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The Case against Animal Rights: A Literary Intervention

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Introduction

The last four decades have shown an especially intense and thorough academic reflection on the relation between man and animal. This is evidenced by the rapid growth of journals on the question of the animal within the fields of the humanities and social sciences worldwide.¹ Yet also outside the academy animals now seem to preoccupy the popular mindset more than ever before. In 2002, the Netherlands was the first country in the world where a political party was established (the so-called “Partij voor de Dieren” or PvdD: Party for the Animals) that focused predominantly on animal issues. Heated discussions about factory-farming, the related spread of diseases (BSE/Q Fever), hunting and fishing practices, the inbreeding of domestic animals, are now commonplace. Animals, as we tend to call a large range of incredibly diverse creatures, come to us in many different ways. We encounter them as our pets and on our plates, animation movies dominate the charts and artists in sometimes rather experimental genres engage in the question of the animal.² Globally speaking, animals might be considered key players in the climate debate insofar as the alarming rate of extinction of certain species is often taken to be indicative of our feeble efforts at preserving what is commonly referred to as “nature.” At the same time, these rates serve, albeit indirectly, as a grim reminder of the possible end of human existence itself. In light of all these intertwining developments the debate on animal rights appears today more pressing than ever.

To be sure, the question of the animal and its possible moral standing in the world has its own history and is probably as old as philosophy itself.³ From Aristotle to Aquinas, Descartes and Kant, to mention but a few key figures who have shaped the history of Western philosophy, the animal has been defined in

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³ For an instructive work that traces the question of the animal in philosophy from antiquity to the present, see: Animal Rights: A Historical Anthology, ed. Andrew Linzey and Paul Barry Clarke, (New York: Columbia University Press, 2004).
opposition to the human, mostly because it was believed to lack rationality and the sort of consciousness rationality implied, which was held to constitute an exclusive human trait. Of course, there have always been other voices. For example, in his Apology for Raymond Sebond (1588), Montaigne suggested that when we play with our cat we cannot be sure the cat is not playing with us and thereby challenged the established philosophical norm.⁴ In 1789, the utilitarian philosopher Jeremy Bentham famously wondered if, in the future, the traditional demarcation line of rationality would not be replaced with the question whether animals could suffer.⁵ In general, however, the overriding view on animals as non-rational beings that are, consequently, not to be thought of as entities that might be attributed a moral standing – let alone rights – has been widely accepted throughout the history of Western philosophy until well into the twentieth century.

In my view, the latest philosophical giant who represents this traditional line of thought would be Martin Heidegger. Indeed, in his lecture course “The Fundamental Concepts of Metaphysics” (1929-1930), Heidegger’s complex musings on the question of the animal remains very much in line with the history of Western philosophy since he ultimately opposed the human to the animal by depriving the animal of language.⁶ Yet, I believe we can discern in Heidegger the beginning of a break with the past since the animal in Heidegger is no longer merely placed in opposition to the human for lacking language, the age old marker for rationality, but this opposition is arrived at through a profound contemplation on the relation between the human and the animal in terms of the world we inhabit and share with animals. Since my argument will be that such a perspective in terms of the world we share with animals is lacking within our modern animal rights debate, it is my aim to re-connect this broader perspective with the thinking through of the question of the animal that has spurred the animal rights debate since the 1970s, the decade in which Peter Singer’s Animal Liberation was written.⁷

The reason for my wishing to do so has everything to do with the way I interpret the unprecedented attention paid to the question of the animal since the 1970s. Effectively, the question of the animal has now taken on a global

dimension, both within and outside of the academy, which suggests that we are passing through a critical phase on many fronts. Some, like Peter Singer, have argued that it has been philosophy itself that has awakened us from our dogmatic slumber and set the animal and its possible moral or legal status back on the agenda.\(^8\) Notwithstanding the invaluable work of those preoccupied with the question of the animal since the 1970s, I believe the critical phase we are passing through is symptomatic of a much wider paradigm shift within our modern world.

This paradigm shift is marked by a growing public unease with the way we treat animals, which perhaps becomes most apparent if we consider the different treatment of pets on the one hand, and factory-farmed animals on the other. At the same time, this public unease is matched with a profound insecurity that may at least in part be attributed to the fact that science, especially biotechnology, has enabled us to learn more about animals than ever before, which has caused the traditional boundaries between the human and the animal to come under strain. In my view, the resulting “status anxiety” about the place of the human in the order of things has caused the modern animal rights debate to revolve around what I would like to call the central issue of demarcation. It is this issue of demarcation that, rather than inviting a renegotiation of the most adequate criteria for demarcation between the human and the animal per se, demands a broader exploration of what it means to share the world with animals.

Let me first sketch the specific way in which the central issue of demarcation has come to characterize our modern animal rights debate. The central issue of demarcation within the context of the animal rights debate is accommodated by a shift from if animals should be granted right towards how and on the basis of which criteria this is to be effectuated. This shift has been the result of a growing and now widespread academic consensus that there is no longer a position that can convincingly argue – i.e. on the basis of academically sound criteria – for not attributing rights to at least some animals.\(^9\) By the same

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\(^8\) In the preface to the edited volume *Animal Philosophy* Peter Singer comments on the rapid growth of animal ethics since the 1970s and states: “For those who think that philosophy follows trends rather than instigating them, it is significant to note that in this instance it was the other way around.” See: *Animal Philosophy, Ethics and Identity*, ed. Matthew Calarco and Peter Atterton, (London, Continuum, 2008), 7.

\(^9\) Exemplified by Paul Cliteur in: “De filosofie van dierenrechten,” in *Ethiek van DNA tot 9/11* (Amsterdam: Amsterdam University Press, 2005), 135-144. In this text Cliteur tackles a number of standard objections to animal rights that in contemporary debates have been voiced by opponents such as, amongst others, Roger Scruton and Carl Cohen. He shows how those objections are each and every time reliant on the positing of a difference between the human and the animal that on closer observation cannot be maintained, at the very least not for some animals.
token, not granting rights to at least some animals would be an unjustifiable withholding, a failing to meet our (legal) obligation to protect animals from harm.\textsuperscript{10} Hence, we are witnessing an expansion of what was, until very recently, a strictly human domain of rights. This expansion leads to a model that places animals within a human order centred on personhood, which poses two interrelated problems. First, it does not account for the shift in register from human to nonhuman and the consequences this might bear on the (legal) conception of personhood.\textsuperscript{11} Second, it leads to a demarcation problem that becomes a central issue in the debate because it remains unclear which animals might be included or have to be left out of the system.

This demarcation problem has inspired a lively polemic on which criteria would provide the most adequate basis for conferring a moral and possibly a legal status to at least some nonhuman animals.\textsuperscript{12} This polemic is no longer an issue that is left to the professional practitioners from the fields of Law and Philosophy. Rather, the question of the animal is now taken up in an interdisciplinary manner within a wide range of other academic fields, such as literary studies, political theory, biology and sociology. This is evidenced by the growing number of universities around the world that have recently begun to set up new academic courses, with Animal Studies and Law and Literature Studies as arguably the most prominent representatives of this trend. On a par with these developments the number of Animal Rights, Animal Studies and Animal Ethics handbooks that have been published in recent years is simply mind-blowing.\textsuperscript{13}

A proponent of animal rights himself, Cliteur then draws on the work of those who advocate animal rights at least for some animals such as, amongst others, Tom Regan, James Rachels and Paola Cavalieri, to unsettle the decisive differences assumed by these opponents of animal rights. For an instructive insight in these debates between opponents and proponents of animal rights see: Carl Cohen and Tom Regan, \textit{The Animal Rights Debate}, (Lanham: Rowman and Littlefield Publishers, 2001).

\textsuperscript{10} For a brief overview of the animal rights debates that inform and defend the position that we owe at least some animals rights see: David Degrazia, \textit{Animal Rights, A Very Short Introduction}, (Oxford: Oxford University Press, 2002). For an elaboration on why animals should not be excluded from the scope of principles of justice within political liberalism, see: Robert Garner, \textit{A Theory of Justice for Animals: Animal Rights in a Nonideal World} (New York: Oxford University Press, 2013).

\textsuperscript{11} For a poignant example of this tendency to take the shift in register from human to nonhuman for granted in an otherwise impressive work see: Paola Cavalieri, \textit{The Animal Question: Why Nonhuman Animals Deserve Human Rights}, (New York: Oxford University Press, 2001).

\textsuperscript{12} Amongst others: Peter Singer, 1975; Tom Regan, 1983; Martha Nussbaum, 2004; Jacques Derrida, 2008 and Kelly Oliver, 2009.

It shall not come as a surprise that this development has led to an enormous diversification of the positions held within the animal rights debate, which sometimes makes it hard to identify and recognize its most important strands. Yet, however divergent the academic fields and the positions taken in, the most important strand may in its most general sense be identified as revealing a concern with demarcation; that is, with the understanding of the relation between the human and the animal as being, in some way or another, key to the manner in which, if at all, animals should be entitled to moral consideration and possibly rights. In the field of Animal Studies, for example, this concern typically takes the form of a renegotiation and refinement of criteria that would single out certain capacities some animals may share with humans, which then provide a basis for either excluding or including some animals within the moral and sometimes the legal community of equals under an expansive model.\(^{14}\)

This predominant focus on demarcation may be illustrated by looking at the two most prominent voices that have stirred up the animal rights debate since the 1970s and whose work remains indispensible to understanding the way things stand today, those of Peter Singer and Tom Regan. Singer, as a utilitarian philosopher inspired by Bentham’s famous proposition on the capacity to suffer as potentially the future demarcation line, suggested that sentience must be the defining criterion that would allow nonhuman animals to be included within the moral community of equals.\(^{15}\) Regan, a rights theorist, apart from sentience defined a cluster of capacities that would make some nonhuman animals, mostly mammals, qualify as “a subject of life” and hence, warrant a form of legal subjectivity, namely personhood.\(^{16}\) Taking the work of Singer and Regan as points of departure, theorists around the world have developed stances that vary considerably, but in which the focus on demarcation on the basis of the criteria Singer and Regan proposed has remained paramount throughout.\(^{17}\)

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\(^{14}\) For an example, see: *The Great Ape Project: Equality beyond Humanity*, ed. Paola Cavalieri and Peter Singer, (New York: St. Martin’s Press, 1993). See also: Martha. C. Nussbaum, *Creating Capabilities, The Human Development Approach*, (Cambridge, Massachusetts: Harvard University Press, 2011); especially the last two chapters in which Nussbaum argues for extending the capabilities approach to animals in a modified form, by postulating that animals may be viewed as having dignity, which would entitle them to certain basic rights.


\(^{16}\) Ibid.

Within this discursive context, those in favour of attributing (some) animals a moral status typically accuse those who hold divergent opinions of ignoring scientific-philosophical evidence that suggests some animals do possess what are considered to be valid criteria for subjectivity; say, rationality, consciousness, sentience, or whatever capacity happens to be in view. Those who argue against the moral consideration of animals on the basis of such and such capacities typically accuse the opposing party of anthropomorphism, which is then understood as a rather sentimental projecting of human characteristics, values and desires upon animals instead of recognizing the difference both species would “naturally” assume.\(^{18}\) Hence, the polemic within today’s animal rights debate seems potentially endless, for no matter the general consensus on a basic notion of sentience and its varying complements as the most adequate criteria for demarcation, the underlying demarcation problem and the way in which it translates to demarcation decisions that eventually will have to be made within the juridical sphere, is not resolved.

A practical example of this insistent demarcation problem and the polemic it breeds may be provided through a brief reconsideration of the famous Great Ape Project. In 1993, Peter Singer and Paola Cavalieri published an impressive volume under the title *The Great Ape Project*.\(^{19}\) The book holds a collection of texts by scientists from even more diversified fields than those I mentioned earlier and opens with “A Declaration on Great Apes.” In this declaration, the rights of great apes are proclaimed and summed up as the right to life, the protection of their individual liberty and the prohibition from torture. Since 1993, however – with the notable exception of Spain – great apes still have not been attributed personhood, while the controversy that marked the project from the beginning has even turned inward. One of its initial advocates, for example, the philosopher Gary Francione, later on withdrew his support from the project because he ultimately found it ill-conceived as long as animals were being considered as human property.\(^{20}\)

More comprehensively, the controversy within a modern animal rights debate that remains focused on its central issue of demarcation through the renegotiation of capacities may be illustrated if we consider two books that were published in, respectively, 1999 and 2009, and in which Peter Singer, arguably

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\(^{19}\) Ibid.

\(^{20}\) See: [http://www.animalfreedom.org/english/column/francione.html].
the most influential philosopher within the animal rights debate, enters into discussions with his critics.\textsuperscript{21} Anyone going through these volumes will not just notice the elegance and clarity of Singer’s style, but also his philosophical consistency. He is holding on to his most basic convictions over time. Effectively, what becomes clear from a rough comparison between these two books is that Singer has not compromised on his position that we must extend the basic principle of equality to animals that are sentient, while his critics put their feet down just the same and, in one way or another, keep arguing against the philosophical underpinnings that underlie Singer’s position.

Admittedly, the overall consensus on sentience as perhaps the most adequate criterion for the inclusion of at least some animals within the community of equals has to some extent caused the polemic on which criteria should inform our demarcation decisions to die down. It has not, however, resolved the demarcation problem and how it informs the polemical context in which animal rights are being discussed today. Rather, it seems that the initial polemic on which criteria would resolve our demarcation problem has now provoked another polemic on precisely which animals are sentient and on why those animals should or should not be entitled to moral consideration or rights.\textsuperscript{22} In other words, the demarcation problem seems to have merely repeated itself in a different form, which has caused the animal rights debate to result in a deadlock.

The reason for this deadlock and for its implied polemic, I propose, is that the question of the animal within today’s animal rights debate is framed from within the subject-object relation that the traditional Human-Animal opposition presupposes, which provokes an endless demarcation problem that turns on a renegotiating of the criteria that would enable a strengthening or weakening of this relation. Hence, if the resulting polemic has generally led to proposals for the refinement of the criteria proposed by Singer and Regan, such as we encounter, for example, in the Capabilities Approach of Martha C. Nussbaum,\textsuperscript{23} it has not led to initiatives for confronting the persistent problem of demarcation that is left unresolved within such proposals. What is also left unaddressed, as we will see, is that the factory-farming industry presents a special problem for the persistent demarcation problem within the animal rights debate, not in the least for the growing awareness that factory-farmed animals might equally meet


\textsuperscript{23} Ibid, supra note 14.
the criteria of sentience, consciousness or some other cognitive capacity as the other animals in the race for personhood.24

This is why the aim of my project is to explore the central issue of demarcation to move beyond the deadlock that characterizes the animal rights debate today. More specifically, I view the demarcation problem within Animal Studies as a problem of the way in which the difference between the human and the animal is thought through within an expansive model because it revolves around a basic principle of equality or inequality between the species. Effectively, what is left unaddressed within this discursive frame is the manner in which our thinking through of difference installs and sustains those categories. In other words, what characterizes the animal rights debate today is that difference is only thought through from within a discursive framework that describes difference as something in-between two poles, namely the human and the animal. The problem with this descriptive framework is that it leaves no space for an exploration of the way in which the animal, or for that matter, the human are categories that are produced within our thinking of difference to begin with.

This is why I propose that this fundamental lack in the animal rights debate may be addressed if we attempt to think through the rhetorical strategies that produce our thinking of difference other than in terms of the typical criteria for demarcation mentioned above. In other words, if we concede that demarcation is not merely a constative matter of description on the basis of categories that underlie certain philosophical truths, but always also a performative act, close reading the texts that underlie today’s philosophical and juridical demarcations between the human and the animal is not merely a formalistic exercise.25 On the contrary, I believe that close readings within a performative rather than a descriptive framework might serve to expose the way in which the philosophical truths that inform the expansive model’s demarcation problem are rhetorically performed, which may shed a different light on the problem of demarcation and the limits posed by an expansive model.

By implication, my close readings here will have to be more than what we generally understand by close reading a text. Effectively, it concerns an attitude

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25 I am referring her, but will not elaborate on, the distinction that was made between constative and performative speech acts by J.L. Austin. See: J.L. Austin, How To Do Things With Words, (Cambridge: Harvard University Press, 1962).
that may stand alongside the reading of animals in relation to human animals and ponders how the situation we find ourselves in within the animal rights debate has been created through language. More specifically, this attitude concerns a strategy of the “and” in that it combines close readings of texts that address the question of the animal with close readings that explore the relation between our conceptualizations of language and the way in which those texts work. Hence, if my focus on the insistent demarcation problem within our modern animal rights debate will necessarily have to diverge from the way in which the question of the animal is taken up within Animal Studies, let me now clarify in which way it differs from the approach to the question of the animal within the field of Law and Literature.

In the field of Law and Literature, the question of the animal is generally approached by framing the discussion on animals and animal rights in either one of two different ways. On the one hand, we may recognize a strand that frames law-in-literature, whereby specific juridical issues and court cases within literary texts are studied and traced back to legal texts. On the other hand, we may recognize a strand that frames law-as-literature, whereby the primary issues under discussion within juridical texts are taken up within a narratological, semiotic or rhetorical analysis of those texts. The difference between the approach within Law and Literature studies and my strategy is that although I will also analyse literary and juridical texts, I will not generally read one text as being in some way representative of the other. Rather, it will be my aim to analyse literary texts in order to explore and call into question a number of fundamental juridical concepts implied within demarcation, such as personhood, harm and rights. This alternative strategy not merely requires a rhetorical reflection on the way in which one text might represent or help to analyse another, but asks for a more radical exploration of the role of language and how it operates the tropological formations that are performed to install those fundamental juridical concepts as always already implied within a discourse that hinges on the problem of demarcation. It is in this sense, then, that I wish to intervene within the discourses that structure today’s animal rights debate.

This is why I will begin each of the first three chapters with a case study...
that allows me to explore a different aspect of the problem of demarcation. My strategy here entails a strategy of double reading, whereby I will each time position a literary text alongside a politico-juridical case. This will enable me to address the questions on the fundamental juridical concepts both texts raise and to bring into focus the conceptual problems of demarcation that in the specific juridical-political case under discussion have remained implicit in spite of the controversies these cases have inspired. In the fourth chapter, I will put my findings on the tropological and performative confrontation with the problem of demarcation to the test and radicalize its implications through a reflection on the way in which language itself operates within the animal rights debate. It is here that I wish to connect the modern animal rights debate with the broader view on the question of the animal Heidegger introduced.

Now, if an expansive model centred in personhood installs a potentially endless demarcation problem, the question of personhood must be of central concern to my project of exploring its demarcation problem. This trajectory requires a thorough understanding of what Esposito has called “the juridical regime of personhood” and its subsequent relation to subjectivity. More specifically, since I intend to explore the tropological formations and conceptual nuances that operate the concept of person, the question of personhood and the way in which it installs subjectivity raises anthropomorphism as playing a key role in the person-ification of the animal.

For this reason, I will start the first chapter with an exploration of the question of personhood by focusing on the intimate dynamics between the trope of personification and anthropomorphism. This exploration at once necessitates a fundamental concern with how language operates the notion of person and therefore offers a very precise theoretical reflection that I will need to develop the close reading attitude required for addressing the question of the animal in the remainder of this project. This is why I will explore the relation between anthropomorphism and personification by close reading Barbara Johnson’s valuable essay “Anthropomorphism in Lyric and Law.” In this essay, Johnson focuses on the question of anthropomorphism and its relation to the trope of personification by following up on “Anthropomorphism and Trope in the

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Lyric,” a text by Paul de Man. If Johnson ultimately concludes there is no practical distinction to be made between anthropomorphism and trope, it is my intention to pick this matter up where Johnson left it, to advance her initial question. I will do so by carefully tracing back the way in which the specific concept of “person” Johnson brings to her study might have informed her conclusion on the relation between anthropomorphism and the trope of personification. This will provide me with an alternative framework for looking into the relation between anthropomorphism and trope, which will then help to develop a different reading of “person.” As we will see, this different person challenges the conventional understanding of what a person is and, as such, allows for distinguishing between anthropomorphism and trope on a practical level; that is, distinguishable within concrete texts. Once I have put my alternative framework in place, informed by this different “person,” I will pursue my project of exploring other ways of reading the construction of animal subjectivity and address the new questions this exploration raises in the chapters that lie ahead.

In the second chapter I wish to explore the fundamental concepts of harm and cruelty and the way in which those are implied within an expansive model and the demarcation problem it poses. In my reading, if prior to the coming into being of the expansive model, the harm animals were potentially exposed to was exerted outside of the juridical sphere – as animals were virtually non-existent as legal persons – the implication of the current expansive model and its conceptualization of animal subjectivity through personhood, is that the harm animals are potentially exposed to – those animals not considered fit to be attributed personhood – is dictated and legitimized by the model itself and exerted within a juridical sphere. It is here, I argue, that we can perceive – without having yet explored these concepts but by understanding them in a heuristic vein only – a moment where “harm” seems to topple over into “cruelty,” at which stage the expansive model seems to turn against itself, especially as the grounds on which to attribute personhood remain unclear.

In order to address this issue, I will read the inclusion of essentially nonhuman animals within the expansive model as the creation of a single discursive space. In literature the equivalent of such a move would be introducing allegory. Exploring the way in which tropological formations

31 For one of many alternatives proposed to the cluster of capacities that would make animals qualify for personhood such as we encounter in the work of Tom Regan, see: Steven M. Wise, Drawing the Line: Science and the Case for Animal Rights (Cambridge, Mass: Perseus Books, 2002).
construct animal subjectivity and how this relates to our more conceptual rather than my heuristic conception of harm and cruelty, I will reserve the second chapter for a close reading of George Orwell’s *Animal Farm* (1945) by taking it out of its defining historical frame as an allegory of the Cold War. The reading I propose instead takes *Animal Farm* as an allegoresis of animals seeking protection from harm, which will enable me to relate my findings back to the expansive model and to address the issues the concepts of harm and cruelty raise as a problem of the way in which language is taken up within allegorical reading. The concept of allegory as a historical mode that carries a preservative impulse here will enable me to bring into focus the animals that – as Jonathan Safran Foer has stated elsewhere – we are most directly involved with, the animals that we eat, and which present a specific if often neglected aspect of the demarcation problem within our modern animal rights debate. At the same time, addressing harm and its relation to cruelty through my allegoresis of *Animal Farm* will be the first step to bring, via the literary, the notion of suffering back to the heart of the animal rights debate.

In the third chapter, my exploration of the demarcation problem will focus on crossing the divide between Kant, and the way in which he attributed a sense of intrinsic worth (or dignity) to the human person, and the notion of person in the work of philosophers who, in the last three decades, have been at the forefront of the animal rights debate. Analysing the flaws of today’s juridical conception of personhood through this framework, I will suggest that working out an alternative conception of animal subjectivity necessitates a rethinking of what today is taken for granted as perhaps the most valuable idea the animal rights debate has produced yet: the idea that nonhuman animals share with human beings the capacity to suffer and therefore deserve our consideration and at least some juridical protection from harm.

As I will argue, this position, even while seeming to convey a radical turn away from Kant, has successfully turned the capacity to suffer into a modern day substitution of Kant’s idea of the distinguishing feature of the human being as a rational being. This amounts to a massive limitation because Bentham’s commitment to suffering does not have to be thought through as merely a scientific issue, but can also be thought of as inviting us to connect with the victimhoods of others. This is why, diverging from today’s interpretation of Bentham’s question as a radical turning away from Kant, my reading will be

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34 Ibid supra note nr. 12.
informed by an alternative outlook on the notion of suffering. This alternative outlook is fostered by an understanding of suffering as something that is not to be thought of as a capacity, as something to be measured scientifically, but rather as the product of a problematic categorization of difference that infects today’s discourse on animal rights. This renewed focus on suffering will bring my work into dialogue with theorists such as Singer, Rachels, Heidegger and Derrida. Scrutinizing their work will provide a basis for, first, explaining how today’s ideas on the animals’ capacity to suffer differ from my own thinking through of suffering and the way in which it might inform animal subjectivity. Second, using the insights gained in the previous two chapters, I will develop an alternative approach to both my heuristic distinction and the conceptual distinction between harm and cruelty I explored in the second chapter by outlining an alternative notion of suffering. This effort will pave the way for examining the constructions of animal identities in George Orwell’s “Shooting an Elephant.”(1936). Close reading this text, I will put my findings on anthropomorphism and trope to the test and look at how the text constructs victimhood through the interactions of tropes. Consequently, alternatives to the text’s identity politics will be worked out through a different reading of those interactions.

In the fourth chapter, I will argue that the traditional relation between the human and the animal still impinges on our juridical sphere today, whereas our modern understanding of the animal no longer bears any resemblance to this traditional understanding. To address this issue and the problem it gives rise to, namely our increasing inability to accommodate the animal both within our modern collective imagination and within our juridical discourse, I will book a return passage to the initial tri-partition Heidegger set up for thinking through the question of the animal. More specifically, taking in the position of a third myself, I will close read the way in which Derrida, in The Animal That Therefore I Am, deconstructed the Human-Animal opposition in Heidegger, in an attempt to read against this impingement and propose that the traditional Human-Animal opposition cannot be thought through without introducing a third category.35 It is my aim here to demonstrate that the coming into being of an expansive model, notably a few decades after the advent of factory-farming, is not just symptomatic of the way in which the Human-Animal opposition translates to and impinges on the juridical sphere today, but also, and more fundamentally, that it should be read as an urgent demand for a different division of space, both discursive and practical, in our time. It is here that art,
science and technology can intervene, in renegotiating the limits of this space. This, I believe, is already happening all around us and to this my current project wants to contribute.
They called him Klaus, after Lotte’s maternal grandfather, although at some point Lotte thought about calling him Hans, after her brother. But the name doesn’t really matter, thought Lotte, what matters is the person.

(- From 2666, Roberto Bolaño)

1. Introduction: Indian Dolphins

In May 2013, the Indian government announced that dolphins were to be considered nonhuman persons who deserved their own specific rights. This is a passage taken literally from the official legal circular that was issued by the Central Zoo Authority. The text shows some grammatical inconsistencies that may be attributed to the specific juridical jargon in which it is conveyed:

Whereas cetaceans in general are highly intelligent and sensitive, and various scientists who have researched dolphin behaviour have suggested that the unusually high intelligence; as compared to other animals means that dolphin should be seen as “non-human persons” and as such should have their own specific rights and is morally unacceptable to keep them captive for entertainment purpose,

Whereas, cetaceans in general do not survive well in captivity. Confinement in captivity can seriously compromise the welfare and survival of all kinds of cetaceans by altering their behaviour and causing extreme distress. 36

Various international broadcasters picked up the circulation. Deutsche Welle published an article that was headed: “Dolphins Gain Unprecedented Protection in India.”37 The Animal Liberation Front (ALF), in an equally celebratory tone,

36 F. No. 20-1/2010-CZA (M). Dated 17.05.2013.
stated: “Dolphins Granted Personhood by Government of India.”38 In both articles, a representative of the Federation of Indian Animal Protection Organizations (FIAPO), Puja Mitra, was cited: “This opens up a whole new discourse of ethics in the animal protection movement in India.”

Effectively, what the Indian Government had ordered was not for dolphins to be granted legal personhood, but that dolphins, because of their intelligence and sensitivity, should no longer be held in captivity. As a result, the use of dolphins in aquatic theme parks was abolished. The scientific evidence that informed this decision was already there, since a few years before (2010) a group of scientists from different fields of expertise, law, behavioural biology, bioethics, marine biology, under the name of The Helsinki Group, had issued a declaration of rights for all cetaceans. This declaration was based, as their program states, on the principle of equal treatment for all persons.39

The widespread confusion in the international press was in all likelihood caused by the text of the circular itself. The statement that dolphins “should” be viewed as nonhuman persons had all too readily been interpreted as if dolphins were granted legal personhood. Of course, one might attribute this confusion to broadcasters being too rash with their commentaries. However, since this “should” – a verb that generally indicates an obligation to do whatever “should” be done – was pronounced by the Indian government, i.e. the lawmaker itself, there is in principle no reason to assume it would not immediately follow up on its own imperative and grant dolphins legal personhood.

And yet none of this happened. The Indian government’s explicit reference to dolphins as nonhuman persons did not warrant dolphins entering the human domain of rights through an expansion of India’s juridical model, nor did the Indian government take steps to ensure this was going to be realized in the near future. International broadcasters had not been too rash with their commentaries but were simply wrong. At the same time, the confusion as to why the Indian government did not follow up on its own imperative was left unresolved and appears to revolve around the notion of “person” as an ambiguous instance of language. This begs the question of what we are to make of the notion of person and whence the disparity between the facts presented by the Indian government and the journalistic reception of the case originates.

The nature of the disparity is clear. Within the journalistic coverage of the case, the Indian government’s attribution of personhood to dolphins is

39 http://www.cetaceanrights.org/.
confounded with the granting of legal personhood, whereas the Indian government’s decision to ban aquatic theme parks is centred on a clear-cut distinction between personhood and legal personhood, even if the text mentions that dolphins should have “their own specific rights.” Hence, within the journalistic coverage of the case, the concept of person is taken out of its immediate context and transferred to the predominantly human plane of rights, which suggests that the concepts person, humanity and legal person are understood as necessarily implying one another. In other words, the language of journalistic coverage does not present the facts of the case, but rather slips into a mode that anthropomorphizes “person” as human and thus as “legal person.” In this respect, the journalistic coverage of the case begs the question as to why there is apparently such a strong urge to make the concepts person, humanity and legal person imply one another in spite of the fact that the Indian dolphins case demonstrates that these concepts must be distinguished from one another in principle.

My basic premise here is that treating something as a person implies more than making a juridical-political, philosophical or moral choice. In other words, what I think the confusion the Indian dolphins case gave rise to illustrates is that treating something as a person is not only a constative matter of voicing our convictions and opinions as a way of asserting our view of the world. Rather, it is always also a performative act embedded within particular rhetorical strategies that revolve around addressing something as a person and speaking about something as a person, etc. Indeed, I propose the animal rights debate to be so ridden with complexity precisely because the rhetorical logic of the key terms within which animal rights are discussed does not always follow its juridical-political, philosophical and moral underpinnings. In the case under discussion, for example, Western reporters immediately started anthropomorphizing the whole case despite there being no conceptual basis to do so at the time the circular was issued.

With respect to this issue, the question of anthropomorphism can be said to run through the Indian dolphins case in two distinct but related ways. First, there is the concept “person” that is anthropomorphized by Western reporters. Second, there is the Indian government’s reliance on a vast body of scientific evidence testifying to the dolphin’s unusual intelligence and sensitivity that informs its decision to view dolphins as persons. This evidence is necessarily anthropocentric and hence, reliant on anthropomorphism, since characteristics that are commonly viewed as predominantly human – intelligence and sensitivity – are attributed to nonhumans. Of course, one might object that the dolphin’s intelligence and sensitivity must be conceived of as wholly different
from human intelligence and sensitivity and hence, that qualifying these characteristics as anthropomorphic attributions amounts to an unwarranted disacknowledgement of the fundamental otherness of dolphins that scientific evidence presents. My answer to this objection would be that I am not disputing the rather obvious “otherness” of dolphins, but the terms in which this otherness is registered. Moreover, let us recall that in their declaration, the Helsinki group (as the original source of the evidence) strived for legal personhood for dolphins because of their profound likeness to human beings.

The more fundamental issue here, however, is that both forms of anthropomorphism apparently have a limit, since they do not warrant the inclusion of dolphins within the moral community under the guise of legal personhood. It is not my aim to explain away this limit by exploring the politics of the specific situation. One could, for example, argue that the Indian government simply used the scientific evidence on dolphins that was already in place to put a stop to the growing number of aquatic theme parks in order to meet the demands of certain pressure groups. However valuable such an analysis might be, it fails, firstly, to address the ambiguous stance of “person” that the case turns upon, the limit it installs and the confusion it breeds. Secondly, it does not allow for a better understanding of the ambiguous stance of personhood and of the role anthropomorphism plays in the personification of the animal.

This is why I wish to zoom in on the confusion the case under discussion gave rise to as a result of the contradictory status of the term person and how it operates as a tool to demarcate entities both within and outside of the juridical sphere. Hence, I will not so much look at the term person as a constative matter – of interpretation or politics – but rather as a problem of how difference is performed through this particular instance of language itself.

2. Person

The etymology of the concept “person” can be traced back to the word phersu, which originally denoted the mask that performers in Etruscan rites wore and which, in the ancient Roman theatre, came to denote persona. In ancient Rome, the word persona took on a legal meaning and if it used to connote the role one played in the theatre it now becomes tied to the role one has to play in life. As
Richard E. Epstein⁴⁰ has observed, this legal meaning of *persona* was much more complex than it is today:

Given the divisions amongst human beings, the law of persons was always more complex in ancient legal systems than in modern ones. The Roman rules for men within the power of their fathers and for women and for insane persons all differed from each other in important particulars. Men within the power of their father could become heads of their own families at the death of their father; they had full rights to participate in political life even while consigned to a subordinate position within the family. (149)

What becomes clear from the above passage is that the different degree of complexity between the Roman law of person and the law of person today must be attributed to the fact that modern law does not permit divisions into human beings and surely cannot subscribe the roles individual human beings are to play in life. In the words of the Italian philosopher Roberto Esposito,⁴¹ the Roman tradition has been overturned by what he views as a sharp subjectivist turn taken by legal theory:

This is what happened to the idea of ‘person’ during the epochal transition from the objective formalism of Roman law to the individualistic subjectivism of modern rights. The moments these were awarded – at least since the French revolution, but already by the time of Hobbes – to all humans, who were thus made equal by their common status as subjects, and then as citizens, at the moment the Roman separation between distinct human categories is said to have collapsed, along with the original distance between mask and face: not only because every individual now had its own mask, as it were, but because the mask adhered to the face so intrinsically that it became an integral part of it. (11)

The advent of human rights, then, no matter what exact historical origin one wishes to retrace it to, has had severe implications for the juridical notion of person today. Roughly, the notion of person has come to denote the individual

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⁴¹ Ibid, supra note nr. 28.
human being as a subject of law that has certain inalienable rights, at the very least to life, to property, liberty and well-being.

These rights no longer permit divisions between human beings but are considered universal rights that are equal to all persons. According to Esposito, we are still living under a regime of personhood whereas the modern notion of person has largely remained unquestioned:

Nowhere to my knowledge, not even in the midst of the most profound disagreement of what may or should be defined as a person (not to mention the equally problematic distinction between a potential and an actual person), is what we, by habit or choice, call ‘person’ ever questioned – much less its absolute onto-theological primacy. (2)

Having begged the question, Esposito challenges the regime of personhood. He does so through a profound analysis of the person as a legal category. More specifically, he traces back the history of the legal category “person” as a dispositif: as key to a bio-politics that functions as a tool for demarcation by excluding others from the juridical sphere. Hence, what Esposito’s focus on person implicitly acknowledges is that person is a much more complex phenomenon than the characteristic polemic on criteria for personhood within the animal rights debate would suggest. With respect to the Indian dolphins case, it shows, first, that person is not merely an empty form on which certain characteristics or capacities, like intelligence and sensitivity can be inscribed. Second, it suggests that the notion of person is so deeply enshrined within our juridico-political sphere that we cannot simply work our way around it by mending it to suit our changing ideas about the legal status of animals.

What Esposito does not address, however, is how the personification of entities from outside of, to within the juridical sphere comes about. Hence, his concern with person hinges on (bio)-political arguments rather than on an exploration of person as an ambiguous instance of language performed through anthropomorphisms and personifications that are embedded within rhetorical reading strategies. As such, his valuable approach remains blind to the ambiguous stance of the term “person” that we detected within the Indian dolphins case. Since I view this ambiguous status as the most important unresolved issue within the animal rights debate, I choose to follow a more radical logic by focusing on person as a performative instance of language. This is why I wish to explore the role of the personification and its relation to anthropomorphism in what lies ahead.
Before I zoom in on the relation between anthropomorphism and personification, however, it is important to note that within the animal rights debate today anthropomorphism is generally not understood as a rhetorical strategy at all. In this respect, the following comment by Sandra D. Mitchell is particularly telling of the approach to anthropomorphism within today’s animal rights debate:42

However, even though anthropomorphic models can be treated as science as usual, unique problems for these models still remain. These problems have to do with the way in which language descriptive of our experience travels back and forth between scientific and social domains. (89)

In this passage, Mitchell addresses the problem of anthropomorphism by treating language as something descriptive of our experience within specific and separate domains. This understanding of anthropomorphism corresponds to the way in which anthropomorphism is conventionally defined, namely as the attribution of something human to something nonhuman.43 It rightfully suggests that anthropomorphism plays a key role in presenting something nonhuman as human, but ignores the role anthropomorphism plays as a rhetorical strategy that performs personification. In order to address this characteristic lack within the animal rights debate, I first wish to provide a framework that allows for a clear-cut distinction between anthropomorphism and the trope of personification. Let us, therefore, turn to a text that seems to present a welcome exception to taking up anthropomorphism in a conventional manner and which therefore will be key to my immediate purpose of resolving the paradoxical stance of the word person within the animal rights debate.

3. Anthropomorphism and Personification

In Barbara Johnson’s valuable essay “Anthropomorphism in Lyric and Law,”44 Johnson explores the question of anthropomorphism and its relation to the trope of personification by following up on “Anthropomorphism and Trope in the Lyric,”45 a text by Paul de Man. Roughly, Johnson’s essay reflects the following position of both herself and De Man on the difference between anthropo-

44 Ibid, supra note 29.
morphism and trope: If De Man maintains it is possible to make an essential distinction between anthropomorphism and trope, Johnson disagrees. She motivates her disagreement with De Man by turning the trope of personification into a primary example of this impossibility, claiming: “on the level of text the mingling of personifications on the same footing as real agents threatens to make the uncertainty about what humanness is come to consciousness […]” In short, Johnson argues it is impossible to distinguish between anthropomorphism and the trope of personification in any given text because we can never be sure what humanness means. Johnson thus follows, but also goes against De Man because she argues that his notion of an essential difference between anthropomorphism and trope can only be thought as an abstract matter, since establishing such a difference would necessarily be reliant on a positive knowledge about what humanness is.

As much as I agree with Johnson on the impossibility of defining humanness, conceiving of the difference between anthropomorphism and trope as an abstract matter only, and leaving it at that, would prove quite useless to my project of resolving the ambiguous stance of person within the Indian dolphins case, in particular, and the paradoxical stance of person within the wider animal rights debate in general. More specifically, it hinders studying the interaction of trope and anthropomorphism within concrete texts, which is a prerequisite for my further exploration of the construction of animal subjectivity within an expansive model. For this reason, I will now zoom in on Johnson’s text to see if we can tease out a practical distinction between anthropomorphism and trope that can inform a different outlook on “person” and its relation to subjectivity.

Johnson begins her investigation into the nature of anthropomorphism by identifying lyric and law as two very different ways of instating what a person is, in order to see how these persons can illuminate one another (550). Johnson’s framework thus revolves around personhood as both a rhetorical and juridical question. In an attempt to address these two questions, she effectively posits the lyrical person on the one hand, and the legal person on the other, through a juxtaposition of texts from the fields of literature and law. First, by discussing de Man’s analysis of two sonnets by Baudelaire; second, by offering us insight into a text, or multiple texts, regarding a Supreme Court opinion from 1993: Rowland v. California Men’s Colony.46 In what follows, I will analyse the way in which Johnson reads into the texts she has selected from both fields. Before I do so, however, it is noteworthy that apart from mentioning lyric and law as two different ways of instating what a person is, Johnson does not start her essay with an explanation of the term person as such. Instead, the only clue Johnson

provides at this point is the dictionary definition of anthropomorphism as a
heading for her essay. This is why I will now first analyse this heading to try and
come to a better understanding of her notion of person. Here it is:

Anthropomorphism. n. The attribution of human motivation, character-
istics, or behavior to inanimate objects, animals, or natural phenomena. 
(549)

The word person is not mentioned in the definition. I take this to suggest that
Johnson reads anthropomorphism as a form of person-ification as I do, but also
that she here chooses to read the concept of person in its conventional sense, as
connoting the human person. What is left unaddressed in this approach, then, is
precisely the conventionality of the relation between human person and
“person.” In other words, if the concept of person is not a constitutive element of
the conventional (dictionary) definition of anthropomorphism, this suggests that,
outside the strictly juridical sphere, an anthropomorphism does not necessarily
concern the attribution of personhood to what is considered an essentially
nonhuman entity. It implies that even if person is conventionally understood as
human it does not mean that human has to be understood as person. Rather, what
is considered human at any given stage could also be something else, like a
motivation or certain characteristics. Hence, the word person could – as with any
noun that does form a constitutive element of the above definition – be subject
to further definition and inspire debates about what it supposedly conveys in
terms of meaning.

It is here that my investigation into anthropomorphism begins to diverge
from Johnson’s, because it will turn upon an exploration of just such a non-
conventional understanding of person. To illustrate my argument let us
momentarily read this conventional definition of anthropomorphism in the
following more schematic manner to see what it might be about if not
necessarily about “person:”

human, motivation, characteristics, behavior attributed to inanimate,
objects, animals, natural phenomena

The term anthropomorphism here functions in the same way as the word person
and as the words that form the elementary parts of its definition: as a non-
specific noun subject to further definition. In fact, understanding what the
sentence comprising the above definition of anthropomorphism means would
imply agreeing upon every part of it and on the way these words relate and
interact within a certain (fixed) context. It would require a system that contains meaning within strict boundaries, a self-enclosing hermetic unity within a context-less space, resembling the picture of a prison without an outside. Obviously, this impossible figure is not a viable option for reading into the conventional definition of anthropomorphism. The only thing that in my view does become clear from this definition is that there must be an attribution of something human to something nonhuman and that anthropomorphism is undeniably an act, an act of attribution. Yet, the definition does not provide any clue as to what exactly marks the shift in register that it bespeaks (human to nonhuman). At most it says: anthropomorphism is the undoing of the shift from human to nonhuman by attributing to the nonhuman something human. This may seem paradoxical and indeed it is.

For the attribution of something human to something nonhuman to be conceivable, there has to be an imaginary moment, perhaps in a no longer retrievable past, when the human decided to distinguish itself from what it regarded as essentially different from itself, as nonhuman. I do not mean anthropomorphism effectuates some longing for a beginning, wholeness and connection to what is considered essentially lost or other. I only wish to suggest that in the act of anthropomorphism there is a mechanism at work that attributes to the nonhuman something human and that in this act, in this moment of acting, the human seems to exert itself by carrying off the suggestion, a suggestion that was not there before the act, as if this nonhuman has always been human after all. In other words, if this essentially nonhuman entity has now – through an act of anthropomorphism – become somehow human, it must always have been somehow human, since otherwise the human cannot be maintained as an essential category. The nonhuman does not become human, then, in the act of anthropomorphism, but through a corrective measure only now has been (re)cognized and labelled as such.

This state of affairs seems, first, to defer the question of what anthropomorphism is to the question of what it means to be human and second, render the term human meaningless. I will return to this deferral and the concurrent inflation of the term human shortly. Here, I only wish to observe that although “person” is a key concept in law and conventionally connotes the human person, the conventional understanding of anthropomorphism – whether the one I just deducted or the one conveyed in the heading of Johnson’s essay – does not warrant an understanding of the relation between anthropomorphism and person as fixed. In fact, zooming in on the claim that informs Johnson’s juxtaposition of lyric and law and the way in which it relies on the convention of the human person, suggests that there is something contradictory about this
claim itself. I consider it, therefore, worthwhile examining it further. Here it is, in the first sentence of the following passage:

More profoundly, though, *lyric and law might be seen as two very different ways of instating what a ‘person’ is.* There appears to be the greatest possible discrepancy between a lyric ‘person’ – emotive, subjective, individual – and a legal ‘person’ rational, rights-bearing, institutional. In this paper I will try to show, through the question of anthropomorphism, how these two “persons” can illuminate one another. (550, italics mine, BV)

First, here “person” is treated as a self-same and single phenomenon, whereas the very different ways (plural) in which this person is instated (legal or lyric) apparently capacitate its meaning. Second, the claim does not read that lyric and law might be seen as two very different ways of what person is, but rather of what *a* person is. The specific reference that is made to person by the indefinite article “a” is left unmotivated and registers person as nonspecific. It makes me wonder why it is brought up and why in this way, so surreptitiously, i.e. without fitting this “a” in between quotation marks as well? The self-sameness and singleness of this person is further emphasized when, in the following lines, Johnson states: “In this paper I will try to show, through the question of anthropomorphism, how these two “persons” can illuminate each other.” (550)

We have now shifted from *a* person to *two* persons who in terms of their identity – supposedly – remain self-same.

Naturally, I cannot trace the motivations that underlie Johnson’s choice of words. What I can do is examine how those words work. Here, I would argue, the mentioning of this “a” without fitting it in between the quotation marks works – disguised as a manner of speech – to stress the singleness of this person, a singleness once more disclosed by contrasting it with the explicit plurality (the very different ways) of the adjectives that supposedly determine its meaning. One might object that my argument is far-fetched here because asking the question about what person is without mentioning this “a” at all would be grammatically incorrect. Yet, considering this grammatically incorrect not only betrays a conventional approach to person as human person, but also implies conforming to a convention that insists on infecting the word person with singleness as the result of a conventional grammatical rule.

In short, using the figure of contrast as Johnson does here, not only encourages us to conceive of person as a single phenomenon, but also legitimates the conflation or rather, substitution, of singleness with individuality.
and thereby works to add a human dimension to the noun person. Compared to animals, plants or objects – although these terms equally remain subject to further definition – individuality is generally regarded, if not as specifically human, then as a paramount human trait, justifying human treatment. Of course, the difference between individuality and singleness is still more complex as we would probably not kill the last chicken, in spite of the fact that we do not generally regard chickens as individuals. The point here, however, is that Johnson’s angle on person as a single phenomenon operating within two juxtaposed but separated domains of lyric and law allows the terms singleness and individuality to be subjected to conflation. This procedure can only be understood if Johnson has – however unwillingly – on this human/nonhuman axis taken the lyrical person to implicitly connote the human (individual) person. This human (individual) person then is made to perform a stand-off with the so-called legal and potentially nonhuman (non-individual) person who, or which, does not strictly need these implicit qualifications in the shape of fixed adjectives.

Thus, instead of addressing the relation between the concept of person and human person that “humanness” conventionally connotes, Johnson uses a framework that can only take this relation as given. This “taking as given” consists of investing the noun person with an intrinsic humanness instead of questioning the conventionality of this procedure. It now becomes clear why Johnson opts for the personification as the most important trope to be examined, since reducing the differences between anthropomorphism and trope to the difference between anthropomorphism and personification both presupposes and reinforces the conventional relation between person and human person. In other words, it betrays a reading of the trope of personification quite literally as a person-ification, whilst considering anthropomorphism to be such a person-making concept as well. Hence, Johnson’s framework here contradicts itself because it relies on reading the trope of personification as an anthropomorphism prior to the exploration of the differences between those terms.

Within such a framework the potential for difference between the two concepts is cancelled out before it can take root; or, as can be gathered from Johnson’s conclusion, can be conceived of as a highly abstract matter only. Johnson’s understanding of person, then, is contaminated by an unwarranted investment with humanness and thus with the implied notion of individuality that humanness connotes; not because Johnson does not appreciate person as not necessarily human, but because the specific way in which she juxtaposes lyric and law is necessarily reliant on this contamination. In fact, each time she tries to loosen the fixity of the relation between person and human person by
uncritically transposing her contaminated person to another plane, it becomes clear how Johnson’s person is always already informed by this human individuality (by this “a” person”). And it is this attempt at loosening that suggests something is sticking. This human individuality, however, does not stick to this person of itself, but is forced into being by treating these very different persons as nouns that rely for their meaning on their accompanying adjectives – as identical containers that can be filled with meaning. It is as if Johnson is asking the question: What if this human person is not human?

This particular conception of person might be considered to stem from a statement Johnson formulates earlier on in her essay, when, after quoting the Keatsian chiasmus “Beauty is Truth, Truth Beauty,” she states that: “a common contemporary way of viewing the relations between law and literature is through the relation between epistemology and rhetoric.” (551). To be sure, Johnson here does not state her own opinion on the matter but points out the conventional way of framing the relation between law and literature. However, neither does she at this point provide an alternative to what seems an all too rigid divide between the interrelated textual fields of literature and law. In fact, Johnson’s reference to the “contemporary commonness” of her statement can not just be read as pointing to a convention, but also as working to gloss over the fact that the claim itself is not motivated. Hence, referring to the “contemporary commonness” of her statement without addressing it critically here comes to function as a rhetoric tool that substitutes the motivation itself. In this respect, the brackets are particularly telling: (“which can stand as a common contemporary way of framing the relations between law and literature”), as they work together with the notion of “contemporary commonness” to construe an aura of factuality, of the matter-of-factness of what is being claimed. A logical thinking through of this rigid framing, however, would result in having to regard (A): beauty, rhetoric and lyric/literature and (B) truth, epistemology and law as part of an elaborate and immensely vague binary which, nevertheless, draws a neat line between epistemology and rhetoric as strictly corresponding to what consequently comes to be considered as the separate(d) domains of lyric and law.

Now, if Johnson’s framework hinders developing a clear-cut distinction between anthropomorphism and trope because it fosters a conventional confusion of persons, I now wish to carve out an alternative framework by letting go of the conventional relation between person and human person altogether. I do so, first, by understanding Johnson’s person as a homonym. I imagine this homonymic person as a word that does not necessarily have any inherent meaning in common with a word that happens to constitute the same
name.\textsuperscript{47} In fact, as a homonym, this person has nothing in common with any interpretation that would allow for treating it either in some aspects or entirely in the same vein in terms of meaning, i.e. as synonymous or as synonyms that have somehow reached perfection and become identical. Admittedly, this is a nonsensical remark: synonyms cannot reach perfection but exist because of the difference they assume. It is, however, the theoretical (logical) outcome of thinking through Johnson’s confusion of persons and thus illustrates the need for another framework. Second, the homonym person does not inhabit a spectrum that allows for gradual scaling. It is a piece of language, a free-floating signifier. Third, my specific understanding of person as a homonym implies that Johnson’s very different ways of instating what a person is (legal and lyric) are not so very different at all. Rather, they are alike, in that they both function and find their meaning exclusively in and through the very (text) system (legal by law and lyric by literature) that happens to proclaim them. Finally, the changed status of person along the lines I propose here must also have consequences for the status of its adjectives. Those adjectives (lyric and legal) no longer determine its meaning. Therefore, I suggest that from now on we treat both \textit{lyrical person} and \textit{legal person} as one single phrase, as a name, as a first name accompanying a surname and together, only together, making up an official sort of identity. If the reader is not immediately convinced please consider this aggregation as a heuristic tool that will enable me to provide a workable definition of anthropomorphism in what lies ahead.

So, let us – informed by my homonymic understanding of person – take on the question of anthropomorphism through a discussion of Johnson’s dialogue with De Man. Prior to presenting us with De Man’s definition of anthropomorphism, Johnson follows him in quoting Nietzsche’s famous aphorism on what truth is: “\textit{A mobile army of metaphors, metonymies, and anthropomorphisms.}”\textsuperscript{48} Johnson adds:

De Man claims that metaphor and metonymy are tropes whereas anthropomorphism, while structured similarly, is not the name of a pure rhetorical structure, but the name of a comparison, one of whose terms is treated as a given (as epistemologically resolved). To use an anthropomorphism is to treat as \textit{known} what the properties of the human are. (551, italics in text)

\textsuperscript{47} Via Latin from Greek: \textit{homos} (same) \textit{onoma} (Name). OED. (Oxford, 2003).
From this introductory and clarifying comment on De Man’s exact words it logically follows that Johnson, in following De Man, has fixed the tropes within the lyric-beauty-rhetoric part of the binary that results from the conventional confusion of persons I have just discussed. By the same token, anthropomorphism is placed within the truth-epistemology-law part. At this stage of her essay, Johnson thus not only agrees with De Man’s argument of anthropomorphism and trope as two essentially different concepts, but also chooses to put emphasis on this difference, stressing it and interpreting it in a particular way by appointing these concepts two separate domains.

