TRANS-HUMANITIES

Title : Heterogeneity and Injustice: A Sketch for a Lyotardian Approach to Animal Ethics

Author(s) : Gerard KUPERUS

Source : *Trans-Humanities*, Vol. 8 No. 3 (2015), pp. 149–68.
Published by : Ewha Womans University Press
URL : http://eiheng.ewha.ac.kr/page.asp?pageid=book10&pagenum=060600
Online ISSN : 2383-9899

Heterogeneity and Injustice: A Sketch for a Lyotardian Approach to Animal Ethics

Gerard KUPERUS (University of San Francisco)

I. Introduction

The animal is what Jean-François Lyotard calls, the "paradigm of a victim": if damages cannot be established "according to the human rules […] then there are not even damages" (*The Differend* 28). In a sense the victim is a non-victim because it is silenced and cannot testify to the fact that it is a victim.

We can say that the animal or those who attempt to speak for the animal (such as animal rights activists) have been deprived of the means to bear witness to an injustice. What some call the unethical treatment of animals (or even torture) is entirely legal—expressed by terms such as "lawful slaughter." Cultural practices, history, and media have placed the animal outside of the law.[1] For example, in medieval times, a lawyer or counselor represented animals, while today a trial of an animal would be deemed bizarre and quite useless.[2] Our inability today to grasp a legal procedure involving animals as legal persons indicates a huge cultural change from medieval times. I do not seek to discuss the exact reasons for this shift, but what is important for the purpose of this paper is that the lack of legal representation for individual animals has resulted in ignoring the situation of, for instance, farm animals. Without recognizing animals as persons animals cannot be granted rights. In other words, we do not have the tools to conduct a thorough public discussion about the treatment of animals.

Peter Singer and others have argued for better treatment of animals on

1. For an excellent discussion on the way media, such as TV commercials, tend to let us think about ourselves as meat eaters, see: Martin, Bill. *Ethical Marxism: The Categorical Imperative of Liberation*. Chicago: Open Court, 2008, in particular 195–269.
2. On the legal status of animals in the middle ages, see: Evans, E. P. *The Criminal Prosecution and Capital Punishment of Animals.* New York: E. P. Dutton, 1906.

Trans-Humanities, Vol. 8 No. 3, October 2015, 149–68

the basis of the fact that they can suffer. This is a significant argument, but Singer's approach draws the animal into the realm of human ethics and rights. Such an approach faces some immediate and obvious criticism: animals kill other animals in order to survive and, likewise, human animals slaughter other (non-human) animals in order to supply themselves with food. Moreover, since non-human animals cannot commit murder and arguably do not know right from wrong, animals do not have a place in the discourse of civil rights and our justice system. If we introduce the discourse of rights we would apply such human norms and equate the animal with the human. Arguments that anthropomorphize the animal are often easily refuted on the basis that animals do not distinguish between right and wrong or that the animal world is a violent one.

Despite the danger of anthropomorphizing, we must recognize that non-human animals have been subject to complete marginalization in terms of the law. Our language pertaining to rights and citizenship systematically excludes animals. As such, non-human animals occupy a negative space within the language of rights. Few laws exist that in some way protect the non-human animal. In addition, laws do not recognize an animal as an agent. In a different terminology Tom Regan has argued that we fail to recognize animals as the "subject-of-a-life," a being for which its own life matters. Each (human or non-human) animal life, for Regan has an inherent value and should be protected as such through rights.

Lyotard calls a situation in which an individual or group is systematically denied rights the "differend." In his most famous work, *The Differend,* he describes this as a conflict in language—a conflict between different genres of discourse, such as the economic (aimed at making profits) and the ethical (aimed at the good). In another text, "The Phrase-Affect (From a Supplement to the Differend)," Lyotard discusses the conflict in terms of two different forms of language: articulated language, or *logos,* and the phrase-affect, or *phôné*, the voice of (among others) the animal. Through this text, I argue that Lyotard's ethical argument is not limited to inter-human relationships, but can also illuminate our relationship to the non-human animal, the other which speaks to me through its body.

I analyze what a theoretical approach to animal ethics would exactly look like through the lens of Lyotard's "differend." In order to do so, I first discuss how Lyotard's discussion of the "differend" calls attention to injustices that are obscured and remain unnoticed. Secondly, I address in particular the case of

animal cruelty as an example of the "differend" and Lyotard's analysis of the phrase-affect. I argue his philosophy leads to an animal ethics that considers the animal as an absolute other, which will avoid anthropomorphizing the non-human animal and instead recognize the animal as a being that lives on its own terms. Finally, I discuss the implications of this approach for animal ethics.

