between us can justify a difference in the way we treat animals. In other words, utilitarians arguing for animal liberation are not insisting that animals are the same as us in every way, or that we should abolish all distinctions between humans and animals, but whether the distinction between animals and humans can be said to justify a *moral* distinction between us; a difference in the way we treat animals as compared to humans. What are being contested, then, are the conditions or

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[33] Even though, as noted earlier, the question of human-nonhuman hybrids has raised the question of just how much a percentage of human cells would make a hybrid 'human,' there was still no doubt, *before* the cells were mixed, as to which were human cells and which were animals cells. It is of course only the artificial mingling of two *different* types of cells that has called into question the identity of the resultant hybrid.

grounds required for moral consideration.[34] The condition of sentience, as the most basic common denominator between us, not only excludes certain humans but, as Diamond suggests, lowers the moral value of all humans. And if, as Diamond further suggests, our very treatment of animals depends on the nature of human morality, then surely it makes sense to thoroughly explore the nature of that morality in order to not only ascertain an appropriate moral response to animals, but also whether our practice of morality does indeed have links to the very nature of our being. For, if these links can be shown, then we might well be justified in saying that the concept of moral equality with animals is at the cost of diminishing what it means to be human.

Some will of course argue that the only differences between animals and humans are biological alone; that we can be described as belonging to different species but that this difference cannot be then said to justify a difference in moral consideration. What they are ignoring of course is that this is a moral question that is considered *by* humans and *amongst* humans alone. It is what *we* discuss regarding how we are to treat *them*; animals themselves do not and cannot take an active or reciprocal part in such moral deliberations. So this is truly a problem that has to do with *human* morality. Moreover, whether or not such morality can be seen to be tied to human biology, or whether human characteristics in general can be tied to biology or what might be called human kind in general, has to remain an open question. For while it might be very difficult to pin down just which aspects of our biological or genetic makeup

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[34] This is not to be confused with a question of whether animals can be part of our moral community; if the argument in this thesis is correct, then all human communities are moral communities, and animals can ever only be the *recipients* of our moral consideration, rather than members of our moral communities.

might produce the characteristics that make us beings for whom the consideration of morality forms an integral part of our being, what we can say is that for those beings that we biologically classify as human, certain moral practices define their *way* of being. This is very different to saying that we give equal moral consideration to humans on the basis of their biology alone, which would of course be meaningless. What might be suggested, rather, is that human beings, while also recognisable as human by their biological make-up, are significant because their significance is of moral significance alone; indeed, it is being argued here that the very concept of morality as we understand it rests within and is practised by the human community alone. In short, human difference cannot be reduced to biological difference, but this is not to then say that our biological make-up plays absolutely no part in contributing to that which makes our lives of moral significance to us. At the very least, it cannot be conclusively proved that they are unrelated, any more than we could say that some forms of behaviour that we associate with certain animals are unrelated to their biological make-up. Just as some animals behave in certain ways, so might we be able to say that this is one of the ways in which humans behave; a way which plays an important part in that which constitutes our being and is, moreover, distinct from animal being. It may be that with further research into the nature of human ontology that the differences between humans and animals might be found to be completely relational; however, any further ontological research is unfortunately beyond the bounds of this thesis, which must limit itself to an investigation into the nature of human morality alone – although this is of course is also linked to the nature of human being.

So while we cannot say that the practice of communal accountability is that which defines that which is human, *tout court*, we can say that it reveals a fundamental difference between human and animal relations; that it not only forms the conditions for the possibility of morality but suggests that the human community is essentially a moral community, therefore giving human being a significance that is beyond the biological. The suggestion that the human community is both moral and universal in nature can be further strengthened, as noted earlier, by showing that the practice of communal accountability also takes place on an inter-communal basis – as shall now be discussed in more detail.

Inter-communal Accountability

Particular or localised human communities hold other particular human communities to account regarding their actions toward them. To again put it in Darwall's terms, our communities are often effectively saying to each other, "Hey, you can't do that to us!" For example, if a community or nation invades or makes war on another, those that are attacked assume both their own inviolability and worth and their attacker's accountability by both contesting the attack (defending themselves) and subsequently resenting that attack. Evidence of this is widespread, as we are reminded every time we read a newspaper or watch our daily news; the Palestinian-Israeli conflict, the Sudanese civil war, the conflict in Iraq and the 'troubles' in Ireland; in short, our very long world history of civil, inter-nation war and ethnic and religious conflict. Often the pain of unacknowledged accountability that a community can feel can be sustained

across generations, as evidenced by the pain Indigenous Australians have felt over the unjust treatment they have received at the hands of both the initial English invaders and the subsequent colonial Government of Australia.[35] Moreover, the importance of the acknowledgement of reciprocal accountability cannot be underestimated, as recently demonstrated by the Australian Government's formal apology on behalf of the Australian people to Indigenous Australians. As Darwall has pointed out, the very presence of a feeling of resentment or injury itself assumes accountability, in that the injuring party is presumed to be a person or a community who can be held accountable over an action and that the injured party is a person or a community to whom the other is accountable. But of course, feelings of resentment in themselves can sometimes be unjust. The caveat that Darwall makes here is that the injured party must also assume that they are holding the other accountable over a standard that they would hold themselves accountable over; which is why, for Darwall, the parties involved need to be rational adults capable of also holding themselves accountable over the same standard. As noted previously, this is Darwall's way of building in fairness or justness; the fact that the standard is agreed upon by at least *one* member of the party as being reasonable for both parties is seen to guarantee that the standard itself is just, although it is precisely this aspect of Darwall's theory that leaves him open to the charges of both relativism and even constructivism. However, the very assumption of accountability has built within it its own standard of value; that one's particular community belongs to the same moral community as the community that has injured it and that one is worthy of