In this context, the fact that Johnson has italicized the word known, is significant, as it de-emphasizes the treating as known, which would complicate a clear-cut division between anthropomorphism and trope, suggesting mingling or overlapping domains. Johnson then cites De Man’s exact words in order to zoom in on the problem:

“Anthropomorphism” is not just a trope but an identification on the level of substance. It takes one entity for another and thus implies the constitution of specific entities prior to their confusion, the taking of something for something else that can then be assumed to be given. Anthropomorphism freezes the infinite chain of tropological transformations and propositions into one single assertion of essence which, as such, excludes all others. It is no longer a proposition but a proper name. (552, italics in text)

Please note the not so slight but instead significant difference in Johnson and De Man’s respective angles on anthropomorphism. Whereas Johnson focuses on treating terms as known, de Man focuses on the treating as known (the taking of something for something else that can then be assumed to be given). De Man thus explicitly talks about an act, whereas Johnson’s comment relays attention from the active verb “to treat” to the more static “to treat as known” in a matter-of-fact way, emphasizing it by means of italicization. What strikes me as odd in Johnson’s further comment is that after quoting De Man’s definition in full she proceeds to ignore the body of it as she only mentions the beginning (anthropomorphism is not just a trope) and the end (anthropomorphism is a proper name). I will discuss the differences between trope and anthropomorphism in relation to defining anthropomorphism as a “proper name” shortly. First, I will continue to follow Johnson and explore why she might have chosen to leave the entire body of De Man’s definition out; to find out what is meant by
this “not just a trope”; to then work towards a clarification of the relation between person and anthropomorphism from the perspective of the law.

What makes Johnson’s framework so relevant to this purpose is its reliance on a conventional understanding of the word person as human person, because it is precisely such a conventional understanding of person that also seems to inform the bypassing of the question of personhood within an expansive model. In this respect, Johnson’s framework parallels the journalistic coverage of the Indian dolphins case. Both within and outside of the law, however, as also became clear from the Indian dolphins case, personhood is not exclusively attributed to humans, nor is legal personhood, since, for example, corporations are commonly granted the status of legal person. In other words, the attribution of personhood to nonhuman entities at once contradicts the expansive model’s own conventional understanding of person. Hence, the expansive model does not imply: this entity, this animal, is a human. Instead it implies: this entity, this animal, can be attributed personhood and thus becomes a legal person. Once this confusion of person with human person has been effectuated, the entity, whether essentially human or not, becomes a legal person, no longer necessarily essentially human. If such a contradictory confusing of persons can, at most, result in differentiating between anthropomorphism and personification on an abstract level, disentangling this confusion is key to distinguishing between anthropomorphism and trope on a more practical level.

Now, if Johnson investigates what constitutes a legal person whilst relying on a framework centred in a conventional – synonymic – understanding of person, my homonymic understanding of the word person provides me with a framework that reads legal person as an aggregation. Bearing this difference in mind, I will now analyze Johnson’s reading of the court case and try to do justice to its complexity by carefully moving back and forth between these two different stances of person.

4. Anthropomorphism and Law and the Lyric

The court case Johnson discusses is about a group of prisoners that wishes to sue the prison for abolishing a policy that previously secured the entitlement to free

tobacco for prisoners who lacked sufficient funds. Since the prisoner’s council is not allowed to possess any funds of its own and thus cannot finance a lawsuit, it attempts to lay claim to a provision in the United States law known as in forma pauperis proceedings. This provision allows persons to be exempted from the prepayment of legal fees if they can prove to be indigent. Hence, before the court can even begin to consider whether or not the prisoners can get their cigarettes restored, it first has to decide if the prisoner’s council can be attributed the legal status of person.

The court case thus indisputably seems to be about personhood, about what constitutes a person. Within my homonymic understanding of person, however, it is not, or only to the extent that the case is treated as such. In my view, the case is about what constitutes a legal person. Without wanting to rehearse all the arguments put forward in this particular case to either grant or deny the prisoner’s council the status of legal person, let me rephrase the problem in a somewhat oversimplified but clear way: The issue the court faces turns upon whether a council can be poor and thus be qualified person or be qualified a person and thus be poor. This issue can be outlined schematically as resembling the figure of the following chiasmus: “Poor is Person, Person is Poor.” However, there is something odd about the way in which this chiasmus works. Whereas the chiasmus is the rhetorical figure that both separates and binds, this chiasmus only binds because it treats as given these two words – poor and person – by fixating them through a swapping of attributes in order to turn them into “perfect synonyms.” I am using the nonsensical term “perfect synonyms” here to illustrate how the differences between the word person and poor are blotted out to the point of substitution by cutting off the chiasmus before it can realize its potential.

It is this procedure, this application of what could at best be qualified as a rudimentary chiasmus, which would enable the court to decide in favour of the council: which would ultimately imply naming it a legal person. Indeed, all the court has to do, (but, as we will see, never did) is to attribute the council either one of the terms – poor or person – and then substitute it for the other; that is then taken as given in De Man’s sense. Viewed this way, and more importantly, presented by the court in this way, it seems the court here is acting as an entity that is trying to deal with the question of what it can or cannot name person in a very sensible and responsible way. Yet in fact it did not. And the fact that it did not had everything to do with the confusion into sameness of the terms person and poor that stems from the conventional confusion of persons I have discussed earlier on. But how does this confusion of terms come to structure the court case? The rudimentary chiasmus “Poor is Person, Person is Poor” is read
through the lens of another rudimentary chiasmus, which then comes to motivate it:

“in forma pauperis is legal person, legal person is in forma pauperis.”

In this particular case, the court does not distinguish between person and legal person because its conventional confusion of persons may conveniently result in the confusion of in forma pauperis with poor. The court reasons: Poor is in forma pauperis is person is legal person, whereby it can randomly substitute any of the above terms for the other if only each time it fits this magical word “is” in between. Strictly speaking, however, the prisoner’s council cannot sue in forma pauperis because it is poor or a person, but only as a legal person, which it can only become after being named legal person. The juridical term in forma pauperis, then, is not to be taken as meaning the same as poor in the sense in which I, for example, could claim to be poor for lack of money or imagination. I cannot be in forma pauperis. I can only sue in forma pauperis and only as a legal person. Thus, if in forma pauperis is not to be confused with poor, the confusion of person with legal person must also be unwarranted. In short, the juridical term in forma pauperis only acquires its meaning in the arena of the law as a position a legal person can entertain. The nonhuman/human discussion on the word poor is not the issue here, but merely serves to gloss over the pattern of unwarranted confusions (or rather substitutions into sameness) the court allows itself to fall prey to in order to come away with a responsible appearance. Bearing these dynamics in mind, the question becomes how the court case can be instructive in gaining a better understanding of anthropomorphism and its stake in the attribution of personhood.

To begin with, we can now distinguish between three different definitions of anthropomorphism in play. The first definition resembles the dictionary definition heading Johnson’s essay and ultimately concerns, as I deduced, the attribution of something human to something nonhuman. I will, from now on, refer to this form of anthropomorphism as conventional. The second way of looking at anthropomorphism stems from the body of De Man’s definition, the taking of something for something else that is assumed to be given. I will refer to this form as strict because despite the fact that it is the human that takes something as given, the “what” that is taken as given does not necessarily involve something human, but, strictly speaking, concerns any “taking as given.” The third form of anthropomorphism I would like to distinguish here is De Man’s somewhat mystical description of anthropomorphism as a proper name, which logically follows from the second. Let us now bring these
provisionally distinguished forms of anthropomorphism back to the court case
and examine how conceiving of them as such would work out in practical terms.

If the court had decided that, yes, the prisoner’s council is admitted into
the system, then it relies on an anthropomorphism in the conventional sense, in
that it has somehow – through an ingenious language game – attributed human
characteristics, motivations or behaviour, let us say “something human,” to this
entity previously considered nonhuman. Whereas the court might feel the need
to consider something as human for practical purposes and without considering
the entity it takes to be human as essentially human per se, such a decision
would, in principle, imply that the law pretends to know what is essentially
human.

If the court decides not to admit the prisoner’s council, which it actually
did, it means that the anthropomorphism in the conventional sense – if we were
still to follow the court and Johnson in confusing persons – is lost; but, not the
anthropomorphism in the strict sense, because it is the treating of the case
through the frame of the aforementioned rudimentary chiasmus as given that
remains anthropomorphic. In short, deciding not to let the council enter does
nothing to prevent this strict form of anthropomorphism, but opens up an
intrinsic arbitrariness, thereby revealing not a potential, but a fundamental
arbitrariness, and by consequence cruelty, at the heart of the court’s operation.

As I will show in my next chapter, my provisional qualification of this
dynamic as cruel begs the question of how cruelty and harm relate to the
ambiguous stance of person both within and outside of the animal right debate.
For now, a look at the Oxford English Dictionary (2003) only underscores the
need for such an exploration in what lies ahead. It denotes harm as causing pain
or suffering to others, intentionally or not, and cruelty as wilfully causing pain
or suffering to others, or, feeling no concern about it. Although these definitions
suit my more immediate purpose, they surely do not provide any clue on the
way in which these terms might be conceptualized in their specific relation to
animals. The point here, however, is that the dynamic I have now provisionally
qualified as installing a fundamental cruelty does not stem from not allowing in
this entity that is asking for admittance. Rather, it seems that at the heart of this
fundamental cruelty lies a systemic lack of curiosity, a legal disposition that
prevents opening up to this entity. Indeed, as we have seen, the court has bound
itself to a rudimentary chiasmus that it has installed as its mode of operation. If,
in this particular case, we are talking about a group of prisoners and not about
animals, the principle – from the perspective of my provisional definitions of
harm and cruelty – seems to remain the same: not granting either group the
status of *legal person* installs a juridical order that legitimizes the harm they potentially suffer as a result of this decision.

Hence, if we momentarily follow the dictionary definitions mentioned above, the harm the prisoners are potentially exposed to can be said to realize its potential for cruelty once they run out of cigarettes. This cruelty consists of not having to be concerned with the prisoners’ problem, once the decision not to qualify the prisoner’s council as a person has been effectuated. In short, instead of demonstrating sensibility and responsibility, the court’s decision as to whether the prisoners will be allowed to sue *in forma pauperis* clearly has nothing to do with the real life problem of the prisoners who want their cigarettes restored. Rather, the court’s decision relies solely on a formal procedure, a formality, however important that may be, especially in the juridical domain.

If De Man’s definition of anthropomorphism as a “taking as given” here exposes the fundamental cruelty a conventional confusion of persons may result in, it does not mean his definition is perfect. Indeed, adhering to De Man’s definition we would still potentially turn a blind eye if the court had ruled in favour of the council, and equally call it an anthropomorphism, taking/mistaking the conventional form of anthropomorphism as a *taking as given* quite literally, as a form of *naming* something human instead of *attributing* something human to something nonhuman. It is this interpretative pitfall – confusing naming with attributing – that I surmise to be the reason why Johnson has glossed over the body of De Man’s definition and focused on the *known* instead of the *treating* as known. It works to conveniently bypass the question of what it means to be human, whereas the anthropomorphic treating as given always takes place before the decision that only comes after the fact. Thus, the problem with De Man’s definition of anthropomorphism as a *treating as given* is that it potentially encapsulates the conventional anthropomorphic attribution of something human to something nonhuman because it cannot address the underlying confusion of *personhood* (attributing) with *legal personhood* (naming).

In this sense, both definitions (conventional and strict) do not so much bespeak an anthropomorphism but curiously are – precisely by allowing for this confusion – made to work as anthropomorphisms themselves. This is problematic because each time the court says, “yes, you are admitted into the system” on this necessarily arbitrary basis, an entrance fee is paid and a *potential other* entity is thereby necessarily excluded through an unacknowledged anthropomorphism that Johnson’s conventional definition does not account for and that De Man’s definition fails to make explicit. By implication, a workable definition of anthropomorphism would have to
differentiate sharply between the conventional and strict form of anthropomorphism while simultaneously enabling any underlying confusion regarding persons to be exposed instead of adding to it.

Let me recapitulate. The law can equally use an anthropomorphism to either grant or not grant entities the status of person, although I maintain that within a homonymic understanding of person the law can only grant or not grant the status of legal person. The question of what is to be taken as person always already relies on an anthropomorphism whereby “human person” is treated as something given. The fact, however, that “person” can be understood as a homonym implies that person has nothing to do with human per se, as the law’s operations in the court case paradoxically prove. The noun person, like any other noun, can never be a given of itself, but can only be taken as given. This implies that the law, in the process of deciding what qualifies as person, can never resort to objective criteria to inform its decisions. At most, it can bet on a resemblance with an entity that is fundamentally unknowable, and proclaim itself the expert. This contradiction – to be an expert in the unknowable – is ultimately resolved by resorting to pure power, saying: “I am law and therefore I name this entity legal person.”

In the case of the prisoner’s council the law is anthropomorphic in its compulsive substitution of legal personhood with personhood. It is this same compulsiveness that characterizes its workings within an expansive model, because it is there that its conference of legal personhood to human individuals stretches to any animal to which it attributes something essentially human. In other words, notwithstanding what we established for a fact within the Indian dolphins case, namely that nonhuman animals may be treated as nonhuman persons while being carefully distinguished from entities that are granted legal personhood, the distinction between legal person and person cannot be viewed as merely a political decision to meet practical ends. Rather, this distinction appears to become inevitable when the notion of person is thought through on a more radical rhetorical plane. Hence, the confusion of person with legal person is uncalled for in a fundamental way if the law wants to lay claim to functioning in a non-arbitrary manner.

In this respect, the emergence of the corporation as a legal person from the second half of the nineteenth century onwards can be said to operate on the axis of this distinction between person and legal person. For a well documented overview of the exact way in which corporations were granted legal personhood under the United States constitution see: Thom Hartmann, Unequal Protection: The Rise of Corporate Dominance and the Theft of Human Rights (New York: St. Martin’s Press, 2002).
corporation was treated as a person and then attributed legal personhood to meet practical and political ends. This legal operation first confuses the human with the nonhuman only to then clearly separate the so-called human person from the *legal person*, as the corporation obviously remained nonhuman once the confusion was effectuated. At the same time, the distinction between the nonhuman corporation and the human person was not entirely effaced by this legal manoeuvre: if, for example, nonhuman corporations could not marry, which confirmed their nonhuman status under the law, they were afforded certain constitutional rights that previously had pertained only and typically to human persons, such as the right to property and privacy.

Without wanting to enter the debate on corporate personhood here, which would seriously deflect attention from my more immediate purpose, my exploration of the ambiguous stance of the word person by way of anthropomorphism seems to suggest that, at least for some of the typical human rights for corporations, there appears to be no ground for embedding them within the construct of the legal person. In fact, scrutinizing and renegotiating the typical human rights of corporations that indulge in factory-farming might be a good point of departure for thinking through the way in which factory-farmed animals can be protected from harm, a matter I will explore in detail in the next chapter. Let it suffice here to illustrate this point with a brief contemplation on the right to property and privacy.

As Siobhan O’ Sullivan has observed, there is a gross internal inconsistency within the animal rights debate because the vast majority of animals, which are the factory-farmed animals that we eat, are made to suffer beyond comparison with any other group of animals that we generally distinguish within the context of what is commonly referred to as the animal, say pets and wildlife.\(^51\) She attributes this inconsistency to the sheer invisibility of factory-farmed animals and understands this invisibility in two distinct but related ways. On the one hand, the majority of people are no longer used to living with those animals that are typically processed on factory-farms. On the other hand, the general public is never exposed to the way in which factory-farmed animals are processed, except on the rare occasions when illegal footage is smuggled out of a farm or (former) employees break the code of silence. Indeed, if there is any truth in the correlation between the level of visibility and the way in which we tend to treat animals, as O’Sullivan suggests, advocates of animal rights might want to raise the question of property and its specific relation to privacy as an unwarranted human attribute afforded to corporations.

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as legal persons. In other words, if the typical human right to privacy for corporations was curbed on the grounds that the corporate legal person is not a human person, the visibility of factory-farmed animals could at least potentially increase, as those who would want to visit such farms would no longer be held back by a legal prohibition of trespassing what is considered private property.

Hence, if the right to property is essential to nonhuman corporations within the model of liberal democracy, the right to privacy within the construct “private property” could be up for renegotiation. Of course, this line of thought contradicts what I established earlier, and by which I still stand, namely that the notion of person is so deeply enshrined within our juridical-political context that any effort at mending it to suit our changing views on the legal status of animals would be a hard battle to fight. Indeed, it would invoke the haunting perspective of a return to a situation whereby the law of person would distinguish between legal persons and, in that sense, resemble the differential status of persons under Roman law, rather than the principle of equality of all persons that has marked the sharp subjective turn of legal theory since the advent of human rights. This is why in the next chapter I wish to develop a more modest approach to the question of factory-farming by addressing the incomparable suffering of factory-farmed animals through an exploration of the way in which the terms harm and cruelty operate the differential status of factory-farmed animals on both a juridical and rhetorical plane.

Whenever the law subjects itself to an unwarranted confusion of persons it claims “expertise in the unknowable” and, as a result, the nonhuman entity under discussion can be named a legal person. The way the law goes about attributing human essentiality to an entity previously considered nonhuman relies on a fundamental arbitrariness, as my analysis of the court case and the example of the essentially nonhuman corporation paradoxically reveals. First, because there is nothing essentially human about person. Second, because a typical human right, for example, the right to privacy, cannot be claimed to stem from some essentially human characteristic or capacity once it has been granted to corporations. The point here, then, is that the court, instead of asking, fruitlessly: what is a person? should ask the only question it can answer, namely: what is a legal person, as that concept of which I-law, and only I-law, am in the business of naming? But strangely, the law can neither answer, nor frame this question in any conclusive way as long as it regards itself in an anthropomorphic way; that is, as centred in the so-called human person.

Hence, it seems the law, because it is centred in legal personhood, has to call into being the anthropomorphic fiction of personhood. It cannot, if confronted with digressive entities, understand those entities on their own terms.
Instead, it adopts a strategy that consists of taking a given person as human person. By implication, the law cannot proactively conceptualize wholly other categories. This leads to a remarkable paradox as it implies that the law can only operate autonomously, while it cannot at the same time. In other words, the law is not so much acting but reacting when it looks at what entities might qualify to shelter under its umbrella of legal personhood, which it confuses with a presupposed (human) personhood in a non-legal sense. It is this process of confusing that is anthropomorphic in both the conventional and the strict sense, which installs a limit to the law’s imagination of the nonhuman other. In short, the law cannot look itself in the face; it needs a mirror and that is where the lyric/literature comes in, and that is why, although for different reasons, I finally do find Johnson’s framework so relevant. The fundamental arbitrariness, which is the result of this lack of capacity of the law, can only be “resolved” or “silenced” by resorting to power, i.e. resorting to itself, saying I am law, freezing the infinite chain and closing the gap.

As Alain Pottage has observed, Pierre Legendre traces this dynamic back to the Western representations of law as logos, which installs a myth of origin that symbolizes and legitimizes a fiction of absolute power; what Legendre has coined the Reference. For Legendre this fictional founding supposition operates much like the point zero in mathematics, as a point of demarcation because of the combined quality of absence and presence that is necessary to its function. I agree with Legendre, but for my current purposes I choose not to emerge myself in the big question of legitimation. Rather, I would argue that it is precisely the distinction between legal person and person that the law, in its confusion of persons, at once performs and does not perform. I read this as operating the presence-absence of person within the concept of legal personhood and establishing and guaranteeing its function as a practical tool of demarcation. Hence, in my analysis, Legendre’s fictional foundation of law as logos is performed by the fictional (rhetorical) confusion of persons implied within a non-homonymic conception of legal personhood. At the same time, this confusion of persons unmasks the idea of law as logos because any demarcation through the notion of person cannot lay claim to an objective non-arbitrariness, but rather must be performed by an anthropomorphism.

Thus, anthropomorphism ultimately is not simply a form of attributing to an entity something human or sufficiently humanlike (conventional), in law it also involves misreading such an anthropomorphic attribution through another

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anthropomorphic move (strict) that regards the word person in personhood as in some way synonymous to person in what must be understood as the aggregation legal personhood. For this reason, the conventional form of anthropomorphism is always encapsulated by the strict form of anthropomorphism, whereas the strict form of anthropomorphism is not necessarily concerned with something human.

Let us now take into account not just the body of De Man’s definition but also his emphasis on anthropomorphism as a proper name. The statement that this or that entity is a person, i.e. that it fits under the umbrella of personhood, must, in the final instant, be qualified as a proposition, for one can still argue that it is true or false. It would therefore qualify as an anthropomorphism in the strict sense, which encapsulates a conventional form of anthropomorphism. However, – and this is essential to my reading – the statement that this entity or person is a legal person can only be made by a singular act and by a singular entity: the law (however personified). It is, therefore, as De Man would have it, beyond proposition. This leads me to suspect that the aggregation legal person functions as a proper name in De Man’s sense. The legal person is named by the law and the law here has the first, last and only word. The “being subject” to further definition is both created and instantly halted by the law when coining an entity a legal person, naming it and, with that act, fitting it into its system. Hence, an anthropomorphism in the strict sense would be performed when the law states: “I take this entity, let’s say a dolphin, to be a legal person,” whereas the statement: “you are a legal person” concerns an act of naming.

In other words, each time the law names an entity a legal person it is as if the law is giving birth to an entity, a nonhuman life that did not exist for the law before this act of naming. Only in and by the law, then, does the legal person thrive, in a sphere literally without space for further definition because only the law is in the business of naming and naming is its only business. The problem of cruelty resulting from this procedure structures the court case in the same way as it structures an expansive model, because it provides only one logical and chronological route for an essentially nonhuman entity to become a legal person. This route can be sketched as follows: An entity would have to be named: 1. entity. 2. person. 3. legal person. But, what if an entity cannot get from step one to step number two? There must be another way, then, of getting from number one to number three. Let us return to Johnson’s essay and see if exploring anthropomorphism in the lyric can be instructive in imagining this other way.

In her essay, Johnson contrasts the lyrical person with the legal person by mentioning the seemingly opposite labels conventionally attached to them. The
former is qualified as being *subjective, emotive and individual*, the latter as *objective, rational and rights bearing* (550). I will not presuppose these categories. In fact, for reasons already mentioned, I object to distinguishing between two persons on the basis of their accompanying adjectives, as I understand these persons as homonymic rather than synonymic. Instead, I repeat my earlier suggestion, here, to read *legal person* as one phrase, as a name, and to conceive of *lyrical person* as a name of equal weight in that it belongs to its own system, which gives it its name. Let us now contemplate the differences between the *legal person* and the *lyrical person*.

On the one hand, the *legal person* can be regarded as single but not unique. In my view, because of this combination of singleness and the incapacity to be unique, the *legal person* is not (necessarily) human. It only exists as a name or, to put it in a better way and avoid the unanswerable question of what it is to be human: it is less likely to be treated as essentially human. Granted the *legal person* is not unique, the law, conferring one entity the status of *legal person* (say, the prisoner’s council discussed in the previous paragraph) must *mutatis mutandis* consider every prisoner’s council as a *legal person*. On the other hand, the *lyrical person* is not the poet and, thus, is just as essentially nonhuman as the *legal person* is. Rather than operating as a name, however, it functions as a voice, single, autonomous and, although not unique either, it seems to have a nonhuman sort of life in the sense that it *does* something. Effectively, it *each time* builds and breaks its own context and – unlike the *legal person* – instead of being pointed to, it has the ability to point to something other than itself.

Thus, where literature has the power to pierce, rupture, (treat as other), the law has to be epistemological (compare: treat as *known* or, for that matter, treat as *unknown*). In this respect, it is not surprising that the *lyrical person* is coming to the surface when we explore the question of anthropomorphism. Not because, as Johnson would have it, the lyric is the most rule bound (550), but because it operates at the furthest remove from the epistemological. That is to say, in its poetical aspect it does not primarily refer to an extra literary reality, or to what would correspond with, say, a realistic prose, feeding into a referential view on language. Instead, each time it is calling its own world or system into being by saying “I.” In this sense, it is compulsory creative rather than compulsory repetitive. The lyric, therefore, is not so much the so-called opposite of law as the elaborate binary Johnson put in place would suggest, but resembles the law in exercising an almost tyrannical power to proclaim itself. The law shares this faculty with poetry in its procedures in that it desperately tries to contain and
control the slipperiness of language by forever trying and forever failing to set up a self-referential (hermetic) system.

Bearing these contemplations on the relation between law and literature in mind, I will now scrutinize Johnson’s reading of Baudelaire’s poem “Correspondances,” in which she again enters into dialogue with De Man.

5. Anthropomorphism or Trope in the Lyric: Baudelaire’s “Correspondences.”

The aim of this close reading is to illustrate how both Johnson’s and De Man’s reading of “Correspondences” ignore other interpretations in ways that work to reinforce their respective arguments on the nature of anthropomorphism and its relation to trope in a decisive manner. For this reason, I will begin by providing an alternative reading of “Correspondences.” This alternative reading will allow me, first, to put my findings on anthropomorphism to the test and to clarify Johnson’s and de Man’s respective positions on anthropomorphism and its relation to trope. Second, it will enable me to determine my own position on the distinction between trope and anthropomorphism in relation to the Human-Animal opposition. Here is the original French followed by Johnson’s own English translation:

Correspondances

La Nature est un temple où de vivants piliers
Laissent parfois sortir de confuses paroles;
L'homme y passe à travers des forêts de symboles
Qui l'observent avec des regards familiers.
Comme de longs échos qui de loin se confondent
Dans une ténébreuse et profonde unité,
Vaste comme la nuit et comme la clarté,
Les parfums, les couleurs et les sons se répondent.
Il est des parfums frais comme des chairs d'enfants,
Doux comme les hautbois, verts comme les prairies,
— Et d'autres, corrompus, riches et triomphants,
Correspondences

Nature is a temple, where the living pillars
Sometimes utter indistinguishable words
Man passes through these forests of symbols
Which regard him with familiar looks
Like long echoes that blend in the distance
Into a unity obscure and profound,
Vast as the night and as the light,
The perfumes, colors and sounds correspond.
There are some perfumes fresh as baby’s skin,
Mellow as oboes, verdant as prairies,
—And others, corrupt, rich, and triumphant,
With all the expansiveness of infinite things,
Like ambergris, musk, benjamin, incense,
That sing the transports of spirit and sense

Johnson explains how “Correspondences” “sets up a series of analogies between nature, man, symbols, and metaphysical unity, and among manifestations of the different physical senses, all through the word ‘comme’ (‘like’).” (555) Johnson agrees with de Man that the problem with this harmonious picture is that it only lasts until the penultimate line of the poem. At that point, instead of proposing analogies, the poem breaks into a stutter, by replacing the “like” that informs the analogies with a different “like” that makes the poem erupt into sheer enumeration, which ultimately undoes the metaphysical unity it supposedly embodies. Both Johnson and de Man, then, use this “stutter argument” to read “Correspondences” as a poem that breathes a comfortable harmony or metaphysical unity; not the entire poem, that is, but up to the point the stutter sets in and because it sets up a series of analogies.

My position is different, because I argue there is no “harmony” to be found in “Correspondences” in the first place. In my view, it is precisely due to

the way in which Johnson and de Man use their stutter argument that the idea of a given harmony is reinforced. In short, the stutter argument fixes the reading of the lines leading up to the stutter (the entire poem except for the last two lines) as breathing a singular metaphysical unity. Consequently, the (pre)supposed unity no longer solely feeds off the correspondences/analogies, but now has become the very condition for the stutter and vice versa. This procedure takes on the quality of yet another rudimentary chiasmus, not to be encountered in the text but fixing the attitude the reader is meant to bring to the text through a specific interpretation of the stutter in the poem: “metaphysical unity is stutter, stutter is metaphysical unity.” In short: if this stutter argument is turned topsy-turvy in order to read the poem “Correspondences” as breathing a metaphysical unity, the idea that setting up analogies constructs a picture of Man in comfortable metaphysical unity with his surroundings per se is taken as given and thus left unquestioned.

Whereas Johnson explicitly follows de Man’s analyses, I do not see why the setting up of analogies has to imply metaphysical unity or harmony. One might, for example, choose to read the “temple” in the first line of the poem as a secluded space that not just anybody can enter; as profoundly disquieting because its pillars appear to be living and are continuously moving away or closing in on Man whilst remaining forever beyond his grasp. Besides, Man (humanity personified, but also a synecdochical totum pro parte) passes through “forests of symbols,” but somehow it is not Man that glances at the (forests of) symbols but the (forests of) symbols that do the glancing. Man, looking back, is confronted or surrounded with long echoes, blending and obscure. In short, not a very clear and comforting picture at all and one in which the synesthetic device “long echoes” works in a particularly unsettling way. Man is lost, in the dark, nearly blinded.

I choose to read “Correspondences,” then, as a poem reflecting Man in a state of anxiety and fear, precisely because he cannot get beyond correspondences. It seems that blinded Man must force correspondences into being, in a desperate attempt to come to terms with the otherness of his surroundings. Taking this view, even humanity personified becomes uncanny in a meaningful way, since it literally enacts what could be qualified as Man’s utter desolation. The point here, of course, is that it is of vital importance to my reading that the analogies in the poem are only proposed and not established, because humanity personified as a singular being has no self as other to turn to, to check and assure himself. It is precisely the word “like” that keeps the text open, serving to resist the fixation of the supposed analogies into comparisons. It is the fantastic quality of the familiarity of the (forests of) symbols’ looks that
strikes Man as disquieting, because Man cannot get beyond faint correspondences. The fact that the looks are familiar might, or, I would suggest, can only be read as man looking back at himself. The (forests of) symbols function like mirrors, and man sees himself, lost, in the dark. The correspondences bespeak the realization of Man’s own stake in the conventionality (familiarity) that the surrounding symbols convey. There is, in other words, the possibility that “in reality” there are no correspondences at all. The enumeration at the end of the poem adds to this awareness and – here I agree with De Man – makes it take on desperate forms.

In my alternative reading “Correspondences” works as an Italian sonnet in which after the second stanza, precisely when we are made aware that man can hardly see anything, the poem breaks into sensations of smell/odour. The intensifying of the role of scent for this blinded Man here adds to the uncanny element of fear that collapses into enumeration in the penultimate line of the poem. In panic and fear our faculty of smell intensifies, but we can also become aware of smells (analogies) that are not actually there (compare the sensation of smelling something is burning that is not uncommon for people in an agitated state and which seems to enact a subconscious or archetypal fear the brain acts out to keep alert). The fear and desolation is subdued by proposing analogies that represent the extreme other side of a spectrum that ranges from fear to joy, analogies that are comforting, soothing and pleasant.

If Johnson agrees with De Man on what “Correspondences” is about; say, about “Man in harmony with his surroundings,” she has more trouble – as she readily admits – digesting De Man’s other and apparently more debatable suggestion, which will be the focus of my analysis and therefore worth quoting in full. This is her comment:

There is another, more debatable suggestion in de Man’s reading that attempts to disrupt the anthropomorphism of the forest of symbols. De Man suggests that the trees are a mere metaphor for a city crowd in the first stanza. If the living pillars with their familiar glances are metaphorically a city crowd then the anthropomorphism of nature is lost. Man is surrounded by tree-like man not man-like trees. It is not “man” whose attributes are taken on by all of nature, but merely a crowd of men being compared to trees and pillars. De Man notes that everyone resists this reading – as do I – but the intensity with which it is rejected does make visible the seduction of the system that puts nature, god, into perfect unity through the symbol, which is what has made the poem so important for literary history. (555, italics mine, BV)
In the last sentence of the above passage Johnson conveys the importance of “Correspondences” for literary history in terms of its power to seduce readers to put nature and god into perfect unity through the symbol. However, as Jonathan Culler has observed, the reasons why “Correspondences” has been so important for literary history are arguably more comprehensive than Johnson suggests. Roughly, Culler distinguishes three main reasons for this importance. First, the fact that “Correspondences” registers our encounter with the world as a passage through a forest of symbols has been aesthetically productive since it portrays the world as a forest of signs accessible to poets and visionaries alike. Second, the poem echoes numerous statements of Baudelaire’s prose writings and thereby confirmed the possibility of a correspondence between poems and prose accounts of aesthetic principles. Third, “Correspondences,” because of its unique qualities, allowed critics to situate Baudelaire in the story of modern poetry. 54

In this respect, Johnson’s somewhat reductive focus on the poem as putting nature and god in perfect unity through the symbol can be read as a strategic choice, as a frame that enables her to deliver a specific argument. Effectively, it allows Johnson to underscore the unity “Correspondences” conveys as she follows de Man in resisting his optional reading of the living pillars as a city crowd, because it does not square with the picture of Man in harmony with his surroundings. Both Johnson and de Man, then, seem to consider this reading option only as a heuristic tool to illustrate the “seduction of the system that puts nature, god, into perfect unity through the symbol.” My alternative reading radically upsets this idea of perfect unity, changing the perspective on what Johnson and de Man have considered a given anthropomorphism in the poem. Hence, my alternative reading demonstrates that an anthropomorphism, whether conventional or strict, cannot be encountered in a text, but is constructed by a reader and depends on how a reader chooses to read a text.

Johnson’s reading of “Correspondences,” condensed in her comment, constructs her understanding of anthropomorphism in a decisive manner as, on three occasions, it reveals that she substitutes one term with the other. First, following De Man, Johnson substitutes living pillars with trees, whereas the poem never even mentions trees. This substitution seems to be motivated metonymically, by the contiguity between trees and forests. Second, Johnson claims the forest of symbols to be an anthropomorphism. Significantly, the

poem, does not mention forest (singular) but only forests (plural). The third substitution occurs when Johnson suddenly talks about “living pillars with their familiar glances,” whereas in the poem it is (the forests of) symbols that do the glancing or, to be precise, the looking, whilst the pillars at most utter indistinguishable words (sometimes). Moreover, Johnson’s translation of the original French “laissent parfois sortir” provides her with a helpful registering of this phrase as a personification, for it literally connotes something like “let at times depart” disorganized words rather than “uttering” indistinguishable words.

This latter substitution might, of course, be motivated by considering the word “these” in the third line of the poem to refer back to “the living pillars” in the first line of the poem. However, this is not compatible with Johnson’s reading because it would contradict substituting the plural forests of symbols with the single forest. Taking into account these three amendments (substitutions) – but still following Johnson – we can now look into her claim that the forest(s) of symbols is an anthropomorphism, which would be lost if we followed de Man’s suggestion that the living pillars with their familiar glances are metaphorically a city crowd and the “man-like trees” would become “tree-like man.” Before considering whether this anthropomorphism would indeed be lost as a result of this reversal, it might be wise to investigate if this forest(s) of symbols is an anthropomorphism in the first place, and, if not, how it comes to be conceived as such.

As discussed above, in her comment Johnson has substituted both the forest(s) of symbols with the living pillars and the living pillars with trees, making up the forest(s) in order to point to the anthropomorphism of the forest(s) of symbols she claims to encounter in the text. The problem with this reading is that the forest(s) of symbols is – in the poem – not (yet) an anthropomorphism, but a trope, a personification, in that it is only personified as being able to regard Man with familiar looks. It is only when the substitution with trees is effectuated by Johnson – not in the poem but in her comment – that this forest(s) of symbols comes to be taken as given; given, that is, a specific, set meaning. Besides, say we momentarily follow De Man’s suggestion and consider these forest(s) of symbols a city crowd and thus as tree-like man, again, only the anthropomorphism in the conventional sense is lost. What would still remain active is the anthropomorphism in the strict sense, for which it does not matter whether we choose the perspective of “man-like tree or tree-like man” as long as the metaphorical relation is not in play but the taking as given. Thus, it is not the poem, but Johnson’s reading of it that has forced this rudimentary chiasmus upon the text by way of an uncritical and unwarranted pattern of substitutions. This pattern of substitutions take as given, trees as living pillars,
and living pillars (trees) as forest(s) of symbols that make up the forest(s) of symbols by which, strangely, forest(s) of symbols would come to mean: trees of trees. Ultimately, such a reading rests on reading these forest(s) of symbols literally as a forest of trees, which would beg the question why does Baudelaire refer to these “trees” as symbols in the first place.

If the second amendment Johnson has made – substituting forests (plural) with forest (singular) – is key to her reading of “Correspondences” as it constructs her exploration of anthropomorphism, this substitution is not to be considered as an isolated given. Rather, it is both the result and the condition of the other substitutions (amendments), which constitute a threefold interactive pattern that is carefully kept together and made to correspond with the presupposed interpretation of “Correspondences” as a poem about man in metaphysical unity with its surroundings. To put the fragility of this hypothesis to the test we would only have to close read in a very elementary way and stick to the plural “forests,” which would immediately open up to different (discursive) spaces and break, quite literally, the (pre)supposed singular unity the poem conveys. In other words, reading “Correspondences” as breathing a singular metaphysical unity relies heavily not on an inherent, but on an interpretative and strict – rather than on a conventional – form of anthropomorphism. This strict form of anthropomorphism activates an unwarranted pattern of substitutions that results in a reading of the poem as a permanent enumeration: Trees of trees of trees, etc. I consider this to be a strong indication for reading the poem in another way.

In this view, and as I hope my reading demonstrates, an anthropomorphism in the strict sense cannot be encountered in a text for this would ultimately imply there is only one possible interpretation, whereas anthropomorphism is never about a known but always about a treating as known, and encountering a treating as known is – especially in lyric poetry – difficult if not impossible to prove. It would require reading a text as an allegory, which, I argue, is precisely what Johnson has done. Johnson has read “Correspondences” as an allegory of “man in metaphysical unity with its surroundings.” If allegorical reading thus seems bound up with anthropomorphism in the strict sense – an issue I will explore in detail in the second chapter – my analysis of “Correspondences” suggests that it requires a text to seduce us into activating an anthropomorphism in the strict sense to be able to point to an anthropomorphism in the conventional sense, and it seems that the identification of this dynamic might serve as a tool to distinguish between an anthropomorphism in the conventional sense and a trope.
Relevant to my alternative reading of “Correspondences” here has been the notion that De Man, when suggesting that the living pillars are metaphorically a city crowd, has not *substituted* living pillars with a city crowd, but only proposed to read the living pillars metaphorically so as to see what happens to the poem. This is an interesting exercise, not just because it forces into being the chiasmus “tree-like man and man-like trees,” but also because it ultimately reveals de Man’s own uncritical *substitution* of the forest(s) of symbols with living pillars, which implies de Man has also made an anthropomorphic (taken as given) move. The substitution of forest(s) of symbols with living pillars, I argue, bespeaks an anthropomorphism in the conventional sense, in that it is apparently much more likely for “living pillars” to do any looking than it is for forests of symbols. Unless they – these forests of symbols – *are* (no longer metaphorically) the living pillars. Here, precisely at this point, the metaphor is lost and becomes an anthropomorphism. It no longer builds up creative potential through a model of likeness that brings the differences between two entities to life, but instead turns upon a complete substitution as it is “motivated” by sameness.

Both De Man and Johnson seem to have overlooked this problem and I suspect this has something to do with the powerful seduction of the conventional form of anthropomorphism de Man’s suggestion rests upon. It is not just a strict anthropomorphism at work here, not just a taking as given that is motivated metaphorically (by forcing likeness into sameness), but an anthropomorphism built on the attribution of (supposed) human essentiality. The strict form of anthropomorphism here encapsulates the conventional form as the “living pillars” share two “traits” that are commonly regarded as touching the essence of the human – as can be derived from the definition of anthropomorphism in the conventional sense heading Johnson’s essay – and work to contrast especially with its *objects* or *animals*, namely “living” and “erect.” One might argue that I have now tried to motivate part of my reading by referring to what is “commonly regarded as” in an effort to gloss over the fact that the question of what it means to be human cannot be answered, just as Johnson did when she chose to leave out the body of De Man’s definition. This would imply, however, that an anthropomorphism in the conventional sense can never be established in an absolute way. I agree. Yet in this case, the “what is commonly regarded as” is not to be understood as an argument in itself, but functions as what Michael Riffaterre called a hypogram, which must always be motivated and, as such, is never present in the text.55

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The comparison De Man instigates with his metaphor of the city crowd initially seems to undo the anthropomorphism in the conventional sense, but has revealed that in order to suggest it, De Man has to introduce another anthropomorphism in the conventional sense somewhere else in the system; an anthropomorphism that is motivated metaphorically, but then is characterized by an ontological shift that led Johnson into a repetitive pattern of substitutions into sameness. The anthropomorphism in the conventional sense (attributing living pillars something human) is not given, but had to be motivated through my reading, whereas the personification of either living pillars or forests of symbols is just there, explicit and unmotivated. Thus, personifications can be encountered (and counted) in the text whereas anthropomorphisms, whether conventional or strict, cannot. This is, in my view, a decisive difference that allows for distinguishing between anthropomorphism and trope. Let me clarify what this might mean for reading into the expansive model by providing a concrete example.

The expansive model is centred on the idea that there is no absolute difference between the human and the animal. As a result, the question as to what is human cannot be answered, but becomes a matter of attribution. Now, “the wind cries” is a personification. It is not automatically an anthropomorphism. One also says a wolf cries, which theoretically would leave open the suggestion that the expression “the wind cries” does not need to be qualified as an anthropomorphism but could also be qualified otherwise, namely as a form of “morphism” that does not prioritize the *anthrōpos*. Indeed, “the wind cries” is only an anthropomorphism if we state or hold, that crying is something essentially human, which is what we do when we state that “the wind cries” is an anthropomorphism. Only then, we take, (in the sense of De Man’s taking as given) crying as “essentially human.” But, I ask, what is crying? The sound a human, a wolf, the wind produces? Or, more precisely: the verb used for these different sounds (or can one cry in silence too?) in different languages. (I can imagine languages in which the wind cannot cry). And so on. Let us now bring my notion of this decisive difference between anthropomorphism and trope back to Johnson’s reading in order to wrap up my argument on “Correspondences.”

Johnson, in her quest to investigate De Man’s claim that anthropomorphism and trope are different concepts, concentrates on the personification, the trope that, being a particular type of metaphor (motivated by similarity), seems hardest to distinguish from anthropomorphism. In fact, at the end of her essay, Johnson still struggles with the difference between anthropomorphism and personification, as becomes clear from the following two interdependent quotes:
Anthropomorphism, unlike personification, depends on the givenness of the essence of the human; the mingling of personifications on the same footing as “real” agents threatens to make the uncertainty about what humanness is come to consciousness. (573)

But the very rhetorical slight of hand that would instate such unacknowledgement is indistinguishable from the rhetorical structure that would empty it. (574)

Johnson here sticks to what I have defined as a conventional form of anthropomorphism, involving “the essence of the human.” As I have just established, however, the anthropomorphism in the strict sense potentially encapsulates an anthropomorphism in the conventional sense because it works by a taken as given that forces a rudimentary chiasmus upon a text, which substitutes similarity with sameness and produces an ontological shift. I would infer that a text is most likely to seduce us into strict forms of anthropomorphism when the metaphor potentially motivating it resembles “something human.” The personification is the metaphor that does exactly that since both the personification and the anthropomorphism in the conventional sense seemingly attribute something human. The poem “Correspondences,” has appeared to be exhausted with personifications, the living pillars “talk,” the forests of symbols “look,” the scents “sing.” Its combination of personifications with its prose-like presentation carries such a profound suggestive power that even de Man falls prey to the unwarranted substitution of living pillars with forests of symbols. The fact that the poem is presented as a micro narrative, comprising three sentences about (a) man wandering through a forest of symbols facilitates a referential/realistic reading whereby the text is read as one continuous metaphor; to be specific: as an allegory. This allegorical reading, which both Johnson and de Man have performed in their own particular ways, is further encouraged as the typical typographic particularities of the sonnet form are missing. In fact, there is not one suggestion in Johnson’s text that would induce us to read this poem as a poem in terms of rhyme, rhythm, sound, formal aspects or the experience of bodily sensations. The introduction of smell/odour at the beginning of the second stanza might stand as one example of something potentially meaningful that is thereby neglected.

I have now established the differences between a conventional and a strict form of anthropomorphism and between personification and anthropomorphism by exploring a text from the domain of the lyric through an alternative reading
of Baudelaire’s “Correspondences.” I will now take my findings to the domain of the law and zoom in on the prisoner’s council court case that Johnson discusses to explore the relation between personification and yet another, so far only vaguely distinguished, notion of anthropomorphism; namely, de Man’s understanding of anthropomorphism as a proper name.

6. Anthropomorphism or Trope in the Law: The Proper Name

Johnson’s comment on the judge’s interpretative strategy in the court case will function as my point of departure for investigating the nature of the proper name. Here it is:

Souter’s text, in fact, is most anthropomorphic at those points where the infinite regress of language is most threatening. Congress is endowed with “natural” intentionality in order to sweep away the abyss of reference. Souter’s dismissal of the prisoner’s association as an “amorphous legal creature” is the counterpart to the need to reinforce the anthropomorphizability of the artificial legal creature Congress. Congress, then, is perhaps an example of de Man’s “proper name.” (561)

If Johnson in the first sentence of the above citation claims that Souter’s text is most anthropomorphic at certain points, we can establish that there must also be a point at which the text becomes less anthropomorphic. In other words, anthropomorphism is reflected upon here in terms of gradual scaling, which simultaneously seems to inform Johnson’s inability to clearly distinguish between anthropomorphism and trope in practical terms. At the same time, the causal relation suggested between, on the one hand, Souter’s dismissal of the amorphous legal creature (the prisoner’s council) and, on the other, the anthropomorphizability of the artificial legal creature (Congress) is not motivated and it is hard to see what is causal about it. If we look at how this comment works, however, it becomes clear that it serves to motivate what Johnson understands by De Man’s “proper name,” because it allows her to take the term “proper name” as literally as possible, as beyond proposition.

After conceding that anthropomorphism comes down to naming, Johnson wonders which names can be defined as proper and suggests Congress might be a suitable candidate. Contrary to Johnson, however, I have now come to understand anthropomorphism as an act that must be performed. By implication, I choose not to read De Man’s definition of anthropomorphism as installing a
proper name literally, but instead as a useful metaphor to illustrate what an anthropomorphism does rather than what it is. In fact, not reading de Man’s proper name as a metaphor would result in any proper name (say, Barbara Johnson) qualifying as an anthropomorphism. Although in a theoretical sense this might not even be untrue, and although it would indeed help to distinguish anthropomorphism from personification, it would not do so in a constructive and conclusive manner, since we would still be left with anthropomorphisms that do not necessarily install proper names. This is why, at this point, I prefer to explore De Man’s proper name as a metaphor by returning to the very beginning of his definition of anthropomorphism. De Man here states that anthropomorphism “is not just a trope.” This statement provides us with the first important clue on how to read De Man’s definition: An anthropomorphism, as the word literally encapsulates the word (h)trope, is not just a trope, but more than a trope. In short, it has the potential to outgrow the status of trope and become something else. Bearing this dynamic in mind, let us now return to the court case.

Souter, who apparently has an interest (probably a policy interest) in not admitting the prisoner’s council into the system of legal personhood, looks for an opening in the legal text, in this case the Dictionary Act, which can help to motivate his intention to not let the prisoner’s council enter the legal sphere as an entity that can sue in forma pauperis. The problem for Souter is that the Dictionary Act clearly states that the term person includes artificial entities unless the context indicates otherwise. Souter, focusing on “unless the context indicates otherwise,” then starts to look for definitions of the word context. He comes up with the following two definitions:

1. The context then, is the surrounding words of the act.

2. “associated surroundings, whether material or mental” – a reference not to the surrounding text but to the broader reality or intentionality.

Souter at once dismisses the second definition of “context,” arguing that this was surely not what Congress had meant (intended), because then it would have been natural to use a more spacious phrase. This is Johnson’s comment:

The word “natural” which is precisely at issue here – since the Court is, after all, trying to find out whether the statute applies only to natural
persons – is here applied to an artificial person, Congress, which is personified as having natural intentionality. (560)

Johnson here describes a rhetorical trick that Souter uses to make his argument, but at the same time sticks to the natural/artificial binary and, in that sense, follows Souter who accords Congress natural intentionality. More than that, in her attempt to clarify what exactly is at stake for Souter, Johnson reads Congress as an artificial person. But, I ask, in what sense is Congress a person in the legal sense (legal person) or a person at all? The personification of Congress may indeed endow it with intentionality, but it is Johnson’s own treating of intentionality (following Souter in this respect) as known, as a strictly or primarily human trait, which keeps the binary natural/artificial person in place. Besides, if Congress qualified as a proper name, as Johnson suggests, and thereby as the name of a comparison, as De Man’s definition would have it, with what, then, is it being compared? In other words, reading into Johnson’s suggestion of Congress as a proper name raises too many questions that cannot be answered in a convincing manner. Certainly, the name Congress is not so easily subjected to further definition, as with any historically shaped institutional body. But its position is not that of a proper name, because it is not beyond proposition. It might assume a strong analogy with the proper name, but it is not at one with it and therefore cannot qualify as an anthropomorphism in de Man’s sense. Instead, it is an entity personified, yes, and thus a metaphor motivated by similarity – which in this case is “intentionality” – but this “intentionality” is treated (both by Johnson and Souter) as given and as essentially human.

Admittedly, Congress’ position is rather odd. Strictly speaking, for Congress to be qualified as an anthropomorphism (and not as merely a personification) it would have to be named a legal person. Only then would it be beyond proposition and no longer subject to further definition. In the comment provided by Souter, however, “Congress” is personified, but not named. Instead, it is an entity with the power to name. Souter is not naming, but only mentioning Congress. Congress cannot sue in forma pauperis on the grounds of being a person. Neither can it sue itself. The personification endows Congress with intentionality, which is a word treated as a proper name, in that it is not subject to further definition because it is – according to Johnson following Souter – taken as given, as essentially human, as natural opposed to artificial.

Thinking through the odd logic of the above line of argument would lead to the conclusion that when something is considered essentially human, say, “intentionality,” it can no longer be defined, which reveals or rather covers up the more fundamental problem, namely, that it is the essentially human which
can never be defined. Hence, although words such as “intentionality,” “natural” and “artificial,” can be attributed to an entity, they cannot be considered to be anthropomorphic in the strict sense (taken as given). Unlike the proper name, those terms maintain within themselves the possibility of further definition and can at most be treated as given, which implies they could also not be treated as given. In this respect, not reading De Man’s proper name as a metaphor amounts to suggesting that a proper name is something that cannot be treated as given, while it is imagined as something that is always already given and beyond any treating, beyond proposition. In fact, radically thinking through my renewed understanding of anthropomorphism as an act, I suggest that a talking pig in a fable like Animal Farm is just a personification, a metaphor and not necessarily an anthropomorphism: for in what sense is it nonhuman if the question as to what is human cannot be answered. In other words, although attributing human characteristics, for example, speaking, to essentially nonhuman entities might conventionally be defined as an anthropomorphism, such an attribution will always have to be informed by a treating as given what being human is: “speaking,” in this case, is essentially human.