Ⅱ. Lyotard's Differend

If we are left without the ability to acknowledge that not everything can be said—in other words, if we fail to concede that the unsayable has meaning—then we arrive at what Lyotard identifies as a "differend." He articulates the "differend" as a conflict between different genres of discourse, an idea "borrowed" from Ludwig Wittgenstein who refers to this as the "language game." For Wittgenstein, the different discourses are similar to games, i.e. each discourse has its own rules and goal (7). Scientific language, for example, has a set of rules with a particular goal (to gain knowledge). In the same way, chess has a set of rules with a particular goal (to win the game). Lyotard assumes this idea and emphasizes the multiplicity of different heterogeneous genres of discourse. The economic discourse is incompatible with the medical (just as the rules of tennis are incompatible with soccer or chess). This incompatibility results from the differences in the rules and the goals of the respective genres. Furthermore, we always speak, think, and act within a certain discourse. For example, right now I am using the philosophical discourse in order to exchange and discuss ideas, to know, to convince, etc. We know the rules of this game, but we also know the rules of other games, of other genres of discourse, which makes it possible to shift from one genre to another. We can change from reading or writing, to talking on the phone, to driving a car, to teaching, to cooking a meal, and so forth.

Since language is heterogeneous (i.e. there are many different genres of discourse with differing rules and goals), conflicts are inevitable. The conflict of the "differend" is "the case where the plaintiff is divested of the means to argue and becomes for that reason a victim" (*The Differend* 9). One becomes a victim by not being able to express oneself as a victim. In other words, the discourse denies a wronged individual the status of victim and the ability to indicate an injustice since the rules of the discourse fail to recognize the

injustice. The situation of the Jews living under the German national socialist laws exemplifies such an injustice. By systematically changing the laws, Hitler's regime denied Jewish people the ability to defend themselves. The language of these laws, Lyotard argues, aimed at effacing the collective name "Jew," and with the loss of this name, the Jews lost the means to defend themselves. During the Holocaust, they lost their status as human individuals with rights. Bearing witness to this injustice is difficult, even after the Holocaust. Those who witnessed did mostly not survive and the few survivors are too traumatized to speak about what they witnessed. The survivor is then a victim of the kind of wrong Lyotard describes since Auschwitz cannot be represented or reconciled. The situation of the "differend," Lyotard explains, occurs when one party loses the ability to bear witness to the wrong that it experiences (*The Differend* 5). No tribunal or court exists that can resolve this situation. Differends occur constantly. For example, take the patient who is denied proper healthcare on the basis of the rules of the insurance company (aimed at making money, not at health), or the prisoners in Guantanamo Bay who are denied any possibility to defend themselves (a policy created in terms of the discourse of the "war on terror," not in terms of human rights).

Lyotard's key example of a group that was victimized in such a way is that of the Jews under Nazi laws. The laws were systematically changed in order to place Jewish individuals outside the law, to transform them into non-citizens without rights. After the Holocaust, survivors were often unable to bear witness to their experiences that were too humiliating, too degrading, and overall too traumatic to depict. As already mentioned, Lyotard calls the animal the paradigm of a victim because the animal is naturally located in the position of a victim. The Jews, on the other hand, were diminished to this position—indeed, it is often said that the Nazis treated the Jews as animals.

Since many readers might feel uncomfortable about this comparison between the situation of the Jews and animals, I will address these concerns and justify the need for this problematic comparison. Comparing the mechanized food industry to the Holocaust has the potential to be condemned as a cheap shot, and entails certain dangers.[3] I do not aim to enter a discussion about the

3. This is most famously illustrated by Martin Heidegger's comparison of the Holocaust to mechanized agriculture. Heidegger makes the comparison after which his critics have argued that Heidegger's logic equates to Nazism, and thus Heidegger must mean that the Jewish people were not humans, not worthy of living. Heidegger is again branded as a

value of human as opposed to animal life, nor do I touch upon the political aspects of that conversation. Instead, I focus on the nature of the injustices that occurred in the Holocaust and the treatment of animals. In both cases, as David Wood argues, death is transformed into a technological process (42–44). This transformation of death involves a radical silencing: death becomes something else and with that death is silenced. From this silence of death (the fact that we never hear the stories behind our food), one could draw a conclusion similar to the conclusion some have drawn from the silence after and certainly during the Holocaust: it did or is not happen(ing). Many people cooperated and many more were silent, simultaneously knowing and not knowing what was happening. After the Holocaust, survivors often could not bear witness. What had happened was too cruel to have happened and to narrate. The animal—as well as the person who tries to speak up for the animal—is, not unlike the Holocaust survivor, silenced. As everyone looked the other way as millions of people disappeared and were treated "as animals," we currently turn a blind eye as millions of cows, chickens, pigs, monkeys, rats, mice, and other animals suffer on a daily basis. Without trying to compare the suffering of Jewish people to the suffering of animals, in both cases the other is not recognized as a member of the ethical community.