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[35] This is not to suggest that the pain that a person feels at losing a loved one to violence is due only to a sense of unacknowledged accountability; an overwhelming sense of grief, loss and of terrible harm done would of course be amongst the various feelings they would experience.

same moral consideration as they. In other words, that they have the same or equal moral worth as their enemies or persecutors and cannot be considered as ends to the means of the injuring community. The worth they place upon themselves in the assumption of accountability is a moral worth, in that it is beyond the use-value violently imposed upon them by the injuring community. This also becomes the standard by which to judge whether resentment is unjust; whether the feeling of resentment regarding the perceived injury stems merely from seeing the injuring party as a means to end, or not – more of which will be discussed below. Moreover, contra Noonan's Hegelian insistence that the injuring party must recognise the humanity of the other for this humanity to be confirmed, this is by no means essential. As with the example of the injury done to Indigenous Australians referred to above, while the acknowledgement of that injury is extremely important, the fact of their own humanity was be no means dependant on such an acknowledgement. That is, they were always fully human; whether their colonisers were willing to acknowledge the fact or not, as noted earlier. For the recognition of reciprocal accountability is the recognition that one's own community and one's enemy's community *both* belong to the human moral community. As opposed to the self regulating reasonableness of the individual within Darwall's schema, the assumption of reciprocal accountability – that you are accountable to me despite the fact that you deny it – automatically places one within the same universal human community containing its own implicit moral standard; that of equal moral worth.

When particular human communities hold other particular human communities accountable, this demand does not have to be made by explicitly using western

concepts alone – as in "I'm a human, and you are violating my human rights"– in order for the relationship to be seen as one of reciprocal accountability. As noted above, when one community attacks another, those who are defending themselves insist on their inviolability and worth; that they are not a means to someone else's ends or an object, but an end in themselves. This is not to suggest that resistance alone means that a being is an end in themselves, as the same might be said of animals, who often physically resist our use of them. Moreover, sometimes human communities will surrender to their attackers rather than resist and risk decimation. Reciprocal accountability is illustrated, rather, by the fact that they hold the attacking party accountable; even if the presumption of accountability is expressed through resentment alone. Human memory is long, in that communities will remember and often pass on their resentment to future generations; the Irish and Scottish longstanding resentment against the English being just one example. In short, it is not the resistance that is the indicator of worth, but rather the presumption of accountability that simultaneously reveals that the person or group does not regard itself as a means to another's ends and that the injuring party from whom they are demanding accountability is a person or community who can and *should* recognise this fact. Again, Arendt's distinction between brute strength, violence and power is useful here; animals may have at times the brute strength or violence enough to resist a human attack – or to attack humans themselves – but they have not the power, as Hume has also pointed out, to make humans accountable to them. In order to explain this point further it is helpful to again include here Hume's remarks on this issue – previously cited in Chapter One – as they have much relevance to the current discussion.

Were there a species of creatures intermingled with men, which, though rational, were possessed of such inferior strength, both of body and mind, that they were incapable of all resistance, and could never, upon the highest provocation, make us feel the effects of their resentment; the necessary consequence, I think, is that we should be bound by the laws of humanity to give gentle usage to these creatures, but should not, properly speaking, lie under any restraint of justice with regard to them, nor could they possess any right or property, exclusive of such arbitrary lords. Our intercourse with them could not be called society, which supposes a degree of equality; but absolute command on the one side, and servile obedience on the other. Whatever we covet, they must instantly resign: Our permission is the only tenure, by which they hold their possessions: Our compassion and kindness the only check, by which they curb our lawless will: And as no inconvenience ever results from the exercise of a power, so firmly established in nature, the restraints of justice and property, being totally USELESS, would never have place in so unequal a confederacy.

This is plainly the situation of men, with regard to animals; and how far these may be said to possess reason, I leave it to others to determine. The great superiority of civilised Europeans above barbarous Indians, tempted us to imagine ourselves on the same footing with regard to them, and made us throw off all restraints of justice, and even of humanity, in our treatment of them. In many nations, the female sex are reduced to like slavery, and are rendered incapable of all property, in opposition to their lordly masters. But though the males, when united, have in all countries bodily force sufficient to maintain this severe tyranny, yet such are the insinuation, address, and charms of their fair companions, that women are commonly able to break the confederacy, and share with the other sex in all the rights and privileges of society.[36]

Note that Hume is even willing to concede that animals might be rational

("which, though rational" and, "how far these may be said to possess reason, I

leave it to others to determine"), but that such a capability has no impact on their

ability to hold humans accountable. Further, though he speaks of them as

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[36]Hume, "An Enquiry Concerning the Principles of Morals," Section III, 152, p. 190.

inferior in strength in both mind and body, even "barbarous Indians" (whom, Hume implies, Europeans treated as animals), are still not seen by Hume to be on the "same footing" as animals; despite the fact that Europeans were able to physically overcome them with violence. Even women – who, by implication , are so weak in body that men are able by their "bodily force" to keep them in "like slavery" – have the power to resist such "tyranny" and nonetheless "share in all the rights and privileges of society." Now, much as we might disagree with Hume's characterisation of female "charms" as their apparently sole source of power, what is important to note here is that Hume describes the subjection of women and Native Americans in terms of tyranny and slavery. What Hume is affirming is that they are denied equality – and therefore justice – when they are imposed upon by other humans. Within Hume's schema then, bodily force, imposition and violence towards humans is equated with tyranny – much as it is within Arendt's. Further, for Hume justice is owed to humans and "gentle usage" to animals, echoing here Montaigne's earlier sentiments; "We owe justice to men, and grace and benignity to other creatures that are capable of it."[37]

For Hume, justice is impossible with animals because they are not equal to us and they are not equal *precisely* because they cannot make us accountable to them; our relationship is one of "absolute command on the one side, and servile obedience on the other." This is a relationship of "a power" that animals simply do not possess, and as such "[o]ur compassion and kindness the only check, by which they curb our lawless will." For, for better or worse, they simply cannot

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[37] Montaigne, "Of Cruelty," p. 364.