With respect to this issue, I conclude that it is precisely the qualification of something as an anthropomorphism that betrays an anthropomorphism, for anthropomorphism is metaphorically speaking – and here I agree with De Man – a proper name. The rest is trope. Hence, if, contrary to Johnson, we have now read the proper name as a useful metaphor, rather than the name of a name, the proper name cannot be qualified as an anthropomorphism. Rather, anthropomorphism concerns the act of naming something as proper, as entirely fitting, fitting like a lid on a can, which at the same time closes off openings into other potential discursive spaces through a sequence of unwarranted substitutions that are fostered through a compulsory treating as known. But, of course, if there is no context, if the context is necessarily eliminated within a treating as known, then what is there to be known? The answer is: the only thing really worth knowing, namely, the fundamentally unknowable. This is the case, not because there is some metaphysically deeper or higher meaning hidden under the unbreakable shell of the proper name, but because the secret is that there is nothing. The act of anthropomorphism relies on the very mystification of this nothing. For Legendre this “nothing” operates as the number zero in mathematics that informs a foundational fiction of law as logos, while for me this nothing has appeared to destroy law as logos only to re-inscribe it as fiction through the notion of person.

With respect to this issue, the act of anthropomorphism might be considered a defensive move that prevents the opening up to what Johnson
refers to as the infinite regress of language, the abyss. In contrast to Johnson, I think we should start to conceive of this abyss not as something dangerous and negative, but as positively as possible. Indeed, I would like to think of it as an infinite space we can enter and in which it is impossible to have any objective point of reference at all. As we have seen, this disposition would pose a serious problem for the law because it is its claim to an objective non-arbitrariness implied within its expertise in the unknowable that informs its foundational authority. In other words, if the act of anthropomorphism functions, while precisely meaning nothing in itself, as a mystification that protects language from an arbitrariness that would reduce it to no more than a silly game devoid of any “real” meaning, then the law is in trouble. Of course, the law can never admit this, for its task is to make meaning. It has to motivate its decisions by anchoring its language somewhere, at some point, but ultimately in texts (written or oral) endowed with – that it itself endows with – a higher authority than other texts in metaphysical unity with the idea of god.

7. Conclusion

I have now explored anthropomorphism as conventional, as strict and as a proper name. This has led me to move away from this tripartite distinction towards a dual distinction whereby I defined two interrelated forms of anthropomorphism: conventional, which involves an act of attributing; and strict, which pertains to the sphere of naming. The conventional form of anthropomorphism does not work like a metaphor, because it is not playing with the dynamics of difference and sameness. It concerns the categorization into domains by way of substitution. Within an expansive model this substitution concerns the attribution of something conventionally conceived of as human to the nonperson. This “attribute” then comes to substitute the nonperson and turns it into a person for the law. The strict form of anthropomorphism is about taking something for something else and treating it as given. Unlike common consensus would have it, neither form of anthropomorphism can be encountered in a text. Pointing to a conventional form of anthropomorphism would involve a poetic reading strategy in that it can at most be motivated by a hypogram. Pointing to a strict form of anthropomorphism (a treating as given) requires an allegorical reading strategy to be forced upon a text, a reading that potentially encapsulates diverse conventional forms of anthropomorphism. The so-called essentially human, then, has appeared not to be essential to our definitions of anthropomorphism. Rather, the conventional form of anthropomorphism
attributes something that is treated as essentially human to an entity and, therefore, always involves a strict form of anthropomorphism, a treating as given. The strict form of itself, the treating as given as such, does not necessarily rely on human essentiality.

Anthropomorphism – whether conventional or strict – is characterized by an ontological shift whereby the metaphorical power of language is temporarily ignored. The law is anthropomorphic as its task of making decisions implies that it, at some point, has to treat as given. The law uses the device of the chiasmus (repetition in reverse order) in a rudimentary manner whenever it substitutes person with legal person, thereby ignoring the poetic potentialities of the chiasmus that would be implied within a homonymic understanding of person.

The difference between trope and anthropomorphism has now become clear. Whereas the trope can be encountered in a text (and counted), an anthropomorphism will always have to be motivated. I have identified anthropomorphism as an act and conclude that the failure or unwillingness to recognize those acts as such – as acts – is what triggers the confusion of personhood with legal personhood that could be detected in the journalistic coverage of the Indian dolphin’s case. Now, my close reading of the prisoner’s council court case leads me to conclude that the law allows itself to fall prey to this same confusion within an expansive model. Consequently, the expansive model causes a demarcation problem as it opens up to a discrimination of anything the law considers essentially nonhuman. It thereby legitimizes, as a consequence, that those entities that are not included can be treated in what I have provisionally qualified as a cruel and ignorant manner. This demarcation problem and its implied cruelty are caused by a conventional confusing of person with human person, whereby the homonymic person is understood in synonymic vein and attributed a minimum of shared identity with the legal person. It would seem that the implication of such identity politics for the criteria to be developed in order to decide on animal rights in a non-arbitrary manner – which is our aim if we really wish to avoid cruelty and ignorance – is that those criteria can no longer lean on a conventional confusion of persons or on an essentialist (shared or separate) concept of identity defining the relation between the human and the nonhuman animal.

However, before starting too eagerly with an exploration of such a different outlook on the relation between the so-called human and the so-called animal, it is important to realize that to conclude that the laws’ fundamental arbitrariness when granting or withholding entities the status of legal person results in a potentially cruel and ignorant treating of those very entities is one thing. Trying to avoid cruelty and ignorance by asking the law to function in a
non-arbitrary manner is a wholly different enterprise. At this moment, it is not certain whether (a) the law can function in a non-arbitrary manner at all; and (b) if the best way to go about avoiding cruelty and ignorance is striving towards such an ideal. I will return to this in chapter two. What I can establish here, is that the notion of a shared identity, a common ground, either implicit or explicit – which is more often than not a key element in all the different arguments put forward both by proponents and opponents of animal rights – has an underlying assumption that serves to keep the current expansive model in place. And as long as this underlying assumption, feeding into a discriminatory identity politics, is in place, it will continue to muddle the animal rights debate via the route that involves the bypassing of the question of personhood, namely by confusing person and human person and subsequently conflating person and legal person. This procedure does not even provide the beginning of a ground for breaking away from an expansive model and the fundamental arbitrariness on which it is centred.

It will be of utmost importance for the animal rights debate, therefore, to undermine both this confusion and this conflation, to disentangle the legal person from person and to replace the question of what a person is with another question: who or what might be the subject of rights and what are the different routes towards imagining such subjectivity and acquiring that position? It will require a different view on the law and its procedures, especially on the way in which those procedures and the concurrent conventional confusion of persons, both within and outside of the juridical sphere, are informed by allegorical reading strategies. One thing that can be established in relation to this different view is that – as we can gather from our close reading of the court case – the law is not so much an authority that facilitates the arena in which its proceedings take place, but rather is itself an actor in a play in which it claims a leading role. However, this reading/leading role is just part of the play it plays out. It consists of pretending (playing) to know the unknowable and to act in a responsible way.
II

The Space of Allegory
Demarcation through Correspondence

1. Introduction: Lobster Cooking

In April 2014, a Belgian chef called Piet Huysentruyt prepared a lobster for consumption on a live television show. He tore off the legs and claws of the animal while it was still alive, then cut it through the middle and threw it on the grill. “This way it will taste much better than when it is merely cooked alive,” the chef explained. The two guests on the show averted their faces in horror, and their response crawled out of the studio and spread to the public domain. A stir was born. The preparation of the lobster reached the national news in both Belgium and Holland and became a hot topic on social media. The representative of GAIA, the Belgian organization for the protection of animals, reacted furiously: “thousands of amateur cooks will follow this example. Piet Huysentruyt keeps the myth alive that animals have to suffer in order to taste good.” The representative of GAIA added that there were now machines on the market to sedate lobsters, which allowed them to die painlessly and declared that GAIA was planning to contact VIER (the Belgian Commercial Television Organization that broadcasted the program) “to charge them with a harrowing lack of ethics and to prevent this sort of barbaric television from being repeated.”

It was not the first time that the preparation of a lobster on a Belgian television show had caused public expressions of protest and outrage. In 2010, a candidate in another television show had trouble putting two living lobsters in the cooking pan and in 2011 a lobster was cut up, alive, on the Masterchef television show. In fact, after charges by GAIA on those previous occasions, the Belgian broadcasting channels collectively agreed not to make animals suffer needlessly on entertainment programmes anymore. In this respect, the response of VIER to the latest charge that was now brought by GAIA only worked to fuel the controversy: a spokesman for VIER stated that the preparation of the lobster on their television show did not constitute a breach of the agreement they had committed themselves to, because the show was not an entertainment programme. The chef himself, interviewed on another television show called Reyers Laat was arguably less cryptic in his comments: “I have prepared lobster in this manner for thirty years. If I am to believe social media I am a murderer. It
is hypocritical to say: I have eaten the best lobster ever, but I do not want to see them die. I will always prepare lobster in this way.”

A few days later, a meeting between the representatives of GAIA and VIER actually took place. Afterwards, both parties adopted an appeasing tone and stressed that their talks had been very constructive. A spokesman for VIER expressed their position as follows. “What has happened cannot be undone but we understand the position of GAIA and will take this position into account in our future programming. We hope our chef will want to consider alternatives.” A GAIA spokesman expressed himself as follows:

I wish to come to a sustainable solution as soon as possible and hope Piet Huysentruyt will be ready to consider an alternative that accommodates all interests, respect for animals, gastronomic quality and the ethical image of the station. If Piet Huysentruyt feels so disposed, GAIA offers to organize a demonstration with the Crustastun, a device which sedates lobsters and crabs and kills them painlessly, which is already being used by a number of chefs in Great Britain.56

On a very basic level, the Belgian lobster furore seems to confirm the claim of Siobhan O’ Sullivan that I discussed in the previous chapter, namely that there is a correlation between the visibility of animals and the way we tend to or wish to treat them. Effectively, the preparation of a lobster on a live television show presents us with the highest degree of visibility imaginable and, in that sense, could be said to occupy the extreme end of a spectrum, the other extreme end of which is factory-farming with its invisible animals. However, since within the journalistic coverage of the case no mention is made of the fact that the vast majority of lobsters – if not necessarily processed in Belgium – are factory-farmed and distributed across the world, the Belgian lobster furore to some extent renders the factory-farmed lobster invisible on a rhetorical plane as a result of the high visibility of the individual lobster under discussion. It shows that the allocation of animals in the categories invisible/visible does not neatly correspond with their pertaining to different species, but that this allocation depends on the way in which animals are treated.

In this respect, the film recordings on lobster farms by undercover PETA activists (People For The Ethical Treatment Of Animals) bears a striking resemblance to the preparation method promoted by the Belgian chef. In 2013, for example, when PETA investigated Linda Bean’s Maine Lobster Factory Farm, they uncovered that:

Lobsters’ heads were ripped from their bodies and dropped into bins, along with their abdomens. Their antennae and legs continued to move after their bodies had been torn apart.

Workers slammed live crabs onto spikes to break off their top shells and shoved the animals’ exposed organs and flesh against rapidly spinning brushes. The crabs were then tossed onto a conveyor belt and dumped – alive – into boiling water.\(^57\)

With respect to both controversies, what the vast majority of protesters called for was the humane killing of the lobsters that we eat and a more respectful handling of the animals in the process. Indeed, it seems to be the case that discussions over the humane killing of animals – whether concerned with factory-farming, incidents as described above, or, for example, with the unsedated slaughter of animals for kosher and halal meat in Holland in 2011 – repeat themselves each time a discussion on animal well-being and animal rights fires up.\(^58\) The central term in these debates appears to be cruelty, which not only must be avoided and replaced by a (more) humane treatment, but which is also regarded as a self-evident instance of excessive harm: as if the excess of harm such an understanding of cruelty embodies is so plain for everyone to see that the question of harm and its conceptual relation to cruelty no longer needs to be discussed. This notion of the self-evidence of cruelty in these debates appears to be paralleled by the way in which the notion of cruelty generally is conveyed in animal rights laws and statutes across the world. Indeed, the term harm is hardly ever mentioned and when it is mentioned it does not make up a conceptual legal term in its own right but is qualified as unnecessary and excessive suffering.

In the British Animal Welfare Act of 2006,\(^59\) for example, the term harm surfaces in section four, which is called “Unnecessary Suffering,” as a heading that is entitled “Prevention of Harm.” In the remainder of this fifty-five pages long animal rights document the term harm is not used, except in one entry in section twenty-four, which concerns the right to search premises for the purpose of arresting a person who has inflicted unnecessary suffering as described under section four. If the term harm is virtually absent in the entire document and if harm only surfaces in section four as a heading of the entry “Unnecessary Suffering,” we may surmise that the harm is itself not conceptualized, at least

\(^{57}\) http://www.peta.org/blog/linda-bean-gas-pump/.
not but in the sense of the non-specificity of the term “unnecessary.” The subentry at the end of section four only confirms this suspicion. It states that: “Nothing in this section applies to the destruction of an animal in an appropriate and humane manner.” This subentry draws our attention to the practice of factory-farming as embedded in a legal space where the relation between harm and cruelty is not conceptualized, and where even the self-evidence of cruelty suddenly appears to have its limits. In respect of the self-evidence of cruelty in both the popular and the legal sphere described above, it might not come as a surprise that my investigation of the entries of some of the seminal works within the animal rights debate and my going through numerous other animal rights and animal ethics handbooks that were published over the last twenty years has proved of no avail to historically ground a legal distinction between harm and cruelty whereby the latter concept would conceptually follow from the first. In most of these works there is plenty of talk about ways to avoid the cruel treatment of animals, about avoiding needless suffering and excessive harm, but the term “cruelty” itself and its relation to harm is left unaddressed, let alone subjected to a critical analysis.

Yet the reason why it is so important to conceptualize this relation is that the framing of the element of cruelty as self-evident seems to register the arbitrary demarcation decisions the law has to make as more arbitrary than strictly necessary. It therefore calls for an exploration of the fundamental juridical underpinnings of this non-conceptualization. This takes on a sense of urgency if we want to investigate the demarcation problem an expansive model poses in light of the cruelty that I hinted at in the previous chapter. This is why in this chapter I wish to explore how a conceptual discussion on the element of cruelty and its relation to harm might inform demarcation decisions and how this relates to my provisional definition of cruelty as a wilful neglect of harm, both within and outside of the strictly juridical sphere.

The context in which I will discuss these issues differs from the context sketched in the examples above in that it is not primarily confined to the slaughter or humane killing of animals. Rather, I will address the issues the Belgian lobster case raises as inviting a reflection on the concepts of harm and cruelty as not self-evident in order to examine how they operate as markers of difference when it comes to demarcating humans from animals and certain

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animals from other animals. More specifically, taking my cue from the fact that the self-evidence of cruelty apparently reaches a limit when it comes to factory-farming, I will turn the practice of farming and the change this practice has undergone since the advent of factory-farming into a heuristic *modus operandi* for exploring the way in which harm and cruelty can be thought in relation to the problem of demarcation. This framework will allow me to think through how the concepts of harm and cruelty have fared both before and since the coming into being of an expansive model in order to offer a different angle on the problem of demarcation that it installs.

Before beginning to explore these issues, however, I will start this chapter with a positioning of the concepts of harm and cruelty within the context of the model from which the coming into being of an expansive model evolved, which is the model of human rights. Once I have addressed the implications of the shift from human rights to animal rights for the way in which the concepts of harm and cruelty operate, I will use George Orwell’s *Animal Farm* as an object of study to think through the wider issues the Belgian lobster case raises.

To this end, I will take *Animal Farm* out of its context as an allegory of the Cold War and read it as a story about animals that are suffering from harm. More specifically, my allegoresis of *Animal Farm* as a story about animals suffering from harm draws on *Animal Farm* as an allegory of ideas and wants to reflect how these ideas have developed and where they stand today. Framing the element of harm in this way not only enables me to read *Animal Farm* as an allegory of ideas but also as an allegory of the expansive model. The analogy between the two is that within both allegories animals are subjected to a harm that topples over into cruelty. As I provisionally concluded in the previous chapter, the cruelty an expansive model incorporates constitutes a wilful neglect of those essentially nonhuman entities not granted legal personhood. In *Animal Farm* I identify the moment harm topples over into cruelty once the farmer starts neglecting his animals and the animals decide to rebel, a matter I will attend to in detail in what lies ahead.

My overall strategy here consists of reading *Animal Farm* in its classic mode as the allegory it is famous for, as a forewarning of totalitarianism. It does not mean I read totalitarianism as resulting from a synthesis between the systems of capitalism and communism, which, as Roberto Esposito has observed elsewhere, would be a gross simplification. Instead, I choose to read totalita-

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rianism as a juridical streak that has nested itself in the animal cruelty laws and that, at the same time, is constitutive of a much wider variety of disciplinary discourses that operate the biopolitical situation we now live in under globalization.\textsuperscript{62} It does not mean I read globalization as totalitarianism. Rather, my strategy entails a proposal to explore the “cruelty” animals are subjected to today as resulting from their being subjected to a biopolitical regime that is characterized by a totalitarian streak wherein the human masses are not mobilized but the animal masses are fixed.

This totalitarian streak, I propose, has become most explicit with the advent of factory-farming, which marks a major change in the way we relate to animals that runs parallel to the emergence of an expansive model and the shift in political constellations that has occurred from the second half of the twentieth century onwards. This change can be read in both qualitative and quantitative terms. Qualitatively, we might consider factory-farming as the modern human practice that is concerned with the animals we are most directly involved with, the animals that we eat. Quantitatively, the historical novice of the practice of factory-farming can at least in part be attributed to the unprecedented scale on which the processing of ever-larger numbers of animals takes place. But also, as my brief reflection on the Belgian lobster case demonstrates, to the all-encompassing nature of this practice itself. I am referring here to the fact that our modern imagination of factory-farmed animals as say, poultry, pigs and cows (outnumbering other species of animals processed in this way) no longer holds, since basically any animal that we eat is now factory-farmed for the simple reason that mass consumption stimulates mass production.

In order to make my exploration fruitful, I understand the expansive model primarily in spatial and symbolical terms, as the emergence of a single discursive space. Anything moving about in this space is and can only take on meaning as a person answering to a conventional conception of personhood. In literature, the equivalent of such a discursive space would be allegory. I am deliberately using Angus Fletcher’s most simple definition of allegory here, i.e. that “allegory says one thing and means another,” to suggest that the allegory allows one domain to envelop another, which then comes to answer to the overall story the allegory conveys.\textsuperscript{63} Since my preoccupation with allegory will be informed by a focus on its production of meaning within one discursive

\textsuperscript{62} For a very clear and precise introduction to biopolitical-philosophical thought in the context of animals through discussions of the work of amongst others Foucault, Agamben, Esposito, Arendt and Derrida see: Cary Wolfe, \textit{Before The Law: Humans and Other Animals in a Biopolitical Frame} (London, University Of Chicago Press, 2013).

space, I intend to bring literary reading strategies into play to address the problems allegorical reading poses for the law. Within the expansive model under discussion, and in view of my provisional definition of the cruelty it generates, the most pressing issue I wish to explore in this manner is its demarcation problem. Concretely, I wish to clarify in which way the production of meaning within one discursive space relates to this demarcation problem. Conversely, I wish to explore whether breaking open single discursive spaces can provide ways of working my way around the demarcation problem and the element of cruelty that the expansive model incorporates.

2. The Conceptualization of Harm and Cruelty

In the opening chapter, I explored the conventional conceptualizations of personhood and anthropomorphism in order to develop an argument for why expanding the juridical model to include animals without questioning the notion of personhood is unwarranted. As we have seen, within an expansive model, the uncritical transfer of personhood to animals is centred on an irreducible demarcation problem, because the decision regarding which animals are granted personhood takes effect on what must remain an arbitrary basis. By implication, those animals not considered fit to be attributed personhood would be subjected to a wilful neglect of harm, which I provisionally qualified as cruelty, because it would be sanctioned, and hence, legitimized by the expansive model. Here, I wish to deepen and complement my provisional understanding of cruelty by addressing the recurrent and as yet unresolved element of cruelty that I have now identified as symptomatic of the modern animal rights debate.

This exploration must begin by looking sharply at the context that has allowed the expansive model to take shape; that is, the context of human rights. The Human Rights Reference Handbook conveys the historical antecedents of human rights as follows:

The origins of human rights may be found both in Greek philosophy and the various world religions. In the Age of Enlightenment (18th century) the concept of human rights emerged as an explicit category. Man/Woman came to be seen as an autonomous individual, endowed by nature with certain inalienable fundamental rights that could be evoked against a government and should be safeguarded by it. Human rights were

henceforth seen as elementary preconditions for an existence worthy of human dignity. (3)

In the last sentence of the above passage the concept of dignity is invoked as that which inalienable human rights were meant to protect. As is well known, the concept of dignity can be retraced to Kant, who in *The Groundwork of the Metaphysics of Morals* (1785) claimed that only human beings have an intrinsic worth, a dignity, as constitutive of their personhood:

> Humanity itself is a dignity; for a man cannot be used merely as a means by any man (either by others or even by himself) but must always be used at the same time as an end. It is just in this that his dignity (personhood) [Persönlichkeit] consists, by which he raises himself above all other beings in the world that are not men and yet can be used, and so over all things.\(^{65}\)

In The American Declaration of Independence of 1776 the inalienable rights that needed to be protected materialized in the right to life, liberty and the pursuit of happiness. If the declaration did not literally mention the term dignity, I choose to interpret these inalienable rights as constitutive of an unarticulated conception of dignity for two reasons. First, because of the striking resemblance to Kant’s terminology mentioned before. Second, because the same appeal to life, liberty and the pursuit of happiness as inalienable rights is voiced in the preamble of The American Declaration of the Rights and Duties of Man of 1948,\(^{66}\) in which those rights are explicitly referred to as constitutive of human dignity.

The inalienable rights that the American Declaration of Independence voiced were taken up in the Bill of Rights of the American constitution and inspired several other constitutions that were drafted in Europe at the time, most notably perhaps the French constitution of 1793. In short, overlooking the historical context of human rights we can already begin to surmise what human rights might generally considered to be for: to protect the subject from the harm that would be caused if his inalienable rights – which together make up the indispensable constituents of its dignity – were infringed by the State and for the State to warrant a protection of the individual’s dignity if those inalienable rights are tampered with by others. To avoid misunderstanding, I am not concerned


here with concrete legal definitions of harm, such as injury or the infliction of pain, but rather with defining harm in its most basic sense, in its core rhetorical relation to the concept of human rights. In this most basic respect, we may surmise that the protection from harm that a personhood-based model guarantees pertains to all human beings equally and that it is centred on the protection from infringements on the person’s dignity. The right to life, for example, implies the State must protect the right to life of human beings and sustain a juridical framework in the form of criminal law to punish murderers. For reasons that will become clear, it is important to observe here that this protection from harm does not primarily consist of the State protecting people from being murdered, but in protecting the right to life that sustains their dignity.

With respect to this issue, we can gather that to protect at least some animals from harm under the law of personhood, which is advocated by those in favour of animal rights, is more complex than the emergence of an expansive model suggests. In principle, this complexity may be attributed to the fact that at least since post-structuralism we have moved beyond essentialism and, as I argued in my first chapter, we must look upon the categories of the human and the animal as rhetorically installed. This implies that, today, there is no longer a sound academic position that can defend the notion of an absolute difference between the human and the animal. However, whereas any criterion installed for either attributing or denying animals legal personhood would have to be qualified as necessarily arbitrary in nature, the absolute difference between the human and the animal is still a juridical fact. To put this matter in a different way: Animals are not granted a legal personhood because the idea of animal dignity is foreign to the law.

In this respect, the call for a (more) humane treatment and a dignified and respectful processing of the animal that we use for food, such as we encountered in the Belgian lobster case, cannot concern the animal and its right to live, precisely because the dignity that is rhetorically invoked is a human dignity. Hence, the public expression of outrage and the resulting call to change the practices of preparing lobsters – if only on television shows – cannot be addressed from within the most basic legal conceptualization of harm, but would have to hinge on a certain conceptualization of cruelty from the start, because, for the law, animals, since they are not “bearers” of dignity, cannot be harmed but can only be subjected to cruelty. In short, once the Crustastun is employed as standard practice and the animal is processed and killed in what, at any given time, is considered a humane way, the killing of the animal can no longer be qualified as a cruel act. This sweeps away any notion of harm that could be implied with killing an animal.
If we look at what the public viewed as the inhumane cruelty inflicted upon the lobster in strictly legal terms, namely as an affront to human dignity, there is an implication that the cruelty at stake here concerns the infliction of harm on the chef rather than on the lobster. Since we can gather from the anger directed towards the perpetrator that this was obviously not what the public had in mind, we can identify a discrepancy here between the juridical and non-juridical sphere. In short, within the non-juridical sphere there is still a minimum potential for sensible identification with the lobster and the harm it is caused. Here, the concepts of harm and cruelty are in line with each other and bear a semantic relation whereby cruelty necessarily follows from harm. From a strictly juridical point of view, however, killing the lobster in a humane way implies no cruelty is done to the animal that is killed, whereas the question whether painless killing harms the animal cannot be articulated. In spite of this important difference, what ties both conceptualizations of cruelty together is a shared focus on humane treatment, which resonates with a Kantian outlook on human dignity.

In *The Lectures on Ethics* (1775-1780) Kant argued that we should not be cruel to animals for our own sake, to safeguard our human dignity:67

> If a man shoots his dog because the animal is no longer capable of service, he does not fail in his duty to the dog, for the dog cannot judge, but his act is inhuman and damages in himself that humanity which it is his duty to show towards mankind. If he is not to stifle his human feelings, he must practice kindness towards animals, for he who is cruel to animals becomes hard also in his dealings with men. (240)

The problem, here, is different than the one posed by the law’s dealing with harm and cruelty. Since the law cannot ‘position’ the concept of harm as long as animals are not attributed legal personhood, the concrete extent to which animals might be subjected to harm or cruelty has appeared to take on yet another level of complexity, in addition to the dynamic I sketched in my introduction. On the one hand, harm cannot topple over into cruelty because animals are presently not included within an expansive model. On the other hand, the cruelty that animals might be subjected to is only curbed within the

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context of their humane treatment, which hollows out the protective measure itself and legitimizes their subjection to a harm that cannot be articulated under the law. It begs the question, firstly, where does the juridical conceptualization of cruelty originate from if it indeed does not complement the concept of harm as an excess of harm? Secondly, it invites us to explore whether the specific juridical conceptualizations of cruelty in animal cruelty laws can actually guarantee humane treatment and what those laws purporting to humane treatment consist of.

One notable exception to the trend in animal studies to take for granted that certain forms of harm cannot be articulated under the law which I briefly wish to touch upon to better position my argument is the work of Ted Benton. In *Natural Relations, Ecology, Animal Rights and Social Justice* (1993), Benton identifies a gap between what those in favour of animal rights aspire to, namely protecting animals from harm through legal means, and the reality that a liberal rights discourse cannot address the sources of harm animals are liable to in our modern world. For Benton, the liberal rights view has a defective character because it is concerned with individual persons and the nature of their interests, while the sources of harm that animals (or humans, for that matter) are liable to are not reducible to the action or inaction of individuals. This is why he proposes that we also need to consider typical socio-economic sources of harm if we want to protect animals from harm by legal means. He lists as primary examples that are rendered unthinkable under liberal rights discourse, the sources of harm caused by corporations, the harms related to injuries of class and to natural disasters.

Benton argues that the conceptualization of person under a liberal rights discourse severely limits our understanding of harm, also if the context shifts from humans to animals. At the same time, however, his approach does not acknowledge the more fundamental issue that the law cannot articulate the category of harm as long as animal dignity does not come up for consideration, which might explain why he limits himself to broadening the scope of sources of harm. This is a problem that I believe should not be underestimated. First, because dignity necessarily pertains to all its “bearers” equally. This implies that if one animal were attributed legal personhood the practice of factory-farming – to mention but one poignant example – would have to be abolished as it would interfere with the right to life, which is arguably the most important constituent of dignity. Second, because if we agree that for the law dignity is effectively the last barrier that separates the human from the animal in absolute terms, the difference between the human and the animal would be blotted out once animals

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are granted legal personhood. This would not just be a counterintuitive step to take and a gross simplification of the complex Human-Animal relation, but it would also call into question the foundation of human rights on which our society has been built.

Thus, even though Benton’s analysis rightfully points out the sources of harm that a liberal rights discourse cannot address, his solution is far from convincing. The reason is that he does not stop to reflect on the status of the word person and its relation to dignity within the law; rather, he takes person as an unambiguous given in need of adjustment. I assume this is why he neither explores, nor historically grounds the way in which we might think the relation between harm and cruelty, within a rights view on animals that is centred on personhood. Admittedly, this is not an easy task. For a historical grounding of harm as a concept we must go as far back as the utilitarian philosopher John Stuart Mill, who in On Liberty (1859) formulated the so-called “harm principle.”

Promising as this may sound, it does not offer any basis for further exploration of the relation between harm and cruelty for our present concern with animals. In fact, Mill’s harm principle, although he never mentions it, could stand as exemplary of Benton’s critique: Mill never really defined harm other than as an action that is wrong when interfering with the freedom of others, those others indicating individual human persons and not animals.

In a sense, then, we are entering new terrain if we wish to explore the relation between harm and cruelty and its relation to the ambiguous status of person within the context of the animal rights debate. We can begin by establishing that the lack of critical reflection on the transposition of those terms from the human to the animal domain, which has characterized the debate so far, is centred on an equally uncritical transposition of personhood from one domain to the other. This lack might further be attributed to the practical absence of harm and cruelty as concepts that come up for scrutiny in their specific relation to animals within the history of the law. This can be illustrated with the following observation by Richard. A. Posner:

Not until the end of the nineteenth century were laws enacted in the nations of the West forbidding cruelty to animals. The laws were full of loopholes – essentially they just forbid sadistic, gratuitous, blatant cruelty

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– but they still represented a dramatic change from the law’s traditional indifference to animal welfare. (53)

If before the nineteenth century animal cruelty laws were virtually non-existent, the positive change Posner describes effectively registers cruelty as excessive harm. There is no indication here, however, that this excessive harm is conceptually indebted to a legal notion of harm. Rather, it seems that what blatant cruelty connotes is the kind of cruelty that is open for everyone to see and is so clear in its excessiveness that it can be regarded as self-evident. Its legal underpinnings, then, do not flow from a conceptualization of harm but are reliant on a circular reasoning that presents blatant cruelty as self-evident because it only concerns those acts of cruelty that are regarded as self-evident.

Since the 19th century animal cruelty laws have varied across the globe, its regions and provinces. The fact that in some countries animals that are used for food, are considered pets in other countries will undoubtedly affect the nature of animal cruelty laws in different ways. In view of my present concern, however, I choose to limit myself to the overwhelming majority of animals, which are factory-farmed animals, and to draw on a comparative study of animal cruelty laws in the United States and on the European continent that was published by David J. Wolfson and Mariann Sullivan in 2004.71 In this study, Wolfson and Sullivan explore the impact of animal cruelty laws in focusing on the lives of animals that are factory-farmed. The most conspicuous element of their detailed account of animal cruelty laws and statutes across both continents is that it shows a persistent pattern of those laws exempting factory-farmed animals from the protection from cruelty. This persistent pattern is accommodated by the manner in which the legal texts are drawn up. The texts either literally exempt some categories of factory-farmed animals or are conveyed in such non-specific terminology that they allow for the exemption of a great many categories of factory-farmed animals in an indirect way.

In the United States, Wolfson and Sullivan found that factory-farmed animals have even been made to disappear from the law altogether:

Certainly, making this many animals disappear from the law is an enormous task. It has been accomplished, in significant part, through the efforts of the industry that owns these animals to obtain complete control, in one way or another, over the law that governs it. While this is not an

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unusual effort on the part of the industry generally, the farmed-animal industry’s efforts have been exceptionally successful. The industry has devised a legally unique way to accomplish its purpose: It has persuaded legislatures to amend criminal statues that purport to protect farmed animals from cruelty so that it cannot be prosecuted for any farming practice that the industry itself determines acceptable, with no limit whatsoever on the pain caused by such practices. As a result, in most of the United States, prosecutors, judges, and juries no longer have the power to determine whether or not farmed animals are treated in an acceptable manner. The industry alone defines the criminality of its own conduct. (206)

In the above passage, Wolfson and Sullivan point out that the animal cruelty laws in the United States are rendered ineffective as a result of a shift in jurisdiction. This shift has caused federal law and its primary animal cruelty statutes to become irrelevant:

The Animal Welfare Act, which is the primary piece of federal legislation relating to animal protection and which sets certain basic standards for their care, simply exempts farmed animals, thereby making something of a mockery of its title. (206)

As a result, The Humane Slaughter Act is the primary federal legislation affecting farmed animals. It requires that livestock slaughter “be carried out only by humane methods” to prevent “needless suffering.” (207)

The problems with the Humane Slaughter Act, which Wolfson and Sullivan lay out, are manifold. Most astoundingly, perhaps, is that it exempts poultry, that there are no significant fines or penalties imposed for the violation of the Act and that its reinforcement is virtually non-existent. Hence, apart from the fact that the State in the United States has, in liberal fashion, retreated from the specific juridical sphere under discussion and can no longer judge what constitutes a cruel practice through a shift in jurisdiction, we can also establish that the implied conceptualization of cruelty within its central Humane Slaughter Act has nothing to do with the protection from excessive harm.

Effectively, United States animal cruelty laws, instead of protecting animals from cruelty, protect the industry from the State. As Wolfson and Sullivan point out in their analysis, if federal law is rendered ineffective, the laws of the separate states do not come to the rescue of the animals either:
Criminal anticruelty statutes are also generally worded in ways that leave the court extraordinary discretion. By including in the definition of *cruelty* the otherwise undefined requirement that the conduct must be unjustifiable or unnecessary, the law may invite the conclusion that a practice, though capable of causing great suffering, is not legally cruel if it is related, in any way, to food production. (211)

The European situation has not seen this complete shift in jurisdiction and, as a result, some of the standard factory-farming practices that are legal in the United States have been qualified as cruel by European courts and have actually been banned, such as battery egg production. For this reason, Wolfson and Sullivan are rather optimistic about the European animal cruelty laws and their effectiveness. However, a broader overview of European animal welfare legislation shows that the British Animal Welfare Act of 2006 appears to be no exception: the same conceptual gap between harm and cruelty emerges in the European situation as animals bear no dignity, factory-farming abounds and that which is considered a cruel practice does not stem from understanding cruelty as following from a conceptual understanding of harm in any juridical sense.72

In this respect, the exemption that was made in Holland for the unsedated slaughter of animals for kosher and halal meat is particularly telling: In 2011 – in a move which, arguably, caused the greatest animal welfare stir in Holland in the last few years – the Dutch Partij voor De Dieren (Party for the Animals) sent draft legislation to the Dutch upper chamber in which it called for a ban on unsedated slaughter. The Dutch government amended the draft legislation by including the provision that animals could still be slaughtered unsedated if it could be proven that unsedated slaughter was no crueller than conventional slaughter. Eventually, this criterion fell away as the right to religious freedom prevailed over the humane slaughter of animals and unsedated slaughter within the realm of religion continues to be protected under the Dutch law. The point here, however, is that within this European animal cruelty case, the amendment that was made to the initial draft legislation installed a criterion for a juridical definition of cruelty that was not centred on a framing of cruelty as conceptually related to harm. Rather, even though jurisdiction resided firmly with the State, the gap that a non-conceptual and self-evident notion of cruelty installed was

filled by an amendment that subscribed to the customary practice of factory-farming just the same.\textsuperscript{73}

In other words, animal cruelty laws, whether or not drafted by the industry itself, are more often than not embedded in a juridical framework that sustains the practice of factory-farming as a customary practice. This renders such laws ineffective for the vast majority of animals. Hence, the conceptual gap between harm and cruelty turns cruelty into a situational issue that facilitates a juridical order in which the grounds for exemption are potentially endless and can even become the rule. This is not to say that animal cruelty laws are largely ineffective \textit{because} of the juridical sphere within which they are embedded. Rather, the more fundamental point is that we cannot expect anticruelty laws to protect animals from cruelty, just like we cannot expect the right to life to protect human beings from being murdered. In fact, as long as factory-farmed animals have no right to life it would only seem fair to expect that anticruelty laws will be even less effective in preventing cruelty than criminal statutes on murder are in preventing homicide.

As we can now deduce from my analysis of Wolfson and Sullivan’s study, animal cruelty laws not so much narrow the gap between the human and the animal but construct a difference between animals within the category animal itself because of the structural exemption for factory-farmed animals. Effectively, every animal cruelty law is bound to generate its own specific group of animals that can be excluded from the protection of cruelty. Hence, the inevitable problem of demarcation between the human and the animal we have envisaged to occur within an expansive model repeats itself in an a priori manner within the animal cruelty laws that are already in place today, namely as a problem of demarcation between animals. Of course, there is no easy solution to this problem. There are, however, solutions that might make matters worse because they allow any consideration of the suffering of factory-farmed animals to further retreat into the domain of invisibility. In fact, we may identify a similar demarcation dynamic in the modern effort to think through animal rights through the envisioning of an animal dignity. I consider one poignant example of this to be the capabilities approach devised by Martha. C. Nussbaum.\textsuperscript{74}

Without wanting to rehearse Nussbaum’s entire argument, here, let me briefly bring into focus what the capabilities approach is about by drawing on Nussbaum’s own words. After discussing the problems the theories of

\textsuperscript{73} Ibid. supra note nr. 58.

\textsuperscript{74} Martha C. Nussbaum, “Beyond Compassion and Humanity, Justice for Nonhuman Animals,” ibid. supra note nr. 40, 299-320.
contractarianism and utilitarianism pose to dealing with the animal question she states that:

The capabilities approach in its current form starts from the notion of human dignity and a life worthy of it. But I shall now argue that it can be extended to provide a more adequate basis than the two theories under consideration. The basic moral intuition behind the approach concerns the dignity of a form of life that possesses both deep needs and abilities; its basic goal is to address the need for a rich plurality of life activities. […]

The idea that a human being should have a chance to flourish in its own way, provided it does no harm to others, is thus very deep in the account the capabilities approach gives of the justification of basic political entitlements. (305)

The capabilities approach enlists a number of central human capabilities. It then explores the extent to which these capabilities can provide a framework for sketching animal capabilities and how those capabilities can guide law and inform basic political principles on the way in which we should treat animals. In accordance with my immediate purpose, I will only focus on the first and, arguably, most important capability Nussbaum mentions; that is, the right to life. This is what Nussbaum states:

*Life.* In the capabilities approach, all animals are entitled to continue their lives, whether or not they have such a conscious interest. All sentient animals have a secure entitlement against gratuitous killing for sport. Killing for luxury items such as fur falls within this category, and should be banned. On the other hand, intelligently respectful paternalism supports euthanasia for elderly animals in pain. In the middle are the very difficult cases, such as the question of predation to control populations, and the question of killing for food. (314)

As for food, the capabilities approach agrees with utilitarianism in being most troubled by the torture of living animals. If animals were really killed in a painless fashion, and free – ranging life, what then? Killing of extreme young animals would still be problematic, but it seems unclear that the balance of considerations supports a complete ban on killings for food. (315)
We can see how in the same passage all animals are entitled to continue their lives whereas the killing of animals for food is not ruled out. This internal inconsistency is, to some extent, “resolved” by the rhetorical question in the second part of the passage: If animals were killed in a painless fashion and had a free-ranging life, what then?

To begin with, that would be the end of factory-farming. First, because the economic cost caused by the exponential growth of space needed to accommodate a free-ranging life for every individual animal would be enormous. Second, because the problem with killing extremely young animals – a problematic demarcation issue in its own right because it conflicts with the right to life – would not be resolved. Indeed, if, as Nussbaum seems to suggest, “the right to continue their lives” was, in some way, limited to an animal reaching maturity, the killing, for example, of factory-farmed chickens after six months instead of after six weeks, which is standard practice, would still render these chickens extremely young given that the average life span of chickens is eight years. Hence, it would not be an economically viable enterprise either.

The more important point I wish to make here, however, is that the focus on all animals and the concomitant exemption of factory-farmed animals effectively registers a vast quantity of animals as other than animals. This is not merely a huge practical problem but a fundamental problem as well because it raises the question of how we come to categorize the category animal as animal and what this means for the traditional demarcation between the human and the animal as a foundation for the concept of human rights in the first place. For now, suffice it to say that the way in which animal cruelty laws register a vast quantity of animals as other than animal seems to render future animal cruelty statutes that might be inspired by approaches such as the capabilities approach especially ineffective. Hence, before even beginning to consider the ramifications of the demarcation problem within an expansive model, we can establish that the customary exemption for factory-farmed animals within the law cannot be explained away as merely a juridical problem of the inability to conceptualize animal cruelty. Apart from the fundamental issues it raises, and to which I will attend in my final chapter, it is equally installed by a recurrent element of cruelty that is sublimated into a focus on humane killing that has captured both the popular and the legal imagination. Effectively, this focus has turned the humane killing of animals into a myth, not primarily because it might very well be impossible to kill animals painlessly, but because it cannot be done with the vast quantity of animals that are processed on factory-farms. This begs the question whether more law would help to protect animals from harm. My analysis of the operations of animal cruelty laws suggests to the contrary, since
every law installs its own categories to be excluded; this effectively legitimizes the cruelty inflicted upon those excluded categories.

In light of my analysis of animal cruelty laws, we can now surmise that the fact that rights are generally considered as instrumental in protecting subjects from harm does not necessarily imply, first, that rights are the best way to go about protecting animals from harm; and second, that it does not logically follow that the desire to protect animals from harm is what motivates the wish to grant animals rights as well. Of course one could ask whether it really matters what motivates the expansive model and the answer would be that, yes, it does. Not being predisposed to what motivates the expansive model offers a different perspective on the element of cruelty that it incorporates. This element of cruelty then no longer has to be understood as the unfortunate by-product of a well-intended and “just” model. Rather, it might also be read as intrinsically bound up with the expansive model and thus as symptomatic of the wider juridical sphere in which it is embedded. With respect to this, I choose not to read the expansive model as resulting from a desire to protect animals from harm, but primarily as motivated by the factual and actual outcome of a scientific discourse.

This scientific discourse, instead of being motivated by a concern with animal well-being, is the result of a not being able, a not seeing any reason not to attribute animals rights. This incapacity, this double negation, this “not being able not to” is “solved” by or “dissolved” into an affirmation, which takes the form of expanding the model instead of questioning it. Reading the expansive model as I do here, demands giving up on the more conventional urge to look at the expansive model as motivated by a desire to protect animals from harm, and raises the question which stakeholders carry an interest in the status quo of the scientific discourse that holds up the expansive model today. In what lies ahead, however, I will restrict myself to bringing the mistaking of effect for cause into play that confuses or, rather, substitutes, the desired result of the granting of rights to subjects – protection from harm – with its scientific motivation. Hence, I will examine what would happen if we really regard the premise that animals should be protected from harm as central to a future juridical model. To this end, and again with a focus on tropology, I will close read George Orwell’s *Animal Farm* and attempt to probe the scientific credibility of such a position.
3. Animal Farm and the Nature of Absolute Difference

*Animal Farm*, a book written by George Orwell between November 1943 and February 1944, was first published in August 1945, at the beginning of the Cold War. It tells a story about animals on a farm who successfully rebel against their master only to see the Rebellion turn into a struggle for power that ends in tyranny. As Michael Shelden has observed, Orwell got the idea for the book on his return from the Spanish Civil War, where he and his wife experienced the long reach of Stalinist influence and made a narrow escape from the communist purges that flooded the country. If this experience turned Orwell into an anti-Stalinist for the rest of his life, the book was not meant as anti-communist but as a warning against the mythical proportions of Stalinist Soviet communism, which had blinded Spanish revolutionaries and socialists elsewhere to the ugly side of Stalin’s reign. On his return to Britain, Orwell experienced this blindness first hand when he initially had trouble finding a publisher for his book. No one wanted to hear any critique on Stalinist Soviet communism, especially now that Stalin had joined the allies against Hitler.

I will begin my close reading by providing my own plot summary:

The animals on *Manor Farm*, which is owned by Mr Jones, meet up one night to listen to Old Major, a white boar who has had a visionary dream that he wishes to communicate to all the other animals. He tells them that their lives on the farm are miserable and short and that Jones and his men steal the fruits of their labour. He assures them that the only way to put an end to the evil tyranny on the farm is Rebellion and teaches the animals a revolutionary song called “Beasts of England” to impel them to a spirit of brotherhood and comradeship. Soon after, when Jones takes to drinking and neglects to feed the animals, they break out of their cages and, in the resulting confrontation, they chase Jones away and take over the farm. The animals rename the farm *Animal Farm* and adopt the Seven Commandments of Animalism with “All Animals Are Equal” as the principle command. Two pigs that go by the name of Snowball and Napoleon naturally assume leadership and, at first, things seem to turn out

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75 George Orwell actually coined the term Cold War. He first used it in an essay called “You and The Atomic Bomb.” In: *Tribune* (London, 1945).

76 For an excellent overview of the historical and political context in which *Animal Farm* was published and for Orwell’s own comments on the spirit in which he wrote *Animal Farm* see: Michael Shelden: “Animal Story.” In: *Orwell, The Authorized Biography* (London: Heinemann, 1991), 291-409.
As time passes, however, and as Napoleon gets rid of Snowball by using him as a scapegoat for everything that goes wrong on the farm, the animals find themselves working even harder than before under the ever more tyrannical leadership of Napoleon and the other pigs that figure as his accomplices. The pigs keep the milk and apples for themselves. The revolutionary song, “Beasts of England,” is replaced with an anthem glorifying Napoleon. The Seven Commandments of Animalism are secretly amended to make sure that the pig’s increasingly humanlike conduct can never be qualified as unlawful. Most importantly, the commandment “All Animals Are Equal” is changed into: “All Animals Are Equal But Some Animals Are More Equal Than Others.” In spite of their hardship, the animals are blind to the reality of their situation and even when Napoleon begins to purge the farm with his dogs, the animals remain loyal to the spirit of their revolution. The story ends with a dinner party to celebrate a new alliance between the pigs and the local farmers at which Napoleon insists on changing the name of the farm back to Manor Farm. When a row breaks out over cheating at cards and the other animals peep in to see what is causing the uproar, they can no longer distinguish between animal and man, at which point they finally come to realise that their Rebellion has been betrayed.

As we can gather from the above plot summary, Animal Farm is about the revolution of animals on a farm seeking protection from harm. Significantly, the first thing the animals do after the Rebellion is install the laws of Animalism to guarantee the protection from harm by way of rights. This implies that the story is about rights. In the standard reading of Animal Farm, as an allegory of Stalinist Soviet communism and its tyrannical aftermath, the animals are read as representing people. The story then seems to be about human rights. More specifically, because of its focus on harm, the text seems to make the liberal Cold War point that communism is detrimental to the rights of the individual. In this sense, the text dramatizes the tension between two forms of justice: the justice of the community – the farm – and the justice of the individual. It can be seen as opting for the last form since, ultimately, the revolution is betrayed.

It would be a gross simplification, however, to argue that Animal Farm’s allegorical structure impels us to read Animal Farm as conveying the message that communism or, more broadly speaking, communal justice does not work and that therefore the status quo under capitalism is the only feasible political alternative. The story, because of its predominant focus on the horrors the animals face after the Rebellion, can indeed invite such a reading, which
actually happened on various occasions after Orwell’s death in 1950. The CIA, for example, used *Animal Farm* for propaganda purposes in a cartoon version that was adapted in such a way that the closing parallel between capitalist and the pigs’ exploitation of the other animals was suppressed. By contrast, Orwell was always very clear about his views on *Animal Farm* being a warning of communism as totalitarianism and of the way it was meant to convey the prospects of capitalism. This can be illustrated with a quote, part from Michael Shelden’s longer citation of Orwell on *Animal Farm* in a letter to Dwight MacDonald, the editor of the New York magazine *Politics* in 1946:

The turning-point of the story was supposed to be when the pigs kept the milk and apples for themselves. (Kronstadt). If the other animals had had the sense to put their foot down then, it would have been all right. If people think I am defending the status quo, that is, I think, because they have grown pessimistic and assume there is no alternative except dictatorship or laissez-faire capitalism […] What I was trying to say was, ‘You can’t have a revolution unless you make it for yourself; there is no such thing as a benevolent dictatorship.’ (407)

This caveat aside, the allegorical reading of *Animal Farm* as a story about human rights that informs these political readings is blocked by the text at several points. The animals are much more animal-like than a strict allegorical reading would demand. The chickens are chicken-like, the pigs are pig-like the cat is cat-like, etc. This element, albeit followed through consistently, becomes most apparent as each animal’s work on the farm is either accommodated or hindered by its species-specific bodily disposition and character. The cat, to mention but one example, never works but only shows up at meal times where she affectionately purrs to convince the other animals of her good intentions. The traditional political-juridical reading, in order to be coherent, has to remain blind to this element. Yet, the effect of the text, the way in which it captures the imagination, depends on just these aspects, which are therefore more than a compositional adornment. In fact, this small but important friction opens up the possibility for another reading that I propose here and whereby the text is still about rights and the protection from harm, but now with regard to nonhuman animals. Hence, my reading will still be an allegory – or rather allegoresis – but the story is now explicitly framed as an allegory about animal rights. This framework allows me to use *Animal Farm* as a model for exploring the

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demarcation problem within an expansive model. More specifically, I will close read the way in which the difference between the human and the animal and between the animals themselves is thought through in *Animal Farm* and explore the effects this bears on the concepts of harm and cruelty in relation to accommodating animals within an expansive model. For this reason, I will begin my exploration with a comparison of how the difference between the parameters of the human and the animal is conveyed within *Animal Farm*, on the one hand, and within an expansive model, on the other.

The expansive model is centred on the negation of an absolute difference between the human and the animal. As I concluded before, there is ultimately no way of telling what the essentially human is, on account of which any proclaimed difference naturally takes on a gradual quality. By contrast, in *Animal Farm* the sense of an absolute difference is not denied, but implicitly conveyed at the very beginning of the book, just before the Rebellion is sparked. At this stage, before the Rebellion, the animals enjoy no protection from harm as they are subjected to the laws of the farm under Jones’ reign. Their situation changes dramatically when Jones takes to drinking out of frustration with the law and wilfully neglects the animals trusted to his care, which is succinctly conveyed in the following passage:

Now, as it turned out, the Rebellion was achieved much earlier and more easily than anyone had expected. In the past years Mr Jones, although a hard master, had been a capable farmer, but of late he had fallen on evil days. He had become much disheartened after losing money in a lawsuit, and had taken to drinking more than was good for him. For whole days at a time he would lounge in his Windsor chair in the kitchen, reading the newspapers, drinking and occasionally feeding Moses on crusts of bread soaked in beer. His men were idle and dishonest, the fields were full of weeds, the buildings wanted roofing, the hedges were neglected and the animals were underfed. (18)

In view of the provisional definition of cruelty I have developed, I identify the dynamic described in the above passage as the moment when harm topples over into cruelty. On the one hand, Jones is described as a hard but capable master, which implies that under the old regime the animals were still cared for in a manner that never impelled them to rebel, because Jones exercised a minimum responsibility for the farm, which, for example, guaranteed their daily rations. In short, the animals might have been subjected to harm, but as long as they were subjected to the human laws of the farm and not ignored by them they were
safeguarded from the most blatant cruelty. On the other hand, when Jones takes
to drinking the animals enter a lawless zone and are neglected as subjects under
the laws of the farm that previously guaranteed them a basic protection against
the most blatant types of cruelty, such as not being fed. Hence, the precarious
situation the animals find themselves in and that this ignites the Rebellion may
be read as a practical illustration of the implications that the wilful ignorance of
those animals not granted legal personhood within an expansive model on a
more theoretical plane could result in.