Auschwitz represents the event that falls outside the realm of what can be said. The experience of Auschwitz is too painful, too horrific; the few who survived in order to speak about it could hardly speak. Modernity and its faith in reason came here to an abrupt confrontation in realizing that reason itself can become a destructive force. The Holocaust represents the industrialization of destruction as well as the legalization of murder, or the reduction of killing

Nazi. Such a circular logic leads to unnecessary and unfruitful accusations and misses the crucial point he seems to make, a point that we are here reminded of by David Wood. For a critique of Heidegger, see (among others): Clark, David. "On Being the Last Kantian of Nazi Germany." *Animal Acts: Configuring the Human in Western History.* Ed. Jennifer Ham and Matthew Senior. New York: Routledge, 1997; Schirmacher, Wolfgang. *Technik und Gelassenheit: Zeitkritik nach Heidegger.* Freiburg: Alber, 1983; and Steeves, H. Peter. *The Things Themselves: Phenomenology and the Return to the Everyday.* Albany, NY: State U of New York P, 2006. Some others who make the comparison between the Holocaust and the treatment of animals include Isaac Bashevis Singer, who writes that "in relation to [animals], all people are Nazis; for the animals, it is an eternal Treblinka." See: Singer, Isaac Bashevis. *The Séance and Other Stories.* New York: Farrar, Straus & Giroux, 1968: 181. Charles Patterson uses Singer's idea in the title of his book *Eternal Treblinka: Our Treatment of Animals and the Holocaust.* New York: Lantern Books, 2002.

to processing. This is a "differend": a situation in which a certain group of people is unable to express or fight the injustice being done to them. Within Nazi Germany, the Jews lost their right to exist and became something less than human. When they lost their citizenship, they lost the ability to speak.

Lyotard argues that we should try to avoid conflicts that arise out of the heterogeneity of different discourses. If we cannot avoid them, we should at least bear witness to conflicts as they occur. Racism, anti-Semitism, sexism, and the oppression of the poor and powerless mostly do not happen in plain sight. Thus, it is our duty to call attention to them and bring them into plain sight. Moreover, we need to develop sensitivity to the heterogeneity of different discourses or language games, as discussed above. In order to do so, Lyotard argues, we should think of different language games as islands. Lyotard conceptualizes our language, and thus our world, as an archipelago (*The Differend* 130). We function in an archipelago of different genres of discourse. In linking one sentence to the other we follow certain rules, in which we can also change from one genre to the other. One can imagine passing from one genre to another as a passage (by ship) from one island to the other, implying that one must first leave a discourse before reaching another. In other words, one has to abandon one set of rules in order to start using another set of rules. To provide an example, one has to make a judgment about a medical treatment based upon the rules of medicine (and not upon an economic goal). Since medicine includes financial aspects, conflicts necessarily arise in which a particular course of treatment is based on economic (rather than ethical or medical) considerations. Further, Lyotard argues for what could be called "vigilance": to develop sensitivity and the ability to recognize situations in which a genre is violated, such as in the Holocaust.

Since genres are always heterogeneous and autonomous—in the sense that each functions by virtue of its own goal and its own rules—applying the rules of one genre to another always involves a wrong, or injustice. Rules that violate the heterogeneity of different language games constitute terror, or the "differend."

The "differend" in this particular case is the animal as a "paradigm of a victim" (*The Differend* 28). In making the transition here from Lyotard's example of the Holocaust to the animal—a problematic comparison, as previously indicated—I want to remind the reader of the close proximity of these situations. Consider, for instance, the expression, "Jews were treated as animals in the Holocaust." The Jews lost their names so that the mass annihilation

was considered "processing" and not murder. Factory-farm animals, however, were never given a name; they were only ever assigned a number. Only pets, and farm animals outside of the meat industry have names, or in other words are assigned an identity. This might seem pragmatic (how could one ever produce or, further, remember the names of thousands of animals?), but it is moreover an emotional issue. Needless to say, names entail attachments, identity, and perhaps even personhood. Names provide an identity, as well as recognition of the named entity as an individual. An assigned number, on the other hand, creates an object, something that was created purposefully with a certain destination, which is not a natural *telos*, but rather an artificial goal. A numbered farm animal is grown and "processed" when ready for consumption. As P. Singer and others point out, when we purchase meat in the grocery store, we are not confronted with the fact that we are purchasing and ultimately consuming an animal. In many ways the meat industry creates a distance between non-human and human animals—consumers and the consumed. This distance is evident in our failure to recognize the treatment of factory farm animals as a "differend."

Since Lyotard discusses the "differend" in terms of conflicting discourses, a significant question arises when applying the "differend" to the situation of the animal: can we even speak of a situation in which the animal is "divested of the means to argue" (*The Differend* 9)? To be denied, or divested of the means to argue implies that one does have something to say, but what one is saying is not being heard. The discussion, thus, leads us to the question of animal language: is the animal "speaking," and if so, how does it speak and what does it have to say?