"*make us feel the effects of their resentment.*" Whether Hume means here that

they cannot make us understand that they are resentful, or that they cannot hold

us to account despite the fact that they are resentful, he clearly does not consider

this power – the power to make us feel the effect of their resentment – a physical

power. Hume has neither credited Native Americans nor women with the

physical power that might be said to be needed to oppose the "bodily force" of

tyrannical men. What, then, is the nature of this "power" that Hume is referring

to?

Hume suggests that justice is impossible without equality and such equality

might be seen in terms of having the power to call other humans to account.

This is a different conception of equality to the Humean concept of 'rough

equality' Rawls uses to stipulate the conditions needed for contracting parties to

form the social contract, for this equality exists whether or not human groups are

actually successful in bringing other humans to account over their actions. As

Hume states, Europeans may have "imagined" that they were not accountable to

Indians – which is how they tried to justify their abuse of them – but, as Hume

himself indicates, *they were still accountable nonetheless*, in that they were, as

humans, beings to whom other humans were accountable and therefore subjects

of and to justice. Here it is perhaps important to clarify further that regardless of

whether or not Hume saw resentment in itself or the power to make resentment

felt the crux of the difference between animals and humans, in terms of the

argument outlined here resentment is seen as containing *both* the assumption

that the injuring party should and can be held to account and that the injured

party is a being that others are accountable to. Moral equality is assumed when

human beings insist on accountability, for when they do so they are insisting that they are an end in themselves; that they are not means to another's ends. It is this insistence that they are an end, a limit to the other's will – just as the other is an end, a limit to their will – that is the recognition of a common equality and indeed, of a common humanity. To reiterate, this demand does not need to occur on an individual basis; for, as shown earlier this demand is constantly made by and for community members on behalf of their communities. It is clear from Hume's passage that he himself is claiming inter-communal accountability on behalf of both Native Americans and women; insisting that other humans are accountable to them on the grounds that they, too, are human.

In short, what is being suggested is that the power Hume is referring to here might be described as a *moral* power; a power that stems from the force of a moral claim. Particular human communities can be said to have the moral power to make other particular human communities accountable to them, *for they possess a moral power that stems from the recognition and claim that each belongs to the same moral community*. This moral community is the universal human community. Humans, of course, also frequently do violence to each other and attempt to refuse their accountability to other humans, but such denial does not entail that they are not then accountable, or that they do not belong to the same moral community.

It should be noted that Hume might have had a very different idea as to what this power might have consisted of; however, that he sees such power as not only exclusive to humans but also irreducibly social and moral in nature is clear

from the passage immediately following those cited above: "[w]ere all society and intercourse cut off between man and man.... [i]t seems evident, that so solitary a being would be as much incapable of justice, as of social discourse and conversation."[38] The claim that this is a moral power should be seen in the light of what generally might be said to be the power differential that exists between humans and animals in regards to moral accountability. Such a claim does not, of course, explain exactly *how* we come to possess this moral power in terms of the demand for reciprocal accountability; it may very well be that it ultimately depends on other aspects of our being and again, this would need to be the subject of further research beyond the bounds of this present thesis. But in terms of the account of human morality given here, this power can in fact only be described as moral in nature, given that it is based on the claim of membership to a moral community. This is what is truly remarkable about such a claim, in that it is a claim that transcends the differing languages, cultural mores and social and moral norms of each particular community, revealing the existence of a universal moral community to which all particular human communities belong. What is perhaps even more remarkable is that the recognition of this universal community does not depend on the sentiment of good will; for the moment we claim that our enemy is accountable to us is also the very moment that we claim that they belong to the same moral community as we do. Moreover, we presume that they can be judged by a moral standard that springs from the value we place on our own lives, a value implicit in the very demand for equal accountability; a value we presume that they *should* respect. That we assume that they *ought* to respect us as ends in ourselves is in

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[38]Hume, "Enquiry Concerning the Principles of Morals," Section III, 153, p.191.

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itself remarkable, considering the vast cultural differences that often exist

between human communities. Yet despite these differences, by presuming

accountability we are in fact presuming that these are beings that are *like us.*

It may help to illustrate this point with a concrete example. The claim of moral

accountability that Indigenous Australians have made of the Australian

Government in terms the enforced removal of its children (among other issues),

was used earlier as an example of inter-cultural accountability. Some readers

may object that this presumption of accountability may have simply arisen

through the familiarity over time of Indigenous Australians with the Australian

justice system; a use of the 'tools' of the oppressor against those same

oppressors. However, this presumption of moral accountability between

indigenous and settler communities has existed since first contact (or invasion) –

when the first English colony was established in Australia in 1788. In this

instance we have two communities with utterly different languages, social

mores, norms, laws and customs meeting together for the first time, for although

Captain Cook's crew had been in the area some ten years earlier, this was the

first time the English and the indigenous communities had had any sustained

contact.   In re-telling that event, drawing on the written and pictorial sources

made at the time, Marcia Langton, other indigenous Australians and Emeritus

Scholar and historian Inga Glendinning describe the relationship of the first

Governor, Arthur Philip, with a local indigenous man, Bennelong.[39] Philip had

abducted Bennelong and imprisoned him in Government House in the hopes of

training him as a translator and mediator. After Bennelong's shackles were

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[39] See *First Australians*, Episode One, "They Have Come to Stay."

finally removed, he escaped, with Phillip spending a number of months searching for and eventually finding him amongst the members of his community. Phillip – who was apparently very fond of Bennelong – approached Bennelong in order to convince him to return. However, after bringing Phillip into a circle of warriors, a Karadgi or "clever man" from the community stepped forward and speared Philip above the collarbone, in what Langton and others describe as a punitive or "pay back" spearing; a ritual spearing that was a widespread form of punishment within Aboriginal communities.[40] That it was a ritual punishment seems extremely likely, given that Phillip, as Langton suggests, could easily have been killed, whereas the blow was by no means fatal. What is even more incredible is that Phillip himself seemed to interpret the blow as a punishment; he ordered his men not to retaliate and after he recovered was able to resume friendly relations with Bennelong, to the extent that Bennelong returned to Government House and eventually travelled to England himself.