After the Rebellion, the absolute difference between the human and the
animal that is conveyed at the beginning of the book is compromised. Indeed,
the fact that the animals become legal subjects under their own laws of
Animalism seems to flatten out what distinguished the humans from the animals
on the farm in absolute terms, namely the having of rights. Strictly speaking,
however, the laws of Animalism, albeit affording the animals some protection
from harm prior to the amends made by the pigs, are surely not drawn up as an
expansion of the laws under the regime of Jones. On the contrary, they are
formulated very much in opposition to those laws; this confirms rather than
effaces the absolute difference between the human and the animal. Admittedly,
this oppositional demarcation still does not completely cancel out the idea of a
species’ overarching inclusivity, since the ground rule of Animalism – “All
Animals Are Equal” – might very well be read as animals being entitled to rights
just as much as humans. However, this would suggest that the oppositional
manner in which the laws of Animalism are framed not so much represents a
form of justice in terms of equality, but at best conveys the aspiration to upset
the traditional opposition between the human and the animal in absolute terms in
the spirit of Old Major’s revolutionary song. In this light, the text can be said to
appeal to the potential for interspecies solidarity while dramatizing the problems
the legal codification of interspecies solidarity poses. This implicit potential,
however, is cancelled out at the end of the story as the animals are subjected to
the laws of what is no longer Animal Farm but Manor Farm and human reign is
reinstalled.

Leaving this cancelled out potential aside, if only momentarily, the denial
of the difference between the parameters of the human and the animal in the
expansive model, on the one hand, and the focus on the oppositional nature of
this difference in Animal Farm, on the other, suggests we might expect both
allegorical models to differ from each other significantly with regard to the
weight attributed to these parameters. Since in both models we come across laws
that install a demarcation problem that turns on precisely the nature of this
difference, we can now explore this issue in more detail.
Within an expansive model the demarcation problem necessarily remains an abstract matter, which hinges, as we have seen, on a conventional notion of personhood. In *Animal Farm* the demarcation problem is addressed in more practical terms when, after the Rebellion, a demarcation decision has to be made on whether or not to let the birds fit in within the other animals. After Snowball has declared that the Seven Commandments should, in effect, be reduced to the single maxim: “four legs good, two legs bad” and the birds object, he makes the following statement:

‘A bird’s wing, comrades,’ he said, ‘is an organ of propulsion and not of manipulation. It should therefore be regarded as a leg. (31)'

This seemingly arbitrary way of demarcation invites us to explore, first, in which way the parameters of the human and the animal in *Animal Farm* inform the demarcation problem the birds are faced with. Second, it begs the question as to what the absolute difference the maxim “four legs good, two legs bad” installs amounts to and how this difference “translates” into the denial of an absolute difference on which an expansive model is centred.

The best way of investigating the workings of those parameters in *Animal Farm* is by zooming in on the moments the human world and the animal world intersect. This intersection is exclusively reserved for the cleverest animals on the farm, the pigs. At first, the contacts the pigs entertain with the human world are established through Mr Whymper, an intermediary third party, a solicitor, a lower species of the humans in that he is working for a boss and not bossing himself, as the pigs aspire to. At the end of the story, the pigs’ efforts to operate on a basis of equality with their human counterparts are brusquely betrayed: the unity between the two worlds collapses just before it seems to take shape and human reign is reinstalled. This collapse can be said to literally reinforce the sharp division between the human and the animal and to enact the fable’s moral lesson. This lesson is at one with the enigmatic rule that has so surreptitiously come to govern the story, namely that: “All Animals Are Equal But Some Are More Equal Than Others”. Any attempt to tamper with this ground rule will be met with tyrannical violence.

On the one hand, this rule can be read as demarcating the humanized pigs from the other animals; that is, if we momentarily read the pigs as symbolizing human beings. On the other hand, this rule can be read as demarcating some animals from others, which would suggest the demarcation problem that stems from the absolute difference between the human and the animal before the rebellion repeats itself in the form of a demarcation problem within the animal
species as constituted by higher and lower life forms. Let us now explore both reading possibilities and begin with the way in which this enigmatic rule performs an identity politics by focusing on the contradictory notion of difference implied within this rule.

The fact that the lower human (the solicitor) intersects with the higher animal (the pig) gives way to a notion of gradual difference, both between and within the species. At the same time, however, the collapse of this intersection at the end of the story testifies to an absolute difference between the species, as the suggestion of a gradual difference is betrayed and appears to have worked as a smokescreen. In short, if the notion of a gradual difference both between and across the species is sustained throughout the story, notions of absolute difference, albeit discernible – for example, through an analysis of the laws of Animalism as oppositional instead of expansive – remain rather implicit until the collapse at the end. The fact that all the different animals on the farm, despite their different and species-specific whining, lowing, bleating and quacking, can communicate with each other but not with the humans, stands as an example of this implicit notion of absolute difference. It suggests that there is only one overriding, essential, absolute difference, a rigid divide between the human and the animal.

On a character level, the horse Mollie operates on the axis of this divide. After the Rebellion, Mollie is the only animal that stubbornly persists in eating sugar cubes and in adorning herself with ribbons, which the other animals consider a token of human idleness. When another horse named Clover confronts Mollie with her unlawful behaviour she denies everything but cannot bring herself to look Clover in the face and runs off into the field. Clover, who has grown even more suspicious as a result of Mollie’s evasive behaviour, decides to search her stall:

A thought struck Clover. Without saying anything to the others, she went to Mollie’s stall and turned over the straw with her hoof. Hidden under the straw was a little pile of lump sugar and several bunches of ribbons of different colours. (42)

Clover never tells the other animals of his discovery and when, shortly after this incident, Mollie disappears from the farm none of the animals ever mention Mollie again. On the one hand, this unwritten code of silence over Mollie’s behaviour both prior to and after her disappearance works to sustain the myth of Animalism through a self-invoked and collective censorship; on the other hand, this code of silence turns Mollie’s stubbornness from a vice into a virtue because
it lends her desire, her indulgence, an apologetic aura of being a creature who is simply unable to resist the call of nature, answering – deep down inside – to higher, human laws. This “call of nature,” however, is not natural, but constructed by the other animal’s code of silence, which reflects their exceptionally mild reactions towards her humanlike behaviour. In total contrast to the death penalty awaiting the animals that do not strictly comply with the laws of Animalism, Mollie’s behaviour merely causes unease and the occasional reproach, but she is neither punished, nor banned from the farm. Moreover, it seems as if this mildness is informed by the animal’s general incapacity to understand Mollie as an individual because they are submerged in the collective myth of Animalism, which at once reduces the other animals to simpletons and makes their reactions take on a non-judgmental, non-condemning, justifying quality in yet another way.

Hence, whereas the other animal’s mild reactions towards Mollie’s behaviour seem to convey a non-understanding of a fellow creature that stems from a non-articulated accepting, an acknowledging, of Mollie as other, of who or what Mollie “is,” this acknowledgement is not the acknowledgement of Mollie as an individual. Rather, this acknowledgement conveys the other animal’s humble bowing, their answering to the human at the top of the hierarchy, which is constructed by a narrative strategy that poses this hierarchy as natural, as always already in place. If the other animals are banned from the farm or an even more cruel fate awaits them should their conduct conflict with the laws of Animalism, Mollie, once humanized, leaves the farm of her own free will and literally crosses over to the other side. It is precisely at this moment that the gradual difference between the human and the animal that Mollie’s character operates until her disappearance is made explicit and performed as absolute after all. The price of Mollie’s humanization, however, is her willing submission to the owner of the neighbouring farm, where absolute difference reigns and the “natural law” is still intact.

Now, if in Animal Farm notions of an absolute difference between the human and the animal remain rather implicit until the end of the story, there is one notable exception to this trend. This exception is formulated in explicit juridical terms and concerns the sheep’s repetitive bleating of the maxim “four legs good, two legs bad.” This maxim poses a rigid divide between the human and the animal, which appears to be centred on their different bodily constitutions. As we have seen, it is issued by one of the leading pigs, Snowball, after considering that the stupider animals, such as the sheep, hens, and ducks, are unable to learn by heart the Seven Commandments installed immediately after the Rebellion. At first glance, this maxim offers comic relief as it ridicules
the blind trust the animals display in their leaders through their exaggerated commitment to an ideological cause they cannot grasp. Yet, there is a more serious touch to this maxim in view of Orwell’s comments on his having trouble finding a publisher for Animal Farm in Britain when he returned from the Spanish Civil War.

As Michel Shelden has observed, albeit without making the connection to the bleating sheep in Animal Farm, Orwell, in a preface for an English edition stated that the real enemy was not Soviet communism but the gramophone mind. Orwell was hinting at the fact that any ideology could encourage a state of mind such as was conveyed to him through the repetitive character of the explanatory excuses he got each time his manuscript was rejected. Roughly, publishers, each adding their different measure of pathos, rejected his manuscript on the grounds that Stalin was an ally of Britain and that Russian soldiers were dying on the battlefield. It all boiled down to any critique on Stalinist communism being either inappropriate or completely off the mark. Reading the bleating of the sheep’s maxim in this light, as an example par excellence of the gramophone mind, I will now take it seriously in my own way by focusing on the manner in which the maxim performs rather than delivers its four legs ideology in Animal Farm.

To begin with, the maxim “four legs good, two legs bad” informs the term Animalism as an “-ism,” succinctly conveying, through a four legs ideology, the animal’s strife for independence and their subsequent craving for a self-sufficient animal world after the Rebellion. The term Animalism formally denotes: the religious worship of animals, or, the behaviour that is characteristic of animals, particularly their being physical and instinctive. In other words, the text not just induces us to read the word Animalism allegorically, as a specific way of interpreting Animality as opposed to Humanity, but at the same time invites us to activate these latter terms as parameters. The text itself, however, never explicitly mentions Humanity or Animality, which suggests that we perhaps should not judge the other animals too harshly for being fooled by the “gramophone record” the maxim of the sheep plays. Rather, we might raise our awareness to the fact that the same maxim installs an -ism that invites us to inscribe parameters that are not literally there, in the text. This is why I will now zoom in on the animal’s maxim and explore this inscription in terms of the laws on Animal Farm.

The maxim “four legs good, two legs bad” substitutes all the other rules previously in place as it comes to regulate Animal Farm’s world by dividing it into two categories, the category of two legs and the category of four legs. It stands to reason that this is the most effective way of making sure no entity falls out of what we are invited to read as the categories of Humanity and Animality. Such categorization, succinctly condensed into a single rule of law, is not concerned with what the animals are or with what they do, but with isolating one from the other through an identity politics that defines this other as the two-legged human. In other words, the rule “four legs good, two legs bad” does not invite an interpretative gesture, but demands a demarcation decision. It begs the question, first, in which way this rule appears to call for interpretation while only demanding a decision. I would argue that this has something to do with Snowball’s intervention that names the bird’s wings legs. As much as this intervention seems to be an interpretative gesture, it does not interpret the rule, which is already in place, but the bodily constitution of the birds. Second, it begs the question as to how the oppositional demarcation rule “four legs good, two legs bad” works, which I will now explore by examining the way in which the opposition between four legs and two legs is performed.

In Animal Farm, in a world that acknowledges only two species (Animal and Man), four legs is the opposite of two legs as good is considered the opposite of bad. Yet, just as the opposition good vs. bad is more often than not a nonsensical simplification of reality, I propose that the opposition two legs-four legs must be considered a nonsensical opposition as well. Certainly, the mathematic doubling of the legs that informs the opposition lends the rule a scientific edge, but mathematically speaking, two legs do not stand in opposition to four legs. In fact, the irrational mathematics of the legs can be said to enact a conventional form of anthropomorphism since “the human” is commonly associated – synecdochically – with human person and hence, with walking upright, on two legs. More specifically, precisely because this irrational mathematics is reliant on a conventional form of anthropomorphism, the figure of the human is framed as a rational-scientific being. This figure of the rational-scientific human being is kept in place by the sheep’s repetitive bleating, no matter the temporal reversal of power relations after the Rebellion.

With respect to this issue, I consider the fact that the animals work out the maths as a foreshadowing of the collapse at the end of the story that works to affirm human leadership. More importantly, I understand this dynamic in terms of Judith Butler’s analysis of the difference between the constative and the performative, because it suggests that the hierarchical opposition between the human and the animal in Animal Farm is not a constative matter of fact but must
still be performed by those who master and who are mastered. This implies that the tyrannical power of the pigs is not an absolute given, but constructed as an absolute given. Since the birds in *Animal Farm* are the first animals faced with the practical implications of the rigid categorization the maxim “four legs good, two legs bad” imposes, I will now shift my focus from the rule to the proceedings the birds are put through as a test case for examining if a theoretical demarcation problem – the impossibility of having an objective standard in place to determine the nature of the difference between the human and the animal – can be reconciled with the practical demarcation decision of fitting in the birds with the animals.

The birds, because they are only equipped with two legs, risk falling out of the category of Animalism. After Snowball’s consideration that “wings are an instrument of propulsion,” this problem is solved by making their wings count as legs as well, together with their two legs adding up to four and fitting them in with Animalism. The birds, then, are saved from becoming enemies of the animal order that has temporarily been installed through an un-acknowledgement of their wings. Not coincidentally, those wings are what distinguishes them from the other animals in that all birds have wings. Consequently, the denial of their wings is the price the birds pay for being allowed to being subjected under the laws of Animalism. This denial enacts what I consider to be a captivating poetic cruelty, because it plays on a notion of freedom through the association of birds with their ability to fly. This poetic cruelty is significantly different from my provisional qualification of cruelty in the first chapter, which, let us recall, constituted the legitimization of a wilful ignorance of those entities not considered fit for inclusion in the system of legal personhood. Here, inclusion in the system installs a protection from harm but generates a poetic cruelty since it legitimizes the wilful ignorance of the fundamental otherness of the entity that is subjected.

Even though the birds are, through a substitution of wings with legs – which is, because it is a substitution, a matter of naming and thus, not as it would seem, a matter of attributing, as nothing is added – incorporated in the seemingly higher category of Animalism, the hierarchical opposition between Humanity and Animality is not undermined, let alone reversed. Rather, and paradoxically, this hierarchy is reinforced. It is as if the animals are saving the humans the trouble of categorization here, by doing the categorization themselves. This is precisely what a totalitarian ideology would want: let the subjects do the subjecting themselves. The point here, however, is that the bird’s

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81 To attribute goes back to the Latin verb *Attribuere* from *add-* to *tribuere* assign (OED 2003).
case not just complicates my provisional understanding of cruelty but also my earlier understanding of anthropomorphism, whereby I distinguished between a conservative form (attributing) and a strict form (naming). In a sense, the birds’ case upsets and confuses these definitions, since the birds are attributed a characteristic, namely legs, through a substitution that names their wings legs. The attribution, at first glance, seems to constitute a conservative form of anthropomorphism because it can only be motivated by a hypogram, which Snowball invents when he defines wings as an instrument of propulsion and therefore as essentially animal.

Strictly speaking, however, the absolute difference between the human and the animal in *Animal Farm* is centred on an Animalism that we have been invited to read as Animality and not as Humanity, even if the animals within the allegory *Animal Farm* function as veiled human beings. By implication, we cannot qualify the attribution of legs as a conservative form of anthropomorphism because the legs are attributed to animals. Rather, given the momentary reversal of power relations the laws of Animalism symbolize, this attribution could, at best, be qualified as a conservative form of zoomorphism. Yet, it would be a simplification to read this zoomorphism as oppositional to anthropomorphism because the confusion of naming and attributing that takes place to fit in the birds within the allegorical model of Animalism is arguably different from the confusion that underlies registering entities as person within an expansive model. In short, the “attributing” here is not an attribution of some inherent quality, but operates on the body of the animal by a taking away of the birds’ wings through a substitution with legs.

In this respect, the expansive model under the laws of Animalism in *Animal Farm* shows the impotency of the human-centred expansive model to register what is fundamentally other about the animal, its body; because doing so would upset the neat distinction between naming and attributing that it relies on to mask its performative operations as constative. To put this complicated matter in another way, the poetic cruelty the birds are confronted with installs a hierarchy that both nests itself in and is masked by an expansive model because it presents itself as a system of equality. Hence, the law’s focus on abstract terms such as life, liberty and happiness as equally pertaining to all the entities it subjects might very well be read as conveying the universal values to which it aspires, but, paradoxically, these terms function as symbols that install a body-mind dualism, which it needs to survive as a system of demarcation.

The *practical demarcation problem* in *Animal Farm* has appeared not to be simply the result of the *theoretical demarcation problem*, of the impossibility to formulate absolute differences between the human and the animal. Rather, the
practical demarcation problem has surfaced in the guise of a demarcation decision to make the availability of an objective standard to measure those differences take shape in our imagination. The practical demarcation decision is produced by a categorization of difference that consists of activating the binary absolute/gradual through an act of anthropomorphism in the strict sense, which “takes as given” the human and the animal as parameters that can operate within the same discursive space without one enveloping the other. There is, however, only difference. Consequently, if within an expansive model a categorization of difference is embedded in a rhetoric of equality, which is centred on the premise that there is no such thing as an absolute difference between the human and the animal, I read Animal Farm as ridiculing this rhetoric of equality because it hilariously stresses its rhetoric of equality instead of the equality itself. This is exemplified by the enigmatic rule stating that: “All Animals Are Equal But Some Animals Are More Equal Than Others.” In short, it is the use of the terms human and animal as relevant parameters fostered by a categorization of difference throughout the story that reconciles a practical demarcation decision with the theoretical demarcation problem.

I have now read the categories four legs and two legs as products of a categorization of difference that strategically functions to extrapolate the parameters of the human and the animal. If the mathematical doubling of the legs points to an absolute difference, the common denominator legs complements the binary because it activates the suggestion of a gradual difference, as both creatures are legged. In short, the mathematical doubling of the legs is not just an irrational construction, because two does not stand in opposition to four, but also because the word legs here is used in synonymic rather than in homonymic vein. It is in both these senses that the binary four legs-two legs is exposed as a construction itself. My reading of the practical demarcation decision the birds are faced with, then, not just addresses the categorization of difference that reconciles the practical demarcation decision with the theoretical demarcation problem, but also points to the obvious but often overlooked fact of how the practical demarcation decision does not involve the establishing of categories, as the categories themselves must be in place before a demarcation decision can be effectuated. It shows how the practical demarcation decision is strategically informed by a particular identity politics, which can never be the result of either an absolute or gradual difference between the species. In other words, we may now observe that the theoretical demarcation problem belongs to the sphere of categorization, whereas the practical demarcation decision belongs to the sphere of naming. The relevance of establishing this difference is that it suggests that the demarcation problem on
which the animal rights debate turns cannot be solved by a scientific progress
that attempts to probe deeper and deeper into the nature of animals. Rather, it
suggests as a matter of principle that the demarcation problem is endless,
precisely because it is hard to see how we can come up with objective criteria
for naming. It seems the only thing we can do to get out of this polemic is revise
our categorizations, a matter I will explore in my final chapter.

For now, my reading of the case of the birds has shown that the cruelty
flowing from the demarcation problem within an expansive model not just
concerns those entities not seen fit to be attributed personhood, but also the
entities that do get to be incorporated within the model, a cruelty I have defined
as a poetic cruelty. Both forms of cruelty concern the law’s right to arbitrarily
neglect what it considers essentially nonhuman entities without and outside of
the model, whereby the poetic form of cruelty installs a hierarchy that is masked
by equality. For both forms of cruelty to be inscribed within a juridical model in
the first place, however, they would somehow need to be perceived as just, as
not allowing for arbitrary neglect but as fostering non-arbitrary and objectively
informed decisions. This begs the question how the seemingly arbitrary and
subjective practical demarcation decision that the birds face, namely the
substitution of their wings with legs, manages to come of as a non-arbitrary,
legitimate decision. In short, this raises the issue of arbitrary chance versus non-
arbitrary law and the illusion of non-arbitrary justice.

4. Arbitrary Chance versus Non-Arbitrary Law: The Illusion of Non-
Arbitrary Justice

The answer to how the seemingly arbitrary substitution of the bird’s wings with
legs comes of as a non-arbitrary decision is as simple as it is puzzling: It is not
the in(ter)vention – the substitution of wings with legs – that is judged, but the
decision that is its result. Once the substitution of wings with legs has been
effectuated, the rule “four legs good, two legs bad” no longer leaves any space
for doubt. Effectively, the rule at this stage no longer functions as a text as it
cannot be interpreted. It may seem to have been transferred the power if not to
interpret then to measure – which would be a personification in its own right, of
the rule as a ruler – but it does not interpret or measure anything, some specific
capacity or characteristic, say, the imaginary number of legs of a bird. In fact,
the rule “four legs good, two legs bad” does not function as a rule at all, as it
cannot be broken. It does, however, match the description of a rule of law: “the
restriction of the arbitrary exercise of power by subordinating it to well-defined
and established laws.” In its capacity as a rule of law it restricts, or rather, neutralizes arbitrariness, because it is impossible not to fit in the birds with the category of the animals once the substitution of wings with legs has been effectuated. In other words, the practical demarcation decision, which is installed through a performative act, is not a decision because a decision requires choice and no choice is offered. Hence, this lack of choice makes the practical demarcation decision come of as a non-arbitrary decision because it generates the illusion of a supposed correspondence to the rule of law that happens to be in place, whereas what actually takes place is a demarcation through naming, which forces an entity into correspondence in an arbitrary way.

The kind of arbitrariness implied within this practical demarcation decision can be qualified as conservative, because it rests on the binary subjective-objective that equates to arbitrary <-> non-arbitrary. Since such a binary can only be sustained hierarchically, it will always need the suggestion of a higher truth, be it scientific, metaphysical, or no matter what, to justify itself. The law presents this higher truth as an “expertise in the unknowable,” whereas the creative option would of course be to try and reconcile an idea of truth with a fundamental un-decidability. In this respect, my exploration of the practical demarcation decision through the case of the birds points to a lack of responsibility on the part of the law, because it demonstrates how the predominant moral informing the arbitrary substitution of wings with legs has detached itself from the rule of law from which it supposedly flows. In short, the predominant moral of the substitution of wings with legs is, of course, that birds are, after all, animals. The rule of law, however, contrary to what the qualifications “good” and “bad” so cunningly suggest, presents neither a moral, nor a decision. More than that, I argue it does not present a moral because it does not ask for a decision. The only real decision the birds are faced with consists of the in(ter)vention of the arbitrary substitution of wings with legs, which begs the question what kind of arbitrariness, if any, it is that the rule of law “four legs good, two legs bad” neutralizes.

In this respect, I wish to observe that within a conservative understanding of arbitrariness, arbitrariness and non-arbitrariness form a binary that is morally charged. In short, non-arbitrariness is registered as informing objective and just decisions while arbitrariness connotes what is subjective, which automatically makes non-arbitrariness look good and arbitrariness look bad, unjust and suspect. In Animal Farm, however, the moral charge that is tied to either pole of this binary is not being followed through and appears to slip away: the law’s implicit claim to non-arbitrariness through the rule “four legs good, two legs
bad” does nothing to prevent the birds from being exposed to a poetic cruelty, whereas it is the arbitrary, subjective substitution of wings with legs that eventually saves them from the harm of being neglected as legal subjects. In this sense, my reading of the case of the birds shows that cruelty cannot be avoided by a juridical system that is centred around a conservative form of arbitrariness. Rather, it might be sustained by it when the rule of law that happens to be in place is imagined as restricting and neutralizing arbitrariness, a “promise” on which it can never deliver.

As we can learn from the case of the birds, an understanding of arbitrariness in its conservative sense, and not (as I do) as a categorization, is what traps the law in a game that requires non-arbitrariness to take root in the concept of a higher scientific or metaphysical truth. It implies that the problem of cruelty is no longer to be viewed as a problem of arbitrariness as such, but of the way in which arbitrariness is understood in relation to truth and how truth itself is understood. If Christianity could claim non-arbitrariness by siding with god’s all knowing truth, today, at least in secular states, the law can no longer point to god. Consequently, the law has to find other vehicles for truth. Since arbitrariness is considered as something that has to be avoided within a system of justice, I consider one of those vehicles to be allegorical reading. However, as long as arbitrariness is understood in its conservative form, neither siding with god, nor allegorical reading works to avoid cruelty. On the contrary, because an adherence to a conservative form of arbitrariness is likely to result in the application of a strict form of arbitrariness, a “taking as given,” it might come to justify it. This problem of justification begs the question as to which claim to non-arbitrariness, in its conservative sense, installs or justifies the expansive model.

I propose the expansive model’s implicit claim to a conservative form of non-arbitrariness to be informed by the consensus posited by the philosophy of science or by the science of philosophy; that there is no absolute difference between the human and the animal. This consensus is paralleled by the consensus in Animal Farm that “All Animals Are Equal.” Both allegorical models perform the impossible exercise of bringing the parameters of the human and the animal within one discursive space, which results in a model that is hierarchically sustained. The naming that results from the predefined categories both models install is not a matter of interpretation, but is performed by an act of anthropomorphism that attributes a single name to an entity; or, reversely, attributes an entity to a name already in place, which strictly speaking is a form of naming and not of attributing, because nothing is added but everything is substituted. Since the entity cannot be both, nonperson and person, two-legged
and four-legged, there is only one way of reading. In other words, it is not the entity that is read but the allegorical code on how to read the entity, which becomes the reading of the entity.

By implication, the confusion of persons within an expansive model may not just be read as serving to cover up the law’s inability to answer the question as to what a person and, hence, to what the human is. Rather, it must also be read as enacting the law’s refusal to acknowledge this inability, and understandably so, because by acknowledging this inability the law would no longer be able to pose as the expert in the unknowable and face a serious authority problem. Hence, it would expose the idea of non-arbitrary justice as an illusion and perhaps force the law to operate in a different manner. The law, however, as it cannot afford to have its lack of “expertise in the unknowable” exposed, turns away from the abyss of the unknowable and adopts a strategy of indifference. This strategy of indifference consists of not questioning the nature of person at all, but in taking person as given, as synonymous with human person. In this way, the law shelters its authority, feeding into the illusion that what is given no longer needs to be questioned. This strategy of indifference, however, comes at a price as it legitimizes the various types of cruelty I have now identified.

With respect to this issue, the conventional confusion of persons within an expansive model can be read as operating an identity politics that veils what must remain an arbitrary attribution of personhood. The law, pretending to know an entity by naming it, imagines gaining access to a fundamentally unknowable body. This procedure can be qualified as perverse, first, because it at once equates naming with knowing and accessing and, thus, fails to respect the bodily integrity of the unknowable body. Second, because it enables the law to keep up its appearance, as an authority making non-arbitrary decisions through the objectification of the entities it subjects. Paradoxically, such an objectification of what the law considers to be an essentially nonhuman entity consists of granting a nonessentially human entity a conventional form of personhood, which is understood as essentially human and thus, somehow, as more than a name. In short, the expansive model treats the human person as a frozen metaphor, as an anthropomorphism, in order to sustain the illusion of non-arbitrary justice.

Parallel to the practical demarcation problem with the birds, the rule set by the expansive model can now be envisaged as follows: “person is good, nonperson is bad.” Only an entity qualifying as person can be subjected. However, if we carry out a thought experiment and momentarily replace person with “two legs,” it becomes clear that the law – contrary to what the expansive model through its activating of the parameters of the human and the animal suggests – treats person not as an identity, a substance bearing figure of
wholeness, but as a trait it can or cannot attribute to an entity. It does so by looking for other traits that are person, which it names person, since, for the law, to name is to be. In other words, the law treats itself as an abstraction and the abstraction person as a trait, whereas the abstraction is the floating signifier person and the trait the law, which is, or is not, attributed. Thus, the question finally has come back to how one can understand personhood and person in view of this ambiguous functioning of the name person within the law. It is necessary, consequently, to explore what becomes of the animals within an understanding of person as a trait and what the implications of those synecdochical dynamics are for my conceptualization of anthropomorphism as an act. These interrelated questions can best be addressed by zooming in on the description of the conventional form of anthropomorphism that I adapted in the opening chapter.

First, if an animal is attributed a certain trait that is qualified as human, say, intentionality, then this form of attributing can be understood as conventionally anthropomorphic, simply because something conceived of as essentially human is attributed to something essentially nonhuman. Strictly speaking, however, the status of “something human” is primarily attributed to the trait in question and not to the animal, which would raise the issue of intentionality as an essentially nonhuman trait prior to its attribution. This paradoxical dynamic illustrates that it takes a synecdochical operation for the animal to be defined by one of its supposed traits, as one of a potentially infinite number of supposed traits comes to stand in for the animal as a being, which only then can be understood as a being with substance, with wholeness and, hence, with a legal identity. Yet, if wholeness, or better, an idea of wholeness, is a prerequisite for the law to forge an identity upon an entity, the categories two legs and four legs that inform the birds’ case expose the categories person and nonperson that sustain the expansive model as problematic. Body parts clearly cannot lay claim to wholeness without being subjected to a synecdochical operation. The legal fiction that they can may be visualized metaphorically as a “science fiction” of two legs or four legs walking around in a deserted landscape.

Within an expansive model, then, the law, through a conventional form of anthropomorphism, introduces a procedural synecdochical pars pro toto, which would potentially inform the granting of rights to an animal. The bypassing of the question of personhood, through its subsequent confusion of personhood with legal personhood, constitutes a strict form of anthropomorphism. This encapsulates yet another kind of conventional anthropomorphism, since rights are, or have been prior to the expansion of the model, strictly human. At the
same time, to qualify rights as traits as I have done now is problematic, since the animals that we are about to grant rights do not have rights prior to this attribution, do not possess those rights as traits. It begs the fundamental question in what sense an animal could be said to possess a trait, say, intentionality. It cannot. The trait of intentionality can only be attributed to the animal. For now, suffice it to say that what remains clear is that what is being attributed as a trait, whether it is intentionality or, subsequently, “rights,” serves to subject the entire entity, which points to another fundamental problem with the law’s identity politics; namely, its being centred on the illusion of wholeness, a matter I will explore in the chapters that lie ahead.

I have now distinguished three different forms of demarcation. First, the demarcation that operates on an absolute difference between the human and the animal. Within an expansive model this absolute difference is denied and within Animal Farm this difference is confirmed. In both cases, however, the absolute difference between the human and the animal appears to be sustained through the performance of a categorization of difference that imagines a continuum between the human and the animal. Second, there is the demarcation problem that surfaces once the laws of Animalism are installed. Here, there is still an absolute difference between the human and the animal while the potential for reading the ground rule “All Animals Are Equal” as animals being entitled to rights, just as much as humans, is not completely cancelled out. Third, there is the form of demarcation that follows from the amended ground rule of Animalism: “All Animals Are Equal But Some Animals Are More Equal Than Others.” It is here that within the category Animal the absolute difference between the human and the animal repeats itself as a gradual distinction between higher and lower life forms. On the one hand, we can now recognize this gradual distinction as a necessary element in the categorization of difference that sustains the overarching divide between the human and the animal as absolute. On the other hand, this gradual distinction invites us to explore the way in which demarcation between animals might come about.

As Sheryl N. Hamilton has observed in her reviews of Canadian and American patenting cases, this issue is no longer merely a literary-rhetorical problem but has now turned into a practical and fundamental demarcation problem for the law as well. Let us, therefore, first pause a moment to reflect on this demarcation problem for the law as it stands today, in order to then read it through the lens of the rule that “All Animals Are Equal But Some Animals Are

83 Sheryl N. Hamilton, “Invented Humans: Kinship and Property in Persons.” In: Impersonations: Troubling the Person in Law and Culture (Toronto, Buffalo, University of Toronto Press, 2009), 105-142.
More Equal Than Others,” in order to address its implications for my specific concern with factory-farming.

5. Demarcation Between Animals

According to Sheryl N. Hamilton, since the rapid advance of technology in the last few decades made it possible to modify the genetic structure of animals and even to clone entire mammals, there has been a growing public unease about our place as humans in the natural order of things. This unease is coupled with a legal anxiety over which animal life forms the law should allow to be patented. Reviewing court cases in Canada and the United States over the last twenty years, Hamilton convincingly shows that this anxiety may be attributed to the fact that the question of bio patenting, the patenting of life forms such as plants and animals, opens up the prospect of patented human life, which forces the law to think through the concept of an invented human being that can be owned and controlled.

To many of us this seems a horrifying idea due to the Frankenstein connotation it bears and not least because it inevitably calls to mind the Nazi experiments on humans during the Second World War. More principally, from a juridical point of view, the prospect of a patented human being would upset the mutually exclusive terms property and person that have marked the juridical scene since the official abolishment of slavery and the advent of human rights. Hence, the patenting of animal life, if legally permitted, for example for medical research, seems to demand a sturdy legal framework that can fend off the prospect of a patented human life if we want to avoid the haunting prospects of the past to return. It forces the law to flesh out a renewed and absolute demarcation of the human from the animal, but also to secure a demarcation within the category animal itself.

As Hamilton observes, these demarcations are more troublesome than ever before, precisely because the biological differences between the human and the animal hardly hold any currency since the advance of biotechnology. Indeed, Hamilton proposes that since the law can no longer resort to a biological vocabulary for demarcating the human from the animal the only obstacles to patenting human beings have become ethical and legal. Without wanting to rehearse Hamilton’s entire argument, the general thread in the court cases on patenting animals she discusses is that the law considers the highest life form the human being, whose commodification under patenting is viewed as an affront to human dignity. To protect this human dignity the law then tries to establish a
demarcation between higher and lower animal life forms whereby only the latter category may be subjected to patenting.

If this seems a logical procedure to ensure that the law does not set the precedent for the future commodification of human beings, the demarcation between higher and lower animal life forms presents us with yet another problem because, as I observed before, animals bear no dignity, which makes it impossible, first, to repeat the demarcation between the human and the animal within the category animal. Second, because if the biological boundaries between the human and the animal are already blurred, the demarcation between different animals cannot be accommodated within a biological vocabulary either. This problem of establishing a steady ground for demarcation within the category animal is evidenced by the general tendency within the court cases Hamilton discusses to present the demarcation between higher and lower animal life forms as self-evident, without being able to resort to arguments that hold sufficient scientific rigor to appear non-arbitrary.

In view of my immediate concern with factory-farmed animals, let us now use the amended ground rule of Animalism that “All Animals Are Equal But Some Animals Are More Equal Than Others” as a heuristic tool to explore whether the typical manner in which the law attempts to demarcate between higher and lower animal life forms in patenting cases can shed a different light on the exceptional status of factory-farmed animals as arguably lower life forms because of the way they are treated.

The patenting case that Hamilton presents as installing the demarcation discussion on higher and lower animal life forms was *Diamond v. Chakrabarty*. In 1971, the microbiologist Anandan Mohan Chakrabarty applied for a patent on a genetically modified bacterium that was potentially very useful for cleaning up oil spills. After the patenting office refused his application he successfully appealed to the United States Supreme Court, which, in 1980, decided to grant the patent. As Hamilton observes:

> The court found that the bacterium, as a living organism, was a composition of matter, and therefore a human-made invention. Microorganisms were more akin to chemical compositions than complex organisms, the justices felt. (113)

The description of lower animal life forms as “a composition of matter” that we encounter in the above citation appears to be a persistent element in all the other court cases Hamilton discusses. Effectively, the tendency of courts has been to register lower life forms as “composition of matter” in contrast to higher life
forms, which are typically more complex. The criteria courts put forward for showing enough complexity to qualify as a higher life form rather than as a “composition of matter” recur in a similar manner in all the subsequent cases Hamilton discusses. On the one hand, an animal is generally qualified as a higher, complex life form whenever science appears to be unable to fully control and reproduce the life form without an element of unpredictability. On the other hand, an animal is generally qualified as a lower life form whenever it can be produced and reproduced en masse because of its uniform properties and characteristics.

In this respect, I propose that we now read the amended ground rule of Animalism that “All Animals Are Equal But Some Animals Are More Equal Than Others” in a most literal manner. The animals that are ‘less equal’ are qualified as the lower life forms because they are more equal; that is to say, they are more uniform than other animals. The point here is not that such a categorization obviously must remain an arbitrary affair because, as we have seen, the law cannot operate in a non-arbitrary manner. Rather, the point is that the demarcation within the category animal here does not primarily rely on the nature of the animal in question but on the way it can be treated by technology. Furthermore, in light of the Belgian lobster case and my subsequent contemplation on the practice of lobster farming, the relatively recent optimization of the factory-farming of lobsters illustrates that this demarcation line has the potential to shift upwards because it is correlative to the advance of technology. In short, if lobsters used to be considered to be too complex for factory-farming because of the element of unpredictability cannibalistic lobsters introduced, this problem has now been overcome with a technology that monitors and controls lobsters at each and every stage to prevent their cannibalizing one another.\(^8^4\)

This focus on treating the animal rather than on the supposed nature of the animal is always also a performative treating, a speaking about animals as lower life forms that becomes most apparent when we zoom in on the practice of factory-farming. The fact that pigs, cows and poultry, for example, are genetically engineered, produced and reproduced in horrifying conditions that cannot bear the light of day seems to have everything to do with the way they can be treated and talked about as uniform production units and, hence, as lower life forms. In this sense, factory-farmed animals are on the same side of the demarcation line as the bacterium mentioned before. The literal invisibility of

bacteria is paralleled by the invisibility of factory-farmed animals in the public domain. And the technology that installs this treatment is as much a technology of science as it is a technology of language, which invites us to register language as a performative technology, a matter I will discuss in detail in my final chapter.

The point here is that if the level of complexity that animals are granted is installed through both a rhetorically operative technology and a technically operative rhetoric, the prospect of the patented human being continues to haunt us, not in spite of but because of the fact that our demarcations of animals into higher and lower life forms are installed by technology. The stage in which this anxiety is played out in our time is the practice of factory-farming, because it is here that a legal framework complements this technological rhetoric and rhetorical technology. This legal framework registers those animals as lower life forms through the consistent state of exemption that animal cruelty laws install. This effectively works to contain this anxiety by rendering the actors on the stage invisible. Such invisibility is not just a literal invisibility that withholds the practice of factory-farming from the public’s eye to avoid the exposure to the cruelty that factory-farmed animals suffer. Rather, it may very well concern the more specific avoidance of the exposure to their genetically engineered bodies and life spans. This would call on us to rethink the traditional category of the animal and hence, the human by working through the haunting prospects of the past. In other words, the problem of the incomparable cruelty factory-farmed animals experience is not primarily a legal problem but an ethical problem that requires an ethical solution. This ethical solution must begin by recognizing that the invisibility of factory-farmed animals in our time requires us to think through our place in the order of things if we want to face up to the taboo on factory-farming that the prospect of the patented human being installs.

We have now seen that Animal Farm enables us to address the urgent juridical problem Hamilton attends to in light of the patenting discussion in a literary-rhetorical way. More specifically, the problem of demarcation between the human and the animal that has taken on a new sense of urgency in light of the law’s focus on the demarcation between lower higher life forms has appeared to repeat itself within the category animal. Contrary to what might be expected now that the traditional biological vocabulary for demarcation has fallen flat, this repetition of difference has appeared to be not simply a matter of philosophical categorization but the result of allegorical readings that are sustained through different tropological operations. At the same time, reading Animal Farm as an allegory of the expansive model has raised our awareness to the change the concept of the farm has undergone. This change is marked by a
vast quantity of animals being qualified as other than animal, both within the strictly legal, technological rhetorical and rhetorical technological sphere.

6. Reflections on Allegory and Allegoresis

What makes *Animal Farm* of interest from a literary point of view and in the context and frame of juridical decisions is that it criticizes the allegorical reading strategies and the demarcation problems that follow from it through the very rhetorical mode it chooses, the allegory. In a sense, then, *Animal Farm*, whether read as the traditional allegory it has come to stand for, or as an allegoresis of animals suffering from harm on a farm, defies its own rhetorical logic and thereby the contents of its own mode of representation. In short, as readers we are invited to read allegorically but the text itself problematizes this attitude by offering a meta-reflection on the mode that sustains it.

In this respect, we may now observe that I have distinguished three different forms of allegorical reading. First, the metaphorical reading that has appeared to be sustained through conservative and strict forms of anthropomorphism. Second, the allegorical reading that is sustained synecdochically, whereby the part, the trait that is attributed, comes to stand in for the whole in order to forge an identity upon an entity. Third, the allegorical reading that pushes both of the previous forms to their limits and radicalizes them as a non-propositional form of naming, which is what happens, for example, when the name of the Farm shifts from *Animal Farm* to Manor Farm. Since allegory is generally defined as only the first of the tropological forces I have distinguished, namely as a sustained metaphor, I will now contemplate the implications of my findings on allegorical proceedings for my allegoresis of *Animal Farm*. The aim here is to see if we can tease out some of the structural problems allegorical reading poses for the law and its demarcation problem by doing justice to the complexity of the tropological dynamics involved in its readings of difference in terms of the correspondence of entities to predefined categories. Let us, therefore, begin with a brief reflection on how allegory is traditionally understood.

In literary theory, allegory is generally conceived of as a text in which the agents and actions, and sometimes the settings as well, are contrived to make coherent sense on the literal or primary level of signification and, at the same time, to signify a second correlated order of signification. Hence, allegory is the qualification of a text whereby the relation between the text and its meaning is assumed to be fixed. Here we can distinguish: (a) the political-historical allegory
and (b) the allegory of ideas. The allegory *Animal Farm* offers a mixture of both, because the consensus as to what it is about leaves plenty of room for drawing either concrete or more abstract parallels. As a political-historical allegory its characters and actions literally come to represent or “allegorize” historical persons and events; for example, the pig Napoleon – the cruel and paranoid leader of the animals – represents the historical figure of Stalin. If we choose to read *Animal Farm* as an allegory of ideas, the characters represent concepts and the plot allegorizes an abstract doctrine or thesis. Within such a reading the horse Boxer might stand in for the working class, depicted by Orwell as loyal and hard working, but also – rather unflatteringly – as stupid.

As I mentioned in my introduction, however, my particular reading of *Animal Farm* has been an allegoresis rather than an allegory, in the sense that I have not assumed the relation between the text and its meaning as fixed and thus as corresponding to one another. Rather, my interpretation of *Animal Farm* as a story about animals that wish to protect themselves from harm has challenged the traditional reading of *Animal Farm* as a story about the Cold War. By implication, the element of correspondence that a fixed relation between text and meaning is reliant upon has also been compromised. Yet, my reading of *Animal Farm* as an allegory of the expansive model still invokes a suggestion of correspondence between, for example, the laws of Animalism and the expansion of human rights under an expansive model. This would suggest that I have merely substituted one system of correspondence with another. This inescapable allegorical element in my reading, however, is different from the traditional allegorical reading of *Animal Farm* as a story about the Cold War because it has operated alongside this reading, rather than substituting it. More than that, it has been necessary to have the traditional allegorical interpretation of *Animal Farm* resonate throughout my interpretation to position the discussion on factory-farming in a (bio) political framework under globalization.

86 For an exemplary case study of *Animal Farm* as a political historical allegory and as an allegory of ideas see: Harold Bloom: *Animal Farm, Bloom’s Modern Critical Interpretations* (New York: Chelsea House Publications, 2009). See also the Cliffs Notes study guide to *Animal Farm*, in which Orwell’s comments on *Animal Farm* in a foreign language edition are paraphrased as follows: “Orwell says his main intention was to show how false the popular idea was that Soviet Russia was a socialist state: he wanted to save socialism from communism,” 9-10. In fact, throughout these Cliffs Notes we find the interpretation of *Animal Farm* as the allegory it is famous for, as might be illustrated with the following passage: “The two-year plan for building the windmill, and subsequent plans, are, of course, reminiscent of Stalin’s Five-Year Plans,” 24. David Allen in: *Cliffs Notes on Orwell’s Animal Farm* (Lincoln: University of Nebraska, 1999).
This persistent notion of correspondence in my reading can be attributed to what Sayre. N. Greenfield has suggested elsewhere, namely that the distinction between allegory and allegoresis remains fundamentally “untidy.” This untidiness stems from the fact that both allegory and allegoresis are conceptually indebted to a reading of a literal or primary order of signification which corresponds to a second correlated order of signification. This element of correspondence effectively registers the text *Animal Farm* as a code, as a communicative device with metaphor as its structural property waiting to be deciphered through procedures of decoding. In short, the allegory *Animal Farm* carries the suggestion that there is a fixed relation between text and meaning because it poses as a communication system within which the text is only momentarily veiled by an encoding as its drowsy metaphor awaits awakening. Yet, a supposed correspondence in the text must always be “measured” by texts that operate outside of the allegorical space it installs. Hence, the longstanding success of the allegory *Animal Farm* is not primarily to be attributed to the skilful way in which correspondences are woven into the text, but to a widespread consensus that is forged through external texts that cohere and that are invested with authority. In this respect, doing justice to the story requires a heightened awareness of the fact that *Animal Farm* acquires its meaning in no other way than by differing from other possible interpretations of the same story, whether those be literal, allegorical, political or no matter what. This relation of difference brings about a fundamental arbitrariness as to what the text supposedly is (all) about, in spite of the consensus that *Animal Farm* is a story about the Cold War.

For heuristic purposes, I would like to start with qualifying this consensus – operating, as it were, outside the story – as a macro encoding, and the parallel characters and events – operating inside the story – as a micro encoding. The text on the back cover of my pocket edition clearly falls within the first category. It does not sketch a developing narrative, introducing characters and the unfolding of events, but limits itself to spelling out the allegorical code in unmistakable terms:

First published in 1945, Animal Farm has become the classic political fable of the twentieth century. Adding his own brand of poignancy and wit, George Orwell tells the story of a revolution among animals of a farm, and how idealism was betrayed by power, corruption and lies.  

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Encountering a macro encoding on a back cover might be a first indication we are dealing with a story that has acquired the status of allegory. The fact that the story’s ending is given away is a second indication, as an allegory cannot bear open endings, unless it states it has an open ending. In short, the suspense in *Animal Farm* does not rely on the whodunnit variety, but on how it is done. By implication, the only space for the imagination the macro encoding leaves, is for its micro encoding – the personified characters, the historical events – to be interpreted in terms of adequacy, accuracy, or, if it were a play, by the quality of the performance. In other words, the consensus on what *Animal Farm* is about, its allegorical status, does not concern the story itself, since it does not thrive on an actual or factual correspondence between historical events and the events in the story. Rather, it is a consensus on the code that directs us towards how the allegory it has come to stand for should be interpreted.

In this way, *Animal Farm*’s macrocode activates a semantic field of precision and accuracy that can only be measured by assuming a higher, imaginary objectivity. And the dynamic that works to reduce the readers of *Animal Farm* to ideal readers who interpret the characters, events and settings in both allegorical models, in terms of correspondences between a primary and secondary level of signification, is the same dynamic that helps judges to read the expansive model. The reading procedure – once exhausted – comes to substitute the story and eventually reduces the story to ever shorter summaries until only its title, the name *Animal Farm* or, alternatively, *Human Person* is left as the epitaph of a story on the brink of dying out. The issue here, as I deduced from my exploration of the demarcation problems that patenting cases pose for the law, is that if *human person* is a name on the brink of dying out, in that it does not correspond to its traditional definition anymore but becomes subsumed under the sphere of materiality, the traditional definition of the animal must also be under strain. This issue directs us to what has been conceptualized as the ornamental mode of allegory.

According to Craig Owens, allegory’s ornamental quality is a historical mode that accommodates a preservative impulse. Angus Fletcher distinguishes two further manifestations of this preservative impulse, namely allegorical syncretism and allegorical synthesis.

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Syncretism may be icono-graphically distinguished from synthesis, insofar as the former preserves the individual traits of the combining beliefs, whereas the latter would achieve a radical transformation of disparate cultural forces, until a single set among them came to dominate and control the assimilation of other sets as minor premises in the logic of the culture as a whole. (43)

In an effort to go beyond the commonplace explanations for why allegorical syncretism at times has appeared to out-favour allegorical synthesis, Fletcher inquires into possible motives for the occurrence of allegorical syncretism by making the following educated guess:

A higher motive, which is harder to define, is the conciliatory and accommodating desire to permit a diverse world of many faces and characters. This motive comes into play when rival world views meet at their borders, when the opposite impulse would, as with iconoclasm, seek to destroy the rival iconography. Allegory here becomes a diplomatic medium of thought. (44)

I take my cue from Fletcher, here, to contemplate the possible tension between allegorical syncretism and allegorical synthesis in *Animal Farm*. As an allegory of ideas, *Animal Farm* warns against the tyranny after revolution, resulting from the clash between the rival systems of capitalism and communism meeting at their borders. Reading *Animal Farm* from within a system in which the clash between communism and capitalism has been succeeded by an intensification of our biopolitical situation under the hyper capitalistic world of globalization, the preservative impulse *Animal Farm* accommodates can be said to condense in the concept of the farm. The “farm” in our globalized society denotes: “A place for breeding a particular type of animal or producing a specific crop.”[^91] In other words, today, a farm generally deals with one species only and is categorized accordingly by the singular species name it has been allotted, say, either a cow- or pig- or chicken farm.

The farm in *Animal Farm*, however, is crowded with many different animals, whilst some of them, for example the cat or the crow, are not kept for breeding at all. In short, in its ornamental mode *Animal Farm* paints a picture of a past no longer existent and testifies at the same time to the way in which the concept of the farm has changed dramatically in the same decades that have

witnessed a stepping up of the animal rights debate within a globalized world. Moreover, the fact that there are many animals on *Animal Farm* accommodates a preservative impulse in yet another way; it offers a perspective in which metaphor, whether or not sustained, is not the prevailing paradigm, simply because the animals do not stand in for something else as they cannot be subsumed under one name. Hence, the ornamental mode of allegory here directs allegory away from a discussion on metaphor and metaphoricity towards how things we now take for granted were done once and not so long ago. The comparison between the farm only half a century ago and the factory-farm today that *Animal Farm* instigates through its preservative impulse, not only demonstrates a major change in our relations with animals, then, but may also offer a changed perspective on the relation between human beings and animals, both within the collective imagination and within the modern juridico-political and scientific-philosophical understanding of this relation. This change manifests itself within an expansive model because it is based on a scientific discourse that understands the difference between humans and animals as no longer defined in absolute terms.

If the advance of science increasingly leads to a blurring of the boundaries between the human and the animal and if the expansive model is only one of the symptoms that makes this changing relation manifest, this can only be understood against the background of a biopolitical framework that has now moved into the area of separating not the human from the animal but life from life, whereby “equality” has appeared to take on a whole other connotation or, in a sense, is taken to its extreme. This I identified previously as the totalitarian streak of factory-farming. At the same time, this extreme notion of equality opens up to a different outlook on the place of human beings in the order of things, since it also affords a fragile basis for demarcation since the traditional framework that opposes the human to the animal is no longer in place. In this light, the practice of factory-farming calls upon us to rethink the way in which our traditional demarcation of the human from the animal relates to the way we envisage our current demarcation policies and the criteria that sustain those policies within the animal rights debate today, an issue I will explore in the next chapter.

7. Conclusion

A predominantly spatial understanding of the expansive model has provided me with a framework for an allegoresis of the allegory *Animal Farm* through a focus on the figure of harm. This has allowed me to explore the ways in which
an expansive model allows harm to topple over into cruelty and has allowed me to gain a better understanding of the element of cruelty within animal cruelty laws today. My close reading of Animal Farm has resulted, that is, in a better understanding of the way in which conceptualizations of truth and arbitrariness are framed within an expansive model. With respect to this issue, it has become necessary to further distinguish between a conservative and strict form of arbitrariness. The conservative form of arbitrariness bespeaks a supposed subjectivity, as opposed to an objectively defined truth, informing juridical judgement. The strict form of arbitrariness is concerned with the putting in place of categories without as yet acting upon those categories. When it comes down to real acting, the kind of arbitrariness involved might be defined differently, namely as taking arbitrary but responsible decisions. The practical demarcation decision has appeared to be neither a “demarcation,” nor a “decision,” but rather to constitute an act of naming.