Ⅲ. Animal Phrases

In order to answer the question of whether or not the animal speaks, Lyotard's definition of language offers us flexibility. To begin, he defines language in a much broader sense than traditional notions. In "Reading Dossier" that prefaces the *Differend*, silence is determined as a phrase. However, is it possible to then include animal language as phrases? Lyotard does not explicitly answer this question, but he poses the (rhetorical?) question of what can be a phrase: "the wagging of a dog's tail, the perked ears of a cat?—And a tiny speck to the West rising upon the horizon of the sea?—A

silence […]?" (*The Differend* 70). This does not mean, as sometimes argued, that for Lyotard everything is language. In fact, we will see that language has limitations and that *logos* specifically cover up, obscure, or destroy affectivity. While not everything is language, we humans live and think in language. Our understanding of the world is always mediated and formed through language. Lyotard characterizes our way of being as linking phrases, an endless chain of sentences, without a beginning and without an end.

Does the animal also live in language? In order to think through this question and, in particular, Lyotard's notion of language in relation to the animal, I turn here to a distinction that Lyotard makes most explicitly in one of his later texts: namely, the distinction between language and affect. In this text, "The Phrase-Affect (From a Supplement to the Differend)," he states that the affect or sentiment is a phrase, or a phrase-affect (234). This does not mean that an affect and a phrase are identical since he draws a clear distinction between *logos* and *phônè*, between articulated language or discourse and the voice or "the sign of pain and of pleasure" (237). This distinction (taken from Aristotle's *Politics*) separates the human and non-human animal not by having and not having language, but rather by two different forms of language: discourse (*logos*) and voice (*phônè*). In this distinction the non-human animal does not have articulated speech, but does have the ability to signal its sentiments that arise through its affectivity.

Starting with *phônè,* Lyotard (following Aristotle) writes, "[a]ll animals, man amongst them, have the *aisthèsis* of pain and of pleasure, and the *phônè* by which they signal this *aisthèsis* to one another" ("The Phrase-Affect" 237–38).[4] One does not require *logos* to signal pleasure and pain. Aristotle speaks of signaling sentiments to one another and of some animals as having "a sort of dialektos" (238).[5] Yet, that would bring the *phônè* to the level of *logos* and Lyotard instead focuses on a "mute communication" in which the body "signals like a face" (238). Lyotard implicitly refers to Emmanuel Levinas here, who grounds his philosophy in the idea of the other that is encountered as a face. Levinas argues that it is the other, the radical other who is not me, who makes a demand upon me through the face. I recognize my responsibility toward the other in the encounter with the other's face. I can certainly ignore the other, or even destroy the other, but the ethical demand itself cannot be destroyed.

4. He refers here to Aristotle's *Politics,* Book 1, Section 1253a10.
5. Lyotard refers here to Aristotle's *History of Animals*, Book1, Part 1, Section 5335a.

To the disappointment of many, Levinas refuses the idea that an animal can have a face.[6] Lyotard questions this denial of a face to the non-human animal. Interestingly, Lyotard does not argue that the animal has a face, but rather that its body and the signals it produces function as a face. In other words, it is not the animal that makes a demand upon me. Instead the body of the animal produces signals, which indicate a phrase-affect "like a face." These signals can include "growlings, pantings, sighs" as well as "the gesture" (238).

By focusing on the *aisthesis*, the pleasure and pain of the animal, the *phônè* communicates something very recognizable—pain and pleasure—yet the source is the other. Since Lyotard discusses a "differend" between *logos* and *phônè*, in which the latter is destroyed through the articulation, we can understand *phônè* as a pre-discursive utterance that makes a demand upon us. The gestures, body language, and sounds of the animal appeal to me as Levinas's face communicates to me. Both the face of the human other and the body of the (non-human) animal make an unarticulated demand upon me, a demand that is not argumentative or arguable. Such demands are unarticulated phrases (*phônè*) and according to Lyotard (following Cassin) are always excluded from ethical language since they are not *logos* ("The Phrase-Affect" 240).[7] Hence, within *logos* a gesture, a growling, or a sigh, does not have any meaning; it is unarticulated as well as unarguable. When language is defined as articulation and argumentative, the animal cannot communicate anything to me. Through the *phônè,* the animal is then able to signal to us as the other. When we do not recognize the *phônè* by excluding it from our *logos*, we constitute a "differend." Lyotard appeals to us to recognize the *phônè* as an ethical demand.