What is striking about this story is that Bennelong and his community saw Phillip as morally accountable to them over his treatment of Bennelong. Despite the fact that Phillip was not a part of the Aboriginal community itself, nor invited to formally become so, he was nonetheless recognised as a being who could be held morally accountable. And by being presumed accountable, he can be said to have been recognised as a member of the same *moral* community; a moral community that implies a standard of value beyond the particular. To

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[40] Ritual spearing is still practised in some Aboriginal communities to this day; for example, by the Nyrippi community in the Northern Territory, some 450kms west of Alice Springs (as communicated to me by a former health care worker in the area, Darren Wake, R.N.).

elaborate, by detaining Bennelong against his will, Phillip was effectively

denying that Bennelong belonged to the same moral community as himself, as

by imprisoning him, he was effectively using him as a means to his own ends;

denying reciprocal accountability by refusing to countenance that he might be

morally accountable to Bennelong over such actions. We might say that what

followed made it clear to Phillip that he was indeed morally accountable to

Bennelong and that they were therefore equal members of the same moral

community. Again, it is important to note here that Bennelong himself did not

have to make this point, for his community acted on his behalf; enforcing their

own communal moral laws. However, they enforced their laws on someone who

actually did not belong to their particular community, but who they nevertheless

saw as morally accountable to them. It is in this sense that we might be able to

speak of the recognition of equal or reciprocal accountability as a universal

standard of value that transcends particular standards or norms. The assumption

of equal moral accountability transcended Philip's particular moral norms, and it

also transcended the particular norms of Bennelong's community, in that it

could be applied to and even accepted by beings who were not members of that

particular community, implying the existence of a greater moral community to

which they all belonged; the universal human community.

We can say, then, that the imposition of Philip's standard on Bennelong was

indeed unjust, because it did not recognise reciprocal accountability or moral

equality, which is essential for the possibility of justice (as opposed to the

practice of benevolent paternalism or tyranny on the one side, and compliance

and resentment on the other). However, even those Aboriginal communities who

chose to retaliate through open or guerrilla warfare were also presuming accountability on the part of the English invaders and therefore, simultaneously, membership to the same moral community. For they were presuming that their enemies *should not* treat them as "vermin to be cleared from the face of the earth" (to use Langford Ginibi's words), and that they could be held accountable for breaching that standard. This standard is the standard of reciprocal or equal moral accountability, which in turn implies that one is, in moral terms, an end in oneself; in that another's standard of value should not be imposed upon us or supervene over our own worth.

It might perhaps be thought that too much is being read into a scenario that occurred over two hundred years ago; for how can we be sure it really happened in the way it has been reported here? Of course we can't, but what we can affirm is that the general dynamics of this particular scenario have been played out time and again across the former colonies of the world; the coloniser denies moral accountability, the colonised insist that they are beings to whom the colonisers are accountable, and, in most cases (but by no means all), moral accountability is recognised. The humanity of the colonised is by no means dependant on the recognition of the coloniser; the very assumption of accountability, often expressed simply through resentment, is evidence enough.

Here it should be noted that it is not being argued that accountability is evidenced or obtained via resentment alone, but rather that the experience of resentment, as Darwall argues, is *one* example of the presence of both the expectation of accountability and the existence of a communal standard; a

person feels resentment over an injury because one *already* assumes the other to be capable of being held accountable for their actions and because they have failed to hold to a standard of value that is communal in the sense that we apply it both to them and to ourselves. Where this argument differs of course from Darwall's is over the nature of the standard, as Darwall's is inextricably linked to an individual's possession of rationality and a (rational) communal agreement over standards. As resentment can be felt over the breaking if a communal standard that is not necessarily just – for example, a group of men might feel resentment over the fact that a woman is not upholding the standard of dress and modest behaviour they expect of her[41] – a communal standard alone does not guarantee that a moral norm is just. However, if we recognise the standard of value that is implicit within the notion of reciprocal or equal accountability – that human beings are ends in themselves – then we can in fact say that this is an unfair standard, in that the woman is not being regarded as a being who is an end in herself and therefore as having worth for her own sake, but rather is being judged in accordance with an end that is seen to be superior to or to supervene upon her own intrinsic worth; her worth being conditional upon this standard rather than upon her worth as a human being. It is in this regard that we can speak of reciprocal accountability as a recognition of unconditional worth; as worth is not then conditional upon the satisfying certain standards, but rather is predicated alone upon the fact that one belongs to the universal human community. Such a universal standard could then be used to judge *between* the localised moral norms of particular moral communities, as is desperately needed in the present state of global relations.

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[41] As, for example, illustrated by the crackdown on "satanic" clothing recently in Iran, as noted earlier.

Implicit in the recognition of accountability, then, is the recognition of equality; when we hold others accountable to us – even if they refuse to acknowledge their own accountability to us – we are in fact recognising that they are creatures with the same being as ourselves. When we acknowledge that we are accountable to others, we are again recognising both the ability to be held accountable *and* a common standard to which we acquiesce. So a communal standard is always already acknowledged in the expectation of accountability, even when that standard is refused by the other.[42] But we can only know if this standard is just if it can in turn be judged by an absolute – an absolutely fair – universal standard; the standard that each human is an end in themselves, the very standard implied by reciprocal accountability itself. When we hold another accountable over an injury they have done to us we are already applying a standard; that we are an end in ourselves and cannot be used as means to another's ends. When we claim reciprocal accountability we are immediately acknowledging that we, and those who have injured us, *are members of the same ethical community.* When a nation claims accountability for the wrong done to them by another nation, they are assuming that both they and those who have injured them belong to the same ethical community; and this moral community is, inescapably, the universal human community.