My effort at reconciling the theoretical demarcation problem with the practical demarcation decision has demonstrated that demarcation is always a performative act that creates difference. In order to be effective it masks itself as constative as it invokes a difference that it poses as always already there prior to the practical demarcation decision, whereas this difference, which is meant to justify the practical demarcation decision, is only installed through this performative act. In short, it seems as if the problem with which Animal Farm starts, a situation in which the difference between humans and animals is such that the first are protected from harm and the latter not, is transposed to the animal world where the same conflict repeats itself. In other words, it seems that solving one demarcation problem automatically invokes another, which provokes the danger of an endless regression to be met by endless repetition. This shows that the practical demarcation decision can never be legitimized through a theoretical demarcation problem.

Reading the expansive model as an allegory, I have identified its macrocode as the negation of an absolute difference between the human and the animal. The expansive model has not just turned out to be a model one can choose to read allegorically, as I assumed in the opening chapter, but as a model characterized by such a profound allegoricity that any attempt at reading it differently immediately results in blowing it up, which is what happens when (the relevance of) its parameters are called into question. Since allegorical reading lays an implicit claim to a conservative form of arbitrariness – to objectivity as opposed to subjectivity – I have scrutinized the way in which this binary might relate to the cruelty that the expansive model incorporates. This strategy has proved an adequate tool for exploring both the construction of
authority within the expansive model and the way in which this construction relates to its identity politics.

My allegoresis of *Animal Farm* as an allegory of the expansive model has demonstrated that the expansive model sustains the parameters of the human and the animal as relevant parameters by operating on an unwarranted categorization of difference. Consequently, I have attempted to move away from those parameters and this categorization of difference and explored the way in which our qualifications of the interactions of trope might play a decisive role in sustaining the parameters of the human and the animal. This exploration has opened up the possibility of reading these interactions differently, which has appeared to destabilize these parameters in that they are no longer to be taken as given.

With regard to trope and its interactions I must now observe the following: In this chapter I have demonstrated that within an expansive model it is a conventional act of anthropomorphism, which is encapsulated by a strict form of anthropomorphism, that makes an entity qualify as a person. At the same time, I have ultimately come to understand the attribution involved in such a conventional act of anthropomorphism as performing a synecdochical operation, whereby the part (the trait that is attributed) comes to signify the whole, the entity, first as a person (conventional) and then as a *legal person* (strict). The synecdoche has appeared not just to work as a neutral figure of speech that can be identified in any given text. Rather, it has become clear that as a trope it is charged ideologically, because it presupposes that the substitution of part with whole and vice versa is possible. This ideological charge comes into play once the trait attributed as a “human trait” comes to signify the whole, the entity, as human. Thus, the nonhuman entity, the nonperson, acquires its wholeness only at the stage at which it transfers into (human) person. In other words, the entity, amorphous, unknown, nonperson, loses itself in the human, regaining a wholeness it never possessed. It is this loss that comes to determine its identity as a person.

The question as to how I can envisage animals as the potential subject of rights has been approached from a perspective that understands the expansive model not as primarily concerned with this issue at all, but with “doing justice” to what I have come to identify as its macrocode: the academic consensus that there is no absolute difference between the human and the animal. This framework has allowed me to renew my provisional qualifications of harm and cruelty. More specifically, my exploration of the dynamics of the first toppling over into the latter led to yet another outlook on cruelty, as I have now developed the notion of a poetic cruelty to point to a fundamental cruelty, both
within and outside of the expansive model. In the next chapter, the question of how a preoccupation with cruelty, as I have now come to understand this term, should inform a different juridical model, a model with a different identity politics, will be addressed by examining the capacity on which proponents of animal rights predominantly build their case, the capacity animals share with humans, namely their capacity to suffer.
III

Victimhood and Identification

Demarcation through Calculation

Elephants in the Zoo

in the afternoon
they lean against
one another
and you can see how much
they like the sun.

(- From Charles Bukowski: The Pleasures of the Damned)

1. Introduction

In March 2014, the Washington Post published an article titled “If You Were a Crustacean Would You Feel Any Pain?”92 The question form here is intriguing. It conveys an appeal to the readers to make some sort of imaginative identification with crustaceans by putting themselves in their place in order to make sense of the possibility that crustaceans might suffer. One of the two photographs included in the article showed a lobster with the following subtext underneath: “some people are repelled by the idea of cooking a lobster alive or the practice of tearing claws from live crabs before tossing them back into the sea.” The other photograph shows a couple eating a live octopus at a festival in Seoul. The subtext underneath the latter photo runs as follows: “An evolutionary neurobiologist in Texas has found that octopuses show much of the pain-related behaviour seen in vertebrates.” In short, what the reader is asked to imagine is not merely if crustaceans can suffer but if they might suffer as a result of the way we treat them when we use them for food.

In the remainder of the article the intriguing appeal conveyed in the heading proves to be somewhat misleading. Rather than inviting us to make an imaginative identification with the crustaceans under discussion the article highlights the latest scientific but still very controversial advances in the field of evolutionary neurobiology. As one of the commentators succinctly puts it: “researchers are either certain the animals feel pain or certain they don’t.” What appears to be at stake in all the experiments on animals that are mentioned in the article is that the traditional demarcation line between vertebrates and invertebrates, whereby the first are considered to be able to suffer and the latter not is under considerable strain. In the article Antoine Goetschel, an international animal law and animal ethics consultant, is quoted as saying: “The global food industry farms or catches billions of invertebrates every year. But unlike their vertebrate cousins, they have virtually no legal protection. Early on in my career I realized that when the law speaks of animals, it does not mean invertebrates.”

However true this statement, in light of my exploration of the legal protection of the vertebrate animals in the factory-farming industry in the previous chapter, we can surmise that the significance of establishing that lobsters, for example, can feel pain, will not matter a great deal for the categorical exemption that befalls factory-farmed animals. More importantly, it seems highly unlikely that the traditional demarcation line between vertebrates and invertebrates will be upset indefinitely any time soon, precisely for the exclusive scientific approach concerning the question of suffering. This is evidenced by the note on which the article ends and which conveys that, in spite of the advances in science, the controversy around the question of animals and their susceptibility to suffering might be potentially endless because, as the author of the article, Tamar Stelling, puts it: “We are ultimately up against the problem of consciousness. Like all subjective experience, pain remains private to each individual, leaving us only with educated guesses.”

In short, the scientific framing of animal suffering reaches a limit when it comes up against trying to measure the conscious experience of pain through experimenting on animals. This scientific approach is arguably quite different from trying to imagine, as the header invites us to do, what it is like to be a crustacean. For this reason, in this chapter I will attempt a serious examination of the question that is posed in the heading and focus on the issue of suffering as a tool for demarcation by trying to imagine other ways of identifying with the victimhood of animals and the pain they might suffer. To this end, I will begin my exploration by reflecting on a famous text by Jeremy Bentham that put the
question of suffering on the animal rights agenda and that continues to inspire the modern animal rights debate.

2. Bentham’s Legacy

About two centuries ago, Jeremy Bentham (1789) suggested that the question of whether animals can suffer might come to inform future deliberations on their position as subjects of rights. At least, that is my – deliberately modest – interpretation of his most famous footnote, a text that I choose to present here, at the beginning of this chapter as it will be of central concern to the development of my argument. This is what Bentham stated:

The day may come when the rest of animal creation may acquire those rights which never could have been withheld from them but 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?93 (Italics and capitalisation in the last sentence in text.)

What I want to do in this chapter is to examine the specific way Bentham’s footnote translates to today’s animal rights debate. Indeed, today, Bentham’s commitment to suffering has been embraced as a central idea in a variety of manners by theorists at the forefront of the animal rights debate, and although there are many important differences and nuances to be signalled in those diverging positions, what ties them together is the general and prevailing idea that essentially nonhuman animals share with human beings a “capacity to

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suffer” and, therefore, deserve consideration and possibly even some juridical protection from harm.94

The problem with this Bentham inspired reasoning, however, especially in light of the provisional distinction I made between harm and cruelty in the first chapter, is that it seems to provide a philosophical basis for either more animal cruelty laws and its concurrent categorical exemptions or for an expanding of the juridical model to include at least some nonhuman animals within the regime of personhood. In both cases this generates the different types of cruelty that a juridical model centred in personhood presents. If in the previous chapter I explored the logic of exemption from outside an expansive model, here, I will focus on the cruelty that would flow from including at least some nonhuman animals within an expansive model. This cruelty, let us recall, consists of the arbitrary and wilful neglect of those entities not granted personhood and in a poetic cruelty that stems from including animals within a model that masks their hierarchical subjection by presenting itself as a system of equality. The paradox is clear: if such an expansive model necessarily involves harm toppling over into cruelty, a cruelty, furthermore, which was not characteristic of the model prior to its expansion, how can arguing in favour of expanding the model for at least some nonhuman animals be reconciled with a sincere commitment to the question of suffering. In the previous chapter I answered it cannot. In fact, if my initial framework was centred on the heuristic premise that the animal rights debate was not so much committed to the question of suffering as such, but primarily concerned with conforming to the macrocode of the expansive model, my subsequent exploration of the demarcation problem has demonstrated that there are also no scientific grounds for assuming the expansive model stems from a commitment to the question of suffering.

In this chapter, however, I wish to move away from this rather unsatisfactory kind of moral claim, as one might simply choose to either disagree or agree, which would not further my project. I will do so by exploring what a commitment to the question of suffering might entail, not by understanding the question of suffering in terms of our measure of the capacity to suffer, but by looking at how what we consider objects of suffering come to be identified through our constructions of their victimhood. In short, if any concern with the suffering of animals necessitates some sort of imaginative identification with their victimhood, it is my aim to explore the way in which literary and legal trajectories construct victimhood and how those trajectories inform and sustain one another. The questions that need to be answered, then,

94 I am referring here to the animal rights field in general but also specifically to the works of Peter Singer, Tom Regan and Martha C. Nussbaum that I have discussed before.

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are, first: What has happened to Bentham’s commitment to suffering to make it take on such a paradoxical stance within the animals rights debate today? Second: How can we refurbish the question of suffering in such a way that it can inform a future juridical model without incorporating the types of cruelty we are faced with in an expansive model?

My basic premise here is that the way in which the modern animal rights debate has “embraced” Bentham’s question relies on a problematic interpretation of Bentham’s question as a radical turning away from Kant, who, as is well known, defined rationality as an essentially human asset, marking an absolute difference between the human and the animal. Since it will be my aim to challenge this modern line of thought I choose to explore two crucial Kantian citations from an entry by Lori Gruen in the Stanford Encyclopaedia of Philosophy. It adequately reflects how the modern day utilitarian and animal rights positions on criteria for suffering are perceived as radically different from Kant’s focus on rationality. Roughly, what becomes clear from Gruen’s discussion of the modern day perspective on suffering is that pain (and not primarily rationality) exerts a moral force. By implication, those nonhuman animals who suffer have some sort of moral standing. If this line of thought indeed appears to be a radical turn away from Kant, the fact that Gruen in her entry points out that a contemporary Kantian like Christine Korsgaard suggests that we have moral obligations towards animals because we can recognize their expressions of pain, may be a first indication that the modern day focus on the capacity for suffering is not so radically different from Kant’s focus on rationality. Indeed, the fundamental problem that underlies the various modern positions on the experience of pain that Gruen discusses, cannot offer a way out of the underlying demarcation problem an expansive model poses. The notion of pain serves as an alternative to Kant’s rationality, which is required, but at the same time pain is still defined as a moral force. This does not suffice, as I will explore in an alternative notion of pain in what lies ahead.

My exploration of the relation between our modern understanding of Bentham’s question on suffering and the Kantian position on rationality starts, then, with the crucial Kantian passages that Gruen cites, from respectively The Groundwork for the Metaphysics of Morals (GMM) and Lectures on Anthropology (LA):95

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[...] every rational being, exists as an end in himself and not merely as a means to be arbitrarily used by this or that will [...] Beings whose existence depends not on our will but on nature have, nevertheless, if they are not rational beings, only a relative value as means and are therefore called things. On the other hand, rational beings are called persons inasmuch as their nature already marks them out as ends in themselves. (Kant, GMM, 428)

The fact that the human being can have the representation “I” raises him infinitely above all the other beings on earth. By this he is a person [...] that is, a being altogether different in rank and dignity from things, such as irrational animals, with which one may deal and dispose at one's discretion. (Kant, LA, 7, 127)

Admittedly, the fact that Bentham in his famous footnote explicitly rejects, not just skin colour, but also “rationality” as a valid touchstone for distinguishing absolutely between the human and the animal, makes it rather difficult not to consider Bentham’s rejection as a response to and a turning away from Kant. At the same time, however, I propose that this interpretation has successfully preempted any suggestion of reading today’s interpretation of Bentham’s question as a mere substitute of Kant’s capacity for rationality; that is to say, as just another way of cutting the divide between the human and the animal. This is why the possibility of reading today’s interpretation of Bentham’s commitment to suffering as a substitute of Kant’s position on “rationality” will inform my reading against the current notion of suffering. The reason for this strategy is that it seems to me rather odd and therefore meaningful that such a reading has not really taken place. One reason for this negligence might be that such a reading would run the risk of significantly downplaying the achievements in the animal rights debate by Bentham inspired theorists so far. This, of course, is not my intention. My focus is exclusively on reading against today’s interpretation of Bentham’s commitment to suffering as wholly different from Kant’s preoccupation with rationality, because I look at the modern interpretation of both philosophers’ positions as the result of this tendency I have come to qualify as a categorization of difference.

On the one hand, according to Kant, the human capacity for rationality distinguishes the human from the animal in absolute terms. On the other hand,

modern animal rights discourse has translated Bentham’s commitment to suffering as a capacity to suffer, which implies that if an animal can suffer it can no longer be distinguished from the human in absolute terms. In other words, whereas Kant’s capacity for rationality installed a species-specific difference, the capacity to suffer within modern animal rights discourse is centred on a cross-species sameness. In short, if Kant poses species as *same* but *different* in one aspect, namely rationality, Bentham is considered to have posed species as *different* but *same* with regard to the aspect of suffering. It is here that I identify a categorization of difference informing the interpretation of both philosophers’ positions within today’s animal rights debate. This interpretation, because it exclusively focuses on the difference between both philosophers, bypasses the question of what both philosophers have in common; namely, first, a problematic and unshaken commitment to a capacity, either for rationality or for sufferability; and secondly, a taking for granted of species as an essentialist construct. Hence, the reading against the capacity to suffer I propose to undertake not only has to work out a renewed commitment to the question of suffering, but will also have to explore the notion of species as other than an essentialist construct if such an attempt wants to succeed.

In order to work out a renewed commitment to the question of suffering, I return to the heuristic vocabulary on harm and cruelty developed in the previous chapters. This is not a straightforward return, but marked by an important difference. Instead of a further deliberation on harm and cruelty, I choose not to return to what separates harm and cruelty, but to explore what I take to be their common denominator: pain. This notion of pain seeks to unsettle the dominant way Bentham’s commitment to suffering has been taken up by philosophers – most notably, Singer, Regan, Rachels and Derrida – at the forefront of the animal rights debate today, namely as in one way or another heeding a discussion on which nonhuman entities should be entitled to a form of moral consideration through a consideration of their supposed capacities, characteristics and/or subsequent bioethical status. It is of vital importance, however, to understand my concern with pain as only a first step towards gaining a different outlook on the notion of suffering, and not as a concept meant to substitute the capacity to suffer in any way. Hence, I am not concerned, here, with re-addressing the problem of cruelty, but with an attempt to momentarily put off and circumvent this problem to the extent that my notion of pain helps me get away from the vocabulary within which a commitment to suffering, in its guise as a “capacity to suffer” is generally registered. For this reason my notion of pain must remain essentially open to further definition. This openness serves two purposes. First, it enables me to momentarily circumvent
the problem of demarcation a modern animal rights discourse centred on a capacity to suffer ultimately will have to engage in. Second, using the notion of pain as I intend to do “safeguards” the question of suffering from being swept away in the process. Thus it allows me to address and renegotiate it in what lays ahead, as any sense of pain can hardly be thought without some notion of suffering.

Let me now explain my deeper motivations for reading against the capacity to suffer as I propose to do and clarify the way in which my strategy fits into my overall project by putting the modern interpretation of Bentham’s question in its relevant context. First, I suspect a strict reliance on the “capacity to suffer” might breed its own exclusionary politics as it gives way to isolating a concern for animals from a concern for other nonhuman entities, isolating the so-called animal from the rest of existence. One might, for example, respectively ignore the wilful neglect of a rainforest by cutting down its trees or stop feeding animals wholly dependent on one’s care for their well-being, which is what happens in Animal Farm after Jones takes to drinking. Within a strict appliance of the modern Bentham-inspired notion of suffering as an exclusive capacity to suffer, and not as a systemic neglect, it would most likely follow that only the animals not being fed would qualify as having the capacity to suffer. This is not to suggest that, given my heuristic definition of cruelty as a wilful neglect, the trees under discussion suffer and should now be attributed rights as well. Rather, my point is that the notion of suffering as it is currently taken up, cannot adequately deal with such questions and therefore must be renewed. In fact, it gets even more complicated as my particular example here concerns animals on a farm, whose suffering within today’s factory-farming practices is generally not acknowledged to the same degree as, say, the suffering of pets, but made subordinate to other (socio-economic) interests.

Second, and perhaps more profoundly, my atypical concern with reading against the “capacity to suffer” stems from a need, at this stage of my project, to explore the odd logic that underlies the embracing of the question on the capacity to suffer by those at the forefront of the animal rights debate. This odd logic becomes most apparent in the work of Singer, Rachels and Derrida and, to a lesser extent, in the work of Tom Regan and Martha Nussbaum. For Regan, the capacity to suffer is not enough to belong to a moral community, as he stresses the additional importance of also being “a subject of life.” Nussbaum has developed what to me seems a much more refined and complex “capabilities approach.” This approach, however, softening a lot of rough utilitarian edges, evokes the same kind of rhetoric I seek to get away from in that it is still about “measuring” and not so much about other ways of identification with nonhuman
others. In my view, it is a valuable “practical ethics,” based in an aesthetic notion of flourishing, but as such not suitable to my project as it does not radically think through its own modes of identification.

The odd logic that connects the key texts of the theorists mentioned above holds that a presumably real concern for the protection of animals from harm – after a long and intellectual debate on animal rights – has led to the general embracing of a central (and, to me, rather disappointing) question about whether animals have the “capacity to suffer.” It is not that I would be in favour of more complex criteria, far from it, but having looked into the problems the expansive model poses, most notably in respect of its insistent demarcation problem, I cannot but conclude that the embracing of this question and the concurrent championing of its simplicity by those at the forefront of the animal rights debate is not supported by arguments that hold sufficient scientific rigor to unsettle its implicit rhetoric. The implicit rhetoric at stake holds that animals would not have to be protected from harm if they could not suffer in the first place. This brings the debate back, once again, to the question of what an animal is and what a human – as its traditional other. It is a question that, as has been demonstrated in the previous chapters, cannot be answered. In this respect, the question that first needs to be answered is not only how and why Bentham’s question on suffering as a capacity to suffer has been embraced so massively, but also which mechanism underlies this question’s subsequent justification.

Let me begin by explaining what I believe to be the mechanism underlying the embracing of Bentham’s question. The question of whether animals can suffer, once it enters the legal sphere, can no longer remain a question. It needs a rule to anchor it as a consequence in order to provide a solid ground for further classification. This anchoring changes the question, as it comes to assume a mystical unity with the rule suddenly imagined to be flowing from the question. This mystification consists of a blurring of the laws of causality with respect to the rule and the question by taking them together. This “taking together” transforms the question and grants it the status of a transcendental rule, giving birth to a self-inflicted sense of authority. The emergent rule could be envisaged as resembling the figure of the following rudimentary chiasmus: “No suffering no animal, no animal no suffering.” The problem with this rudimentary chiasmus is that it presupposes the animal by treating it as known and pretends to grasp the question of suffering. Conversely, it treats the question of suffering as known and pretends to grasp the animal.

Since we cannot have it both ways, the question of whether animals have the capacity to suffer appears to be incapable of grounding its own imaginary rule. This, in turn, implies that the rule, which is not really a rule, cannot ground
the question either, let alone be at one with it. In other words, Bentham’s elegant question seems to be hijacked by those who embrace it, whereas Bentham never laid down a rule, but simply asked a question. Hence, the question as to whether animals can suffer, when translated to the modern legal sphere as the touchstone of their capacity to suffer, presupposes the unknown as known, which turns Bentham’s question into a question to measure the immeasurable. Of course, there are empirical tests that measure suffering and that seemingly have proved, beyond reasonable doubt, that certain animals – especially those whose capacity to suffer has often been disputed, such as fish and lobsters – can actually suffer. My point here is not to downplay these important scientific achievements, in spite of the lingering question of consciousness and the accusation of anthropomorphism and hence, of the critique of being unscientific that cannot be shaken off and that such research will continue to come up against. Rather, I wish to argue that this mechanism of measuring can only be sustained through the evocation of the figure of the animal – and, consequently, of its traditional other, the human – as transcendental parameters from which can be extrapolated at will in order to effect such measuring. Hence, the legal interpretation of Bentham’s commitment to suffering as a capacity to suffer reduces the notion of suffering to a scientific matter of measuring which, as the figure of the rudimentary chiasmus demonstrates, does not offer a way out of the demarcation problem and the types of cruelty it installs.

This is why my renewed commitment to the question of suffering wants to escape this scientific capacity to suffer by probing the way in which victimhood might be constructed through the open figure of pain. Reading against today’s central notion of the capacity to suffer in this way, as no longer embedded in a rhetoric of sameness or difference between the species, I wish, by no longer understanding difference conceptually, to work towards a dissolution of the kind of identity thinking that the expansive model, with its parameters of the human and the animal and its Bentham-inspired notion of suffering, relies upon. The key texts in this chapter are: Peter Singer’s “All Animals are Equal,” taken up in his *Applied Ethics* (1986)97 and George Orwell’s “Shooting an Elephant,” (1936).98 Close reading Singer’s text will allow me to identify the key terms that conceptual differences manifest themselves in when it comes to the question of suffering. In my subsequent close reading of George Orwell’s “Shooting an Elephant,” these key terms will serve as heuristic tools to read against the

modern interpretation of the question of suffering as a mere capacity to suffer. As my argument develops, I will use and elaborate on the relevant work in the field by, amongst others, Rachels and Derrida, theorists who have struggled with the question of suffering in ways that may be particularly fruitful for my project.

Let me now start by examining Singer’s “All Animals are Equal” and identify the specific stakes involved in his notion of a Bentham-inspired “Practical Ethics.” The reason I choose to refer to Singer’s text from his Applied Ethics as “Practical Ethics” depends not just on the semantic similarity between the terms. Rather, I wish to point out that the passages of this text are a literal reproduction of those in his book Practical Ethics, which was published seven years before, in order to illustrate the importance of this text within Singer’s wider philosophical argument.99

3. The Practical Measure of Suffering

In “All Animals are Equal,” Singer stresses the viability of the capacity to suffer as a unique touchstone and takes Bentham’s famous footnote as a point of departure. Before moving on to discuss Singer’s position via a close reading of some of the key passages in his text, it is worth noting that my close reading will be different from the many other close readings and critiques this text has provoked over time. This difference lies in the fact that I intend to focus on the capacity for suffering as a unique touchstone, rather than on the principle of equality. Indeed, without wanting to rehearse the particularities of all those critiques of Singer’s “All Animals are Equal”, the general tendency has been to critique the principle of equality rather than the capacity for suffering and then to treat the capacity for suffering as a secondary problem only once the principle of equality, in the specific way that Singer envisages it, has been deemed untenable.100 One of the most lucid critiques on the principle of equality Singer adheres to has been provided by Richard J. Arneson,101 for instance, whose position resonates with many other critiques on this principle. Roughly, Arneson finds fault with Singer’s main argument that, given the incommensurability of intellectual capacities between humans and animals, we must judge the latter’s

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100 For a valuable overview of these and related critiques and responses by Singer see: Peter Singer Under Fire: The Moral Iconoclast Faces His Critiques, Volume three, ed. Jeffrey A. Schaler, (Illinois: Open Court, Chicago and La Salle, 2009).
moral standing different but never superior. Yet, as Arneson observes, this implies that humans are not equal either but have different interests as well, which would undermine the fundamental moral equality of all human beings and hence, the very principle of equality itself.

Again, my focus concerns the capacity to suffer, not the issue of equality. This is what Singer says with regard to Bentham’s famous footnote:

In this passage Bentham points to the capacity for suffering as the vital characteristic that gives a being the right to equal consideration. The capacity for suffering – or more strictly, for suffering and/or enjoyment or happiness – is not just another characteristic like the capacity for language, or for higher mathematics. Bentham is not saying that those who try to mark ‘the insuperable line’ that determines whether the interests of a being should be considered happen to have selected the wrong characteristic. The capacity for suffering and enjoying things is a pre-requisite for having interests at all, a condition that must be satisfied before we can speak of interests in a meaningful way. (221)

Singer states an entity cannot have interests worthy of our consideration if it lacks the capacity for suffering and/or enjoyment. In order to stress the priority of this capacity over any other possible capacity, he mentions two examples he, at best, considers secondary and, as such, unfit to provide a basis for moral consideration: the capacity for language and, somewhat grotesquely, the capacity for higher mathematics. In my view, Singer’s preoccupation here with having interests and his subsequent choice for those two examples to support his argument is meaningful, because together they project the scope of a Kantian outlook on rationality. In short, if Kant argued that rationality bears a causal relation to having interests, and thus constitutes an absolute difference between the human and the animal, the two examples Singer mentions convey the range from a minimum to a maximum deployment of such rationality.

In this respect, Singer’s comment registers Kant’s conception of rationality as itself a gradual phenomenon. Hence, Singer’s substitution of Kant’s rationality with the capacity to suffer as a touchstone for having interests draws on attributing the capacity to suffer a similar gradual quality that his examples ascribe to Kant’s rationality. The only real difference is that Kant positions his touchstone between and Singer across the species. In other words, what unites Singers interpretation of Bentham with Kant is not the specific capacity posed as a viable touchstone, but a prioritizing of which entities can be said to have interests and, whilst each draws the line in a different place, an
implied holding on to the notion of species as an essentialist construct that is sustained through a categorization of difference. In what follows, I will argue Singer’s Kantian mindset infects his practical ethics in a way that does not open up to dealing with the problem of cruelty and its implied notion of suffering because of the peculiar way Singer holds on to the notion of species as an essentialist construct.

Having made his point on the capacity to suffer, Singer makes a strong case for extending equal consideration to animals sharing this capacity:

My aim is to advocate that we make this mental switch in respect of our attitudes and practices towards a very large group of beings: members of species other than our own – or, as we popularly though misleadingly call them, animals. In other words, I am urging that we extend to other species, the basic principle of equality that most of us recognize should be extended to all members of our species. (216)

In the passage above, Singer introduces the basic principle of equality, which is presented not as factual equality but as a moral idea, as equality of consideration. This is a valuable idea, because it would allow – although this is not specifically advocated by Singer – for reading the expansive model as the extension of a moral principle to animals by way of the attribution of rights, if not the exact same rights, which, from a practical point of view, would be nonsensical anyway. This basic principle of equality, however, if not committing Singer to extending moral consideration through the attribution of rights, also informs Singer’s conception of speciesism. For Singer, speciesism is a violation of this basic principle of equality if moral consideration for other species would be denied on the basis of their lack of any other capacity or characteristic than the capacity to suffer.102

The theoretical problem with Singer’s definition of speciesism is that it still poses humanity as a homogeneous group. Contrary to the general line of critique against Singer’s principle of equality, I consider this homogenizing move problematic, because it installs the human species as a distinct species from the animal species, which suggests Singer here applies his own brand of what may be called a “strategic speciesism”. A further and more practical problem arises with Singer’s positioning of the capacity to suffer as a strict condition for extending moral consideration to essentially nonhumans. This condition, to be justified, requires some form of measurement and the

subsequent exclusion of those entities not granted the capacity to suffer. This is how Singer proposes to solve the problem of measuring:

No matter what the nature of the being, the principle of equality requires that its suffering be *counted equally* with the like suffering – in so far as *rough comparisons* can be made – of any other being. If a being is not capable of suffering, or of experiencing enjoyment or happiness, there is nothing to be taken into *account*. This is why the limit of sentience (using the term as a convenient if not strictly accurate, shorthand for the capacity to suffer or experience enjoyment or happiness) is the only defensible boundary of concern for the interests of others. To mark this boundary by some characteristic like intelligence or rationality would be to mark it in an arbitrary way. Why not choose some other characteristic, like skin colour? (222, italics mine, BV)

The problems such measuring poses become apparent in the first two lines of the citation. On the one hand, extending the moral principle of equality requires that suffering be counted equally, with the like suffering of any other being, but, only in so far as rough comparisons can be made. Admittedly, this contradiction between “counting equally” and “rough comparisons” has a lot to do with Singer’s wish to be practical, as Singer must be well aware suffering cannot be counted equally, if it can be counted at all. Suffering itself is of paramount importance however, otherwise there is no “account”. With respect to this, the point here is, however, that the question of suffering need not and indeed *cannot* be attributed to a concern with practical ethics alone. In other words: solving the problem of measuring by relegating it to a matter of practical ethics also points to the notion of the capacity to suffer as intrinsically problematic for the extension of moral consideration towards other beings. More than that, apart from the problems such measuring poses and of which the vagueness of Singer’s argument seems but a symptom, the underlying ethical issue is not so much resolved, but avoided and reduced to a matter of calculation, which leaves us with the impossible exercise of working out the numbers.

In fact, in close reading Singer, it appears that his position on the relevance of Bentham’s question if animals can suffer as different from drawing an insuperable line on the basis of any other capacity or characteristic, results from interpreting Bentham’s footnote in a particular way. Singer understands Bentham’s famous footnote to point to the capacity for suffering and enjoyment, what Singer refers to as sentience, as constituting the insuperable line. Yet
Bentham never mentions enjoyment. As we can learn from the third sentence of his footnote, he only asks whether sensitive beings can suffer:

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.

In other words, if we stick to Bentham’s text, there is, in principle, no reason to understand it as conveying the capacity for enjoyment as a complementary criterion to the capacity to suffer. In this respect, we could also choose to follow up on Bentham in a more literal manner and understand the word “sensitive” as denoting: “quick to detect or respond to slight changes or influences,”

103 in the way, for example, that spiders are said to be “sensitive” to vibrations of their web. Such an understanding of sensitivity in Bentham would complicate the notion of suffering and enjoyment Singer insists on in a significant way, because it opens up the possibility of taking into consideration movements and reactions that cannot be narrowed down or grasped by interpreting them as testifying to a capacity for suffering or enjoyment. It is not that I want to propose a new demarcation line here. Rather, I wish to point out that such an alternative notion of sensitivity would require us to rethink what, within the context of Singer’s criteria, would still have to be qualified as a merely mechanistic reaction. Hence, it would expose the way in which Singer’s insisting on the capacity to suffer and enjoyment installs this other sensitivity as irrelevant to the cause of rethinking animal subjectivity.

I read Singer’s reductive rhetorical move here as indicative of the problems with his practical ethics, and I read Bentham’s refraining from mentioning the capacity for enjoyment as conveying a clear understanding of the problems such a complementary qualification would pose. Indeed, introducing the capacity for enjoyment, we might not just have to count suffering but also enjoyment equally, whereas one could imagine enjoyment to be a phenomenon much harder to detect or define than suffering, as it might be done in perfect silence or “experienced” after the fact, as a result of something commonly referred to as reflection. Conversely, looking at enjoyment in this way also points back to suffering as something that may very well go beyond immediate physical pain, as something that can be experienced in silence and be brought on by reflection as well. But, where “reflection” comes in, one cannot help being reminded of the Kantian touchstone of rationality, which would immediately

upset the whole idea and call into question the capacity to suffer as a unique touchstone.

With respect to this issue, the trouble with Singer’s practical ethics becomes still more apparent in the last sentence of his comment: “to mark the boundary in any other way than by the notion of sentience, would be to mark it in an arbitrary way.” As I see no reason not to, I understand this figure of non-arbitrariness here in its conservative sense. This would imply that Singer claims that his posing of the capacity to suffer is to mark an insuperable line in a non-arbitrary way. Any other (arbitrary) way of (de)marcation, like skin colour, would have to be condemned as speciesism. In other words, Singer, following up on Bentham, here explicitly repeats the comparison between what in Bentham’s footnote was still left somewhat unarticulated and what Singer – via Ryder – has popularized; namely, the comparison of racism with speciesism as a similarly discriminate affair. He does so in claiming that the accusation of speciesism would be justified if the insuperable line were any other than the capacity to suffer. In other words: species that lack the capacity to suffer may be ignored (then “there is nothing to be taken into account”).

I wish to momentarily leave aside here the contradictory move Singer makes by first claiming that his Bentham-inspired touchstone of the capacity to suffer “is not just a matter of putting forward another characteristic and drawing an insuperable line,” to then end up stating that posing any other characteristic as a boundary would be a form of speciesism. What I want to do first is examine this notion of speciesism or, better, the accusation of speciesism, and the way in which its explicit comparison with racism works here, apart, of course, from the bleak connotation it transfers to speciesism. In order to do so, I read Singer’s notion of the capacity to suffer as the posing of an insuperable line resulting from a Kantian mindset. Within such a framework, if an animal is attributed the capacity to suffer, its protection from harm, whether by moral consideration only or by the granting of rights as well, is motivated by a claim to sameness. In short, its suffering is somehow considered to be of the same order, of the same kind, corresponding to or congruent with the like suffering of human beings. However, since I concluded that any appeal to sameness between the species installs a categorization of difference, the question becomes, firstly, how does this categorization take effect here and secondly, what sort of difference might be at stake? These questions can best be addressed by looking at the notion of speciesism and its rhetorical relation to racism, which could schematically be framed as follows:
The accusation of racism can be countered theoretically by the fact that race does not “exist” other than as an essentialist construct. What the racist and the speciesist have in common, then, is that they might be accused of discrimination, which is only a general term. The accusation or condemnation of speciesism, however, cannot be countered satisfactorily by referring to species as an essentialist construct, because Singer’s framework presupposes species in a different way than racism presupposes race. The accusation of speciesism presupposes the human vs. the animal species as essential and homogeneous categories, measuring all the different essentially nonhuman beings by the category of the human species, whereas racism remains an inter-human affair.

The implications of this difference become clear from the following comment, which I take to be exemplary of Singer’s framing of speciesism as bound up with the sort of categorization of difference I seek to get away from:

In this respect, the distinction between humans and nonhumans is not a sharp division but rather a continuum along which we move gradually, and with overlaps between the species, from simple capacities for enjoyment and satisfaction, or pain and suffering, to more complex ones.

(227)

In the above passage we encounter a condensed form of the sort of categorization of difference that my reading of Animal Farm presented. The fact that the different animals could all communicate with each other, but only the cleverest ones, the pigs, with the humans, categorized their differences as both absolute and gradual. Stressing this analogy, however, does not serve a critical purpose in itself. My point is that the analogy here works differently, because it exposes how the insuperable line of the capacity to suffer needs the idea of speciesism to extend the moral principle of equal consideration and, possibly, although not explicitly advocated by Singer, expanding the domain of rights to include animals. Conversely, if the accusation of speciesism is reliant on posing the capacity to suffer theoretically as a non-arbitrary demarcation line, in order to extend a moral principle, its implied concept of species is dependent on the essentially human set against its traditional other, the animal. This strategic speciesism, comfortably nesting itself within Singer’s own discourse, by insisting on the parameters of the human and the animal, fails to open up to a
vocabulary that can offer a way out of the constraints of the expansive model. More than that, its strategic nature suggests it might also turn against itself. This is why I wish to move away from any discourse that allows for the term species to be signified by the accusation of speciesism. At the same time, I do not wish to drop the term species altogether, as it is simply there and I can and do not wish to make it go away.

This is where I differ in a fundamental way from Derrida, who, at the end of the first chapter of *The Animal That Therefore I Am*, coined the word *animot* to remind us that what we generally refer to as animal effectively denotes a multiplicity of different beings that cannot be subsumed under a species concept:

I would like to have the plural *animals* heard in the singular. There is no Animal in the general singular, separated from man by a single, indivisible limit. We have to envisage the existence of “living creatures,” whose plurality cannot be assembled within the single figure of an animality that is simply opposed to humanity. (47)

Derrida’s neologism *animot*, then, opens up the problematic of designating an incredible variety of creatures by the name animal. It does not, however, open up space for addressing the concept of species(ism). Rather, it leaves it intact as a biological determinate because it is primarily concerned with its object. This is why, instead of following up on Derrida’s wider argument, which will be discussed in my final chapter, I would like to deal with speciesism head on by reading it differently, namely not as a biological determinate, but both much broader and narrower. In order to do so, I turn to a meaning that may be derived from the Spanish “*una especie,*” which denotes the typical biological construct under discussion, but which in everyday speech also connotes “kind” or “sort,” or “sort of,” as in “I feel kind of/sort of blue” or “it’s a kind of/sort of magic.” Here, the term species takes on the quality of non-specificity, which provokes an identification that is not an identification, the grammatical equivalent, if one can put it that way, of simile: the simile “like.”

The object of comparison, however, the “with” with which it is being compared escapes essence, as it is only suggested and then falls back; it seems to almost incarnate in the “like.” This different reading of species, drawing attention not to possible objects of comparison but focusing on the comparison itself, opens up to speaking in terms of heterogeneity and difference instead of classification by homogeneous categories and thus allows for coming to terms with difference in a way speciesism as a biological determinate cannot. It opens
up to a framework that might grasp, by not grasping, the idea that a racehorse differs more from a workhorse than a workhorse from an ox, although I could mention an infinite amount of other examples, whereby I would not have to limit myself to “animals.”\footnote{An example I feel at liberty to cite from Deleuze and Guattari (in \textit{A Thousand Plateaus}, p. 257), whose work on “becoming animal” will be touched upon in chapter 4.}

Effectively, my argument here on not treating the term species as an essentialist construct per se resonates with that of Louise Economides, who has elsewhere drawn on Deleuze and Guattari’s theories of multiplicities and becomings to demonstrate that modern animal rights discourse cannot but adhere to an ethical individualism that cannot do justice to the question of the animal, if only, because animals’ identities are shaped by the collectives within which they live. In contrast to Economides, however, I do not so much wish to challenge the notion of species as an essentialist construct in animal rights discourse by drawing on the immanent multiplicities and heterogenetic structures that shape embodied beings. Instead, the focus on language itself brings me to the point that it would now become possible to talk about these “horses” as other than members of a species and to work towards other modes of identification with their victimhood without necessarily having to give up on the word species.\footnote{See: Louise Economides, ‘Romantic Individualism, Animal Rights and the Challenge of Multiplicity’: <http://www.rhizomes.net/issue15/economides.html>.

Before I move on to explore these other modes of identification, there is one more paradox to be solved. If, on the one hand, Derrida has coined the word \textit{animot} to escape the classification of the animal under a species concept and, if I have, on the other hand, suggested that the capacity to suffer must be read as an insuperable line, since it is bound up with maintaining the concept of species as a biological construct, why is it, then, that Derrida seems to embrace Bentham’s notion of suffering in the same way as Singer does, i.e. as wholly different from the insuperable line of rationality Kant once proposed? A possible answer might be that Derrida stresses the importance of understanding the notion of suffering not as a capacity, but as an ability. Can they suffer, Derrida argues, amounts to can they not be able. This is what Derrida states:

\begin{quote}
Once its protocol is established, the form of this question changes everything. It no longer simply concerns the \textit{logos}, the disposition and whole configuration of the \textit{logos}, having it or not, nor does it concern more radically a \textit{dynamis} or \textit{hexis}, this having or manner of being, this \textit{habitus}, that one calls a faculty or “power” this can-have or the power one
\end{quote}
possesses (as in the power to reason, to speak, and everything that that implies). The question is disturbed by a certain *passivity*. It bears witness, manifesting already, as question, the response that testifies to a suffering, a passion, a not being able. “Can they suffer?” amounts to asking can they not be able? (27, italics in text)\(^{106}\)

This “passivity argument,” however poetic and true, does not convince me for two reasons. First, because it constitutes a negation that opposes activity to passivity, which seems hardly relevant to the question itself since suffering is not by definition a passive undergoing that cannot be resisted or overcome. A picture of salmons swimming upstream, laying their eggs on the shore only to die of exhaustion comes to mind. Those salmons might be said to suffer all right, but not to *passively* undergo their suffering. Admittedly though, Derrida might be referring to a more fundamental vulnerability, in which case his observation seems quite right. But even if this is the case, Derrida’s connecting of the question of suffering with the notion of passivity within the specific context of the animal rights debate rather unfortunately links the animal to the notion of passivity, thereby feeding into the worn-out stereotypes in which the traditionally other, the animal, has been registered in ways unfavourable to both animals themselves and to the cause of those human beings that have been compared to animals in history. Second, because Derrida’s “passivity argument” treats Bentham’s broader idea of what Singer termed sentience in very much the same reductive way as Singer does. The only difference is that it occludes the idea of enjoyment and blurs the idea of measurement in an arguably more creative manner, namely by rhetorically weaving in the notion of passivity against the so-called activity of potential other capacities. Third, because Derrida’s notion of passivity is questionable in so far as it resides with the question-form itself and not with the notion of suffering such a question might be *about*, which is what I am after. Moreover, if Derrida argues that the supposed *passivity* the negation instigates makes the question of the capacity to suffer stand out as not just any characteristic, I would suggest conducting a thought experiment and replacing it with the capacity to sleep or, for that matter, to stay awake, which, in line with Derrida’s specific terminology here, can hardly be called a capacity either, as one cannot not be able to stay awake or sleep.

I have now looked into what I have come to regard as Singer’s and Derrida’s reductive measure of Bentham’s valuable commitment to suffering. This brief exploration has opened up the prospect of looking at the animal as a

\(^{106}\) Ibid, supra note 35.
heterogeneous other, defying species qualification. In addition, it has outlined the formulation of a new semantics on the subject of species itself. It has demonstrated that today’s embracing of Bentham’s commitment to suffering as a capacity to suffer, is not a radical turning away from Kant, but that it may be read as a modern day substitution of Kant’s idea of the human being as a rational being. Since my analysis has shown such a reading to be unwarranted, because of the strategic speciesism it installs, I will now move away from the capacity to suffer and its implied species concept by returning to the common denominator of both the figure of harm and cruelty, which I have addressed as pain.

There is, however, one important caveat to be made here, since my heuristic notion of pain as a force that binds harm and cruelty makes me liable to the accusation of installing a categorization of difference myself, substituting, as it were, suffering with pain. In order to avoid this trap, I propose to read pain not as a minimum but as a maximum ground; not just as physical or mental pain, but both as a scientific, linguistic and aesthetic phenomenon that involves literary and other creative strategies, as a common de-nomin-ator to be taken most literally, in that it names both harm and cruelty by a taking away (de) of their name (nomen). If this requires reading pain differently from the way modern animal rights discourse reads the capacity to suffer, namely as an exclusive capacity that ought to be measured scientifically, it also suggests this exclusive capacity to suffer cannot be excluded altogether since such would amount to a substitution. This is why I will start by exploring the position of pain and where it stands scientifically today in order to account for the way in which this standing relates to the immediate purpose of my project.

James Rachels, who has written extensively on ethics and animal right issues, explains the scientific notion of pain and its relation to the animal rights debate as follows:

The question of which other animals feel pain is a real and important issue, not to be settled by appeals to common sense. Only a complete scientific understanding of pain, which we do not yet have, could tell us all that we need to know. In the meantime, however, we do have a rough idea of what to look for. If we want to know whether it is reasonable to believe that a particular kind of animal is capable of feeling pain, we may ask: Are there nociceptors present? Are they connected to a central nervous system? What happens in that nervous system to the signals from the nociceptors? And are there endogenous opioids? In our present state of understanding, this sort of information, together with the obvious
behavioural signs of distress, is the best evidence we can have that an animal is capable of feeling pain.  

Rachels here establishes his basic point on pain by building up a confident picture of what we can know about pain. His argument resonates with Singers, despite the fact that his denial of an appeal to common sense in favour of a more thorough scientific approach somewhat downgrades Singer’s description of a practical ethics concerned with measuring equally what can only roughly be compared. Rachels adds:

Relying on such evidence, some writers, such as Gary Varner, have tentatively suggested that the line between animals that feel pain and those that do not is (approximately) the line between vertebrates and invertebrates. However, research constantly moves forward, and the tendency of research is to extend the number of animals that might be able to suffer, not decrease it. Nociception appears to be one of the most primitive animal systems. Nociceptors have now been identified in a remarkable number of species, including leeches and snails.

The presence of a perceptual system does not, however, settle the question of whether the organism has conscious experiences connected with its operation. We know, for example, that humans have perceptual systems that do not involve conscious experience. Recent research has shown that the human vomeronasal system, which works through receptors in the nose, responds to pheromones and affects behaviour even though the person is unaware of it. [...] The receptors for “vomerolfaction” are in the nostrils, alongside the receptors for the sense of smell; yet the operation of one is accompanied by conscious experience while the operation of the other is not. (12)

If, as Rachels points out, we have not yet come to a full scientific understanding of pain, it would only be fair to say that a scientific understanding of pain has its

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own limits, both scientific and non-scientific. Not just because science, as Rachels argues, never halts and always tends to move forward, but also because there is a limit to what we can know through science. This latter point seems to be illustrated in the last sentence of the above citation, which stresses the undecidability of questions of the conscious experience of pain in what, from a scientific point of view, are “identical receptors.” This fundamental undecidability, this liminality of science, allows me to substantiate and wrap up my argument on moving away from the capacity to suffer as an exclusive capacity towards an all-encompassing notion of pain that is and must remain open and essentially before definition. In order to do so, I propose to momentarily carry out another thought experiment through a contemplation of what might happen if we really did substitute the capacity to suffer with Kant’s capacity for rationality.

If today, roughly two ages after Bentham’s famous footnote, the capacity for rationality is attributed to a larger and still growing number of nonhuman animals as scientific research into the capacities of animals has improved and because it is improving all the time, there is, in principle, no reason not to suspect the capacity for rationality might eventually come to equal or even outgrow the numbers now attributed to the capacity to suffer. In other words, and contrary to what Singer claimed, the capacity to suffer is not a unique demarcation line but, as a capacity to be measured scientifically, will always install other limits because it is defined as an exclusive capacity in Kantian vein. Keeping this in mind, and having established why moving away from such an exclusive capacity to suffer is important to my project, I will now embark on my close reading of George Orwell’s “Shooting an Elephant.” The aim of close reading this intriguingly dense text is, first, to explore its constructions of identity and victimhood by examining how those constructions are produced by, and infected with, the parameters of the human and the animal through a rhetorical interaction with the key figures that I have now identified within my close reading of Singer, those of racism and speciesism. Second, my aim is to explore the way in which working with the heuristic notion of pain I have developed might challenge those constructions. Third, I will explore how the genre choice – do we read the text as an autobiographical essay or as an allegorical story of colonialism – affects the construction of the victimhoods at stake.

In George Orwell’s “Shooting an Elephant,” the protagonist, an autobiographical representation of Orwell himself, is a police officer with the British Raj in Moulmein, now Myanmar, Burma, who is recalling what he refers to as a “tiny incident in itself.” In short, he is rung by a sub-inspector at the other end of the town and informed that an elephant has gone “must” and if he could please come over and “do something about it.” “Orwell” transports himself to the other end of the town, is confronted with the horrible sight of a man killed by the elephant and, not really wanting to, but spurred on by the locals, ends up shooting the elephant.

In my view, the ways “Shooting an Elephant” presents the overt racism within the British Raj, although undoubtedly a harsh reality at the time, does not appear particularly shocking. This might be attributed to the distancing effect of the time and place in which the story is situated. Similarly, the postcolonial cliché, however true, that colonial powers acted out a racist ideology, in a sense breeds the idea of racism as just the kind of thing one would expect to encounter when reading about a colonial police officer recalling his experiences within the British Raj. Given this distancing time lapse and the fact that we have now “officially” moved into a postcolonial era, then, it would seem only fair to suggest the text, despite the clinical way it registers racist attitudes and mindsets as part and parcel of everyday life under imperialism, does not have such a chilling impact on the reader today as it might have done around the time of its publication. The relevance of providing arguments for what seems rather obvious, this lessened impact, is that it also suggests that the undeniably shocking impact of the story does not rest with the usual suspects, but must reside somewhere else, a matter I wish to explore in what lies ahead.

Not uncommon either, is how this colonial racism is forged textually, namely by an insistent linking and comparing of the local humans to animals throughout the text. This issue has been taken up in a great many (post)colonial readings of “Shooting an Elephant.” In those readings, however, the text is generally framed as an autobiographical essay that can be read as an allegory of (post)colonial imperialism, whereas I intend to consider either genre choice as optional only for exploring the relation of genre choice to the construction of

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108 Whenever I put Orwell in quotation marks I am referring to the protagonist of the story and not to the author.
victimhoods in the text. To mention just a few examples of how colonial racism is installed through animalizing humans: Local prisoners are “huddling in the stinking cages” of the lock-ups, they have “cowed” faces, and those who pester “Orwell” are described as “little beasts,” which, excited about the possible killing of an elephant, “flock” out of their houses. The most conspicuous Human-Animal comparison, however, the site, as it were, where racism and speciesism meet, concerns the description of the confrontation of “Orwell” with the man trampled by the elephant. When “Orwell” arrives at the place where the elephant is last seen he struggles to get a clear picture of what has happened, to the point of doubting whether what he was told over the phone really happened at all. The locals he questions (he does not ask them) or who approach him, come up with strongly divergent narratives and none of it seems to make any coherent sense to him. Then, his doubts are at once taken away by a brutal experience:

I had almost made up my mind that the whole story was a pack of lies, when we heard yells a little distance away. There was a loud, scandalized cry of “Go away, child! Go away this instant!” and an old woman with a switch in her hand came round the corner of a hut, violently shooing away a crowd of naked children. Some more women followed, clicking their tongues and exclaiming; evidently there was something that the children ought not to have seen. I rounded the hut and saw a man's dead body sprawling in the mud. He was an Indian, a black Dravidian coolie, almost naked, and he could not have been dead many minutes. The people said that the elephant had come suddenly upon him round the corner of the hut, caught him with its trunk, put its foot on his back and ground him into the

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109 For the way in which “Shooting an Elephant” is generally taken up as an autobiographical essay in modern post(colonial) debates see for example: Paul Gilroy, *Postcolonial Melancholia* (New York: Columbia University Press, 2005). See also: Mohammed Sarwar Alam, ‘Orwell’s “Shooting an Elephant”: Reflections on Imperialism and Neoimperialism.’ *IIUC STUDIES*, Vol. 3 (December 2006): 55-62. In this text Alam states that: “The Shooting of the Elephant is the incident that reveals imperialism inflicts damage on both parties in imperialistic relationships.” (55). See also James Tyner in: “Landscape and the mask of self in George Orwell’s ‘Shooting an Elephant’.” (2005). *Area* 37 (2005): 260–267; <doi: 10.1111/j.1475-4762.2005.00629.x>. Tyner states that: “I contend that “Shooting an elephant” is not simply a polemic against British Imperialism; nor, for that matter, does the elephant signify the British Empire. Rather, Orwell employs the event as a more personal concern, namely as that of a loss of self in a de-humanizing landscape and the realization that with the masks of colonialism – and by extension whiteness – the colonizer likewise becomes non-existent.” Thus, Tyner arguably takes in a more nuanced position by questioning the notion of “self,” and all that this implies for our understanding of subjectivity and identity. Yet he does not radically pursue this question since he remains indebted to a reading of “Shooting an Elephant” as an autobiographical essay and, by consequence, as an allegory of imperialism.
earth. This was the rainy season and the ground was soft, and his face had scored a trench a foot deep and a couple of yards long. He was lying on his belly with arms crucified and head sharply twisted to one side. His face was coated with mud, the eyes wide open, the teeth bared and grinning with an expression of unendurable agony. (Never tell me, by the way, that the dead look peaceful. Most of the corpses I have seen looked devilish.) The friction of the great beast’s foot had stripped the skin from his back as neatly as one skins a rabbit. (3-4)

The suffering that the man in his dead struggle must have been subjected to is conveyed by linking him to an animal in two different ways. First, preceded by an uncanny clicking of the local women’s tongues, an almost photographic reference is made to his “teeth bared and grinning.” Second, the elephant has apparently stripped the skin from the man’s back “as neatly as one skins a rabbit.” In short, both descriptions address the victim as a subhuman animal-like being and, therefore, could be qualified as bluntly racist. This racism, however, can also be read as being made so explicit only to invite us to condemn it, in which case the comparisons under discussion would have to be read as constituent elements of the overall moral of the story; that is, expressive of the subhuman condition under which all subjects are living under the colonial imperialism “Orwell” despises so much.