We have seen that the "differend" is the situation in which someone is "divested of the means to argue and becomes for that reason a victim" (*The*

6. This is particularly disappointing considering the (now famous) story about Bobby, the dog who enthusiastically greeted Levinas and his fellow prisoners of war during WWII. Every day when they would return from work back to their camp Bobby would await them. Since the dog was so vigilant in its task of greeting them, Levinas called Bobby, "The last Kantian in Nazi Germany," but still denied any kind of ethical responsibility we have toward the other that is the non-human animal, for it does not have a face–which he only attributes to humans. See: Levinas, Emmanuel. "The Name of a Dog, or Natural Rights." *Difficult Freedom: Essays on Judaism*. London: The Athlone Press, 1990: 151.
7. Lyotard refers to: Cassin, Barbara. "Parle si tu es homme." *La Décision au sens—Livre Gamma de la Métaphysisque d'Aristote*. Paris: J. Vrin, 1989.

Differend 9). The animal is unable to articulate and to argue since human *logos* or reasoning excludes the voice (*phônè*) of the animal. Yet, the problem is more profound than mere exclusion since we find here a radical heterogeneity that cannot be included. Lyotard illustrates this in his discussion of the child that falls outside of the realm of justice. The infantile *phônè* of the child "is innocent not because it has no fault, but because the question of what is just and unjust is unknown to it given that this question demands the *logos*" ("The Phrase-Affect" 240). One could say that the animal in this instance can be compared to the young child who has not yet encountered the very idea of justice. The animal might recognize its life as full of pain, but it cannot recognize it as a life full of injustice. Only the human discourse, *logos,* attributes that pain to the notion of injustice.

In a sense, we can then say that the animal is silent by nature; it falls outside of *logos*, and with that outside of notions like justice and injustice. As a being that is bred in a rational, industrialized, and technological world, it is, therefore, a victim that is a non-victim: it cannot testify that our actions are brutal, horrific, or beastly. Presumably, for this reason, Lyotard calls the animal the paradigm of a victim. Although the animal is silent by nature it is not a victim by nature, but is made a victim that cannot testify because of its exclusion from our discourse as an other without a name. One could argue that the mechanized food industry turns the animal into an absolute other: an object that is in radical opposition to the knowing or eating subject. In this way, the other lacks respect, as a being systematically placed outside of the realm of justice. Lyotard's ethics focus specifically on alterity, on the other who is placed outside of justice and cannot testify to the very injustices committed against it. Consequently, the nameless other cannot affect us, as it is merely a number without identity or individuality. Its body remains, however, and I argue that we have to let this body speak to us by "listening" to its *phônè*. We have to let it speak, be open to its "mute communication," and be able to be affected by it.

Meaning, in order to acknowledge the "differend" in which the animal is unable to express itself according to our rules, we have to acknowledge the phrase-affect as a sentence, as communication. The affect or sentiment lies in the gestures and sounds of the animal's body, which creates a face, as Lyotard argues. With this face, it makes a demand. The animal, accordingly, does not have to argue, it does not have to articulate according to the rules of *logos* in order to make a demand. Instead, it can express its pain and suffering through

the phrase-affect.

I argue, with Lyotard, that an animal does express its suffering through the phrase-affect, the *phônè*. However, we often fail to hear the *phônè*; language tempts us to exclude all communication that is not logical and vocal. To hear the phrase-affect requires a particular kind of sensibility, an ability to listen to that which falls outside of what we normally hear. This is closely tied to the injustice of the "differend" in which an individual or a group cannot speak up. On the one hand, we find instances in which we purposefully deny rights to certain people, as was the case with the Jews under Nazi laws. On the other hand, we find instances of moral blindness, in which we do not know that we are excluding, oppressing, or denying a group of others. The latter is the case with the non-human animal.

Ⅳ. An Animal Ethics of Otherness

Lyotard's emphasis on affectivity might lead us to think that the approach I propose here is similar to P. Singer's utilitarian approach that tries to avoid suffering. Certainly, in order to recognize and to be moved by suffering, one needs affectivity. However, Singer appeals to the similarities between the animal-other and humans, while the affectivity that Lyotard introduces does not emphasize similarity between the two, but rather our ability to be moved by otherness, an otherness that we do not necessarily understand. What we often lack is the ability to be moved by, for example, the animal in the meat industry. Even while we share the characteristics of suffering and pain, we cannot know exactly *how* the animal suffers or *how* it experiences its pain, and on the basis of these uncertainties, it is fairly easy to deny the suffering, or to even deny that the animal can feel at all (René Descartes' machine is a good example of such a denial). Since the approach I propose does not rely upon the qualities that animals share with us, but rather on a radical difference between animal and human, we do not need to understand how the animal exactly suffers in order to acknowledge the ethical demand we face in regards to it. In other words, it is not necessary to translate the animal pain to human pain. We are immediately affected by its *phônè* without the need to take it up in *logos*.