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[42] For example, a slave-owner may hold a slave accountable for their actions, but not see the slave as equal, precisely because the slave-owner does not see himself as reciprocally accountable to the slave. For, the recognition of reciprocal accountability – i.e., that the slave owner is as equally morally accountable to the slave as he expects the slave to be to him – automatically acknowledges equality. The slave, in her desire to see the slave-owner held morally accountable over his use of her, is in that very desire recognising that the slave-owner *is* reciprocally morally accountable to her; that they are in fact moral equals.

So in this sense Darwall is quite correct in claiming that reciprocal accountability is both the form *and* the partial content of morality,[43] as accountability not only provides us with the structure needed for the very possibility of morality, but also with an inherent, universal standard of value. Moreover, ethics is meaningless without accountability, in that just as accountability is meaningless without a communal standard, so too is a communal standard meaningless without accountability. This is why ethics is incomprehensible without the presence of each of its elements; to have a standard that one cannot draw others to account over is meaningless, but just as importantly, a particular communal moral standard of value itself must have the possibility of being challenged over its own possible injustices; hence the need for a universal standard for justice. Morality serves its own purpose, is its own end, and in that sense cannot be reduced to that which humans decide upon arbitrarily. But it is also inseparable from human being, in that it is only human communities that produce the conditions for the possibility of morality. Whether we like it or not, if we live with other humans we are compelled to participate on an ethical basis with them; we are always already engaged ethically with other humans in that we are always already, from birth, made to be accountable for our actions. In this regard we are inescapably accountable in our relationships with other humans and our lives are inescapably bound up with ethics. We could say that as humans we are bound or given over to ethics as soon as we enter into a human community, in that we have no choice or say in the matter; despite our protests, we will always be held accountable to, for and by other humans; just as we will, similarly, hold them to account over their actions regarding us.

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[43] Darwall, *Second-Person Standpoint*, p. 65.

Just to make it very clear, ethics and morality are being used in an interchangeable manner here, but are not being used in the sense of being morally 'good;' rather, what is meant is that even when we are being morally 'bad' we are participating in an ethical structure that is inseparable from human being. Morality may serve its own purpose, but its means are inseparable from human being. The conditions for the possibility for ethics as we understand it are bound up with human being, and the conditions for the possibility of human being are bound up with ethics. However, as noted earlier, they cannot be said, within the terms of the argument presented here, to define human being in its entirety. The conditions for the possibility of ethics include not only a standard of value, but the possibility of the breach of that standard, along with the possibility of being held accountable for that breach. The possibility of justice, as discussed in the previous chapter in relation to Nussbaum's argument for the inclusion of animals within the parameters of human justice, also requires the possibility of reciprocal accountability for it to not degenerate into paternalism. It also requires the possibility of an appeal to an absolute or universal standard when particular communal standards themselves fail us and are unjust; a universal standard not reducible to any particular or relative standard. This brings us now to a more detailed consideration of justice.

Justice

As noted earlier in our discussion on Hume, he can be read as defining justice – at least in terms of the distinction between animals and humans – as a practice

that takes place between equals and that equals might be interpreted as referring to all humans; as opposed to the rough equality of materially productive individuals as referred to by Rawls. It is, however, important to note that Hume also describes justice as artificial, in that he sees justice as arising out of particular social circumstances – such as a scarcity of resources, disputes over property and increases in the size of human communities. In short, in cases where sentiments of sympathy can no longer seen to be capable of naturally regulating human relations. Moreover, Hume sees justice as particularly unnecessary during times of famine and war, which he regards as conditions where any rules of justice are suspended in a basic fight for survival.[44] Rawls also seems to follow Hume in such an understanding, in that his concept of justice as fairness has to do with distributive justice – the fair distribution of goods, services and positions within society.[45] But as Nussbaum and Okin have pointed out, such a public conception of justice leaves that which goes on in the supposedly 'private' sphere – the family – as necessarily outside the realm of justice. Moreover, as Nussbaum goes on to suggest, certain humans (and animals) are excluded from moral consideration within such a schema. It can also be argued, contra-Hume, that issues of justice seem to inevitably arise precisely *due* to such conflicts as war, in that any flouting of reciprocal accountability will specifically give rise to issues of justice (although Hume does seem to recognise this in relation to the violence done to Native Americans, as seen above). For our experience attests to the contrary; wars creates wounds that only the recognition of accountability, and therefore justice, can heal.

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[44] See Hume, "Enquiry Concerning the Principles of Morals," Section I, 146-151, pp. 185-190.
[45] See Rawls, *A Theory of Justice.*

Humans, of course, can be treated unfairly apart from any consideration of distribution; we need only think of such things as murder, 'domestic' violence, incest and rape, to understand that a conception of justice needs to include such areas of injury, as we saw earlier in the case of Korean women raped by Japanese soldiers. In other words, at its core justice concerns the way we treat and are treated by other humans. Justice, then, can only be fully understood when it is seen as an essential part of our ethical structure of being; as inextricably enmeshed with our practices of communal accountability and social standards of value. When we hold others to account over their actions to us – whether inwardly, via resentment, or outwardly, by formally calling them to account through our communal norm-enforcing processes – it becomes an issue of justice. Justice, by such a definition, concerns holding others to account over their behaviour in accordance with a social standard of value. But as there is always the possibility that our social standards are unjust, in order to satisfy justice we need the possibility of appealing to a universal standard of justice, one that can itself hold social standards to account. This requires of course, as noted, an absolute standard of value; one that does not show partiality in regards to its subjects and provides a measure of absolute worth by which all other standards can be measured. The only standard available to human beings that does not rely on the appeal to divine or transcendent measures of worth (which would immediately become a source of dissension amongst different communities), is the standard of value we impart to human beings themselves. For this is what we all have in common; our human being.