Within such an allegorical reading we would, in all likelihood, qualify “Orwell’s” linking and comparing of the man trampled by the elephant to an animal as just another unfortunate feature of the condition of imperialism. At the same time, our possible moral indignation at the racist terms in which the man trampled by the elephant is registered would be deferred to, and brought in line with, “Orwell’s” moral judgement on colonial imperialism, which is presented as wrong, degrading, and perverting its subjects on either side. In fact, in the somewhat introductory second paragraph, notably before the encounter of “Orwell” with the man trampled by the elephant, this type of moral claim already seems to be hinted at, as “Orwell” explicitly attributes his own schizophrenic attitude to the condition he lives in as a servant of imperialism:

All I knew was that I was stuck between my hatred of the empire I served and my rage against the evil-spirited little beasts who tried to make my job impossible. With one part of my mind I thought of the British Raj as an unbreakable tyranny, as something clamped down, in saecula saeculorum, upon the will of prostrate peoples; with another part I thought that the greatest joy in the world would be to drive a bayonet into a Buddhist priest's guts. Feelings like these are the normal by-products of
imperialism; ask any Anglo-Indian official, if you can catch him off duty.
(2, italics mine, BV)

The overall moral of the story, condensed, as it were, in this introductory passage, seems to bear an overarching influence on the subsequent victimhoods constructed. Both the man trampled by the elephant and “Orwell” are presented as victims of imperialism and, as such, degraded to, respectively, a subhuman animal-like creature and a schizophrenic evil-spirited colonial officer. Conversely, let it be noted straight away, and gaining a different outlook on the constructions of their victimhoods, this might allow for questioning and upsetting the overall moral that is offered through the lens of “Orwell.” In this regard, let me first examine the way in which “Orwell” registers the victimhood of the man trampled by the elephant by zooming in on the specific way he relates the condition in which he has encountered the man to the condition of imperialism.

The man is described as lying down, flat and defeated, in a horrifying and disgraceful position. This description coincides with the word “prostrate,” which we already encountered in the passage from the introductory paragraph mentioned above, and which literally denotes: to put or throw flat with the face down. In other words, the description of the man trampled by the elephant harkens back to the overall moral conveyed in the introductory second paragraph. This textual dynamic makes the man trampled by the elephant take on an exclusive allegorical quality, as he is made to stand in for “all the prostrate peoples clamped down by the tyranny of imperialism.” If we follow this logic, the elephant comes to stand for the British Raj, which the protagonist will then try to kill. Consequently, the particular suffering of the trampled man is not addressed, but bypassed, and comes to function as a constituent element in the allegory of the condition of a beastly imperialism. This condition, however, – and this is the effect of the specific allegorical quality that is lent to the man through a subtle synecdochical operation – suddenly also implicates “Orwell,”

110 Etymology of the word prostate: classical Latin prōstrātus (adjective) lying flat, laid low, defeated, (noun) person lying prostrate, in post-classical Latin also (adjective) abject (late 2nd cent. in Tertullian), (noun) person who has been slain (Vetus Latina), uses as adjective and noun of past participle of prōsternere. Compare Anglo-Norman prostrat, Anglo-Norman and Middle French, French prostré (13th cent. in Old French), Old Occitan prostrat, Spanish postrado (mid 13th cent. as prostrado). Denotation of the word prostate: Of a person: lying with the face to the ground, in token of submission or humility, as in adoration, worship, or supplication; (hence more generally) lying stretched out on the ground, typically with the face downwards, OED 2012.

111 For an example of the way in which this line is typically read as allegorically conveying Orwell’s position under imperialism as equally clamped down by its tyranny see: Herman Lebovics, Imperialism and the Corruption of Democracies (Durham: Duke University Press, 2006).
because, in the second introductory paragraph, his schizophrenic mindset has already been attributed to the very same condition.

If we decide to follow up on the overall moral conveyed in this manner, the only difference between “Orwell” and the man trampled by the elephant, to put it somewhat cynically, is that “Orwell” just happens to take up a different position within the system. This position lends his victimhood an allegorical quality as well, as the last sentence of the passage indicates it is not so much “Orwell,” but, in another synecdochical operation, his job as any other Anglo-Indian official that is responsible for his schizophrenic attitude. Thus, reading this passage through the lens of “Orwell,” as we are invited to do, the victimhood of the man trampled by the elephant is presented as fundamentally identical to that of “Orwell.” The construction of this fundamental identical identity is reliant on not addressing both victims as bearing a particular agency, but as mere icons of the all-encompassing condition of imperialism that works to sustain the overall moral of the story. This begs the question whether the overall moral of the story sustains their victimhoods as fundamentally identical, or whether it is their fundamentally identical victimhoods that sustain the overall moral of the story, a matter I will explore in what lies ahead. At this stage, I only wish to establish that there seems to be a strong interdependency between the overall moral of the story and the victimhoods constructed as fundamentally identical. And yet, we clearly sense “Orwell’s” victimhood not to be identical to that of the man trampled by the elephant. To tackle this discrepancy, let me now look at both victimhoods up close.

The man trampled by the elephant is degraded to the status of an animal-like condition and left to function as a mirror, an object, reflecting not so much an object but a fixed condition, symbolically conveyed by literally being ground in the earth. Reduced to this fixed condition and stripped not just of his skin, but also of his individuality, the victimhood of the man trampled by the elephant, one might paradoxically argue, is sacrificed to the overall moral of the story. By contrast, “Orwell’s” schizophrenic, non-fixed condition, not just degrades him, but, as he expresses a high self-consciousness, a rather cunning awareness of his own state, bears witness to an extreme, albeit somewhat perverted, sophistication. Perverse, because he is wilfully prepared or disposed to go counter to what is expected or desired, but, at the same time, sophisticated, because he is aware of his own inconsistency. In short, if the condition of the man trampled by the elephant is conveyed in photographic, metaphorical or allegorical terms, literally as a picture of a dead animal-like being that the reader can control, take up and look at, “Orwell” acts out the ability or the astonishing
and almost superhuman capacity to construct, to narrate, to identify with and to reflect on his own suffering.

Taking this view, when read in terms of their ability to narrate their own victimhoods, the difference we sense between the man trampled by the elephant and “Orwell” might seem to disavow the fundamental identical identity they are administered through the overall moral of the story. Yet, because this difference can still be read as centred on a form of strategic speciesism implied within the operation of a categorization of difference, it does not upset the overall moral of the story and, hence, does nothing to prevent their victimhoods from being registered as fundamentally identical. In short, the fact that both men are momentarily registered as belonging to an absolute different order of species, the human and the animal, is counterbalanced by the gradual difference implied within the sheer contingency of their positions under imperialism. Consequently, addressing the different victimhoods we clearly sensed here in the way I just proposed does nothing to upset the idea of those victimhoods as fundamentally identical. This is why I will now attempt to read those victimhoods as fundamentally particular through an exploration of the way in which the victimhoods conveyed as fundamentally identical relate to the overall moral of the story, other than through the allegorical identity forced upon the victims. To this end, I will inquire into the specific narrative underpinnings of the overall moral of the story and attempt to break it open.

If there seems to be an interdependency between the construction of the victimhoods as fundamentally identical, on the one hand, and the construction of the overall moral of the story, on the other, both constructions are reliant upon following through the focalization position that is offered through “Orwell.” This focalization position not merely presents us with a neutral moral but, due to Orwell’s particular genre choice for the autobiographical essay, affords the focalizing party an implicit truth claim in the shape of a sort of first hand, eyewitness testimony. This particular quality invites an identification with “Orwell” as Orwell, making the story seem a genuine reconstruction of the facts experienced by Orwell and the moral delivered the result of its digestion by a moral authority, all the more reliable for not sparing himself in the process.

If the genre choice of “Shooting an Elephant” as an autobiographical essay plays an important role in “Orwell’s” ability to reflect on his victimhood, a strong indication the story is perhaps not as autobiographical as Orwell wants us to believe, might be the odd circumstance that the man, the mahout – the only person that can manage the elephant – has apparently set out in pursuit and is now twelve hours away. In my view, the conveyance of what seems to me an excessively long time lapse as a kind of insignificant, almost casual remark, is
just the kind of narrative strategy a good storyteller would use. It gets the mahout out of the way indefinitely and sets the stage for arranging the confrontation between “Orwell” and the elephant. The more fundamental point, however, is that this genre choice for the autobiographical essay facilitates the aforementioned rationalization of “Orwell’s” irrational mindset: as if “Orwell” reflects on Orwell, seemingly constructing thereby “Orwell’s” subjectivity as an overwhelming rational subjectivity; that is, a human subjectivity because it is marked by a superior capacity for rationality in the Kantian vein.

Yet, looking closer at the kind of rationality “Orwell” displays and at the way in which it is opposed to that of the man trampled by the elephant, exposes “Orwell’s” rationality not to be so Kantian at all. Rather, it should be qualified as a sensitivity, sharply contrasting with the “naturalized” insensitiveness of the dead man. At the same time, this sensitivity can no longer be considered sophisticated, but must now be registered as a very limited sensitivity, as it only concerns “Orwell’s” measure of his own victimhood. The strategic speciesism that registers the victimhoods of “Orwell” and the man trampled by the elephant by way of a categorization of difference here turns against itself, because the insensitiveness afforded the man trampled by the elephant makes it seem as if he does not have the capacity to suffer. In other words, the capacity for rationality has been substituted with a capacity to suffer, whilst nothing has changed in terms of their victimhoods being conveyed as fundamentally identical. It begs the question how “Orwell” measures his own victimhood, if his “rational” register is not suitable to the task?

In the moral-conferring passage from the introductory second paragraph, “Orwell’s” feelings oscillate between the capacity to suffer from rage and hatred and the capacity to enjoy the prospect of driving a bayonet into a Buddhist priest’s guts; the capacity, that is, to enjoy the suffering of others. In short, “Orwell’s” identification with his own victimhood is marked by a fusion of the elements of joy and pain, which seems to disable his capacity to engage in the measurement of his victimhood as different from the other victims at the scene. This fusing of joy and pain not just hints at “Orwell’s” inability to move beyond his own victimhood, it also suggests that joy and pain are especially unfit as categories for the measurement of victimhood; not just because their susceptibility to fusion defies the illusion of measurement and the feasibility of their status as separate capacities, but also because, adopted as categories for measurement, they appear to almost inevitably narrate “the rational human being” in a strategically speciesist manner, in the final instance, as the only relevant parameter. As long as these elements are understood as concepts or as
categories, the factor ‘joy’ ranks higher, more human, than pain, as long as pain remains understood as a minimum ground.

There is a striking analogy here with the allegorical reading in the extra-juridical context of “Shooting an Elephant,” on the one hand, and the allegorical construct of an expansive model on the other. In both cases, the rational human being is hierarchically installed through a reductive reading of pain as a mere capacity to suffer as the animal (like) other is not allowed its own discursive space. This parallel is significant because it points to the expansive model’s reliance on an exclusive capacity to suffer as taken up with a strict understanding of the legal order as a moral order. The point here is that if I have now further refined the possibilities for distinguishing between the victimhood of the man trampled by the elephant and “Orwell,” by exposing his rationality as a poor sensitivity, these differences still remain caught up within a strategic speciesism and with the capacity to suffer as a distinguishing marker and, hence, with the fundamental identical victimhood sustained by, or sustaining, the overall moral of the story. Let us see, then, if besides “Orwell” and the man trampled by the elephant, bringing in the elephant as a third victim can help to explore the way in which alternative identifications with all three victimhoods as fundamentally particular might come about. To this end, and in order to break down the strategic speciesism that has appeared to inform the narrative construction of victimhoods as fundamentally identical for the victims discussed so far, I will now scrutinize, first, the comparison of the elephant with a piece of machinery and, second, the comparison of the elephant with a human grandmother.

5. Re-sensing Victimhood: Particular Zones of Identification

As we have seen, racism in “Shooting an Elephant” relies heavily on strategic speciesist Human-Animal linkages and comparisons. It manifests itself most conspicuously in the last paragraph, after “Orwell” has shot the elephant. This last paragraph presents all three of the “victimhoods” I am currently concerned with:

Afterwards, of course, there were endless discussions about the shooting of the elephant. The owner was furious, but he was only an Indian and could do nothing. Besides, legally I had done the right thing, for a mad elephant has to be killed, like a mad dog, if its owner fails to control it. Among the Europeans opinion was divided. The older men said I was
right, the younger men said it was a damn shame to shoot an elephant for killing a coolie, because an elephant was worth more than any damn Coringhee coolie. And afterwards I was very glad that the coolie had been killed; it put me legally in the right and it gave me a sufficient pretext for shooting the elephant. I often wondered whether any of the others grasped that I had done it solely to avoid looking a fool. (10)

The perspective in this last paragraph has suddenly shifted from the subjective and rather lyrical “I” in the face-to-face encounter with the elephant, towards a more impersonal third person “matter of fact” voice. Whereas the entire text up to this point has been shot through with racist overtones, repeatedly linking and comparing the man trampled by the elephant to an animal, here this consistent procedure spills over into a straightforward *positing* of the victim as lower than an animal. At this stage, however, the elephant is no longer depicted as an animal, but as a piece of machinery, considered more valuable than the man who was killed. On the one hand, the comparison of the elephant with a machine, crafted from a third person perspective at the end of the story, invites the kind of moral claim almost literally spelled out throughout the text; namely, that the true condition of imperialism consists of its subjects being bound to their inescapable fate, which is determined by their fixed place within the system. On the other hand, this type of moral claim also works to let “Orwell” off the hook, as the condition of imperialism seems to leave him just as helplessly subjected and equally clamped down by its “unbreakable tyranny” as the local victims or, for that matter, the elephant. Again, then, the differences between the three victimhoods under discussion are subdued as the victims passively undergo their inescapable fate(s). It suggests that if I would choose to take up the text’s invitation and read the above fragment as an allegory of imperialism, bringing in the elephant as a victim and the way it is staged as a piece of machinery does not further my project.

However, as I concluded before, there are indications that the strong impact of the story does not reside with the usual subjects; that is to say, does not reside with reading the story as an allegory of imperialism. Instead, it seems to me that the impact of the story has much more to do with the shooting of the elephant and the way in which the pain involved – no longer understood as an exclusive capacity – is delivered through the face-to-face encounter with the “I”, the “Orwell” of the story. In this respect, the vocabulary adopted from within the third person perspective in the last paragraph can be considered wholly different from the vocabulary adopted from within the “I” perspective in the face-to-face encounter with the elephant we are confronted with earlier on in the text.
Whereas the first can be labelled strategically speciesist because it is caught up with activating the parameters of the human and the animal and, thus, ultimately with the allegorical reading or summary, as it were, of the story “Shooting an Elephant,” the latter generates a sensation of ‘pain’ that paints a completely different, and arguably much more disconcerting picture, of the victimhoods involved:

But I did not want to shoot the elephant. I watched him beating his bunch of grass against his knees, with that preoccupied grandmotherly air that elephants have. It seemed to me that it would be murder to shoot him. At that age I was not squeamish about killing animals, but I had never shot an elephant and never wanted to. (Somehow it always seems worse to kill a large animal.) Besides, there was the beast’s owner to be considered. Alive, the elephant was worth at least a hundred pounds; dead, he would only be worth the value of his tusks, five pounds, possibly. But I had got to act quickly. I turned to some experienced-looking Burmans who had been there when we arrived, and asked them how the elephant had been behaving. They all said the same thing: he took no notice of you if you left him alone, but he might charge if you went too close to him. (7, italics mine, BV)

The elephant is compared with a grandmother and since killing animals strongly contrasts with murdering a grandmother it seems the victimhoods constructed are altogether different. The fragment, however, because it presents yet another example of “Orwell’s” schizophrenic mindset as a victim of imperialism, still carries the allegorical tinge of the moral code of the story, which registers the victimhood of both “Orwell” and the elephant as fundamentally identical. Strictly speaking, then, neither the momentary comparison of the elephant to a piece of machinery, nor the comparison to a human grandmother open up the possibility of distinguishing between the different victimhoods at stake because the overall moral of the story is in no way undermined. Yet, in very much the same vein we sensed the victimhood of “Orwell” not to be identical with that of the man trampled by the elephant, we clearly sense the elephant’s victimhood not to be identical with “Orwell’s” either. To tackle this discrepancy, but this time outside of the context of a “strategic speciesism”, I will now use my heuristic figure of ‘pain’ to look at the construction of both victimhoods as fundamentally particular.

The fragment not so much evokes the pain the elephant is about to undergo, but, on the one hand, the painful realization of the inevitability of the
elephant’s fate and, on the other hand, the painful realization that there is still a choice for “Orwell.” This pain does not primarily operate on the basis of an identification with either “Orwell” or “the elephant” as victims, but concerns a situation, which breaks the strategic speciesist terms in which the comparison of the elephant with a human grandmother is delivered into two ways of identification. First, the fact that the elephant is compared with a grandmother triggers an awareness that there is something wrong with what is about to happen to the, at this stage, humanlike elephant. This situation presents a clear moral choice, the problem of shooting a grandmother. Second, there is the identification with the suspension itself, with the uncomfortable sensation that the situation still presents a choice, that although all is lost somehow not all is lost as well as time is running out. In short, the pain evoked here is not the foreseeable physical pain that the elephant is about to undergo, it is not a matter of measuring its capacity to suffer, but is brought on by a sensation of indeterminacy, by a lack of a clear-cut moral standard to which to conform.

Alternatively, the elephant’s pain upon physical impact is conveyed in the following subsequent paragraphs:

When I pulled the trigger I did not hear the bang or feel the kick – one never does when a shot goes home – but I heard the devilish roar of glee that went up from the crowd. In that instant, in too short a time, one would have thought, even for the bullet to get there, a mysterious, terrible change had come over the elephant. He neither stirred nor fell, but every line of his body had altered. He looked suddenly stricken, shrunken, immensely old, as though the frightful impact of the bullet had paralysed him without knocking him down. At last, after what seemed a long time – it might have been five seconds, I dare say – he sagged flabbily to his knees. His mouth slobbered. An enormous senility seemed to have settled upon him. One could have imagined him thousands of years old. I fired again into the same spot. At the second shot he did not collapse but climbed with desperate slowness to his feet and stood weakly upright, with legs sagging and head drooping. I fired a third time. That was the shot that did it for him. You could see the agony of it jolt his whole body and knock the last remnant of strength from his legs. But in falling he seemed for a moment to rise, for as his hind legs collapsed beneath him he seemed to tower upward like a huge rock toppling, his trunk reaching skyward like a tree. He trumpeted, for the first and only time. And then down he came, his
belly towards me, with a crash that seemed to shake the ground even where I lay. (8-9)

I got up. The Burmans were already racing past me across the mud. It was obvious that the elephant would never rise again, but he was not dead. He was breathing very rhythmically with long rattling gasps, his great mound of a side painfully rising and falling. His mouth was wide open – I could see far down into caverns of pale pink throat. I waited a long time for him to die, but his breathing did not weaken. Finally I fired my two remaining shots into the spot where I thought his heart must be. The thick blood welled out of him like red velvet, but still he did not die. His body did not even jerk when the shots hit him, the tortured breathing continued without a pause. He was dying, very slowly and in great agony, but in some world remote from me where not even a bullet could damage him further. I felt that I had got to put an end to that dreadful noise. It seemed dreadful to see the great beast lying there, powerless to move and yet powerless to die, and not even to be able to finish him. I sent back for my small rifle and poured shot after shot into his heart and down his throat. They seemed to make no impression. The tortured gasps continued as steadily as the ticking of a clock. (9-10)

The comparison of the elephant with a human grandmother is left lingering here when, after it has been shot, its “mouth slobbers” and an enormous “senility” sets in. Similarly, the elephant’s dramatic rising on its hind legs, its trumpeting, are delivered in typical strategic speciesist vein, reliant, that is, on a most conventional form of anthropomorphism, opposing two legs to four legs. In short, the identification with the pain the elephant undergoes at the moment of real physical impact continues to be conveyed in strategic speciesist terms, as before. The difference, however, is that this strategic speciesism now turns to excess as the description of the elephant’s blood as red velvet lends the victim an almost aristocratic nobility, whilst its concurrent evocation in explicit poetical terms registers it as an archetypical elephant that “might as well be a thousand years old,” dwelling as a sacred object in a pristine landscape.

By implication, the coverage of the elephant’s pain upon physical impact does not concern an identification with the elephant standing there beating its bunch of grass against its knees. Rather, it seems its pain can only be delivered in the form of an impotent approximation. This impotent approximation constitutes a narrative circling around the elephant’s pain through the evocation of an allegorical (strategic speciesist) and symbolical (archetypical) elephant we
can “identify” with and which keeps the elephant itself, the literary figure of what is supposed to represent an elephant, at a relatively safe distance. At the same time, however, and perhaps this is the crux, these approximative modes of identification enter into a relation with something else, and somehow the story breaks the distance. This makes me wonder if the distance is only built to be broken, a matter I will return to shortly.

The point here is that the explicit linking and comparing of the elephant to a human grandmother, whilst adding a flavour of sacredness to this human grandmother through a poetic-archetypical touch, produces an excess that works to register its victimhood in the most severe strategic speciesist terms. This modus operandi suggests that reading through the lens of “Orwell,” as we are invited to do, leaves no space for other modes of imaginative identification with the elephant and, consequently, that its victimhood must always remain fundamentally identical to “Orwell’s.” In a strange twist, then, “Orwell’s” imaginative identification politics of impotent approximation justifies itself because it is the only narrative strategy available. However, if approximation generally is understood as a linear thing and, hence, assumes an essence to be encountered “out there” or “in there,” which is only blocked by obstacles or hidden beneath a veil, an impenetrable substance, I choose not to work my way through this impenetrable substance. Rather, I wish to look at this impotent approximation as primarily the result of a strategic speciesist mindset, which refuses or fails to acknowledge that there is no essence, let alone an approximation in the linear sense. This begs the question, first, what is it that brings about this sensation of pain, this shocking impact of “Shooting an Elephant,” if not “Orwell’s” approximative identifications? And, secondly, what kind of identification strategies might do justice to its victimhoods as particular? To address these questions, let us first look more closely at “Orwell’s” identification strategy when comparing the elephant to a grandmother.

In a sense, of course, one might perfectly well be moved by the scene as it stands, because the prospect of shooting a grandmotherly elephant offers at least some sort of imaginative identification on an emotive plane. Looking at the way in which the comparison works, however, I would argue it to be reliant on a specific register of the emotive: the sentimental. This qualification is not an unscientific matter of personal taste and I do not wish to imply that there is something fundamentally wrong with sentimentalism. My point is not that the comparison of the elephant with a grandmother is sentimental, but that it is presented as sentimental, as a far-fetched whimsical fancy. The fleeting character of this fancy both plays a key role in its presentation as fancy and in relegating it to the sentimental domain. This relegation is effectuated by a
remarkable shift in vocabulary in the sentences following up “Orwell’s” comparison of the elephant with a grandmother: Once “Orwell” has commented it would seem murder to shoot it, the vocabulary shifts to his not being squeamish about killing animals, to then shift again as it registers the elephant as in the first place a machine, a commodity. This dazzling shift in vocabulary is not gratuitous. It conveys the extremely quick rationalization of “Orwell’s” final judgement, his unspoken “decision” to shoot the elephant, which takes place immediately after the shift in vocabulary has been accomplished, at the very beginning of the next paragraph. At the same time, this shift works to lend his decision a fatalistic aura of unavoidability, making it seem as if the situation presents no (moral) choice for “Orwell” at all.

In this respect, it is noteworthy that the rejection of “Orwell’s” initial comparison of the elephant to a grandmother as a sentimental issue not just removes any possible moral objection to the shooting of the elephant, but that it also kills off the possibility of identification with the elephant’s particular victimhood and, in the process, with “Orwell’s” particular victimhood as well. In this sense, the shooting of the elephant is indeed inevitable in more than one way. It not just results from the pressure of a situation “Orwell” as a victim of imperialism cannot withstand, but is also instigated by a “narrative demand” to conform to the overall moral of the story, which needs the illusion of fundamentally identical victimhoods to sustain itself. This narrative demand is significant, because removing the moral objection that would hinder the shooting of the elephant does not need to imply there is an obligation to shoot it, which is what “Orwell’s” (non) acting would seem to suggest. Rather, it presents a choice lying outside of the sphere of morality, a sphere beyond or, better, before what might at any given time be deemed right or wrong. On a meta level, then, this narrative demand makes the moral of the story work as the law of the story, in that it has to treat all victims, whatever their differences, as essentially equal, as fundamentally identical victims. The paradox resulting from this meta perspective is clear: not shooting the elephant would appear to be “unfair” to the other victims.

Besides removing any possible moral objections to the shooting of the elephant, “Orwell’s” rejection of his own fancy as sentimental is presented as a reality check. This reality check might be considered the way in which it is presented, as a perfectly sane and rational move. If we question what kind of reality is checked, however, we cannot but conclude that it is informed by “Orwell’s” understanding of the elephant as, after all, not a human but an animal. Consequently, it can be used and disposed of as a commodity. In other words, the rational argument at stake in the reality check, which informs
“Orwell’s” judgement, harks back to the parameters of the human and the animal as the only possible viable points of reference. Yet, this reference has nothing to do with reality as it might generally be understood, as in some way tangible, and on the extreme side of fancy, because it here reveals itself as an abstract matter *tout court*. More importantly, going along with the rejection of sentimentality demonstrated by this reality check does not ease the pain.

What, then, I ask, again, may be the imaginative identifications that make the prospect of shooting the elephant such a horrific enterprise, and what kind of narrative weaving constructs this horror in “Shooting an Elephant?” Given my repeated failings to answer these questions it has now become clear that they cannot be answered by zooming in on “Shooting an Elephant” as an allegory of imperialism. This is why I will now attempt to read against this allegory by taking a closer look at why we are inclined to read the story as an allegory in the first place. To this end, I will now zoom out on the text and explore whether its presentation might suggest an opening up to alternative reading strategies.

The presentation of “Shooting an Elephant” offers a relevant analogy with Baudelaire’s “Correspondences,” the poem I analysed in the first chapter, because both texts invite an allegorical reading. If “Correspondences,” despite its stature as a poem, invited an allegorical reading through its presentation as prose and its thick use of trope, “Shooting an Elephant” invites an allegorical reading because its presentation as prose logically follows from Orwell’s genre choice. Once engaged in the act of reading, however, both texts seem to be marked by recurrent poetic overtones. In “Shooting an Elephant,” these poetic overtones are its effective use of repetition, feeding into the suspension, the shifting perspectives with each paragraph and the emergence of an “I” more often than not on the verge of turning lyrical. I qualify this “I” as lyrical because the reader is put in the position of someone who is listening in, as scraps of what seems interior monologue are interchanged with emergent situations and stages. Admittedly, the last paragraph is a notable exception to this pattern as the figure of the “I” here comes to resemble the figure of a somewhat distanced reporter.

Since the last paragraph clearly presents us with a reflection on the events that have unfolded, rather than letting us experience these events for ourselves, I propose to interpret this allegorical “I” as deflecting our attention from the lyrical “I” that operates the story and therefore as irrelevant for my reading of the story’s victimhoods as particular. Hence, if my analyses of “Correspondences” demonstrated that reading the interaction of its tropes differently unsettled the allegorical reading it invited and opened up its more poetical register, I will now attempt to do justice to the poetic factors in “Shooting an Elephant” and explore whether doing so can help to unsettle its
allegorical reading in an effort to address the victimhoods at stake as fundamentally particular.

The text offers a celebration of tropes. The man trampled by the elephant presents a strange case. Before being symbolized through a synecdochical operation that makes him stand for all the “prostrate” peoples, he must have been one of the locals and, in that sense, a particular individual. Yet, we can only infer this retrospectively, as he never enters the narrative in an individual capacity, but is linked and compared to animals in metonymic and metaphorical vein from the very start and ultimately posited as a commodity. The elephant undergoes the same fate, momentarily personified through the comparison with a grandmother, it at once gets caught up in “Orwell’s” reality check, which links it to its traditional other, the nonhuman animal, only to be posited as a commodity as well. In other words, both the man trampled by the elephant and the elephant loose their “metaphorical edge” as the same narrative pattern is followed through to its logical conclusion: 1. Linking 2. Comparing. 3. Positing, whereby the linking and comparing mingle and, more often than not, constitute one another. The main tropes involved in this pattern are metonymy, metaphor, synecdoche and anthropomorphism, both in its conventional and strict sense. The ways in which these tropes interact when it comes to the construction of “Orwell” as a victim follows a less straightforward pattern.

The one trope that follows the same pattern in all three cases, however, is the synecdoche, because it works to present the man trampled by the elephant, “Orwell” and the elephant as interchangeable victims, as “parts” that each represent the fundamental and “whole” victimhood brought on by the weight of imperialism. The man trampled by the elephant as “prostrate,” the elephant as an archetypical elephant – as yet another copy of the original-mythical elephant – and “Orwell” as “any other Anglo-English official” can stand as concrete examples of those synecdochical dynamics. In this respect, the synecdoche could be said to fulfill its ideological charge here in a meta kind of way. However, the synecdoche can also be read as doing something else, precisely because, as I concluded in the previous chapter, it can never simply be a neutral figure of speech. In this case, I would like to argue that synecdochical operations run and spread through the text in ways that open up the possibility of transforming the interchangeability forced upon the victims into a full blown interaction of the spaces of their identity. Let me zoom in on this potentially subversive synecdochical dynamic by exploring the narrative weaving that affects it in conjunction with the effect the other tropes bear on “Orwell’s” constitution.
“Orwell” gets caught up in the game of linking, comparing and positing from the very start. In the first paragraph we come across the following sentence (the italics are mine): “As a police officer I was an obvious target and was baited whenever it seemed safe to do so.” “Orwell” is presented as a target, an animal of prey, a therion, a wild beast.\(^{112}\) In the second paragraph, the locals are described as: “evil spirited little beasts who tried to make my job impossible.” Still later, the elephant is referred to as a great beast: “The friction of the great beast’s foot had stripped the skin from his back as neatly as one skins a rabbit.” In short, the text introduces our three characters as victims by comparing them with animals that are all accorded the same name. This homology points to a categorization of difference at work in the text, because the accompanying adjectival qualifications of the three characters under discussion, “little,” “great” and “baited,” convey their victimhood as different only in degree and, thus, as essentially identical from the very moment they are introduced.

Once the characters have been introduced and the confrontation of “Orwell” with the elephant is set, however, other comparisons join in that work to disturb this picture. In fact, the second time “Orwell” is compared with an animal it is not with a beast but with a toad: “If the elephant charged and I missed him, I should have about as much chance as a toad under a steam-roller.” This comparison is significant; first, because it is at odds with the earlier qualification of “Orwell” as a beast, which erodes the fixity of its status as a beast by offering a different identification. Second, because the comparison of “Orwell” with a toad not only upsets the introductory qualification of “Orwell,” the man trampled by the elephant and the elephant as fundamentally identical “beasts,” but simultaneously constitutes an imaginative identification with the wounded elephant, which, despite being shot repeatedly seems to remain unaffected and motionless as it keeps breathing as steadily as the ticking of a clock. For purposes that will become clear I repeat the passage in quoting it again:

His body did not even jerk when the shots hit him, the tortured breathing continued without a pause. He was dying, very slowly and in great agony, but in some world remote from me where not even a bullet could damage him further. I felt that I had got to put an end to that dreadful noise. It seemed dreadful to see the great beast lying there, powerless to move and

\(^{112}\) Middle English: from old Norse beit, pasture, food, beita to hunt or chase. Interestingly, Homer did not have a word for the animal or for the living being (zoon). He only used the word “therion,” which specifically meant the animal to be hunted. See: A. Chorus, Het denkende dier: Enkele facetten van de betrekking tussen mens en dier in psychologische belichting (Leiden: Sijthoff, 1969), 39.
yet powerless to die, and not even to be able to finish him. I sent back for
my small rifle and poured shot after shot into his heart and down his
throat. They seemed to make no impression. The tortured gasps continued
as steadily as the ticking of a clock. (9-10)

The pain delivered by this picture of steady breathing and motionlessness
effectively slows down our experience of narrative time and, in that sense,
mirrors the comparison of “Orwell” with a toad, which, in its desperate
slowness, would seem motionless and unaffected as long as the steamroller has
not ground it into the earth. Moreover, this hint at the fate of being ground into
the earth also connects “Orwell” with the man trampled by the elephant. In other
words, “Orwell,” the elephant and the man trampled by the elephant here come
to share what I want to call a zone of identification. Such a zone is no longer
reducible to sharing a capacity; it is not brought about by an interchangeability,
but by an interaction that connects their positions in terms of “situation.” Thus,
the comparison of “Orwell” with a toad brings about connections that allude to
the figure of identity as other than a fixed and marked off condition. These
connections are sensed rather than deduced, whilst the emergent imaginative
identifications are not produced by comparing one victim with the other but
through an imaginary and intermediary third, in this case the figure of the toad.
In fact, the toad itself seems to be the figure par excellence to convey this
dynamic as the toad happens to be one of those animals that defies the strict
rules of taxonomy, thereby resisting identification by designation into a category
since there is no clear-cut taxonomic distinction, for example, between frogs and
toads.

The skin of the toad seems to play a key role in resisting clear
identification because it is its slimy, metamorphic skin that allows for its shape-
shifting and its blending in with its environment. In this respect, the figure of the
toad in “Shooting an Elephant” works to contrast the way in which the notion of
the skin is conveyed through the victims under discussion, namely as an outer
shape that might serve as a reliable figure of identity to our senses. The man
trampled by the elephant has his skin scraped off, the elephant is scraped to the
bone after “Orwell” has left the scene, and “Orwell’s” comparison of himself to
a toad testifies to his own preoccupation, albeit only figuratively, with saving his
own skin. Indeed, if the skin represents a conventional figure of identity that
both the man trampled by the elephant and the elephant have involuntarily shed
off, the comparison of “Orwell” with the toad affords him not the same, but a
similar quality of nakedness, of vulnerability, bringing about another
engagement, another interaction with the other victims.
This interaction, however, does not yet upset the notion of skin as a conventional figure of identity, marking off the inside from the outside, but still operates on this binary as complicit with a linear understanding of identity that can be approximated. It does, however, pave the way for yet another possible imaginative identification which works to question the notion of the skin as a figure of identity, thereby upsetting the conventional figure of identity itself. The trope involved in bringing this imaginative identification about is the synecdoche, which here not so much substitutes the “parts” with the “whole,” but allows for letting the identities at stake slip into one another. First, the conventional notion of the skin as a “part” holding together the supposed singular “wholeness” of each victim’s body is laid bare through the figure of the toad. Second, “Orwell’s” marked-off identity is absorbed by the crowd: as “Orwell” marches forward, the crowd marching at his heels is presented as a singular entity with a single throat producing one sigh: “The crowd grew very still, and a deep, low, happy sigh, as of people who see the theatre curtain go up at last, breathed from innumerable throats.”

Shortly hereafter, it is into the pink caverns of the elephant’s throat that “Orwell” pours shot after shot. Note that “Orwell” does not “fire” shot after shot but “pours” it in, as if the elephant were thirsty and is drinking. Since “cavern” denotes a vast dark space, and because the elephant’s thirst cannot be quenched, it seems as if the shots fired are swallowed in the void. In other words, the bullets never reach their target because they cannot penetrate the impenetrable substance of the pink caverns. It suggests “Orwell’s” shooting no longer follows a linear logic, but takes on the quality of a last desperate effort at approximate identification doomed to fail. What is more, the pink colour of the caverns may be read as neither blood (inside), nor skin (outside) but as an inseparable mixture of both, which works to upset the binary informing the logic of linear approximation that the skin, as a conventional figure of identity, would assume. In short, the picture of helplessness so vividly painted here does not necessarily concern the poor elephant or “Orwell’s” inability to finish it off. It can also be read as conveying “Orwell’s” helplessness at establishing an imaginative identification with the elephant.

At the same time, as the effect of the bullets is described, a disorienting implosion of terms is bestowed upon the elephant: “But in falling he seemed for a moment to rise, for as his hind legs collapsed beneath him he seemed to tower upward like a huge rock toppling, his trunk reaching skyward like a tree.” In this scene, the elephant, and not just “Orwell,” is no longer described as a fixed and marked-off entity held together by its skin. Rather, the elephant emerges as a metamorphic entity, not in the process of dying, but in the process of a fantastic
metamorphosis that has now come to implicate the organic as much as the inorganic.

In fact, the elephant is registered in terms of what Marina Warner has suggested to be typical metamorphic imagery, involving processes of hatching, splitting and doubling. This fantastic metamorphosis differs from the classical Judeo-Christian conception of metamorphosis in a significant way, since the latter conveys a renewal in a linear development of an entity towards its final identity, whereas the first is understood as a continuous process of shape-shifting life that takes place within a profound ecological interdependency. Unlike Warner, however, I choose to understand the terms hatching, splitting and doubling not literally, say, as hatching from eggs, but rather as the sudden emergence of a new being: The elephant suddenly emerges, when it appears round the corner and tramples the man, when it appears in the field, when it beats its bunch of grass against its knees, as it suddenly rises after being shot. In short, in my reading, the metamorphic imagery we are confronted with after the elephant has been shot breaks the linear pattern implied by reading “Shooting an Elephant” as an allegory; that is, as a story with a typical beginning middle and end. In this view, the end of the elephant is not the end of the story but just another emergence of the elephant that shapes the connections to the other victims at the scene.

Yet, my attempt to address the victimhoods involved as particular by reading them as being played out against a constantly shape-shifting, rather than a linear process of metamorphosis, does not need to imply that the shocking effect of “Shooting an Elephant” can be attributed to close reading it as an allegory of this shape-shifting type of metamorphosis alone. Rather, it is a bringing into conflict of both forms of metamorphoses that sustains the shocking impact of the story. In short, the shooting of the elephant activates a reading in which it is put down by being shot at in the skin and a reading of the desperate shootings in its throat, this pink fleshy unidentifiable substance, which suggests that it cannot be put down by being shot in the skin. Similarly, the elephant’s rising on its hind legs and its trumpeting (the characteristic behaviour of elephants when giving birth) activates a reading that conveys some kind of resurrection fraught in the most conventional strategic speciesist terms and can be read as expressive of its horrible fate and of its connection to the different and particular fates of the other victims.

I conclude that reading “Shooting an Elephant” through the open figure of pain has opened up non-conceptual identifications with the different

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victimhoods at stake in the text. The comparison of “Orwell” with a toad and the implosion of metamorphic imagery at the moment the elephant is being shot works to connect “Orwell” to the man trampled by the elephant and to the elephant in many different ways. These connections have been set in motion by close reading the explicit comparisons sustained by metonymy and metaphor in interaction with the workings of trope, especially the trope of synecdoche. This process opens up the closed off metaphorical edge within which the three victimhoods under discussion were framed by the overall moral of the story, by the allegorical reading of “Shooting an Elephant.” These victimhoods, released, as it were, from their fundamental identical identity, have come to constitute one another, because the interactions of trope instigated a doubling metamorphic dynamics that allowed for imaginative identifications pointing to the porosity and fluidity of identities. Consequently, the narrative intensity caused by the interaction of tropes could no longer be accommodated by the suspense of the story alone, but bred an implosion of perspectives and a concurring slipping of identities, which caused the interactions of the positions of the victims as situational.

Thus, if the condition of imperialism in “Shooting an Elephant” exposes colonial imperialism as a system that effectively negates the pain of others, this only happens as long as this other is read in strategic speciesist terms. Alternatively, a poetic strategy can create an openness, a possibility for identifying with the pain of others, a possibility for a non-conceptual identification in the gut. In other words, reading pain as I have done now invites the question not which rule I should apply, but asks for an inter-subjective engagement. In this respect, “Orwell’s” choice to shoot the elephant does not need to be interpreted as a strict moral or legal obligation, but may also be read as the possibility for solidarity with an(y) other. In an effort to further explore the implications of this conclusion I will now look closer at the ways in which “Orwell’s” decision might affect his position as both a legal and a moral subject within the allegory “Shooting an Elephant.” This will enable me to reflect on how those legal and moral positions relate to the structure of the expansive model within the law.

6. The Legal and the Moral Subject

When “Orwell” takes up a gun to see what he can do about the situation with the elephant he uses a term from the legal domain:
I took my rifle, an old .44 Winchester and much too small to kill an elephant, but I thought the noise might be useful in terrorem.\textsuperscript{114} (2-3, italics in text)

A further explicit reference to the law is made in the last paragraph where “Orwell” declares having acted in accordance with the law:

Besides, legally I had done the right thing, for a mad elephant has to be killed, like a mad dog, if its owner fails to control it. (10)

“Orwell”, somewhat uncomfortable with the shooting of the elephant, not only blames the condition of imperialism for his actions, but also invokes the law as providing him with an adequate moral framework for having done so. In other words, “Orwell’s” comment poses the law as congruent with a moral order, whereas “Orwell’s” discomfort suggests this moral not to be in line with his choice to shoot the elephant. Apart from this troublesome discrepancy, what remains implicit in “Orwell’s” comment is that the legal standing of subjects also demands a legal form of consideration towards those subjects. In short, if a mad elephant has to be killed like a mad dog, “Orwell” would appear to have fulfilled his legal obligation and have done the right thing. He only did the right thing, though, if he insists on confusing the legal with the moral. This is problematic, as his unsuccessful attempt at absolving himself from guilt or, less dramatically put, his transfer of responsibility by pointing to the legal side of the matter demonstrates.

Furthermore, the plain fact that the elephant has a legal status does not protect it from harm. This has everything to do with the way in which the elephant is framed in legal terms, since the elephant is only entitled to protection from the law as long as it qualifies as a tame elephant. And even this qualification can only protect it from harm to a very limited extent, because it merely implies the elephant cannot be killed by anyone but its owner. The more fundamental problem, however, is that because it has a specific legal subjectivity, its shooting can now be legitimized and be considered a legal obligation. In other words, the limits posed on the protection from harm here resonate with the limits installed by an expansive model, because a poetic cruelty is generated as the animal is synecdochically substituted with one of its supposed characteristics or capacities, in this instance, the elephant’s tameness.

\textsuperscript{114} \textit{In Terrorem}: Latin, in fright or terror; by way of a threat. A legal warning, usually one given in hope of compelling someone to act without resorting to a lawsuit or criminal prosecution. Based on Merriam-Webster’s Dictionary of Law, 2001.
What my reading of “Orwell’s” comment further suggests is that the limits an expansive model poses are not just installed through the synecdochical substitution of certain characteristics or capacities, but that those limits are installed and sustained by a narrative demand to confuse the moral with the legal. This does not in any way guarantee, as the shooting of the elephant demonstrates, the protection of such a legal subject from harm.

Within an expansive model, this problem might, at least in part, be attributed to its being centred on the touchstone of the capacity to suffer, which, as we have seen, must ultimately result in registering the other in strategic speciesist terms. The paradox is clear: The expansive model’s moral is constituted by deeming speciesism as the wrong thing to do because it is centred on the basic principle of equality. Yet, in order to sustain this moral position it must introduce a strategic speciesism that registers some legal subjects as more equal than others, while other subjects cannot become legal subjects at all. In short, the expansive model poses, by way of yet another rudimentary chiasmus, “the moral subject as a legal subject” and “the legal subject as a moral subject” and centres this unwarranted presupposition on the basic principle of equality that Singer posits as the grounds for extending moral consideration towards other beings. This is why I will now explore what role Singer’s basic principle of equality plays in the confusion of the legal with the moral order within an expansive model.

Singer explains the extension of the basic principle of equality not as factual equality but as equality of consideration:

The extension of the basic principle of equality from one group to another does not imply that we must treat both groups in exactly the same way, or grant exactly the same rights to both groups. Whether we should do so will depend on the nature of the members of the two groups. The basic principle of equality, I shall argue, is equality of consideration; and equal consideration for different beings may lead to different treatment and different rights.115 (217)

This seems a fair and nuanced position. Singer here treats the basic principle of equality as a moral idea but conveys an acute awareness that equal moral consideration can and must have different legal implications for different beings. At the same time, however, his position does not account for the logic of equality as a basic principle. This begs the question, first, why is equality a basic principle at all; and secondly, if it is not the only basic principle with what other

115 Singer, ibid., Practical Ethics.
basic principles does it compete? These questions may seem rather abstract. They are, however, highly relevant to my current project since, within a Bentham-inspired expansive model, another human aim, namely to prevent or reduce suffering, also appears to be accepted as a basic principle. This implies that one basic principle could potentially enter into conflict with another basic principle. The implication of this simple fact is that, as far as the expansive model is concerned, its basic principle of equality should not be read as a rule that may be taken for granted as some sort of natural law that cannot be tampered with. Rather, the basic principle of equality appears as a rule that follows from the position this basic principle entertains within a wider field of basic principles.

If this is indeed the case, it now becomes possible to read the touchstone of the capacity to suffer as stemming from a new basic principle adopted by the theorists and philosophers at the forefront of the animal rights debate today. In short, the touchstone of the capacity to suffer has become the rule by which to measure suffering for those who hold as a basic principle that suffering must be prevented and reduced. By implication, the expansive model brings together a basic principle revolving around a notion of suffering with a basic principle of equality.

The amalgamation of those two basic principles, I propose, must enter somewhere into conflict as it culminates in the types of cruelty that the expansive model generates. This conflict and the resulting cruelty stem from reading the basic principle of equality as a moral principle, whereas it is only implied as a legal principle because speciesism is legally deemed untenable. Conversely, the legal stance on preventing or reducing the suffering embodied in the touchstone of the capacity to suffer is read as a moral principle, whereas this moral principle is betrayed by the generation and incorporation of cruelty within the legal sphere. Effectively, what this confusion of the moral with the legal amounts to is that the expansive model extends the basic principle of equality to other “species” on the grounds of a continuum between the species. The (strategic) speciesism operated by this confusion consists of formulating the capacity to suffer as a bottom line, as an exclusive and minimum capacity that other species may share with humans. It is only then that those other species may be subjected to the basic principle of equality, which, as it comes second, reveals itself not to be such a basic principle at all.

Thus, the common sense idea that the touchstone of the capacity to suffer leads to the rule that those nonhuman entities sharing this capacity might be granted consideration and, within an expansive model, at least some of those rights, amounts to a gross simplification of what is at stake within the expansive
model we are faced with today. Rather, it has appeared that a conflict of the so-called basic principles of equality and the basic principle of preventing or reducing suffering installs a confusion of the moral with the legal subject, which informs the workings of the expansive model and the cruelty it generates. In this respect, it seems fair to conclude that the expansive model does not amount to the extension of a clear-cut moral principle as such, but that the morality it might at any given time convey must always result from a political Austausch.

In other words, the question the expansive model is meant to answer, as to who or what is a subject of rights, cannot be answered within its framework because the expansive model appears to be the result of a political struggle in the guise of a polemic on possible touchstones. For this reason, I will now return to one of the most controversial but often bypassed issues woven into this polemic, the issue of dignity. In the previous chapter, I explored the theoretical and philosophical underpinnings of dignity and established that the problem of animals bearing no dignity severely complicated thinking through their position as subjects of rights. Here, I will draw on a recent political polemic in the Dutch context to contemplate how this weaving takes effect in practical terms in our modern imagination in order to move away from it once and for all in the next chapter.

7. Dignity in Practice

In 2010, a Dutch political party proposed the introduction of five hundred animal cops to the national police force. Their specific task would be to combat animal abuse within the domestic sphere. This proposal met with severe criticism from other parties. The argument of those opposing parties ran as follows: it is sentimental and hypocritical to advocate the introduction of animal cops to protect one group of animals from harm – mainly pets – whilst not doing anything about the harm inflicted upon the masses of animals in the factory-farming industry. This seems to be a solid argument, especially given the fact that the inspection service that is meant to control the Dutch factory-farming industry is typically ill-equipped and undermanned. The point here, however, is that this criticism portrays the division into categories of animals to be protected and those to be left to themselves, or rather, to the factory-farming industry, as arbitrary in a conventional sense, using the adjectives “sentimental” and “hypocritical” to deem such arbitrariness untenable. In other words, the accusation of subjective arbitrariness is reliant on the fiction of an “objective,” “non-arbitrary” and consequently “just” but necessarily fictional contraposition.
This suggests that the parties opposing animal cops, contrary to what their accusative tone suggests, cannot provide objective alternatives either, but can, at most, resort to what they consider more practical alternatives, a better and more effective distribution of resources.

Be that as it may, the political party advocating animal cops, perhaps aware of the futility of arguing about arbitrariness in conventional terms, has apparently chosen not to play that game at all. Instead, it has countered accusations of hypocrisy and sentimentality, not by laying a nonsensical claim to non-arbitrariness, but by introducing a rather more (or less) mysterious argument: it is not just for the sake of the animals that we want these animal cops, but we also desire animal cops because they can help us do something about a category of seriously mentally disturbed culprits that tend to engage in the cruel treatment of animals at a very young age. This argument brings about a shift in focus from “the protection of the animal” to “the protection of the human.” In other words, instead of answering to, this argument defers accusations of hypocrisy and sentimentality by extending the motivation for the installation of animal cops from an animal to a human interest. It is clear, however, that this shift is not primarily concerned with protecting the particular type of human culprit evoked, but that it concerns something else, the protection of something like “society at large”; not just of humanity as such, but of the humanity of humanity, which must be safeguarded from a specific type of human culprit by its timely (i.e. at a young age) but after the fact, arrest and imprisonment.

This position might have something to do with a typical perspective on the humanity of humanity the political party under discussion might entertain. In fact, from its consistent commitment to the protection of domestic animals, and not to the animals in the factory-farming industry, we may gather that the harm done to domestic animals is considered as posing a threat to its conception of the humanity of humanity, whereas the kind of harm potentially caused to another and much larger category of factory-farmed animals is not. By implication, the resulting paradox is not the irreconcilability of the party’s desire to protect one category of animals, mainly pets, and not the category of animals in the factory-farming industry. The real paradox here would be that if the humanity of humanity is considered at risk, it is allowed to use this same animal, the one that needed to be protected by animal cops, as bait in order to hunt down and catch the human culprit. In short, what this attitude represents is not so much a double

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standard but a moral idea reminiscent of Kant’s idea of an intrinsic worth or “dignity” of the human being.