The emphasis on radical alterity starkly contrasts other animal ethics. Approaches by philosophers such as P. Singer and Regan emphasize the similarities between humans and animals: animals have feelings and can

suffer, not unlike our feelings and suffering; or animals are "subjects of a life" and should thus be treated as equals, i.e. not as a means but always as ends in themselves. Interestingly, in our everyday lives, it is exactly those animals that we know best, our pets, and those animals that we somehow consider equal (such as the "intelligent" dolphin) that are, mostly, treated according to the principles stipulated through these philosophical approaches that attempt to equate the human and non-human animal. In these selected cases, we recognize the strength of these theories, but more distant animals, such as "dumb" cows and pigs as well as animals in the wild are less fortunate. Singer and Regan certainly mean to include these animals. Nevertheless, it is more difficult to relate to the suffering of the factory-farmed animal, a poisoned rat, or the sea lion suffering from toxin-induced seizures, than it is to relate to our cats and dogs that we interact with daily in personal spaces. Since factory farms are mostly far removed from urban areas, since few people have access to laboratories, and since we spend more time on the Internet than in nature, we often are not exposed to these animal others. We rarely view or come in contact with their suffering. Chances that we will recognize and acknowledge that suffering as similar to our own are even more remote.

The fact that so few measures are taken against the brutal treatment of animals in factory farming or laboratories is telling. It implies that we either look the other way and deny what occurs or that we lack a certain kind of sensitivity; or it is some kind of combination of these two. We do show sensitivity as evident in our relationships to pets and other animals. Yet, we react differently or lack affection toward other kinds of animals. While the testing of rats and mice, however senseless and cruel, mostly continues without much disruption, experimentation on dogs mostly results in widespread public outrage. Likewise, our Western culture slaughters millions of animals each year, but awards a documentary on the hunting of dolphins in Japan with an Academy Award. While the latter example might also include some racism, generally speaking we admire and are more easily affected by animals that display certain features with which we can identify. While rats and mice (as well as pigs) can, in fact, be great pets, we collectively view them as a nuisance at best, and carriers of diseases at worst.

This problem of lacking affectivity for more distant beings is not limited to animal ethics. Typically, what happens to our family, neighbors, and people somehow close to us (such as celebrities that we regularly see in magazines and on TV) affects us much more than what happens to individuals in more

distinct parts of the world. As we have seen, a similar phenomenon occurs in our relationship with animals. Only particular animals ethically affect us, whereas we fail to even recognize other animals' ability to suffer. The dog and the rat might suffer equally, but we are affected differently. The suffering of the lab rat and the animal at the factory farm are not sensed. Significantly, Lyotard often argues for openness toward or a sensibility to the unsayable—that which cannot be represented. We lack such a sensibility and fail to grasp injustices that arise precisely from a non-human animal's inability to express the injustice it experiences.

Thus, we are not affected by the suffering of certain kinds of animals. The reason that we do not care about certain animals is complex, and it lies beyond the scope of this paper to discuss the psychological, social, historical, or cultural aspects underlying our relation to different animals. Instead, I argue that we have to be open to the animal other as an other in the ethical sense, so that we are affected by it and recognize it as a victim.

What does it concretely mean to recognize, let's say, the rat as a radical other that should be regarded as a being that deserves ethical respect? It does not seem desirable to stop companies and governmental agencies that target rats and other rodents. Yet, the slow-working poisons used to kill rats, among others, do raise ethical issues. Besides the fact that a poisoned rat or mouse can poison their predators, such as raptors, it also seems reasonable to suggest that an animal experiencing symptoms like bleeding, seizures, depression, and confusion (all symptoms that are caused by poisons tested on rats) suffers. While we do everything we can to rescue a dog who has accidentally eaten some of the rat poison, and while we suffer with him, we celebrate when we rid the house of rats thanks to the same (now) wonderful chemical substance. There is, however, no evidence that the rats suffer less than a dog suffers. Their death is—as is the case with the factory-farmed cattle—transformed into a technological process.[8]

This brings us back to Lyotard's discussion of the Holocaust and the "differend." In Auschwitz, death becomes something worse than death. Death ceases to be killing, as it is transformed into a technological process in which people are "processed." Death itself is killed. Proper names were changed to numbers and the collective name "Jew" was destroyed. Only numbered bodies

8. Using poisons also results in the death of wild animals, such as owls, which prey on animals such as rats and mice.

that lacked legal status remained (*The Differend* 101). The industrialized meat industry, laboratory testing, rodent control, etc. do something very similar; proper names do not even need to be eliminated, as animals within these system have never been anything but a number. We do not recognize identification of individual animals. We merely speak of "cattle" or "cow." Even the collective name "cow" has been transformed into "beef." The Nazis created a system to deny that killing or suffering took place in Auschwitz; similarly, no killing takes place in the meat industry. Only dolphins suffer when hunted, and only dogs suffer from poisons and experimentations.