One could characterise the objections to western humanism as objections to what have been seen as conditional terms for moral consideration or personhood. In this sense one can speak of the need or demand for unconditional respect, in that what is being demanded is that respect be given for persons or beings regardless of their characteristics; be they human, animal or machine. In other words, respect despite difference. This concept, however, as seen earlier, presents a problem for justifiable grounds; if the other is so completely and uniquely different, how are we to know that they desire or require our respect? As argued in the critique of Bill Readings in Chapter Three – who insists that we not define Australian Aborigines as humans – if we cannot see others as having anything in common with us, how are we to know that they would like to be treated as we would like to be treated? The utilitarian response to this concerning animals has been to point out that they feel pain as we do; however, as argued in Chapter Four, this standard of common value ultimately excludes certain humans from equal moral consideration. Further, to attempt to apply the same standard of treatment to both animals and humans, as shown by Tom Regan and Nussbaum, is to then ignore that essential to the concept of justice is the concept of reciprocal accountability; both parties in a dispute must be able to draw the other to account over the standard of value applied to them for one-sided paternalism to be avoided and for justice itself to be possible. It is precisely because animals cannot hold humans reciprocally accountable that they cannot be seen as ends in themselves, in that they are not in any way able to challenge the imposition of our moral standards and norms upon them, or insist that we accept their moral norms on their terms. Such an inherent inequality of relationship is both unjust and unfair to animals, particularly if we recall the fact

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that Nussbaum recommended that we even try to prevent wild predators from eating other animals.

One of the major objections, as noted earlier, to the suggestion that animals are not ends because they cannot hold humans accountable, is that some humans also do not have this capacity; are therefore also not to be regarded as ends? As noted previously, it is the main contention of this thesis that accountability amongst humans is a communal, rather than an individual practice, in that our human societies are so structured that we hold and are held to account by our communities over social standards of value. If it can be agreed that accountability is a thoroughly communal practice and that inherent to the very practice of accountability is the assumption that those involved in a relationship of accountability are ends in themselves, then treating a person as an end becomes a standard of value that can be equally and universally applied to all humans, simply due to the fact that they are human. Such a standard of equal moral worth and equal moral consideration could then be said to be fulfilling the conditions of justice lacking in other theories.

Here it might be objected, why not just simply include animals within such a schema? What is being suggested here is that we are fundamentally different to animals in regards to our practice of ethics and that our practice of ethics, based as they are on the assumption of communal accountability and inviolability, shows that a fundamental difference exists in regards to our way of being. More, of course, needs to said about the nature of that being, as noted earlier, and so this thesis is only a partial account of what it might mean to be human. We can

conclude, however, with some brief final remarks on the concept of humans as ends, how justice and ethics might themselves be seen as ends, and how both are linked to the practice of communal accountability; that these concepts and practices indeed form the conditions for the possibility of ethics. Moreover, can we speak of a moral imperative in regards to accountability? And finally, where might such a conception of ethics leaves us in regards to our treatment of animals?

Humans as Ends

It was Kant who, as noted above, beautifully described human being as an end in itself. According to Kant, as a rational subject you are the limit to another's will; "the rational subject…as a supreme condition restricting the use of every means – that is, always also as an end;" which is directly linked to your own law-making ability – "for it is precisely the fitness of his maxims to make universal laws that marks him out as an end in himself." [46] To be an end is to have value in yourself; to be valued for your own sake, not conditional on any rank, wealth, or social position, but simply because you are human. Moreover the value that Kant sets upon humans is unconditional; humans are priceless, in that they have "not market or relative value, but intrinsic value."[47] Humans are, quite simply, as ends in themselves, "exalted above all price."[48]

However, Kant of course links the concept of human being irrevocably to the condition of rationality – and rationality inescapably to morality; "Thus *morality*

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[46] Immanuel Kant, *Groundwork of the Metaphysic of Morals*, p. 105.
[47] Ibid., p. 102.
[48] Ibid., p. 102.

lies in the relations of actions to the autonomy of will – that is, to a possible

making of universal law by means of a maxim."[49] Kant moreover links both to

the conditions for being an end; "morality is the only condition under which a

rational being can be an end in himself; for only through this is it possible to be

a law-making member in the kingdom of ends."[50] Such a condition, as noted

earlier, excludes non-rational humans from being seen as ends. However, within

the schema of communal accountability, humans can be seen as ends in

themselves not on the grounds that they are rational but rather simply on the

grounds that they are human, and, as members of human communities,

inevitably enmeshed in the practice of communal accountability.

Respect, then, can be seen as the recognition of accountability; an attitude that

responds to someone as more than just a function or as having use-value. If

inviolable worth can be seen to be inherent to the practice and assumption of

communal accountability, then all humans can be seen to have inherent and

universal worth; whereas by contrast, the exclusion of particular humans from

such worth can be seen as contingent and relative. For if the argument presented

in this thesis is correct – that communal accountability is practised universally

amongst humans – then the exclusion of certain humans from moral

consideration can truly be described as arbitrary.

To see each human being as an end in themselves is to provide an absolutely fair

standard of treatment that is available to all. To have unconditional value means

that one's value is not conditional on any particular value; one does not have

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[49] Ibid., p. 107.
[50] Ibid., p. 107.

value because one is rational or sentient, or because one belongs to a particular culture, creed, nation or religion. Value has to be unconditional for it to be applicable to all humans; we have to say that humans have value simply due to the fact that they are human. To be human, then, is to have value in and of yourself; to have value for your own sake. This is the absolutely fair and impartial universal standard that is needed to judge all particular standards – all contingent and localised communal moral norms.

Justice and Ethics as Ends.