As we have observed in the previous chapter, according to Kant, dignity, the humanity of humanity, was defined by rationality and, as such, rationality was constitutive of an insuperable line that animals, by their very nature, could not cross. More specifically, Kant thought that rationality bore a causal relation to having interests, which implied humans possessed an intrinsic value, a dignity, which was why only humans could be entitled to moral consideration and why only humans could be regarded as bearers of rights. Consequently, Kant maintained that all our duties to animals are really indirect duties to humanity and the reason why we should not be cruel to animals for the sake of the animals themselves is because being cruel to animals might hinder human moral improvement. It is precisely in this respect that the argument provided by the Dutch political party advocating animal cops betrays a fundamental Kantian outlook. More importantly, since the parties opposing the introduction of animal cops have only done so by stressing the inadequate distribution of recourses that would be implied within the decision to introduce animal cops, we can surmise that the Bentham-inspired concern with the suffering of animals as a capacity to suffer betrays a Kantian spirit across the political spectrum that still seems very much alive today.

The point here, however, is that this Kantian attitude conveys a commitment to two notions I have rendered highly problematic in the previous paragraph: first, a belief in human morality as such; and second, in the law as a system, or structure that holds the power to distribute rights according to the moral standing of an entity. As we have seen, these Kantian notions infect Singer’s “practical ethics” and seem to have inspired the animal rights debate to take up its implied basic principle of equality as a justification for the expansive model. It shows how a conception of intrinsic worth, or dignity, whether slumbering or explicitly formulated, still bears a considerable influence on the harm to animals that the law is likely to permit or curb in our time. In short, if in the animal cops debate both pets and cattle are considered animals that suffer from harm, the different level of preoccupation with the harm of those victims, not just by the parties that advocate animal cops but across the political spectrum, suggests their identity and victimhood must legally be performed in very different ways. It suggests, once more but in yet another way that the legal weaving of their respective subjectivities cannot be interpreted as a straightforward moral or metaphysical issue at all. Rather, those subjectivities must be brought about by establishing artificial legal, moral and philosophical categories that somehow solve the political-juridical and not some “naturalized”
moral dilemma of granting one category of animal protection, whilst excluding the other. Hence, looking at the philosophical basis that enables the law to frame its different legal constructions and exploring the ways in which the literary can inform this framing might help to move away from the kind of nonsensical but, in my view, symptomatic and Kantian polemic the parties mentioned above are engaged in.

8. Conclusion

The expansive model, with its unique touchstone of the capacity to suffer, reduces ethics to a matter of calculation, because it is reliant on a unwarranted biological-scientific notion of suffering that works to sustain the fiction that suffering can somehow be measured. The law, however, is not only, and surely not necessarily, operative on either calculation or morality – with each right imagined as bearing some sort of intrinsic moral value in itself. Nor, as we can learn from the problem of cruelty an expansive model poses, is the law necessarily concerned with the moral standing of the entities it happens to subject. In short, the expansive model, because it centres itself on a basic principle of equality, betrays a perspective on the law as intrinsically moralistic, which it is not. The law, as much as it might be interpreted as a moral system fraught within a (metaphysical) strategic speciesism and all the polemic issues ensuing from such interpretations, might very well coincide with a prevailing popular moral at any given time. However, as thinking through the praxis of an expansive model has shown, it remains primarily an artificial category and thus should be approached as such.

Looking closer at the question of dignity by drawing on a concrete example from the political domain has suggested intrinsic value cannot be measured, because value can only ever be extrinsic, which implies measurement, or calculation, conflicts with ethics. My close reading of “Shooting an Elephant” has tried to imagine such extrinsic values through the open figure of pain and not by the measurement of some naked power or capacity like the capacity to suffer. What my reading has demonstrated is that literature is able to do more than just work though animals metaphorically, allegorically, with all the anthropomorphisms, both conventional and strict, implied. By implication, the working out of animals in the law, as another but still textual genre, does not have to be contained by the law’s seemingly more severe and sober categories either. Hence, if dignity is never intrinsic, but always extrinsic, the moral subject and the legal subject might be viewed as two
entirely different subject matters, in very much the same way as I concluded in the first chapter that person and legal person do not necessarily have anything in common. Instead of looking at the law and which rule to apply, then, doing justice seems to require an ethics not formed by and reduced to the supposed morality at stake, but by answering responsibly to a given situation.

In this respect, my close reading of “Shooting an Elephant” has shown that we may envisage other subjectivities than those that are framed within the traditional Human-Animal opposition if we look at the way in which victimhoods are constructed not in opposition to one another but through connections that are sustained within a zone of identification. More specifically, my reading of “Shooting an Elephant” has suggested that such readings require not an oppositional but a tripartite structure, a matter I will take to a meta level in chapter four by introducing a third element to the traditional Human-Animal opposition so as to explore the limits I believe it still poses to our modern imagination of the animal other.
1. Introduction

In the previous chapters I established that the expansive model we are faced with today relies on what ultimately must be qualified as the fiction of the Human-Animal opposition to account for its expansion. Effectively, if the juridical model in place prior to the recent debate on expanding it to essentially nonhuman animals was already centred on the Human-Animal opposition, whereby the first were considered as subjects of rights and the latter not, an expansion by way of an uncritical transfer of personhood to animals, whilst seemingly opening up to nonhuman animals by generating a legal community of equals, does not so much upset, but, paradoxically, presents us with a continuity of the Human-Animal opposition itself. As long as the general singular person is upheld as the prevailing legal category, the animal rights debate remains caught up in an irresolvable and insistent polemic on demarcation, which hinges on the invocation of this very opposition.

On the one hand, this led me to touch upon, and call into question, the scientific, legal and philosophical underpinnings of the Human-Animal opposition. On the other hand, I concluded that the Human-Animal opposition not only functions as a – however fragile and, therefore, at times somewhat concealed – basis for legitimating the expansive model itself, but at the same time hinders thinking through animal subjectivity in terms other than defined by an expansive model. What has become clear in the process, then, is that any attempt at thinking through animal subjectivity by questioning the limits that today’s expansive model poses, cannot be achieved without readdressing the Human-Animal opposition itself and how it has managed to maintain its competitive stance overtime, especially within an expansive model that would seemingly open up to nonhuman animals by transferring to some of those the notion of personhood.

One way to explore this complex issue would be to trace and reflect on the long history of the Human-Animal opposition as a philosophical tool for teasing out the uniqueness of the human condition, of establishing that what is
proper to the human comes at the expense of the animal. However, to establish and problematize that animals, or to paraphrase Derrida, “those creatures we have given ourselves the right to call animal” have forever been put in opposition to the human in order to define ourselves as human is one thing. Quite another is to infer – and this is a suggestion, we will see, that I find implied within Derrida’s *The Animal That Therefore I Am* – that if the Human-Animal opposition must be recognized from a theoretical standpoint as an untenable fiction, it only needs to be analysed from within the terms of the opposition itself. Indeed, following up on the suggestion that the Human-Animal opposition, because of its status as ultimately fictional, only needs to be deconstructed and can then, somehow, be left unaddressed once we attempt to imagine other, essentially nonhuman forms of subjectivity, as much as it might seem the correct way to move forward, is both too much and not enough. It is not enough, because it would not do justice to the way in which the Human-Animal opposition impinges itself upon the historical, political, legal, philosophical and scientific context we are living in today. It is too much, because this would imply taking the Human-Animal opposition as a historical given without exploring the other ways of carving up the world with which it has had and continues to compete. Hence, it would seriously impede rethinking our complex relations with animals in the modern context.

This state of affairs leaves us with two options for further exploring imaginative identifications with other, essentially nonhuman forms of subjectivity. First, we can try to work out alternatives to the notion of personhood. Although I would surely like to point in that direction, this would be an immense interdisciplinary task as it would require introducing a wide range of specialists from the field of law. The main reason for not wanting to develop alternatives to the notion of personhood here, however, is that I wish to continue exploring the Human-Animal opposition from a literary point of view by looking at it as, primarily, a language construct. Second, and consequently, since the Human-Animal opposition has, at this point of my research, acquired

117 For an instructive overview and critical analysis of this historical dynamic see: Kelly Oliver: *Animal Lessons: How They Teach Us to Be Human* (New York: Columbia University Press, 2009).

118 “The animal is a word, it is an appellation that men have instituted, a name they have given themselves the right and the authority to give to the living other,” Jacques Derrida, *The Animal That Therefore I Am*, ibid. (New York: Fordham University Press, 2008), 23.

the status of a kernel fiction, we might start to question its status as fiction by looking at it as something not other than reality but as a performative language construct that impinges itself upon reality; or, better, as something that is a piece of the real itself. This latter view offers us the prospect that the Human-Animal opposition cannot yet be deemed irrelevant, but suggests that it will continue to haunt the animal rights debate for at least as long as no alternative categorizations are taken into consideration.

In this chapter, then, I will take the Human-Animal opposition back to the heart of the debate. I will do so by booking a return passage to the initial framework that Heidegger devised for carving up the world and from which his particular outlook on the Human-Animal opposition evolved. Briefly, in *The Fundamental Concepts of Metaphysics*¹²⁰ Heidegger set up the tri-partition Man-Animal-Stone, attributed those categories a different order of reality, of being in the world, and then set the human apart from the animal by positing language as the decisive marker for distinguishing absolutely between the human and the animal. The reason I bring Heidegger into focus at this early stage, while only starting to explore his tri-partition at the end of this chapter, is that ever since Heidegger introduced his famous tri-partition theorists have left his stone unturned. This has allowed for this third element to shift into the background, giving way to an unwarranted reduction of focus on the Human-Animal opposition, a dynamic I first wish to retrace in order to provide myself with an adequate theoretical preparation for analysing Heidegger’s tri-partition. This effort is informed by my basic premise that the Human-Animal opposition, because of its status as ultimately fictional, must be thought of in terms of relation, not to either of its poles, but to something else. As I have concluded in the previous chapters and maintain here, there is nothing – and here I principally disagree with Heidegger – not even language, that on a scientifically or philosophically sound academic basis can be identified as essentially human, and, for that matter, animal.

A good case in point of what I consider to be a valuable but nevertheless reductive focus on the Human-Animal opposition since Heidegger would be the work of Derrida, who, in the fourth chapter of *The Animal That Therefore I Am* (2008) performs a deconstructive reading of Heidegger on the animals. More specifically, Derrida reads against Heidegger’s conceptualization of language as essentially human through an extensive interrogation of Heidegger’s position on language as the unique human ability to respond and hence to deceive. Derrida does so, first, by exposing the way in which Heidegger’s conceptualization of

language as the ability to respond and thus in terms of the ability to say “I”, as the ability, that is, to present a presence to the self, is anchored in a philosophical tradition that has forever set the human off against the animal. Second, by broaching the question of what it would mean for an animal to say “I” and, hence, to respond. Framing the matter in this way, however, Derrida does indeed trouble the traditional boundaries between the human and the animal, but he does not take into consideration Heidegger’s “third,” the stone. In fact, in my reading against Derrida I will argue that he has cancelled out this “third” in a way that I find symptomatic of a particular conceptualization of language adopted within his deconstruction of Heidegger.

This conceptualization of language relies, in part, on the work of Benveniste and the way in which Benveniste conceived of the figure of the “I” as a condition for language. However, whereas Benveniste’s language philosophy opens up to thinking the relation between language and speech in both deictic and indexical terms, Derrida rather exclusively focuses on an indexical, or more specifically, autotelic register in terms of a presence to the self. This brings a philosophical rather than poetical outlook on language into the picture that I will be seen to argue against, because it gives way to what I consider to be an irresolvable loop within Derrida’s framework. This is why my alternative consideration of the figure of the “I” will evolve from exploring the relation between language and speech in deictic terms. What I Intend to show is how, already within Benveniste’s partition between language and speech, the potential of a third is cancelled out and that this cancellation impinges itself upon Derrida’s reading of Heidegger and his subsequent cancelling out of Heidegger’s “third.”

Because I share Derrida’s fundamental critique on Heidegger’s conceptualization of language as that which sets the human and animal in opposition, I remain heavily indebted to his work. However, my approach here differs from his in that I will try to move beyond deconstruction by moving before it, precisely by attempting to open up space for this third element, Heidegger’s stone, to re-join the Human-Animal opposition as a way of upsetting and reframing it. In other words, whereas Derrida puts the animal in the Human-Animal opposition under erasure by troubling the limits of the traditional conceptualization of response, I will diverge from Derrida by putting the Human-Animal opposition under erasure by bringing in a third. Let it be clear from the start, then, that it is not my aim to replace one opposition with another. What I wish to do is to multiply and thicken the Human-Animal

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opposition by exploring how realizing the potential for alternative distinctions might help to work out different forms of subjectivity alongside the kinds of subjectivity haunted by the always already implied Human-Animal opposition.

The literary work that I will use to address the issues sketched above is Jorge Luis Borges’ poem “El otro tigre” (“The Other Tiger,” 1960). The poem treats the Human-Animal relation as a problem of language. In doing so, it suggests a way of thinking about language that differs radically from the manner in which both Heidegger and Derrida, each in their specific way, conceptualize language to imagine this relation. In my view, the poem thereby invites us to take a next step in thinking through animal subjectivity and the role of language implied within the construction of the Human-Animal relation. For this reason, my close reading will focus on the various conceptualizations of the nature of language that the poem presents and I will attempt to explore the way those conceptualizations might foster alternatives to the traditional philosophical imagining of the nonhuman animal. I will do so by contrasting the role of the philosophical figure of the “I” as a general singular with the role the poetical figure of the “I” plays in such processes of the imagination. This will allow me to determine my own position on the figure of the “I” and to offer an alternative to the way in which it has been taken up by Derrida in his particular questioning of the notion of response in Heidegger. The aim of my trajectory in this chapter is, on the one hand, to effect a movement from thinking through subjectivity in terms of being, towards, if only very loosely, a Deleuzian-inspired sense of mobility, which is not premised on a primordial primacy of becoming over being, but on being as just another becoming. On the other hand, my aim is to explore the implications of such a movement for the notion of animal subjectivity within the animal rights debate.

2. Borges’ Tigers

In Borges’ poem “El Otro Tigre,” (The Other Tiger) the lyrical I deliberates on the processes that inform our modes of imagining the animal other, in this case a tiger. The poem starts with the following succinct statement: “I think of a tiger.” The “I” in question is thus presented as that peculiar instance of language from which, or through which, some sort of imaginative identification with the other might unfold. The rationality embodied by or transferred to the “I” within this “I think of” is then contrasted in the very same line as the poem takes on a dreamlike quality. The light fades and the lyrical I starts wondering about the nature of the tiger it intends to bring to life through the remainder of the poem.
El Otro Tigre

Pienso en un tigre. La penumbra exalta
La vasta Biblioteca laboriosa
Y parece alejar los anaqueles;
Fuerte, inocente, ensangrentado y nuevo,
él irá por su selva y su mañana
Y marcará su rastro en la limosa
Margen de un río cuyo nombre ignora
(En su mundo no hay nombres ni pasado
Ni porvenir, sólo un instante cierto.)
Y salvará las bárbaras distancias
Y husmeará en el trenzado laberinto
De los olores el olor del alba
Y el olor deleitable del venado;
Entre las rayas del bambú descifro,
Sus rayas y presiento la osatura
Baja la piel espléndida que vibra.
En vano se interponen los convexos
Mares y los desiertos del planeta;
Desde esta casa de un remoto puerto
De América del Sur, te sigo y sueño,
Oh tigre de las márgenes del Ganges.

Cunde la tarde en mi alma y reflexiono
Que el tigre vocativo de mi verso
Es un tigre de símbolos y sombras,
Una serie de tropos literarios
Y de memorias de la enciclopedia
Y no el tigre fatal, la aciaga joya
Que, bajo el sol o la diversa luna,
Va cumpliendo en Sumatra o en Bengala
Su rutina de amor, de ocio y de muerte.
Al tigre de los símbolos he opuesto
El verdadero, el de caliente sangre,
El que diezma la tribu de los búfalos
Y hoy, 3 de agosto del 59,
Alarga en la pradera una pausada
Sombra, pero ya el hecho de nombrarlo
Y de conjeturar su circunstancia
Lo hace ficción del arte y no criatura
Viviente de las que andan por la tierra.

Un tercer tigre buscaremos. Éste
Será como los otros una forma
De mi sueño, un sistema de palabras
Humanas y no el tigre vertebrado
Que, más allá de las mitologías,
Pisa la tierra. Bien lo sé, pero algo
Me impone esta aventura indefinida,
Insensata y antigua, y persevero
En buscar por el tiempo de la tarde
El otro tigre, el que no está en el verso¹²²

The Other Tiger

I think of a tiger. The fading light enhances
the vast complexities of the Library
and seems to set the bookshelves at a distance;
powerful, innocent, bloodstained, and new-made,
it will prowl through its jungle and its morning
and leave its footprint on the muddy edge
of a river with a name unknown to it
(in its world, there are no names, nor past, nor future,
only the sureness of the present moment)
and it will cross the wilderness of distance
and sniff out in the woven labyrinth
of smells the smell peculiar to morning
and the scent on the air of deer, delectable.
Behind the lattice of bamboo, I notice
its stripes, and I sense its skeleton
under the magnificence of the quivering skin.

In vain the convex oceans and the deserts
spread themselves across the earth between us;
from this one house in a far-off seaport
in South America, I dream you, follow you,
oh tiger on the fringes of the Ganges.

Evening spreads in my spirit and I keep thinking
that the tiger I am calling up in my poem
is a tiger made of symbols and of shadows,
a set of literary tropes,
scraps remembered from encyclopaedias,
and not the deadly tiger, the fateful jewel
that in the sun or the deceptive moonlight
follows its paths, in Bengal or Sumatra,
of love, of indolence, of dying.
Against the tiger of symbols I have set
the real one, the hot-blooded one
that savages a herd of buffalo,
and today, the third of August, '59,
its patient shadow moves across the plain,
but yet, the act of naming it, of guessing
what is its nature and its circumstance
creates a fiction, not a living creature,
not one of those that prowl on the earth.

Let us look for a third tiger. This one
will be a form in my dream like all the others,
a system, an arrangement of human language,
and not the flesh-and-bone tiger
that, out of reach of all mythologies,
paces the earth. I know all this; yet something
drives me to this ancient, endless adventure,
foolish and vague, yet still I keep on looking
throughout the evening for the other tiger,
the other tiger, the one not in this poem.\(^{123}\)

\(^{123}\) Jorge Luis Borges, *El Hacedor*, Buenos Aires, 1960, trans. by Alastair Reid, though slightly modified: in the original Spanish the fourth line of the second stanza reads: *una serie de tropos literarios* which was translated by Reid as: *a set of literary images.*
At first glance, the poem conveys an awareness of the difficulty of establishing the difference between two tigers. First, there is the tiger it weaves through the texture of the poem, which, henceforth, I will refer to as the fictional tiger. Second, there is the real life flesh-and-bone tiger that must be prowling somewhere in its natural habitat, on the fringes of the Ganges, which I will refer to as the factional tiger. The vast and unbridgeable distance between the fictional tiger in the poem, on the one hand, and the factional tiger supposedly roaming on the fringes of the Ganges on the other, is illustrated metaphorically by the great geographical distance separating the lyrical I, geographically located at a far-off seaport in South America, from the tiger on the other side of the earth. From this very basic distinction between a fictional and factional tiger alone, a distinction that could also be read as an opposition and which I will endeavour to complicate in what follows, we can already surmise that the poem offers a profound contemplation on the nature of language and its role in imagining the other. More specifically, its basic demarcation of the fictional from the factional tiger raises the questions of how language might function as a tool for imagining the nonhuman other, and what limits the nature of language imposes to such processes of the imagination. Let us now explore these questions.

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The first part of the second stanza presents us with a reflection on the difference between the fictional and factional tiger by framing the complex issue of establishing this difference as a problem of language and how it fails to capture the living.

   Evening spreads in my spirit and I keep thinking
   that the tiger I am calling up in my poem
   is a tiger made of symbols and of shadows,
   a set of literary tropes,
   scraps remembered from encyclopaedias,
   and not the deadly tiger, the fateful jewel
   that in the sun or the deceptive moonlight
   follows its paths, in Bengal or Sumatra,
   of love, of indolence, of dying.
The lyrical I here conveys a keen awareness that the fictional tiger it brings to life is never at one with the factional tiger but no more than a language construct, a set of symbols, of literary *tropes*. In short, the only possible imaginative identification with the factional flesh-and-bone tiger, the lyrical I seems to suggest, always has to remain an approximative identification, a potentially endless linguistic and vain attempt to penetrate its inconceivable essence. The “solution” proposed to this irresolvable problem, conveyed in the first half of the last stanza, is therefore all the more puzzling.

Let us look for a third tiger. This one
will be a form in my dream like all the others,
a system, an arrangement of human language,
and not the flesh-and-bone tiger
that, out of reach of all mythologies,
paces the earth.

The role of language that was conveyed throughout the poem leading up to this last stanza gave way to the idea that the real life flesh-and-bone tiger cannot be identified through language, yet cannot be approximated otherwise, a matter which was left unresolved as it was implied within the troublesome distinction between a factional and a fictional tiger. Here, in this last stanza, it is as if we are encouraged to use a language that somehow escapes the confines of the way in which the tiger is registered up to this point, as we are offered the prospect of looking for a third tiger. In the remainder of the last stanza this encouragement is played down significantly as the quest for a third tiger is registered as an endless adventure, both foolish and vague: as if the encouragement were just a folly testifying to the limits of language and not worthy to be followed up on. At the same time, this somewhat mysterious language is envisaged as a system, an arrangement of human language.

In what follows, I will attempt to consider this third option seriously by taking as a source of inspiration what Derrida said in *The Animal That Therefore I Am* – but left undeveloped in the remainder of his book – about the role of language in thinking through the question of the animal.

For thinking through the animal, if there is such a thing, derives from poetry. There you have a thesis: it is what philosophy has, essentially, had to deprive itself of. It is the difference between philosophical knowledge and poetic thinking. (7)
The third option that is offered up in Borges’ poem, then, marks a break with trying to imagine the nonhuman other, in this case a tiger, in terms of a language that is positively referential and in which the fictional tiger could be made to convey an approximate correspondence with a factional tiger whereby both tigers constitute a problematic binary opposition as quasi philosophical categories. In short, if I have now briefly considered the poem’s composition up to this last stanza to be “about” the nature and consequent limits of language in trying to imagine the other, we may now read the encouragement to look for a third tiger as an invitation to consider a poetical reading strategy of the poem in terms of what it does. In other words, the poem here offers us the prospect of imagining the tiger-other through a language that is poetical rather than conceptual-philosophical. This is why I provisionally choose to read this “arrangement” of human language as a plea for a poetical reading strategy whereby, just like in music, an “arrangement” denotes the adaptation of a composition for performance with instruments or voices other than those originally specified. Let us begin by zooming in on the way in which the seemingly odd encouragement to look for a third tiger is delivered and try to make sense of what this poetical reading strategy might amount to in more concrete terms.

The explicit encouragement in the last stanza of the poem to look for a third tiger, not the fictional tiger constructed from the books and encyclopaedias, or the factional tiger the lyrical I “fictionalizes” at the very instant it attempts to describe it, seems highly paradoxical. The paradox I am interested in, however, not so much concerns the impossibility of establishing the difference between a factional and a fictional tiger, no matter how many tigers we seek to describe. Rather, the paradox I wish to address resides with the encouragement to look for a third tiger being presented as both a necessary and a vain enterprise. It is clear why it is in vain, because this third tiger must eventually remain a language construct all the same. But why is it necessary, if we momentarily choose, as I do, to read the voice of the lyrical I here as other than originally specified; namely, by not adhering to the somewhat stereotypical romantic and foolish disposition of the lyrical I in question.

The immaculate last line of the poem: “the other tiger, the one not in this poem” might throw a light on what is at stake in presenting the encouragement to look for a third tiger as necessary. Indeed, the so-called third tiger we are asked to look out for, the one not in the poem, collapses our logical train of thought and triggers an awareness of what may be suggested by the seemingly odd, but still rather straightforward, encouragement to look for a third tiger. Especially when we draw our attention to a passage in the last part of the second
stanza, in which the lyrical I succinctly addresses the problem it is faced with as a problem of naming:

but yet, the act of naming it, of guessing
what is its nature and its circumstance
creates a fiction, not a living creature,
not one of those that prowl on the earth.

The act of naming the factional tiger is said to create a fiction, causing a split between the fictional tiger and the factional tiger. This split, however, is at once dissolved as the factional flesh-and-bone tiger, once mentioned, named, takes on the quality of the fictional tiger, simply because it now becomes a set of literary tropes and can no longer be distinguished from it. This paradoxical dynamic, however, does not imply that the encouragement in the first line of the last stanza to look for a third tiger can only be read as a rather foolish-romantic and, therefore, vain enterprise. Indeed, it may also be read as an attempt to circumvent the seemingly irresolvable problem caused by mentioning, naming, this third tiger, since, strictly speaking, we are not encouraged to mention or to name the third tiger at all, but only to look for it.

In this light, the encouragement to look for a third tiger delivers yet another and arguably more interesting paradox, as the last line of the poem registers this third tiger as “the one not in this poem,” which, despite not quite guessing its nature and circumstance, always already inscribes the third tiger within the poem in the form of a present absence. In other words, the lyrical I is encouraging us to look for a third tiger, a living creature, instead of a fictional creature, which it has to mention, to name, in order to deliver its encouragement, but which it cannot name at the same time because naming it, or, more broadly, guessing its nature and circumstance, at once inscribes the tiger in the poem, relegating it to the fictional domain and separating it from the living creature we are asked to look out for.

In this view, comparing the impossibility of mentioning/naming this living creature conveyed in the last part of the second stanza with the explicit encouragement to look for a third tiger at the beginning of the last stanza does not result in an irresolvable paradox. Rather, the apparent paradox here is put to work because it effectuates a shift from an approximative and linear strategy doomed to fail towards a strategy of the unnamed; a strategy, if you will, of relation by deferral. In other words, the lyrical I is not so much asking us to look out for only a third tiger, but for a fourth, a fifth, a sixth, etc.; for as many tigers as we can construe in an imaginative effort that must, above all, keep running, as
every other tiger named blots out the previous one and is blotted out, in turn, by
the next in an endless deferral necessary to be or, better, to remain able to
envisage a living creature by tracing it, as a way of literally keeping it alive.
This can be illustrated metaphorically as every other tiger construed becoming
part of a network in a web of dispersed points in space and time of which not the
points but the interconnected texture of the lines themselves make up the living
fabric of the imagination. This is, then, how I concretely use a poetic reading
strategy to read the “arrangement” of human language conveyed through the
couragement in the poem.

This alternative strategy of the unnamed not just recognizes the
impossibility of knowing and identifying with the other in its essence, in order to
then suggest that “identification” relies on endless deferral and a continuous
process of re-imagining. The poem does more. It does not simply ask us to
choose one strategy over the other, but effects a doubling by taking them
together as it relays our focus from identification towards imagination. It
performs a transformation of what at first seems a nonsensical encouragement to
stick with a linear strategy of identification into a radical openness implied
within a strategy of the unnamed. In this way, slipping from one strategy into the
other, the poem wrestles itself out of the grip of the Human-Animal opposition
always already implied within a linear strategy of identification. It does so, not
by deconstructing and, hence, ignoring the role of the Human-Animal
opposition, but by working with it and showing how this traditional opposition
takes effect in a strategy of the unnamed. At the same time, however,
introducing the third tiger in this way immediately begs the question what this
radical openness, implied within a strategy of the unnamed, might amount to in
more concrete terms, thereby affording a sense of urgency to explore the relation
of language, naming and their respective roles in imagining the nonhuman other
and the subsequent constructions of its subjectivity.

It is of interest, with respect to this issue, to recognize that the flesh-and-
bone tiger imagined to be prowling on the fringes of the Ganges is set at a
distance from a lyrical I and not from a real life flesh-and-bone “I”, let alone the
author Borges. The first implication of this simple fact is that the imaginative
identification played out in the poem might be read as primarily concerned with
a notion of language as a nonhuman vehicle, rather than with trying to convey
how an essentially human being might identify with an essential animal being.
In short, the impossibility of imagining the real life flesh-and-bone tiger in its
essence here not just points to a certain conception of the nature of language as
deceptive because it is not suited to the task, but also touches upon the problem
of identifying language, here in the shape of a lyrical I, as corresponding to or
veiling something essentially human. In this light, the suggestion in the above fragment that the third tiger cannot be spoken of might have something to with the fact that, contrary to the lyrical I positioned as fixed and immobile within the confinement of a house, it does not concern a marked-off and fixed entity “out there,” but something fleeting, an event that, within a strategy of the unnamed, can never be caught in the act. Moreover, it is worth remembering that we are encouraged to look for it rather than being forbidden to speak of it.

In fact, I would suggest it cannot be spoken of, and thus not be forbidden to be spoken of, even when imagined to be spoken of, because the problem with “speaking of” here does not reside with this “speaking”; that is, with forever being trapped within the prison of language. Rather, the problem of “speaking of” concerns the “of” in question. This “of” signals an “about,” which suggests a philosophical rather than a poetical knowledge of the essence of the animal in question to be at hand, which reversely implies the a priori ability of language to somehow correspond to or veil the essentially human. Yet, since the “I” in the poem is anything but essentially human, in this case a lyrical I for being the voice of a poem, the real life flesh-and-bone tiger can never be “spoken of.” Firstly, because this would imply the essence of humanness, and, consequently, the essence of tigerness, to be available to us through language and identifiable somewhere outside, in the real world. Secondly, it would hinge on mistakenly identifying the figure of the “I” with something essentially human, instead of thinking of whatever “I” we stumble upon as a piece of language and, therefore, always already nonhuman.

By implication, a philosophical reading strategy in terms of “aboutness” would not just reinvigorate the Human-Animal opposition with its two essentialist poles, but also expose a fundamental connection between this opposition and the relation between the philosophical figure of the “I”, language and the human. In fact, language here would no longer function as the decisive marker floating about between the human and the animal, separating the human from the animal as some sort of threshold whilst at the same reiterating their opposition. Rather, language becomes no less than a substitute for the human, reducing the notion of “human language” not to an exclusive faculty but to a tautological construction. In this scenario, it is language that is not merely contrived as uniquely or exclusively human, but which is subsequently posed as essentially human for being attributed the power of “speaking of.”

By contrast, aspiring to a poetical reading strategy to imagine the nonhuman other and taking our cue from the functioning of the third tiger we have now explored in Borges’ poem may warrant a different reading of the figure of the “I” and the way in which it relates to language. Indeed, in a
poetical-deictic reading, the figure of the “I” not so much resembles a piece of language that has momentarily cut itself loose from what generally, on a meta-level and in tautological vein is referred to as human language, but concerns an act of speech that calls into being, and that even when it is suggested to be “speaking of,” cannot be qualified as corresponding to something essentially human. In short, the impossibility of a “speaking of” within a poetical reading strategy would imply that any attempt at imaginative identification through language must always amount to a speaking to, a tracing of the unspeakable, which, albeit hard to concretely envisage, one way or the other, involves addressing the other not in terms of correspondence, but as other.

This begs the question, first, whether the lyrical I takes in an exceptional position within our conceptualizations of the figure of the “I”. Second, if so far I have considered the figure of the “I” in terms of what it is not, the question remains of how to understand the conceptualization of the pronoun “I” when it is considered to correspond to or to veil – and thus to literally stand for – what, at any given time, might come to qualify as an essentially human being. Hence, the question becomes how to understand the conceptualization of language in relation to envisioning the figure of the “I” and the question of subjectivity. To further explore these complex matters, I will now zoom in on the way in which Derrida conceives of the figure of the “I” and its relation to language, to naming and to subjectivity by looking at what I consider to be two key passages on the figure of the “I” that not only foster Derrida’s exposition of the philosophical tradition he criticizes, but which also inform his deconstructive reading of Heidegger for cancelling out Heidegger’s third. Close reading the ways in which the “I” in Borges’ poem might interact with Derrida’s conception of the stakes of the figure of the “I” will, first, allow me to develop my own position on the figure of the “I” in order to, second, read against Derrida’s particular deconstruction of Heidegger’s Human-Animal opposition, which, third, will clear the way for re-introducing and critically reflecting on Heidegger’s third, the stone.

3. The figure of the “I” and its Relation to Language, Naming and Subjectivity

In *The Animal That Therefore I Am*, Derrida proposes that we are passing through a critical phase regarding the question of the animal due to the unprecedented way in which we have come to treat them in our industrialized

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124 Pro/noun from Latin pro/nomen, literally meaning in place of/name.
world. In order to address this pressing matter through the metaphysical discourse that underlies our modern treatment of animals, he retracts a long philosophical tradition that has forever defined the animal in opposition to the human. Going back to Descartes, who defined Man as the only thinking species, Derrida discusses philosophers such as Kant, Levinas, Lacan and Heidegger and scrutinizes the way in which the traditional Human-Animal opposition surfaces in their works. What Derrida observes, through detailed deconstructions of the works of those philosophers, is that the traditional Human-Animal opposition they arrived at is still very much indebted to Descartes. In short, Man is still registered as a thinking animal, which implies Man is considered unique for having some sort of supreme consciousness, which is generally registered as the capacity for language and hence to respond, which the animal is deprived of.

As Derrida demonstrates, in Lacan, although he does not deny the animal some capacity for signs and communication, this deprivation of response stems from a particular notion of the animal not being able to erase its traces; in Levinas the deprivation of response is bound up with his trouble with granting the animal a face, whereas in Heidegger the deprivation of response is ultimately arrived at as Heidegger considers the animal to be captive within its own environment without being able to comprehend its own captivity. In Heidegger’s terms this translates into being poor-in-world for being deprived of language. In his exposition of the way in which Kant defined the human as a rational being in opposition to the irrational animal, Derrida scrutinizes the idea of response as just another Cartesian “I think” by questioning Kant’s notion of an “I” that presents a presence to the self as a unique demarcation criterion for response, an issue we will see he later takes up in questioning the notion of response in Heidegger. For this reason, I will now examine how Derrida raises the stakes of the figure of the “I” by offering a reflection on his critique on Kant’s position on the figure of the “I”.125

Power over the animal is the essence of the “I” or the “person,” the essence of the human (this conforms, moreover, to the divine injunction that, from Genesis on, assigned to man such a destination, that of marking his authority over living creatures, which can be effected only through the infinitely elevated power of presenting himself as an “I,” of presenting himself and just that, of presenting himself to himself, by means of a form

125 I refer here to, but will not expand on, Paul de Man’s dealing with Hegelian aesthetics, in the context of which De Man traces a similar problem with the term and use of the term ‘I’. On this see Paul de Man, “Sign and Symbol in Hegel’s Aesthetics”. In: Critical Inquiry 8 (1982), pp. 761-775. For the importance of this issue in relation to aesthetics (and politics), see: Isobel Armstrong, The Radical Aesthetic (Malden, Mass.: Blackwell), 2000.
of presence to himself that accompanies every presentation and representation [sic]. This presence to oneself, this self of the presence to itself, this universal and singular “I” that is the condition of the response and thus for the responsibility of the subject – whether theoretical, practical, ethical, juridical or political – is a power, a faculty that Kant is prudent or bold enough not to identify with the power to speak, the literal power of uttering “I.” (93)

In this passage, Derrida illustrates how Kant conceives of the figure of the “I” as a universal singular figure, essentially at one with the concept of person that I scrutinized in the first chapter. Interestingly, Derrida emphasizes the word faculty by italicizing it and comments that Kant is bold or prudent enough not to identify this faculty with the literal power of uttering “I”. Of course, Derrida here does not state his own position on this matter but merely seems to appreciate the philosophical consistency that Kant demonstrates by arguing that the power, the faculty, of the universal singular “I” concerns an aptitude of language that must, at all times, be abstracted from particular, concrete speech. Yet Derrida neither poses an alternative to Kant’s position at this point, nor does he do so in the remainder of his text. At the same time, for Derrida, this universal singular figure of the “I” conditions response and, thus, subjectivity – let us say, language – because it presents a power to perform a form of presence to the self.

This latter point is highly relevant to my project because Derrida, in his reading of Heidegger, challenges the rigid distinction between response and reaction that informs Heidegger’s conceptualization of language as the unique and, therefore, essentially human ability to respond through an interrogation of the figure of the “I”. In the following passage, leading up to his deconstruction of Heidegger’s Human-Animal opposition, Derrida already starts to complicate the notion of response and its relation to the figure of the “I”.

No one denies the animal auto-affection or auto-motion, hence the self of that relation to the self. But what is in dispute – and it is here that the functioning and structuring of the “I” count so much, even where the word “I” is lacking – is the power to make reference to the self in deictic or autodeictic terms, the capability at least virtually to turn a finger toward oneself in order to say “this is I.” For, as Benveniste has clearly emphasized, that is what utterts and performs “I” when I pronounce or effect it. It is what says “I am speaking of me”; the one who says “I” shows himself in the present of his utterance, or at least of its
manifestation. Because it is held to be incapable of this autodeictic or auto-referential self-distancing (autotelie) and deprived of the “I” the animal will lack any “I think,” as well as understanding and reason, response and responsibility. The “I think” that must accompany every representation is this auto-reference as condition for thinking, as thinking itself; that is precisely what is proper to the human, of which the animal would be deprived. (94)

What Derrida suggests here, and I propose to read the passage in a somewhat reverse order to deliver my point more clearly, is that philosophy has always entertained a deliberately narrow definition of the figure of the “I”, namely as an “I think.” In this way, it has enabled itself to set the human apart from the animal indefinitely. This poignant point delivered, Derrida, in the remainder of his text, starts to disengage the capacity to respond from this “I think.” He does so by dwelling on the question of what it would mean for an animal to respond, not as a way of saying “I think” but in what Derrida himself refers to as “deictic” or “autodeictic” terms, in order to convey a presence to itself. Yet let me note that Derrida’s understanding here of a presence to the self as deictic, would have to be understood as indexical rather than deictic since indexicality presupposes a relation of contiguity whereas a deictic relation is concerned with an “I” and a you that are necessarily other. This caveat made, it will be of central concern in what follows that Derrida focuses on an indexical, then, or, to avoid further confusion of terminology, autotelic understanding of the figure of the “I” in Benveniste’s Subjectivity in Language while leaving unaddressed the way in which Benveniste relates the figure of the “I” to a “you”. Hence, what is left unaddressed is an understanding of the figure of the “I” whereby it is the speaker who sets himself up as a subject. Within such an understanding of the figure of the “I” the speaker does not so much turn a finger towards itself to say “I am speaking of me” in order to convey a presence to itself, but it is the speaker speaking to the other that informs its subjectivity.126

Hence, within Derrida’s understanding of the figure of the “I,” language is the technique by which “self-presence” is possible via language. The Kantian position reflected on by Derrida’s Benveniste-inspired understanding of language suggests that within every utterance an “I” is always already implied. For example, when one says “go away” there is an “I” present in this utterance in the form of an absence, because what is implied is “I urge you, go away.” For Derrida, this “I” presents a form of presence to the self, since with every utterance I present myself as present to myself. Within Benveniste’s

126 Ibid., 224.
understanding of the figure of the “I”, however, the “I” is connected to a you, which implies the possibility of being addressed. In short, whenever one utters “I” there is always already an opening up to the possibility of being addressed as a you. In this conceptualization, the figure of the “I” is not so much revealing a “presence to the self” but dialogical, whereas language, rather than being understood as a technique, implies a bodily constituted “presence to the other.” It is here that poetry may provide an instructive angle on the figure of the “I” because it opens up to an experience whereby a first person addresses a you that might very well not be present, rather than conveying a mere philosophical conceptual reflection about being present in third person descriptive terms.

By implication, we may begin to surmise that Derrida’s deconstruction of the works of the philosophers that make up the metaphysical tradition he retraces is, primarily, a philosophical project undertaken by a language philosopher. In other words, Derrida’s one-sided focus on Benveniste’s understanding of language here seems to demonstrate that his understanding of language and its role in imagining the animal is not informed by the poetical outlook on language that he himself in the beginning of his book considered vital for thinking through the question of the animal. As we will see, this is further evidenced by the lack of poetical analysis in thinking through the question of response in Heidegger since, unlike in Borges, no “third” is brought into the picture. For now, let us try to clarify what Derrida’s philosophical understanding of language and its role in imagining the nonhuman animal amounts to in more concrete terms. This is perhaps conveyed most clearly in the following fragment from his famous interview “Eating Well”:

The idea according to which man is the only speaking being, in its traditional form or in its Heideggerian form, seems to me at once undisplicable and highly problematic. Of course, if one defines language in such a way that it is reserved for what we call man, what is there to say? But if one re-inscribes language in a network of possibilities that do not merely encompass it but mark it irreducibly from the inside, everything changes. I am thinking in particular of the mark in general, of the trace, of iterability, of difference. These possibilities or necessities, without which there would be no language, are themselves not only human. It is not a question of covering up ruptures and heterogeneities. I would simply contest that they give rise to a single linear, indivisible, oppositional limit, to a binary opposition between the human and the

infra-human. And what I am proposing here should allow us to take into account scientific knowledge about the complexity of “animal languages,” genetic coding, all forms of marking within which so-called human language, as original as it might be, does not allow us to “cut” once and for all where we would like in general to cut. (284-285, italics in text)

In the above fragment we can see how – just as the figure of the “I” is taken up in autotelic terms within Derrida’s Benveniste-inspired reflection on Kant – the idea of language and, hence, response, is conveyed from within a framework of the Derridaean philosophy of *differance*, which hinges on an interrogation of a presence to the self. More specifically, language is approached as a system of signs, of traces that provide for the iterability of difference, a matter that has been key throughout Derrida’s work on deconstructing the “metaphysics of presence” tradition that philosophy according to Derrida represents. As Peter Benson has observed elsewhere, what Derrida means by presence in this context – and this amounts to a massive limitation – is that speech has traditionally been favoured over writing for the literal lack of mediation it was assumed to convey.¹²⁸ Hence, Derrida’s vocabulary of the mark, the trace, which we will see he invokes in his reading against Heidegger’s position on language and thus response as essentially human, conveys an understanding of language as not essentially human for never fully being present to itself.

This Derridaean approach to the figure of the “I”, language and, hence, response to imagining the question of the animal here appears to result in an expansion of the idea of language as beyond any reductive “I think” and in a subsequent problematizing of the traditional demarcation line of language as separating the human from the animal. Before I move on to address the implications of Derrida’s language philosophy for reading against Heidegger’s notion of response, however, let me introduce what I find lacking, namely a deictic-poetical rather than an autotelic-philosophical reading of the figure of the “I”. To this end, I will now return to Borges’ poem, because I believe it suggests yet another way of thinking about the figure of the “I” that I wish to contrast with that of Derrida resonating both within the above two passages and within the fragment cited from “Eating Well.”

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Whereas Derrida focuses on the question of response for thinking through the animal in terms of the capacity to say “I”, Borges’ poem offers an exploration of the different ways in which the figure of the “I” may be uttered. More specifically, the figure of the “I” in Borges’ poem addresses the other through a deictic calling into being of a third that must remain unnamed. This exploration of the figure of the “I” not only defies the binary between a fictional and a factional tiger but, at the same time, disrupts a speaking of the other in terms of an “aboutness” that must, nevertheless, remain approximate. In short, Borges poem explores the I - You relation in two ways. First, thematically, through its reflections on the fictional and the factional tiger and the conceptual issues it raises by its insistent attempt at conceiving of a third tiger. Second, poetically and performatively, through its experiments with the lyrical “I”, which differs from the philosophical “I” of the “I Think.” Let us now explore the various ways in which the figure of the “I” in Borges poem is uttered.

The figure of the “I” in Borges’ poem may be understood, at its most basic level, as a lyrical I for constituting the voice of the poem. However, this description of the “I” in Borges’ poem as a lyrical I is merely a formalistic exercise. It follows from nothing else than that we name the “I” that we encounter in a poem a lyrical I and, as such, merely constitutes a convention of genre, the categorical description of an instance of language. Another convention in literary theory, albeit less descriptive than the former, is the qualification of the figure of the “I” for the way it functions in a given text. This qualification of an “I” as lyrical is generally registered as concerning a communication situation whereby the “I” in a poem speaks out to another and the reader is placed in the position of overhearing. Since I am interested here in contemplating what the figure of the “I” in the poem does, rather than in fixing a label on it in literary terms, I choose not to apply the aforementioned qualifications too strictly, but to explore the operations of the figure of the “I” by considering it in light of the encouragement to look for a third tiger at the beginning of the last stanza.

This encouragement is delivered in the following way: “Let us look for a third tiger,” which suggests, first, that the “I” in question has literally withdrawn from the scene of the passage. In other words, the “I” is at most implied here and, for all we know, could have turned into a “we” in the process, because the addressee, the “us” mentioned within the address, could be evoked by both an “I” and a “we.” Second, it suggests that this implied “I” – if we momentarily choose to accept the “I” to be implied within the address of the “us” and thus to “count” as an “I” – is addressing the reader directly. This indicates we are no longer in an apostrophic position of overhearing and thus not dealing with a
lyrical I for the way it functions in the text, but, at most, with a lyrical I in the formal sense, for being the voice of a poem.\textsuperscript{129}

These various guises in which the “I” in Borges’ poem manifests itself suggest that it cannot be qualified as a general and universal singular for the way it operates. Hence, the difference between, on the one hand, the universal singular “I” that, within Derrida’s reading of Kant is dealt with in terms of a presence to the self that conditions language and, on the other hand, the literal uttering of the “I” through speech is foregrounded here as the “I” of literal speech is not general, because at times it is literally absent or, is present but then shifts back and forth from lyrical to non-lyrical. Nor is this poetical “I” singular per se, because once it is implied within the address of the “us,” we can never be sure whether it has not shifted into the plural “we.” This is why I propose that, if we momentarily stop and think through this difference between the philosophical figure of the “I” as a general singular and the poetical-literal “I” that speaks as constitutive of the difference between language and speech, Derrida’s claim in the third line of the passage above that the figure of the “I” is always implied, even when the word “I” is lacking, becomes problematic when read in a poetical vein.

First, because this implied “I”, due to the fact that it is always implied, cannot belong to the literal “I” of speech that is uttered. Hence, it may at best correspond to the universal singular “I” that Derrida interrogates in autotelic terms, as the power to present a presence to itself. Yet, the concept of an always implied “I” in autotelic terms cannot be reconciled with the idea that the implied “I” in question, because it is implied, would then have to be spoken for, whispered, so to speak, by the one that does not speak, because it makes the notion of “self” within this “presence to itself” dependent on another “I” as external to the “I” itself; that is, as caught up within a conceptualization of language as distinct from concrete speech. This, of course, is a fundamental distinction in Benveniste’s thinking through of subjectivity in language and the very reason why he does not only understand the figure of the “I” in autotelic terms but also in terms of deixis. Moreover, we can now imagine the “I” that speaks, or whispers, the “I” that does not speak, as an “I” that does not speak either, but that is spoken by yet another “I” that might or might not speak. Here the concept of the “I” as a universal singular, begins to reel, which suggests the notion of “presence to the self” implied within Derrida’s philosophical

conceptualization of the implied “I” must be read, from within a poetical reading strategy, as always already a “presence to the other.” Hence, the notion of ‘self’ can only be conceived of as pointing to a non-marked off entity, a fluidity of interconnected bodies of speech.

Apart from my reservations concerning Derrida’s philosophical interrogation of the figure of the “I” as a universal singular through an alternative and poetical reflection on the differences between the lyrical I as such, the formal lyrical I and the conceptualization of an implied I, it is meaningful to note that there are yet two other specific “I”’s to be distinguished within Borges’ poem. On the one hand, there is the “I” implied with the “I think,” as in “I think of a tiger.” On the other hand, there is the “I” implied within the “I dream you.” This “I dream you” is conveyed as follows in the last part of the first stanza:

In vain the convex oceans and the deserts
spread themselves across the earth between us;
from this one house in a far-off seaport
in South America, I dream you, follow you,
oh tiger on the fringes of the Ganges.

The “I dream you” offers yet another way of imagining the tiger, namely through some sort of dream-language. It is in this dream-language that the “I” in question does not perform a form of presence to itself, but a presence to the other. In fact, if we agree that it is the dream that allows the self-critical conscience – or what Freud called the ego – to be subdued, we could infer that the “I” within the “I dream you” is here no longer hindered by the “working through” of the laws of inherited social and cultural standards, naturalized, as it were, by the traditional Human-Animal opposition implied within an “I think.” Rather, the “I” dissolves within the dream, upsetting thereby in yet another way the whole conception of the figure of the “I” as a universal singular that performs a presence to the self. Thus, contrary to the “I” implied within an “I think,” and in line with a poetical thinking through of the concept of an implied “I” in Derrida’s philosophical interrogation of the figure of the I” as a general singular, we can here no longer “speak of” a fixed and marked-off self either. In other words, the “I” within the “I dream you” not just resists being qualified as a general singular “I” because it shifts back and forth from lyrical to non-lyrical, but also, I suggest, because the “of” – as in “I dream of you” – is missing. This holds for the original Spanish as well, in which “dreaming of” is grammatically
registered as “soñar con,” which would literally denote “dream with,” but which, in the poem is – ungrammatically – conveyed as “te sueño,” I dream you.

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As we have seen, Derrida reflects on Kant, who reads language as conditioned by a general singular “I” and then understands its functioning primarily in autotelic terms, whereas Benveniste also understands language as that which conditions deixis captured through speech. Notwithstanding these significant differences, both theorists thus share an understanding of the figure of the “I” not so much as a piece of, but as an aptitude of language that conditions subjectivity. This begs the question, in which way both theorists, but especially Derrida, conceive of the relation between the figure of the “I” within speech, on the one hand, and as a condition for language, on the other. Let us address this question by zooming in on what Benveniste has to say about the figure of the “I” as a general singular.

Now these pronouns are distinguished from all other designations a language articulates in that they do not refer to a concept or to an individual. There is no concept “I” that incorporates all the “I’s” that are uttered at every moment in the mouths of all the speakers, in the sense that there is a concept “tree” to which all the individual uses of tree refer. The “I,” then, does not denominate any lexical entity.130 (emphasis in original)

In this passage, Benveniste understands the figure of the “I” as a general singular in the “true” sense: it cannot be conceptualized and does not refer to a concept or to an individual, but, as it does not denominate any lexical entity, stands outside of speech as a purely grammatical function, as an always implied “I” without conceptual content. Hence, Derrida’s outlook on language is tied together with that of Benveniste because the figure of the “I” is viewed as a condition for language and thus posited, somehow, outside of or external to language, which registers language as a philosophical concept that can be abstracted from speech as a system of signs. For now, it is not my aim to contest the obvious possibility of this abstraction itself. Rather, I wish to use Borges’ poem to examine how it impinges itself upon Derrida’s framework and his subsequent reading of Heidegger in order to read against it and thicken the

130 Ibid., 226.
Human-Animal position I believe it is still too exclusively caught up in.

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A good point of departure for exploring this complex matter seems to be to retrace how the poem invites a reflection on the nature of language through the opposition between a factional and a fictional tiger. As we have seen, the way in which this opposition is conveyed and complicated suggests language’s natural (fictional) disposition and makes it lack the power to lay bare the underlying (factional) truth of its words. Hence, on a thematic-conceptual level the nature of language conveyed in Borges’ poem may be qualified as deceptive for the insistent suggestion of correspondence with the factional tiger that every other fictional tiger inspires. This deceptive quality of language reaches its most dense peak whenever there is an “I” that speaks, lyrical or otherwise, which make it seem as if language could present itself, of itself, as disclosing, as being at one with the essentially human. In this respect, the deceptiveness of language played out in Borges’ poem draws on a particular allegorical notion of language as a veil. This allegorical notion of language, however, is simultaneously evoked and shattered in the poem and thus could be said to be deceptive in its own right.