This is exactly the injustice that Lyotard identifies as the "differend": the situation in which no damages exist. This lack of stated injustice is itself an injustice. In this manner we can understand Lyotard's claim that the animal is the paradigm of a victim. The non-human animal does not have a voice or right, and thus its injustice goes unnoticed. This, then, is what it means to be excluded as an other. In order to include other animals besides pets and those animals that are similar to us, we need to recognize the animal as an ethical other, not on the basis of the characteristics or features it shares with us, but, as we have seen, rather on the basis of its ability to signal through its body, through its phrase-affect. It speaks to us then as an other.

We can argue, with Lyotard, that by using animals in laboratory research and factory farming, we fail to respect heterogeneous discourses. We disrespect the autonomy of the animal genres that should—according to Lyotard's thinking—not be overruled by a notion of hierarchy. Animal rights advocates often argue that we should relate to the animal, or that we are animals and thus, we should treat animals respectfully. Within Lyotard's ethics, this poses a significant problem since it universalizes what is and should be respected as different. Ethics, for him, always involves recognizing the singularity of each and every discourse. Without this recognition, something other is made into the same thing. A different culture, a different way of thinking, or a different genre should be respected as different. If we fail to honor differences, we destroy otherness by appropriating it. Imposing our western standards on the rest of the world is as problematic as our use of human standards for the non-human animal. Both actions alter what is radically other into the same.

In this regard, we should attempt to leave the other as an other, i.e. to leave the animal as an other that cannot be reduced to or grasped by our human standards and ways of thinking. Since the animal falls outside of justice or injustice and since our actions cannot be evaluated in a language different

than our own, the ethics of the animal should be thought in terms of a radical otherness that deserves respect on its own terms. Instead of using our human rules to establish standards of treatment, we recognize the animal as a being with its own discourse and its own ways of being. Laboratory animals, zoo animals, as well as in the mechanized food industry have already been subjected to a human discourse that destroys their autonomy. If we argue that the animal is an ethical being or deserves our respect on the basis of a similarity to us (a sentient being, a person, a being with feelings and so forth) we make the other into the same. While equality is often regarded as positive, I argue that setting human (rather than non-human) rules for the treatment of animals destroys the autonomy of the animal. If we use our rules or our discourse to establish an ethics of animal treatment, it would further silence the animal, resulting in another "differend."

Lyotard demonstrates that we should respect the absolute alterity of different discourses, including the unarticulated *phônè* of the animal. As discussed above, the genres of discourse form islands, each distinct from the others. For Lyotard, ethics resides in keeping these discourses apart, and either avoiding or bearing witness to the "differend," i.e. the situation where one language game imposes its rules upon another language game. The discourse or language game that argues that we can use the animal since it is a lower form of life and the language game that argues that animals cannot be used because they are similar to humans both constitute a "differend" in which we impose the rules of human *logos* on the animal. If we, for example, argue for a moral obligation toward the animal because it is sentient, we use our own rules for determining this moral obligation. This becomes highly problematic when one considers an animal with a nervous system radically different from our own, such as a jellyfish—an animal without a central nervous system or brain. Since the jellyfish is not sentient in the way we understand that term, it would fall outside the established ethical jurisdiction. Thus, an ethics that argues for animal rights on the basis of similarity is in fact exclusive; it tells us we only have moral obligations toward certain animals, namely those with which we can most relate. These ethical systems exclude animals that are radically different from us. Thus, if we argue that the non-human animal should be respected on the basis of its similarity to our being, problems arise when we encounter animals that are not like us at all. Hence, I propose an approach in which we are more affected without having to imagine the suffering as our own.

V. Concluding Remarks

In this essay, I have made a sketch for a Lyotardian approach to animal ethics by thinking through the notion of the "differend" as it relates to the non-human animal. The "differend" is caused either because one does not "naturally" have any rights (i.e. one is born without rights) or because one loses those rights. The horror of the Holocaust or any genocide results from denying a particular group full personhood and protection under the law. In other words, one becomes a being without rights and a public voice. The animal, on the other hand, is naturally born in this situation and is, presumably, not aware of this lack. I argue that, on the basis of Lyotard's ethics, the animal should be given the right to be autonomous and to live as much as possible without human intervention.

One of the most important problems encountered in this essay is that since the animal does not have human speech, or *logos,* the animal—as well as its defender—is unable to bear witness to a wrong. Moreover, in this case, to be the other means falling outside of justice. It seems, thus, problematic to speak of "injustices." Treatments of animals such as locking them up in small and dirty spaces, and growing them as fast as possible so that they can be slaughtered and consumed seem problematic, but can we call them unjust? While in Medieval times a lawyer or counsel represented animals, nowadays animals have been reduced to machines and as such exist outside of legal considerations.[9] Today, we would deem a trial against an animal bizarre and quite useless. While I do not seek to reinstitute such trials, I want to emphasize that the lack of a public discussion concerning the treatment of animals has resulted in ignoring the situation of so-called "farm animals." Furthermore, because we do not recognize the possibility of reason in the animal, we call into question the very idea that these animals "find themselves in a situation." The absurdity results from an animal's inability to testify, leading us to deny that harm or injustices have occurred at all. The animal does not have a place in our judicial system and thus it is assumed that the injustice does not occur.