As Darwall has argued, following Strawson, morality can be seen to be fulfilling its own conditions, its own end, as compared to consequentialist arguments that place any assessment of moral worth on an outcome; i.e., we punish a wrong act because punishment will act as a deterrent to future wrong-doing and improve society as a whole.[51] Darwall describes his approach as acting for the "right reasons;" reasons that satisfy the conditions of morality, rather than reasons that are based on contingent outcomes. This is not to suggest that justice may not at times be closely connected to punishment for a wrong, but rather that punishment is not part of the *necessary* conditions of justice. By contrast, the acknowledgement of reciprocal accountability – the acknowledgement that a party or a community has injured or wronged another human being or human community – is one of the necessary components or conditions of justice, in that acknowledgement of a wrong necessarily precedes punishment and can in fact be separated from punishment. This can be illustrated, as noted earlier, by the

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[51] Darwall, *The Second-Person Standpoint*, pp. 15-17.

recent demand for an apology by the Australian Government to Indigenous

Australians and the establishment of the Truth and Reconciliation Commission

in South Africa, but can also be seen in the example given below, where a

mother describes the pain involved in not having accountability properly or

officially acknowledged over the death of her 18-month-old child, who was

accidentally killed by medical practitioners while under their care.

> We later found out that the doctor wanted to be the one to tell
> us. He wanted to tell us then and there but the hospital
> protocol did not allow it. I had to wait 10 months to hear "I'm
> sorry."
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> The nurse that was involved in the procedure…we had to
> wait 10 months to meet her, and she was banned from
> approaching us. And we were actually at the Coroner's Court.
> We were standing in the line to the ladies toilet. I am in a
> public toilet and the lady's standing behind me, I happened to
> recognise her, and I said, "You are one of the nurses from the
> hospital, aren't you?" She said, "I am the nurse." She breaks
> down and cries and I break down and cry. And this is all
> happening in the public toilet, the last place this should
> happen. It is one of the most emotional meetings I have ever
> had, and all she ever wanted to say to me was, "I'm sorry"
> and all she could keep saying was, "I'm sorry, I'm so sorry."
> We ended up embracing and it was something we needed to
> do. I needed to hear that "I'm sorry" and she needed to say it.
> And it is happening in the public toilet. It is something the
> hospital should have organised.[52]

What the above example illustrates is the importance of the acknowledgement of

accountability in regards to a wrong done. As with the case of Britt Lapthorne

earlier, the parents of the child killed are primarily concerned that such

accountability be acknowledged, rather than with trying to prevent more deaths

from occurring. This is not at all to say that future prevention is not a concern

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[52] From the NSW Legislative Council, as cited in Ian Kerridge, Michael Lowe and John
McPhee, *Ethics and Law for the Health Professions*, Second Edition (Sydney: The
Federation Press, 1998, 2005), pp. 136-137.

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for anyone involved in the case at all, but rather that the requirements of justice differ in nature to such concerns. While the foregoing examples show the desirability of having a wrong personally acknowledged, the acknowledgement of a wrong does not always necessarily require an acknowledgement by the actual perpetrator of the crime itself. We can all think of many crimes where the perpetrator or perpetrators still continue to refuse personal accountability. Nevertheless, accountability can still be acknowledged in that the perpetrator is judged to be accountable according to *communal* standards of value. In short, justice can still be satisfied due to the fact that it is the moral community that acknowledges breaches to its own standards.

In this sense the acknowledgement of reciprocal accountability is an end in itself, in that it serves no other purpose than the fulfilment of its own law, its own principle. Moreover, if the argument presented here is correct in suggesting that it provides the very grounds for the possibility of ethics, then we can say that ethics, too, is an end in itself. Similarly, we can value other humans simply because they are moral beings; they cannot be reduced to a function or price because an essential part of their very being is defined by the practice of ethics, and in this sense they might then truly be said to be priceless. As this structure or form of ethics is that which is practised by or is peculiar to humans – indeed, it is being suggested here that the conditions for the possibility of ethics is human being – we can see it as one of the aspects of our being that makes us distinct from animals. The practice of ethics, that which makes human life distinct, is an end in itself, and as ethics is inseparable from and forms an essential part of human being, so too might human being be described as an end

in itself. And so in regards to ethical matters, we might truly be said to be an end in ourselves; both on the grounds that our inviolability is assumed in the very presumption of reciprocal accountability, and on the grounds that we are moral beings, and morality is an end in itself.

If the conception of human morality that presented here is correct – that is, of human morality conceived as inseparable from communal accountability – then we might indeed speak in terms of a moral imperative; of "owing" justice to human beings, as Montaigne puts it. If we live in human communities we are always already living in a moral community and are morally accountable to other humans; our communities will hold others to account on our behalf and similarly demand and expect that we be accountable to others on their behalf. Indeed, we cannot even conceive of ethics apart from our relations to other humans, for it is our relations with other humans that give us ethics as we know it; both in terms of our standards of value and in terms of our assumptions of reciprocal accountability. It is the same regarding our relations with other particular human communities; all human communities are at this point of time enmeshed with one another on a global scale – culturally, economically, politically and of course and most importantly, morally. As shown by the long-awaited apology by the Australian Government on behalf of the Australian people to the Indigenous peoples of Australia after years of oppression and abuse; as shown by the calls for emancipation by slaves, women, the colonised and the working classes, to name a few, and as shown by the world-wide condemnation of the Holocaust; whether we like it or not, we are always morally accountable for our actions towards other humans, for we belong to the

same moral community. We can choose to ignore our accountability to other humans, we can decide to continue to arbitrarily exclude some humans from the list of those we imagine ourselves accountable to, but in reality, due to the very nature of human morality argued for above, we can never divorce ourselves from a relation of reciprocal accountability to other humans; for, whether we like it or not, other humans will continue to make moral demands of us. It is the very fact that humans constantly assume, expect and demand accountability from other humans – both on an inter and intra-communal level – that demonstrates that we belong to the same moral community. Participation in a human community, then, both on an intra-and inter-communal level, always already carries with it the moral obligation of reciprocal accountability to other humans.

The demand for reciprocal accountability is fundamentally different to Korsgaard's suggestion that, owing to a common language and shared meanings, we are then liable to submit to another's demands, simply because they demand it.[53] As noted earlier, we are often made to be accountable to demands and standards of value that we do not share, and it is here that the standard of universal value implied in accountability – of each human as an end – can be used to contest abusive demands and standards. Indeed, we often demand accountability precisely because we have *not* been treated as having the inviolable worth of an end in ourselves. When others treat us as objects, then they are accountable to us; just as we ought and should be held accountable to them when we similarly injure them. It is in this regard that we can truly speak

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[53] This being Korsgaard's interpretation of Wittgenstein's private language argument in relation to the moral obligation we might owe others in *Sources of Normativity*.

of certain actions as being inhumane or humane, in that in not recognising our accountability to another human we have injured is to treat them as less then human. This is clearly illustrated by the correlation between the classification of certain humans in the past as sub-human and the subsequent denial of accountability towards them. The recognition of reciprocal accountability, then, can be seen as the recognition of respect, whereas the denial of accountability is a denial of worth; a denial of the respect we can say that owe other humans as humans, as an intrinsic part of one of the conditions of human being. To deny accountability, then, is to deny in a very real sense part of that which makes us human.

However, if we have been successful in establishing that reciprocal accountability is only practised communally by humans and that humans are ends in themselves directly due to the possibility of such accountability, does this then follow that we can then treat animals with impunity? While this argument, like Kant's, concludes that animals cannot be seen as ends in themselves, it does not necessarily follow that we should then cease being benevolent towards animals – as Kant himself concludes.[54] On the contrary, what is being suggested here is that if we want to maintain a proper sense of ethical concern for animals, then we need to first understand the nature of human morality. For if we define ethics and justice in terms of paternalism towards those who cannot make us accountable to them on their terms, as Nussbaum argues, we then open the door to confusing justice with paternalism

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[54] See Kant, "Duties Towards Animal and Spirits," in *Lectures on Ethics*, trans. Louis Infield (London: Methuen and Co., 1930), pp. 239-241.

and benevolence. We risk imposing unfair standards on animals; of assuming a relationship of equality when in reality no such equality exists. Moreover, if we define justice as the imposition of our ethical standards on other beings, and, if there is no difference between the ethical value of humans and animals, then we further risk classifying some humans as those to whom we are simply benevolent; as beings whom we can make accountable to us, but who cannot make us reciprocally accountable to them – which brings us back to the very same problem that has plagued traditional humanism regarding its exclusion of some humans from the realm of accountability. As Diamond suggests, the concept of animal equality ultimately undermines the significance of humans, as opposed to raising the significance of animals. Moreover, as Diamond further suggests, our moral attitude to animals depends on maintaining the moral significance we impart to our own lives; for that which is at stake in the debate over animal and human difference is the very nature of human morality itself.

How we treat animals, then, depends very much on how we view ourselves; upon our own conception of our relational and moral practices. So in order to ascertain how best to approach our relationship to animals, we need to first thoroughly explore the nature of our own morality. This thesis has been an attempt to explore something of the nature of that morality, but it is an attempt that can ultimately only give a partial ontological account of what it means to be human; which means that any suggestions as to how we should treat animals based on such an account must needs then be similarly incomplete. It may be, as Diamond suggests, that we can only offer animals our pity as our fellow, similarly mortal creatures; or it may be, as the multifarious nature of relations

between ourselves and animals are more thoroughly explored, that we can offer

something more. Either way, such an exploration must, unfortunately, be taken

up beyond the bounds of this thesis.

Summary

This thesis began with the question; what grounds do we need in order to justify respect for others? It has been shown that even scholars who have ostensibly rejected humanism on the grounds that it marginalises others have relied on implicit assumptions and appeals to humanist concepts regarding the universal equality and unconditional worth – and therefore respect – owed to human beings. It has also been demonstrated that those who argue that animals deserve the same universal equality as humans, as the latest in a long list of others excluded from full moral consideration by humanism, fail due to the fact that animals cannot make us reciprocally accountable in our relations with them, and that such reciprocal accountability is essential to our practice of ethics and understanding of justice. Moreover, utilitarian arguments for the inclusion of animals within the realm of moral consideration results in the exclusion of certain humans from the same realm, and so cannot be said to be truly universal in its scope. We have also engaged with current humanist scholars who have attempted either to reconceptualise traditional grounds for respect or to broaden the scope of moral consideration to those traditionally excluded from such consideration and shown that such approaches, being founded on either rationality, autonomy, self-determination, sentiment or intuition, have also prove inadequate. It was concluded that an ontological understanding of human being was needed in order to provide an adequate foundation for the justification of respect for others, so that such respect would not be made arbitrarily vulnerable to the contingencies and instabilities of rhetoric, cultural relativism, sentiment, social change or the vagaries of political policies. The ontological foundation

subsequently offered, while partial rather than complete in its conception, seeks to balance the tension between particularism and universalism by showing a structure of human morality that is irreducibly communal in its practice. Moreover, while arguing that the inter-dependant practices of social standards of value and reciprocal accountability are thoroughly communal in nature, the universal standard of value implied by the assumption of reciprocal accountability – that each human is an end in themselves – ensures that justice is not reduced to communal consensus alone, as this standard provides for the possibility of respect for particular individuals beyond the relative nature of localised and particular norms. We could end by concluding, then, that *if* we want to show respect for others *then* we need to adopt such a foundation, but what is actually being suggested here is somewhat more than a conditional claim. This thesis has argued that, as humans, we are always already morally accountable to other humans, being morally bound to a practice of reciprocal accountability within our moral community; the universal human community. For it is just such a practice that contributes to shaping our understanding of what it means to be human.

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