The alternative approach to animal ethics that I suggest here, inspired by Lyotard, is that we regard the animal as an absolute other, i.e. a being that does not have a moral standing in terms of our own judicial and ethical systems. Instead, we should recognize the animal as an existence in itself, radically

9. On the legal status of animals in the middle ages, see Evans.

different from ourselves, and with its own set of rules and goals that must be respected. Concretely, this means that when we capture animals, grow them, torture them, and so forth, we do not respect their right to be a being that is other than ourselves and that has its own rules and goals. Our human influence on their lives often makes their own rules and goals unobtainable.

I have argued that an animal ethics based upon the idea that animals are radically different is fruitful since it determines our obligation toward them not on the basis of similarity, but rather in respect for radical difference. As Lyotard argues, we do have an obligation to bear witness to the "differend," the conflict in which one language game silences another. In the instance of the animal "differend," we find a conflict between *phônè* and *logos*. In not hearing and not bearing witness to the "differend," we silence the animal so that the ethical call remains unnoticed.

Following Lyotard's ethics, it is clear that the application of human ethics to the non-human animal also constitutes a "differend," a violation of the heterogeneity of different discourses. This occurs, first of all, in the animal not knowing right from wrong (or good from evil). The animal's ethical system either does not exist or is radically different from ours (e.g. we do not prosecute an animal for killing another animal). Secondly, we cannot use a human ethical system to describe the animal in terms of autonomy, having certain rights, and so forth. Those standards are all human ethical standards, not animal standards, and would result in yet another "differend": the use of one set of rules applied to another genre.

While the genre of the animal radically differs from our ethical discourse, Lyotard's ethical ideas emphasize that we have to respect the animal, meaning that the animal itself should make its decisions on its own terms, not ours. On the basis of the ethics of the other laid out in this paper, the animal has the right to exist as an autonomous being. This means that its life should not be determined or regulated through human intervention, in being bred, grown, tested, or poisoned. Nor should the animal be seen as an equal in the human ethical community. This would also constitute a "differend," reducing the other to the same.

Works Cited

Lyotard, Jean-François. *The Differend: Phrases in Dispute*. Minneapolis: U of Minnesota P, 1988. Print.

____. "The Phrase-Affect (From a Supplement to the Differend)." *Journal of the British Society for Phenomenology* 32.3 (2001): 234–41. Print.

Regan, Tom. *The Case for Animal Rights.* Berkeley: U of California P, 2004. Print.

Singer, Peter. *Animal Liberation: The Definitive Classic of the Animal Movement.* New York: HarperCollins, 2009. Print.

Wittgenstein, Ludwig. *Philosophical Investigations.* Malden: Blackwell, 2001. Print

Wood, David. *The Step Back Ethics and Politics after Deconstruction*. Albany: State U of New York P, 2005. Print.

Abstract

While most approaches to animal ethics emphasize the equality of non-human and human animals, this paper recognizes the animal not as an equal, but as an absolute other. In order "to sketch" the argument for such a new approach, the essay relies on Jean-François Lyotard's notion of the "differend" and makes explicit use of his analysis of the phrase-affect. The "differend" is typically used for understanding the oppression of individuals or groups who have lost the ability to defend themselves. With the phrase-affect Lyotard opposes the animal *phônè* (the signaling of the body) to human *logos.* He emphasizes that against our emphasis of *logos*, we have to recognize that meaning does not only reside in human language. To deny meaning to *phônè* constitutes a "differend" — a situation in which an individual or group (in this case the non-human animal) is systematically denied rights and cannot phrase the injustice experienced. Through the phrase-affect this essay, thus, applies Lyotard's analysis of the victim of a "differend" to the non-human animal. Although he never developed such an analysis, Lyotard does mention that the animal constitutes the "paradigm of a victim." More broadly he argues that we need to cultivate sensitivity for otherness and for the "differend." The essay argues that a human rights approach can be made precisely through such a strategy, in which we do not emphasize equality, but the absolute otherness as a basis for respect and ethics. The result of this approach is that we recognize the right of the animal to exist as an autonomous being.

Keywords: Lyotard, animal ethics, phrase-affect, alterity, differend

Gerard KUPERUS is Assistant Professor in the Philosophy Department at the University of San Francisco. He has published on animal rights and environmental philosophy from a Continental perspective. He is the author of *Ecopolitical Homelessness: Defining Place in an Unsettled World* (Routledge, 2016).
Gkuperus@usfca.edu

Received: 15 August 2015
Reviewed: 15 September 2015
Accepted: 7 October 2015