First, literally first, we are seduced into identifying a lyrical I with an essentially human being. I would qualify this as an allegorical operation because the suggestion of correspondence between a lyrical I and a human being here comes to function as a catalyst for entering into the impossible figure of a linear strategy of approximation, which, as I discussed in my second chapter, thrives on the old misconception of language as an allegorical construct all the same. By implication, the “I” in question here is not a general singular, but, as a result of a particular allegorical reading of language shifts into a general singular and is read as the most condensed sustained metaphor of the human subject. This shift itself is the shift in focus from language as it is used, speech, to philosophically conceptualizing language as an abstract system of signs. The problem this shift conveys is that we are thus presented with a reading of both the figure of the “I” as a general singular, on the one hand, and language, on the other, as no longer standing in metaphorical relation to one another. In short, the figure of the “I”, once conceptualized as a general singular within an allegorical reading – and this is the problem with Derrida’s autotelic reading – does not so much illustrate, but kill off its supposed metaphorical power, which ultimately results in the two concepts, the figure of the “I” and “language” being read in a synecdochical vein as perfectly congruent substitutes, which causes the conditionality upon which the distinction rests to evaporate.
At the same time, in the poem, the idea of language as a veil, as an allegorical construct, is shattered, because ultimately its implied strategy of linear approximative identification is deemed untenable as we are offered an opening towards an alternative strategy of the unnamed. This “shattering” of the idea of language as a veil by opening up space for a strategy of the unnamed offers a different perspective on the nature of language as deceptive, whereby language is no longer understood as a veil but as a performatively instance that calls into being. This does not imply, however, that we should now read this performativity as some sort of corrective measure applied to an allegorical conception of language. Rather, instead of reading the performative character of language the poem brings to bear as effectuating a reverse shift from philosophical thinking of language as an abstract system of signs towards a poetical thinking of language for the way it is used, I choose to read it as pointing to the problem of registering language as a philosophical system of signs for the thinking through of nonhuman subjectivity since it causes the nonhuman entity to be read in terms within which the figure of the human is always already inscribed.

With respect to this issue, I argue that Derrida’s treating of language as a philosophical system of signs that can be abstracted from speech raises a problem for his exposition of the general singular “I” as traditionally an “I Think.” The reason is that an understanding of language as a system of signs that can be abstracted from speech implies that without speech there would be no such thing, no such system of signs we refer to as language. We can speak, our bodies can speak, but we cannot “language.” There simply is no verb that allows us to speak language, we can only speak and talk “about” language. In this light, thinking through animal subjectivity seems to require a counterintuitive leap of faith because it forces us to let go of any philosophical idea of language on a conceptual level and to focus instead on a heterogeneous multiplicity of languages, of intertwining and overlapping structures of speech. In other words, first there is embodied speech, only then there is the possibility of abstracting language as a system of signs. Hence, instead of working within the language - speech distinction we would have to understand language as embodied speech. It is here that I diverge from Derrida since the figure of the “I” loses its non-conceptual status precisely when we start thinking “about” the animal for always already inscribing the human within our thinking. In other words, whereas the distinction between language and speech implies language to be philosophically conceived of as an abstract system of signs, as a technology that is external to the human being, the poetical performativity of speech as embodied expression and not primarily as something from which language as a
philosophical system of signs can be extrapolated, has appeared to defy the non-conceptuality of the philosophical “I,” because the philosophical “i” can only think of the animal in terms of “aboutness.”

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I have now concluded that Derrida’s interrogation of the figure of the “I” as a general singular is bound up with a view on language as a system of signs that is understood in an allegorical vein. To put it somewhat crudely, Derrida, in his valuable critique on the philosophical tradition, does not problematize the idea of the figure of the “I” as a general singular beyond delivering a critical reservation on the traditional reading of the figure of the “I” as always, and unfortunately so, an “I Think.” This is, of course, a very important philosophical gesture. It creates space for disengaging the figure of the “I” from the “I Think” and allows for rethinking the figure of the “I” as a condition for response, opening up an immense field we are only beginning to explore today. At the same time, Derrida’s autotelic, rather than deictic concern with the figure of the “I” as a condition for response still does nothing to radically contest, on the one hand, the figure of the “I” as a general singular, and, on the other, the inextricable taking up of language allegorically; that is, as a philosophical system of signs that would be perfectly interchangeable with conceptualizing the figure of the “I” as a general singular. In other words, the figure of the “I” in Derrida shifts from being a condition for language towards being at one with it, which introduces an irresolvable loop within his framework.

For this reason, I will now explore the way in which this loop affects Derrida’s complex line of thought on the question of response, first, by looking at what he problematized as this other general singular, the animal, and which he subsequently proposed to put under erasure by imaginatively substituting it with the neologism animot. Second, by looking at what his Benveniste-inspired adherence to the figure of the “I” in terms of conditionality means for his articulation of language as a philosophical concept and, consequently, for the exploration of subjectivity within his deconstructive reading of Heidegger.

4. The “I” and the Animot

In the first chapter of *The Animal That Therefore I am* Derrida introduces the neologism animot for the first time. The word animot is a pun on the word animal – Derrida aims to have the plural heard in the singular. According to
Derrida, the *animot*, contrary to what the tradition of the “I Think” has forever defined as the general singular animal, designates “a heterogeneous multiplicity of living creatures” and, in that capacity, allows for a reconsideration of the notion of response, which Heidegger (and the wider tradition he represents) denied the animal. This is why Derrida proposes to imaginatively substitute the word animal with the word *animot*, which not only enables him to work out a specific way of opening up to the notion of response, but, eventually, also leads him to conclude that the capacity to respond might not be distinguished so absolutely from the capacity to react as Heidegger has suggested.

This begs the following questions: first, how does Derrida envisage the *animot* as potentially opening up to the notion of response in a way the general singular animal cannot; and, second, what are the implications of introducing the neologism *animot* while remaining indebted to setting it off against what I have now come to consider Derrida’s problematic critique of the figure of the “I” as a general singular in autotelic rather than deictic terms? The third question I wish to pose is whether we can think of a different angle to read the Human-Animal opposition. This different angle must not only enable us to address the specific way in which Derrida, through the notion of *animot*, destabilizes Heidegger’s absolute distinction between reaction and response. It must also confront Derrida’s ultimate negation of this distinction as absolute in a manner that allows for breaking free from the implied continuity of the Human-Animal opposition on which it relies.

With respect the first two issues, it is important to note that when Derrida develops his idea of *animot* and the way in which it might open up to the notion of response, he sketches what, at first glance, appears to be a level playing field for both the figure of the “I” and the animal. Indeed, he begins his deconstructive reading of Heidegger by framing both figures as general singulars. This affords both terms some sort of positional equality with regard to one another:

> It happens that there exist, between the word *I* and the word *animal* all sort of significant connections. They are at the same time functional and referential, grammatical and semantic. Two general singulars to begin with: the *I* and the *animal* designate an indeterminate generality in the singular and by means of the definite article. (49)

The positional equality afforded both the general singular “I” and the animal as a general singular in the above passage might lead one to expect that Derrida critiques the figure of the animal as a general singular in very much the same
manner as he did the traditional philosophical figure of the “I”. Yet, at the end of
the very first chapter of *The Animal That Therefore I Am*, Derrida not so much
critiques what he defines as this other general singular, the animal, in autotelic
terms but primarily finds fault with the name animal:

Whenever “one” says “The Animal,” each time a philosopher, or anyone
else, says “The Animal” in the singular and without further ado, claiming
thus to designate every living thing that is held not to be human (man as
*rational animal*, man as political animal, speaking animal, *zōon logon
echon*, man who says “I” and takes himself to be the subject of a
statement that he proffers on the subject of the said animal, etc.), well,
each time the subject of that statement, this “one” this “I,” does that he
utters an *asinanity* (bêtise). He avows without avowing it, he declares, just
as a disease is declared by means of a symptom, he offers up for diagnosis
the statement “I am uttering an *asinanity*.” And this “I am uttering an
*asinanity*” should confirm not only the animality that he is disavowing but
his complicit, continued, and organized involvement in a veritable war of
the species. (31)

As we have seen, on the one hand, Derrida delivers a critique on the figure of
the “I” as traditionally an “I Think” and, consequently, as too narrow a concept.
This fundamental insight allows him to reframe the figure of the “I” by looking
at it in terms of the ability to respond and to contemplate what response might
amount to apart from thinking. On the other hand, and herein lies a discrepancy,
the term Derrida highlights in the above passage as this other general singular,
the animal, is not so much registered as too narrow a concept, but as a word that
is so horrific *because* it is a general singular and *therefore* complicit with no less
than a veritable war on the species. Let it be noted in passing that Derrida here
not just places the violence lodged in the word animal in a philosophical
tradition but explicitly suggests this violence to be implicated whenever “anyone
else” speaks of the animal as well. The point here, however, is that in view of
this difference in critical treatment of both terms as general singulars, it should
not come as a surprise that Derrida focuses on the general singular animal as the
most urgent point of departure for thinking through the ability to respond and all
that this implies.

In the following passage, Derrida succinctly conveys the problem with the
general singular (the) animal. He does so by pointing out that the conceptualiza-
tion of the animal as a general singular must be placed in an age old
philosophical tradition that has registered the animal as a general singular for being deprived of language and, hence, from a response.

_Animal_ is a word that men have given themselves the right to give. These humans are giving it to themselves, this word, but as if they had received it as an inheritance. They have given themselves the word in order to corral a large number of living beings within a single concept: “The Animal,” they say. And they have given it to themselves, this word, at the same time according themselves, reserving for them, for humans, the right to the word, the naming noun (_nom_), the verb, the attribute, to a language of words, in short to the very thing that the others in question would be deprived of, those that are corralled within the grand territory of the beasts: The Animal. All the philosophers we will investigate (from Aristotle to Lacan, and including Descartes, Kant, Heidegger, and Levinas), all say the same thing: the animal is deprived of language. Or more precisely, of response, of a response that could be precisely and rigorously distinguished from a reaction; of the right and power to “respond” and hence of so many other things that would be proper to man. (32)

As becomes clear from the above passage, this age old philosophical tradition has held, and most conspicuously so in Heidegger, that the animal, contrary to the human, is deprived of the ability to respond and can merely react. This idea, in turn, is centred on the belief that the animal does not have the ability to deceive, which, according to Derrida, is always already implied within the notion of response. In a complex reading of Lacan on the difference between pretence and lying in the third chapter of _The Animal that Therefore I Am_, Derrida has convincingly argued that the animal cannot be deprived of the quality to deceive but that this matter must remain fundamentally un-decidable. In fact, as we will see, it is precisely this notion of deception that will be key to Derrida’s use of the _animot_ to read against the clear-cut distinction between reaction and response in Heidegger.

To better grasp the specific way in which Derrida’s proposed substitution of the general singular animal with the neologism _animot_ informs his deconstructive reading of Heidegger, let me bring into focus what, for the purposes of my current project, is essential to Heidegger’s complex position on the animal. In my view, Richard Iveson has formulated this position most aptly. I choose not to paraphrase Iveson here, but to quote his position on Heidegger in
full because I need both the specificity of its wording and its comprehensiveness to touch on all the relevant aspects we will need to address:

In the fourth chapter of *The Fundamental Concepts of Metaphysics*, and via the work of the biologists Hans Driesch and Jakob Johann von Uexküll, Heidegger argues that the nonhuman animal is excluded from the worlding of world as a necessary result of its *captivation* (*Benommenheit*), that is to say, “(c) aptivation is the condition of possibility for the fact that, in accordance with its essence, the animal *behaves within an environment but never within a world*” (FCM 239). This is because, as far as Heidegger’s animal is concerned, there can never be anything *beyond*, nor any differentiation *within*, the disinhibiting ring which marks the absolute limit of her environmental capture. As a result of this essential undifferentiated *absorption* (Eingenommenheid), “the animal” can never apprehend (“have”) “its” own captivation- that is, can never apprehend “its” own capture within a set- and hence “it” is poor-in-world (*weltarm*).

The condition of possibility of world, withheld as we have seen from the animal, “is” precisely the “having” of captivation *as such*, that is, the apprehension of the undisconcealedness of Being *as* undisconcealedness (i.e. of the withdrawal of Being). In other words, the human “is” only in this having of the “as” –structure (die ‘als’ –Struktur), which is the condition of possibility for the *logos*, as it is only in having the “as” that the human is given to apprehend beings *as beings* - the wonder that beings *are* which is the worlding of world- and thus, beyond the captivation of the disinhibiting ring, to perceive itself as *an* (individuated) being.  

As we can infer via Iveson, Heidegger claims that the animal, because it is deprived of the ability to respond, does not have language and thus cannot be thought in terms of being “as such,” a logic that ultimately allows him to attribute the animal, one the one hand, and the human, on the other, a different ontological status. What Derrida aims at in his deconstructive reading of Heidegger, then, is precisely a renegotiation of the ontological abyss Heidegger has put in between the human and the animal. He does so, first, by rejecting the idea of the animal as a general singular and proposing to put in under erasure by

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imaginatively substituting it with the neologism *animot*.\(^{132}\) Hence, the way in which Derrida envisages the *animot* to open up the notion of response must be understood as an opening up to at least a consideration of the possibility of what Heidegger would call – but denied – the being “as such” of the animal. Second, Derrida questions Heidegger’s rigid distinction between reaction and response in a particular way; namely, through a contemplation on whether the *animot* and its leaving of marks and traces could not be viewed as conveying the capability of deception, as just another way of responding.

With respect to both issues, it is important to observe that Derrida remains indebted to approaching the Human-Animal opposition in Heidegger from the same vantage point as the tradition he traces has done since time immemorial, namely in terms of the relation between reaction and response. This framework is – in accordance with his autotelic understanding of the figure of the “I” as a general singular – still reliant on taking up language in a profound allegorical sense. As I concluded before, such a traditional framing fails to account for the way in which the figure of the “I” shifts from being posited as a condition for language towards simultaneously being at one with language whenever the role of language is exclusively thought as a philosophical system of signs that may be abstracted from bodily speech.

In fact, I would argue, it is the specific quality of deception implied within such an allegorical outlook on language, this notion of veiling, covering and, alternatively, uncovering, that not merely informs the traditional notion of response, but that, given Derrida’s contemplations on the *animot* and its marks and traces to be covered or uncovered, remains key to his argument in a most literal way. Admittedly, we do not have to read Derrida’s language of marks and traces in a literal way, especially not since Derrida has in mind the metaphorical language of marks and traces that he uses to deconstruct the metaphysics of presence we discussed earlier. Yet, even if we choose not to read Derrida in such a literal manner, the allegorical outlook on language within Derrida’s framing is not destabilized. Rather, it seems as if the allegorical outlook implied within the difference between language and speech in Derrida brings forth a potentially endless deferral of binary oppositions whereby the question of the animal is alternatively traced in terms of the Human-Animal, Reaction-Response and Presence-Absence. In other words, language, both in Heidegger and Derrida, can only be attributed to a body if it is defined in traditional allegorical terms, as betraying some sort of mysterious extracorporeal essence; the Cartesian essence, if you will, of the “I Think” always already implied once we set the nonhuman

\(^{132}\) “I’ll do it several times but each time that, henceforth, I say “the animal” I’ll be asking you to silently substitute *animot* for what you hear.” Ibid., *The Animal That Therefore I Am*, 47.
other – whether conceived of as animal or animot – against the figure of the “I” as a general singular caught up within a one-sided autotelic understanding.

This begs the question, first, how to confront the category of the human as other than a general singular still tied up with the traditional “I Think” for being conceived of in autotelic terms. Second, it asks for a further exploration of the notion of animot, not just of the way in which it supposedly opens up to the possibility of the “as such” of the animal, but more specifically of the way in which it evolves from Derrida’s as yet unquestioned adherence to the general singular human as not primarily problematic for its name. In order to do justice to the complexity of these interrelated issues, I will now, rather than dealing with each question separately, try to address them in conjunction. Let me start by zooming in on the role the animot plays in Derrida’s renegotiation of Heidegger’s position on the rigid distinction between reaction and response, which, as we have inferred via Iveson, is centred on the animal’s captivity and its subsequent lack of the “as such” structure.

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After broaching the question if the rigid distinction between reaction and response in Heidegger can be maintained, Derrida goes through great pains to question the uniqueness of the quality to respond. Indeed, in the two citations below, Derrida interrogates the way in which the philosophical tradition defined response by speculating on whether the ability of animals to cover their tracks or erase their traces cannot be understood as a way of responding.

As we shall see, even those who, from Descartes to Lacan, have conceded to the animal some aptitude for signs and for communication have always denied it the power to respond-to pretend, to lie, to cover its tracks or erase its own traces. (33, italics in text)

Having or not having traces at one’s disposal so as to be able to dissimulate [brouiller] or erase them, in such a manner as, it is said, some (man, for example) can and some (the animal, for example, according to Lacan) cannot do, does not perhaps constitute a reliable alternative defining an indivisible limit. (33, italics in text)

In the first quotation, Derrida’s critique on the philosophical tradition betrays an explicit literal rather than a metaphorical understanding of the animal’s capacity to cover its tracks or erase its traces, which is a matter I will address shortly. For
now, suffice it to say that Derrida posits that we can never know if the animal is not using its marks and traces as just another deceptive language, which is why language, the ability to respond, to deceive, cannot be distinguished absolutely from a reaction. Hence, the question of response must remain undecidable and, therefore, response cannot be qualified as exclusively and essentially human as Heidegger suggested.

Of course, such a deconstructive reading of Heidegger is an important gesture, as it seems to once and for all settle the question on whether language can be defined as the decisive marker separating the human from the animal in essentialist terms. At the same time, however, Derrida’s conclusion on the undecidability of the difference between reaction and response opens up a whole different can of worms, since it would imply that we might have to revise the juridical conception of responsibility on which our traditional conception of personhood has been built.133 My immediate purpose here, however, is to explore what precisely informs Derrida’s conclusion on the undecidability between reaction and response, which, albeit a solid argument in itself, I find problematic; first, for the way it is arrived at through the notion of animot; and second, for the specific branch of ontology on which it is centred and from which I seek to get away from by bringing in Heidegger’s third, the stone.

On the one hand, Derrida deconstructs Heidegger’s position on the rigid distinction between reaction and response and radically redefines response. But, on the other hand, he still operates from within a traditional philosophical framework, because he stills follows Heidegger and the wider tradition he critiques in registering response and, hence, deception, as key to distinguishing between different categories in essentialist terms. The reason I refer to these terms as essentialist is that the Human-Animal opposition implied within thinking through the difference between reaction and response still constitutes a binary, while, as a matter of principle, we cannot have a binary opposition that is not framed in essentialist terms unless we would have a positive knowledge of what those terms mean. To put this complex matter in a somewhat oversimplified way: Derrida works from within the same preordained framework as Heidegger, and the fact that he reaches a different conclusion does nothing to upset this traditional framework and; indeed, he thus ultimately reinforces it.

133 For an instructive introduction to Derrida’s thinking on responsibility that is not centered on the distinction between reaction and response but understood in terms of what Derrida calls the Aporia of the Law, see: “Derrida: The Impossible Origins of Responsibility.” In: François Raffoul, The Origins of Responsibility (Bloomington: Indiana University Press, 2010), 282-299.
By implication, Derrida’s proposed imaginary substitution of the animal with the *animot* as a possible alternative to the general singular animal and as a way of opening up to the possibility of the animal “as such” becomes suspect. In short, Derrida’s notion of *animot* may put the animal under erasure but not the Human-Animal opposition itself. In this respect, and in light of Derrida’s explicit literal understanding of the language of traces and marks in the citations quoted above, the proposition to imaginatively substitute the animal with the *animot* becomes a symptom of an allegorical reading that ultimately re-installs the Human-Animal opposition. When he finally arrives at his conclusion, he has already taken for granted that he is speaking of certain animals: those that leave tracks and/or erase their tracks as a way of deceiving their enemies. In other words, Derrida has, in his valuable critique on a philosophical tradition that registers the deceptive quality of language as a unique and, therefore, essentially human phenomenon, taken the notion of language here as deceptive in terms of tracks and traces in a most straightforward allegorical sense, without accounting for the paradoxical status of his conceptualization of language as both at one with *and* a condition for the ability to respond.

Of course, this does not mean that those animals that cover or veil their traces are performing allegorical operations. Rather, it suggests that their “literal” use of signs is read allegorically in Derrida’s critical reading of the philosophical tradition that Heidegger represents. This allegorical procedure, albeit testifying to the fact that the quality to respond might not be such an exclusively human affair after all, brings to mind the procedure we witnessed in my analysis of *Animal Farm*, whereby only certain animals, the most humanlike ones, could respond to the humans. Not only does this line of thought seem to run contrary to Derrida’s own notion of *animot*, but while seemingly doing away with the Human-Animal opposition on one level, it also brings a categorization of difference into play that causes the Human-Animal opposition to be surreptitiously reintroduced in the most essentialist terms on another.

To be sure, the problem with Derrida’s foregrounding of the undecidability between reaction and response is *not* that this conclusion is not “true” from a philosophical point of view. Indeed, his argument is very convincing and I fully agree with it. Rather, the problem with Derrida’s conclusion on this undecidability is that it installs an argument that, ultimately, hinges on very much the same undecidability that characterized the scientific research on the animal’s capacity to suffer, which I sketched and analysed in the previous chapter. In short, the question of response is indeed undecidable. But not so much because certain animals may or may not cover their traces, whether literally or metaphorically, but because Derrida’s conclusion on this
undecidability ultimately raises the question of consciousness, the traditionally primary asset of human language, even while deconstructing the traditional Human-Animal opposition itself.

This dynamic, I propose, may be attributed to what causes Derrida to introduce the neologism animot as an adequate way to deconstruct the ontological deprivation of the animal in Heidegger in the first place; namely, his understanding of the figure of the “I” in autotelic terms and his subsequent one-sided focus on the general singular animal. In other words, finding fault with the word animal as a general singular and proposing to imaginatively substitute it with the animot is not enough if envisaging the figure of the “I” as a general singular to an important extent remains unquestioned. More than that, precisely because it is only questioned from within an autotelic understanding of the figure of the “I”, it is uncritically transposed to certain animals and, therefore, awkwardly reductive.

In my reading, Derrida’s argumentation is simultaneously successful and flawed. He has framed his argument ultimately, but effectively a priori, in traditional terms, as a problem of demarcation that hinges on an undecidability about what may be considered human and what may be considered animal by looking at capacities, in this case the capacity to respond, however loosely, or creatively defined. Thus, the way in which the question of response is framed in Derrida results in a reinvigoration of the traditional Human-Animal opposition because of the allegorical outlook on language implied within his analysis. But also, I suggest, because it is precisely his not merely metaphorical but also literal thinking of the animot in terms of marks and traces that effectuates what I consider to be a one-sided ethological strand at the core of Derrida’s thinking. In short, thinking in terms of marks and traces as assets to be attributed to certain humanlike beings betrays a concern with the behaviour and organisation of a particular selection of the animal domain and harks back to looking at the question of the animal from a biological perspective. However important it is to learn more about animals, such a reductive focus on demarcation not only reiterates what Iveson in his comment succinctly conveyed as Heidegger’s concern with environment, on the one hand, and with world, on the other, but effectively veils what should really be at stake and therefore cannot but result in forever being locked up in the Human-Animal opposition, even whilst seemingly deconstructing it.

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For this reason, I propose that what should really be at stake here is not how to deconstruct the traditional Human-Animal opposition, but how to demarcate the category of the animal/animot if we can no longer rely on opposing it to the human, which seems to be precisely what happens if, as Derrida concludes, the rigid distinction between reaction and response can no longer be maintained. This problem does not primarily ask for a deconstruction of the Human-Animal opposition by an imaginary substitution of the word animal with the word animot. Rather, it asks, first, for a further exploration of the word animot, both of the specific way in which it is conveyed within Derrida’s framework and as other than as a substitution for the word animal. Second, it asks not only for an interrogation of the animal as a general singular, but also for formulating an alternative to Derrida’s interrogation of the figure of the “I” as a general singular, not so much in terms of the way in which it is conceptualized in relation to language, but in terms of how it is used, both within and outside of the juridical sphere. Third, I would argue, it asks for bringing in a conceivable “third” that allows for the human and the animal to take in a veritable positional equality with regard to one another.

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A good point of departure for exploring these complex matters might be to zoom in on the way in which Derrida approaches the problem of the animal as a general singular throughout his text, namely as a problem of naming. This is Derrida:

The animal is a word, it is an appellation that men have instituted, a name they have given themselves the right and the authority to give to the living other. (23)

On a very basic level, the reference in the above fragment to the word animal as a name is problematic because it suggests the name animal, once substituted with the neologism animot, is only substituted with another name. In other words, there seems to be no significant difference between using the word animot and the word animal, because it would be somewhat ludicrous to suppose that when we hear the word animal we are inclined to think of all the animals we can and cannot imagine as one and the same general, singular, animal. On the contrary, it seems to me that when we hear the word animal we immediately imagine an immense variety of creatures we, if only for being able to use the particular “language” in which we express ourselves, speak; that is,
generally refer to as animal. It is not so much, then, that we are not doing justice to “a heterogeneous multiplicity of living creatures” when we generally refer to those creatures as animal. Rather, it just happens that speech works by selecting and splitting, not within the abstract concept of language, but within itself.

This is why I now propose we let go of the difference between language and speech as a conceptual tool for thinking through the subjectivity of the animal other. Instead of exploring subjectivity in language, as Benveniste and Derrida have done, I propose we must think through subjectivity as speech. Without wanting to fill in how to go about thinking through subjectivity as speech, but leaving it open, such a frame presents two concrete advantages. First, the continuous selecting and splitting of speech can no longer be understood as causing a split between the fictional and the referential “it” supposedly veils. There is no longer an “it,” no “language,” that is, that veils. Second, since this particular notion of speech cannot be understood in such an allegorical vein we avoid getting caught up in the loop we have now identified within Derrida’s framework. Instead of a loop, there is only a splitting within itself, an insistent mobility when we speak.

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In my view, the loop in Derrida’s framework is not merely caused by his autotelic understanding of the figure of the “I”. It also stems from his finding fault with the general singular animal as a form of naming, whereas I conceive of our use of the word animal, and consequently, the human, as categories. My understanding of the terms “category” and “name” here is not indebted to a specific philosophical conceptualization of those terms. Rather, it follows from my earlier exploration of those terms in my reading of the bird’s case in Animal Farm. If in Animal Farm the name wings was substituted with legs and if the demarcation categories were the categories of the human and the animal we may now surmise that the difference between categories and names is that, unlike names, categories cannot so easily be substituted with one another. In other words, affording an entity a different name might very well allow it to be placed within a different category, as might happen, for example, with the notion of personhood within an expansive model. Categories, however, are formed ideologically in relation to the world we believe to inhabit. I must agree with David Wood on this point, who, in an essay on an excerpt from Derrida’s The Animal That Therefore I Am called “Thinking with Cats,” suggests that what we
do when we set the human against the animal is not a matter of naming but of categorization.\textsuperscript{134}

But I have doubts about this. The violence lodged in the word Animal is not the product of naming. We do not name the creatures of the world “animal” or “the animal.” Rather, “animal” is a category, one of the same order as “man.” To call it a category rather than a name is important. Categories are gross ways in which we (humans) carve up the world. (133)

The point here is not that categorization is always also a performative act that is more complex than a straightforward philosophical designation, which is a matter that has been discussed at length in the previous chapters. Rather, I wish to raise an issue here in relation to Derrida’s argumentation concerning the animot; namely, that if the word animot helps us to think of animals not in terms of a general singular but as designating an incredible variety of living beings, it is also true that biology has done exactly that. Ever since Aristotle, it has endlessly striven to distinguish, classify and attribute different names to an incredible variety of nonhuman beings that it has categorized as either animal, plant or (in) organic matter. What is at stake here, then, is not the name animal that demarcates, but the demarcation such a category implies. It is noteworthy, in this respect, that Derrida does not offer the same treatment to the other pole of the Human-Animal opposition he is interrogating: he does not explicitly speak about the human as “designating an incredible variety of living beings that we have given ourselves the right to call human.” In short, whereas Derrida insists on imaginatively substituting the general singular animal with the neologism animot in order to point out and, to some extent, fend off, at least verbally, our complicit involvement with a horrific and organized injustice that he qualifies as no less than a veritable war on the species, the human remains the human.

This might have something to do, first, with the fact that the human, the category human, although each of us is given a name, does not signal such an incredible variety of creatures as the category of the animal does. Not just because, I would suggest, our physiology is obviously much less diverse, but also because any attempt at distinguishing between humans on the basis of even the slightest physiological feature or behavioural characteristic within the category human, as the histories of women, slaves, colonialism and recent genocides have taught us, puts one at risk of entering the dangerous territory of

racist bias. In other words, Derrida’s ethological speculation on the animal in terms of marks, traces and behaviour cannot be administered to the other pole of the equation without upsetting the supposed positional equality – both in between and within – he has so generously afforded those poles at the beginning. In fact, we can now conclude that the “I” standing, so to speak, for the human in this equation not only immediately falls apart when not read within an allegorical conception of language, but also that framing the human and the animal as two general singulars can only be maintained if one of those general singulars is understood as a name instead of a category.

This is why I now propose to diverge from Derrida, first, by insisting that addressing the question of the animal from the perspective of the animal necessarily involves a “passing through” rather than a deconstruction of the traditional Human-Animal opposition, precisely by looking at both terms as uneven categories and not as names. Second, I would argue that looking at the question of the animal asks for a framework that is not ontologically predefined by a clinging onto and, hence, setting the animal against the figure of the “I” conceptualized as a general singular. Let us now reflect on the human and animal as categories and try to imagine in which way the category of the human is used rather than conceptualized.

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The category of the human, of the general singular human, differs from the category of the animal as it is necessarily universal; that is, if we aspire to not live in a (proto) fascist world. Indeed, to deny this universality would imply affording some humans a humanlike, animal status. In fact, I propose that the category of the human is, in the first place, at heart, a juridical figure, as Man is the same only for the law. In other words, the only way in which the category of the human can be sustained for the way in which it is used, is as a legal category; or, as Erica Fudge so aptly put it:

In the late eighteenth century the American Declaration of Independence formulated the human in a slightly different way by arguing that ‘man’ had certain inalienable rights, such as ‘life, liberty and the pursuit of happiness’ (and in the mid-nineteenth century Harriet Taylor Mill was to question the limitation of these rights to men). To say that a right is inalienable is to say that without those rights human status cannot be; is to
say that, if those rights are gone, so too is the human. The human here becomes a being with an essential status that is fixed, stable.135

In this respect, the ontological difference between the human and the animal the philosophical tradition has established and that Heidegger reaffirmed in his own idiosyncratic way, has only partly been contested by Derrida, because he has remained indebted to the traditional vocabulary and limited himself to try and understand one category in terms of the other. The idea that the animot, a certain group of animals, might leave marks and traces in a way the general singular animal obviously cannot, does nothing to change this fact. Hence, the way in which the notion of animot is developed by Derrida, can never function as a lever to open up to the “as such” of this multiplicity of living beings we have given ourselves the right to call animal. First, because the resulting contradiction in terms would dictate we must do justice to a certain, homogenized and a heterogeneous multiplicity in terms of each “individual” being “as such.” Second, and more fundamentally still from a practical point of view, because setting the animot against the figure of the “I” as a general singular already implies looking at the animot – and I agree here with Erica Fudge – exclusively from within, even if not explicitly articulated as such, a juridical framework which, under the regime of personhood is centred on a predefined ontological difference between the human and the animal.

Finally, let me conclude that Derrida’s proposed substitution of the “name” animal with the “name” animot, rather than opening up to a strategy of the unnamed by bringing in a third, as my analysis of Borges’ poem demonstrated to be a possible alternative, a beginning of a way out of a predefined ontological difference, aligns his project with that of the endlessly named species of biology; that is, it gives way to a strategy of the named. Derrida has limited himself to questioning the figure of the “I” as a general singular, on the one hand, and the figure of the animal as a general singular, on the other, while not exploring the figure of the stone in Heidegger’s tri-partition and the ontological stage it sets for Heidegger’s denial of response to the animal. Returning to Heidegger’s stone, then, which I will now set out to do, might, first, provide us with another angle on how to read into the predefined ontological difference within both Heidegger and Derrida, so as to, second, explore possible alternatives for thinking through animal subjectivity and the way in which such subjectivity might be imagined, if at all, within a legal sphere not contained by an expansive model.

5. Heidegger’s Stone

Within an ontologically predefined framework it has proved impossible not to end up with a demarcation discussion where liminality is negotiated on the basis of certain faculties; for example, response, which, as we have seen, is typically followed up by a renegotiation on how to interpret these faculties. This inescapable mechanism has appeared to characterize the way in which the Human-Animal opposition impinges itself upon our modern political, scientific and philosophical context, in which the expansive model has appeared to be symptomatic of the way this mechanism “translates” to the juridical sphere. This begs the question, what, if not in terms of a predefined ontology, might be a fruitful way of addressing the question of the animal, other than by placing it in binary opposition to the figure of the human, but also other than through the substitution of the word animal with the word *animot* such as proposed by Derrida. Again, Borges’ poem might guide us here, especially when we compare the way in which the “I” operates the poem with Erica Fudge’s reference to the figure of the human: the general singular “I” as fixed and immobile for the way it is contained within the juridical sphere.

The figure of the “I” in Borges’ poem is imagining a tiger at the other end of the earth from within the fixed and immobile confinement of a far-off seaport house, whereas the tiger it is tracing is forever on the move, prowling around the fringes of the Ganges. In other words, the imaginative identification of the figure of the “I” at work in the poem could be said to revolve around a sense of mobility, whereby the figure of the “I” is registered as immobile and the figure of the tiger is registered as mobile. In contrast to this immobile “I,” the tracing of the tiger throughout the poem, first by way of a linear strategy of approximation, then through what I qualified as an opening up to a strategy of the unnamed, and ultimately through some sort of dream-language, suggests the occurrence of a *multiple, heterogeneous, dividual* figure of the “I” in Borges’ poem. This *multiple, heterogeneous, dividual* figure of the “I”, rather than conveying an attempt to identify the tiger in linear essentialist terms, betrays an insistent exploration at the threshold of the other as the driving force of the poem.

Hence, what I propose the figure of the “I” in Borges’ poem is doing, through a combination of its inseparable yet distinct functionalities – and thus *not* through the myth of the general singular *individualized* figure of the “I” – can be illustrated metaphorically as the movements of a blind person groping for, with hesitation and uncertainty, and moving along with difficulty, that which it has to feel rather than to name, in order not to give or make meaning,
but to make sense. In fact, as it is well known that Borges suffered from a condition that verged on blindness as he grew older, this sensation lends the poem a magical-ambiguous quality, not in the shape of an aesthetic polish that can be brushed off, but as constitutive of its performance. In short, Borges’ poem confronts us with a performance that re-senses rather than rethinks the animal and its subjectivity. This re-sensing does not stand in binary opposition to thinking, because thinking here, far from being excluded from this re-sensing, appears to operate as one of its modalities. In other words, liminality is not so much perceived in terms of the literal physical mobility of the animal re-sensed, but operates through the mobilization of the modalities of the *dividual* figure of the “I”.

This re-sensing splits the identifying party up in two distinct ways. On the one hand, ontologically, whereby the figure of the “I” is staged as fixed and immobile within the confinement of his house and the tiger is staged as mobile, forever moving. In this ontological staging we can see the allegorical figure of the “I”, the abstract figure of the human at work, extrapolated, as it were, from our being seduced into identifying the writer Borges with the figure of the “I”. On the other hand, if we wish to do justice to the *multiple, heterogeneous, dividual* figure of the “I” performing Borges’ poem, and of which, consequently, the “I” registered as fixed and immobile is only a modality, the identifying party’s supposed (human) subjectivity as ontologically predefined and essentialist shatters into a multiplicity whereby mobility seems no longer ontologically predefined. Taking my cue from Borges’ poem, then, what I propose to do now is to explore whether looking at Heidegger’s tri-partition Man-Animal-Stone, in terms of mobility, in both of its emergent forms I have now discussed, namely ontologically and non-ontologically, might shed a different light on the Human-Animal opposition and offer a way out of the limits an ontologically predefined framework poses.

To begin with, I suggest we do not take anything for granted and look upon Heidegger’s tri-partition Human-Animal-Stone as a strange and arbitrary categorization. It is arbitrary in a most fundamental sense: because, as I concluded in my second chapter, any categorization is necessarily arbitrary. Yet, it is a strange categorization as well, for if we take a closer look at Heidegger’s ontological framework; that is, at the way in which Heidegger fills out the relation of these respective terms to one another, a fourth terms surfaces, the term “world.” In short, the human has world, the animal is poor-in-world and the stone is world-less. If we zoom in on this tri-partition in relation to this fourth term, it immediately becomes clear that the stone is the odd one out for not having world at all. In fact, I would go further and suggest that it is precisely
because Heidegger positions the stone as world-less that the human and the animal, albeit differing in the way in which they relate to world, can be defined in ontological terms in the first place, i.e. in terms of world.

In this view, the attribution of world-lessness to the figure of the stone enables Heidegger to position the Human-Animal opposition within a predefined ontological framework and, hence, is much more important to his framework than Derrida’s deconstructive reading of Heidegger’s Human-Animal opposition suggests. This begs the questions, first, why has Heidegger chosen the figure of the stone to set up his ontological framework? And second, can a reading of the figure of the stone in Heidegger’s tri-partition, other than in terms of world, namely, in terms of mobility, provide us with another outlook on his framework?

It is important to note here that if I have just now referred to Heidegger’s stone as part and parcel of what must be considered an arbitrary categorization, then I do not mean the conservative kind of arbitrariness that plays out the binary objective/subjective, since – as I concluded in my second chapter – there can never be an objective position from which to categorize. By implication, doing justice to Heidegger, one must read this arbitrariness in another way and infer that the term stone is not so much chosen subjectively, much less randomly, but well-informed. This would suggest that his choice for the stone enables him to set up a predefined ontological framework in a way that, let us say the plant, cannot. In other words, if Heidegger, within his tri-partition would have substituted the stone with the plant and have argued the plant to be worldless, he would seemingly have arrived at the same conclusion.

And yet, he has not done so. Thus, we might infer that, first, the figure of the stone, for Heidegger, presents us with something that can be put to work so as to correspond to something else in a unique way. Second, we may recognize that the figure of the stone informs Heidegger’s ontological framework not just by affording the human and the animal “world”, but in a manner that eventually allows him to further distinguish between kinds of beings and the way in which they relate to world, namely as either existing (the human) or merely living (the animal). In an effort to further explore the unique position of the stone within Heidegger’s framework, let us momentarily take a step back and begin by looking at the spheres within which the stone generally manifests itself, both traditionally and within everyday language.

As Jeanne Gaakeer observes, the stone has traditionally served to demarcate spheres of power, both in biblical and juridico-political terms:
Law is fond of boundaries. On the edges of the village in which I live the passer-by comes across two solitary stones. The one reads East of Stone, the other West of Stone. Both indicate jurisdictional boundaries from well before the time that the country of the Netherlands got its current form, both geographically and juridico-politically, as a nation-state. From times immemorial such boundary stones of the law have been used to demarcate spheres of power, indicating the consequences for the people inside the space of their influence, and fending off those deemed outsiders. Examples abound. In the Bible, the book Deuteronomy (19:14 and 27:17, King James Bible) gives express warnings in order to regulate human relations, “Thou shalt not remove thy neighbour’s landmark (i.e., boundary stone) which they of old time have set in thine inheritance […],” and to make sure that people suffer the consequences of transgression, “Cursed be he that removeth his neighbour’s landmark.” In Roman Law, the Julian Law on Agrarian Matters, approx. 58 BCE, instructs magistrates and landowners alike to take good notice of their professional obligations.136

In this passage, Gaakeer points out that the figure of the stone has traditionally served as a symbol of liminality to regulate relations between human beings in terms of space. And I assume that Heidegger was well aware of this unique asset when choosing the stone over, say, the plant. This division of space, however, was not so much discursive, but practical in nature as it was concerned with the allocation of land, with the physical space in which bodies could lawfully move. Hence, if we compare Heidegger’s use of the figure of the stone to the traditional use reflected on by Gaakeer, we may observe that Heidegger has not so much used the figure of the stone in its traditional-practical sense but discursively: to separate the non-living stone from both the living and the existing (the animal and the human). The difference between the traditional-practical division of space, on the one hand, and Heidegger’s modern-discursive division of space, on the other, is that even though both divisions install a juridical order, the former was not ontologically predefined. In fact, the harsh retribution that was promised on unlawfully removing the stone, suggests those boundaries were subject to change whenever power-relations demanded a different division of space.

Now, if we momentarily read the figure of the stone for the way in which it is used within our everyday language, in phrases such as: “his face turned to stone” or “it is written/engraved in stone,” it becomes clear that in both expressions the figure of the stone serves as a token of immobile fixity; as if today the figure of the stone has shaken off its arguably more flexible and practical status it was once afforded by the tradition to which Gaakeer refers. In fact, the latter expression might provide us with a possible clue to where this emphasis on the fixity of the stone as ontologically predefined “originates,” if explicitly not on the tradition commented on by Gaakeer. Indeed, the latter expression almost inevitably calls to mind the Stone Tablets through which God’s Law was communicated to the people. Hence, this expression directs our attention to the function of the stone not so much within, but before (the inauguration of) the traditional juridico-political sphere – in this time before time – in which the stone functioned as an intermediary technical device, as the hardware, if you will, that enabled God to transmit his text.

The immobile fixity of the figure of the stone within this biblico-techno-juridico-political sphere before tradition, at this mythical originary moment, was presented as both everlasting and originary, as the laws of the world God’s (human) beings inhabited. This implies that the figure of the stone was not used in the traditional way Gaakeer invokes, but in very much the same way as Heidegger has done, namely as a token for immobile fixity within an ontologically predefined framework. Hence, Heidegger’s use of the stone can be qualified as non-traditional because he has not worked out a discursive system in which the figure of the stone might be re-inscribed within the modern techno-juridico-political context, but merely substituted, as it were, God’s authority with his own and cast the stone aside. In another sense, however, Heidegger’s framework remains traditional in that it regulates relations between human beings, since the animal, in Heidegger merely living, bears no essential relation to the human being but remains separated from it by an ontological abyss.

For this reason, I will now speculate on what I believe to be the implications of what Heidegger has not done with the figure of the stone. I will do so by following up on the potential that the traditional use of the figure of the stone Gaakeer describes might offer us today. First, by reading against the figure of the stone and the specific way in which Heidegger uses its immobility as an ontological marker. Second, through an analysis of the figure of the stone in terms of a mobility that is not ontologically defined.

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The figure of the stone as an example par excellence of fixedness, of immobility, is key to Heidegger’s reading. In other words, if it seems that Heidegger uses the human to set apart the animal as its ontological other, it is even more true that he has used the stone as a figure of the inert, the immobile, to bind the human and the animal together. This binding consists of a sharing of that which opposes the inert, namely a mobility. Read in terms of mobility, a mobility that operates ontologically through the binary immobile/mobile, this strategy works to construct the human and animal as alike in that they are – in what I consider to be an important in-between moment – after being compared to the stone, but before Heidegger distinguishes further between the human and the animal, on the same ontological level. It is at this stage, after eliminating the stone from the tri-partition, that I propose the problem of differentiating between the mobile human and the mobile animal must have presented itself to Heidegger. Here, I would suggest, the body, which would have the ability to move around, and which binds them together, must be cut out of the equation if there is any additional ontological difference to be established. Hence, the theory of Dasein, the logos, response, deception, let us say language, and the shifting into the background of this bodily connection as potentially a constitutive element of a zone of identification.

In this view, however, there is something odd going on with Heidegger’s position on language, more specifically with the way in which it informs his further distinguishing between the human and the animal in additional ontological terms. As we have seen before, language, for Heidegger, is essentially human and therefore separates the human and the animal ontologically, whereby the first exists as a being “as such” and the latter is merely living. As a first step towards reading this distinction through a mobility that is not defined ontologically, but still on Heidegger’s own terms, I propose that within Heidegger’s framework, once he has cast aside the stone, not the human and the animal, but mobility is split into being “as such”; that is, into existing, on the one hand, and living, on the other.

Now, if, as I concluded before, language as essentially human does not “exist” since we simply cannot define what the essentially human is; and if I have now demonstrated through my analysis of the heterogeneous, multiple, individual figure of the “I” in Borges’ poem that speech is, essentially, a mobility, the stakes change dramatically. In short, if we choose not to read Heidegger on his own terms but in terms of a mobility not ontologically predefined, this would suggest that it is neither the animal, nor language, but speech that (merely) lives. In fact, it is precisely in this sense that I read language, contrary to Heidegger, as essentially nonhuman, and contrary to Derrida, as not essentially nonhuman
either. Indeed, in my view, language, in Heidegger, when read through the prism of a mobility not ontologically predefined does not “exist” but can only be maintained as speech and, as such, must be qualified as both essentially nonhuman and living. Paradoxically, this would translate back to Heidegger’s framework as being understood, primarily, as essentially animal.

However, since it is impossible to attribute the animal an essence, I propose that we introduce here a different version of Derrida’s animot, namely as the embodied mobility of the living other. This notion of the embodied mobility of the living other opens up to a reading of this living other as not necessarily bound up with what we generally refer to as animal at all. In other words, instead of looking at the figure of the animot in allegorical terms, I infer that what Derrida’s animot is doing when covering and alternatively uncovering its tracks – whether understood literally or metaphorically – is not about response/deception, but, quite simply, moving. This alternative interpretation of the animal in Heidegger, as a category read in terms of mobility, leads me to conclude that the animal in Heidegger, without wishing to definitely qualify it, to name it, effaces itself or, better still, does not concern what Iveson in his comment referred to as an undisconcealedness; that is, a withdrawal from being, but a withdrawal from the animal. In this light, the animal in Heidegger comes as close as it gets to the word before the general singular animal, to the therion: the mobile body to be hunted.

Here, the ontological distinction between the human and the animal in Heidegger collapses. More than that, it no longer makes sense. Not because language is not necessarily essentially human, as Derrida has demonstrated, but because it can only be thought of as a non-existing becoming-animal. This becoming-animal may, but also may not, be understood in a Deleuzian sense. It is Deleuzian because it has nothing to do with what we generally qualify as animal. Rather, it may be read as a becoming that “reveals the ontological primordiality of the in-between.”\(^{137}\) It is not Deleuzian because it may be understood in a far more literal sense; namely, as not yet animal but as a species of Therion, in the manner I used the word species in the previous chapter, i.e. in a deliberate non-specific way by drawing on the etymological root of the Spanish “una especie.” This alternative outlook on the animal in Heidegger does not erase the differences between the category of the human, on the one hand, and the category of the animal, on the other. By contrast, reading these categories in terms of a mobility not ontologically predefined, points to the way in which their difference is constituted by the way in which their space is

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defined and contained in the techno-juridico-political sphere of our time. At the same time, it suggests that Heidegger’s ontology may be reliant on a confusion of what mediaeval philosophers referred to as *Metaphysica Generalis* with *Metaphysica Specialis*; between being “as such” and being of a certain kind.

To be sure, setting the stone against both the human and the animal can be read – if considered in terms of mobility – as primarily a categorization of the being “as such” of the latter two terms, which, consequently, should have limited the theoretical space for Heidegger to distinguish between the human and the animal to a preoccupation with their being of a certain kind. This, in my view, is precisely what happens if we agree that existing in Heidegger does not “exist” when his tri-partition is read in terms of a mobility that is not ontologically predefined. It is here that we encounter in Heidegger what we have come to recognize as a categorization of difference running through all the discourses we have explored so far and which, ultimately, in one way or the other installed the Human-Animal opposition. In Heidegger, this categorization of difference is effectuated by a surreptitious replacement of a traditional ontology with a literary strategy, which seemingly enables a further distinguishing into ontological levels, a procedure that we usually encounter in literary genres that range from the literary fantastic to the postmodern.138 This strategy resembles what can be illustrated metaphorically by the unpacking of matryoshkas, whereby the human is hierarchically one up in the rank and has the ability to look down at the animal below. The animal cannot perceive the human but can, at most, perceive what is below as well, which, from the point of view of the human in question, can indeed be qualified in Heideggerian terms, namely as a captivity.

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The question becomes what do living and mobility mean? More concretely, what should we make of the idea that the stone does not live for its immobility? Indeed, if we momentarily substitute the stone with the plant, we might infer that the distinction between living and non-living is not as solid as we generally think and as Heidegger’s particular choice for the stone suggests. Let us consider, for example, what Luc Ferry has to say about the figure of the plant and its relation to living about three ages ago:

At the end of the eighteenth century, life was apt to be defined as “the faculty to act according to the representation of a goal” – which is why it

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was believed that plants, which cannot move “because they have their stomachs in the earth,” were not living beings. This definition no longer has a place within the structure of contemporary sciences. It nonetheless continues to have meaning from the perspective of a phenomenology of the sign of freedom: finalized movement, or action, if one prefers, remains for us the visible criteria of animal nature, what distinguishes it from unorganized matter, but also from the vegetable world – which is why the intermediaries, anemones or carnivorous plants, are still somewhat mysterious to us.\footnote{Luc Ferry, “Neither Man nor Stone.” In: Animal Philosophy, ibid., 148-149.}

This passage illustrates how the conventional understanding of an anthropomorphism, namely as endowing the nonhuman other with essentially human attributes, must be viewed, as I concluded in the first chapter, as a personification – at most, a trope. In short, the plant might be attributed something essentially human, like a stomach, but this attribution does not warrant a qualification of it as living, which ruptures the idea of the human and the living as strictly bound up with one another. Instead, the categorization of the plant into the domain of the non-living results from an anthropomorphism in the strict sense, as the supposed immobility of the plant is taken as given to imply its non-living. In other words, what my momentary substitution of the figure of the stone with the figure of the plant is telling us, is that what matters in demarcating the living from the non-living depends both on the specific techno-juridico-political sphere we inhabit, and on a concurrent and ontologically predefined conceptualization of mobility.

As Ferry notes, the idea of a non-living plant has no place in contemporary sciences. This must, of course, be attributed to the fact that science and technology, and their marriage in our modern techno-juridico-political context, have enabled us to learn more about plants than ever before. In cinema, for example, the capacity to permanently record over a longer period of time and then to play what has been recorded at a very high speed, by using the narrative strategy of compressing time, has allowed us to meticulously visualize the mobility of plants and of a vast range of other living materials. In this respect, the advance of technology has made it become increasingly problematic to deny that the binary mobility versus immobility is a false one. Rather, we are forced to acknowledge this binary as performing a function for the conventional arbitrary way it operates a demarcation politics and for the specific ontological stage that it might set up in accordance with the requirements of the techno-juridico-political sphere at any give time. But also, I propose, because Ferry’s
specific example of the changed ontological status of the plant demonstrates that pertaining to the category mobile or immobile and, hence, living or non-living, would just seem a matter of speed or flow, which opens up space for renegotiating the functioning of those latter terms as ontological markers.

This may be illustrated by contemplating the figure of the sponge, in a sense the historical, biological predecessor of the stone. The sponge, it is estimated, started moving about five million years ago. Until that time, it was immobile for it did not need mobility, because its sustenance circumstances were such that it could filter its food out of the water by staying still. In other words, in order to live, immobility was key. Thus, from the perspective of the sponge back then, mobility did not matter; what did was the context in which it found itself and which enabled its sustenance. In fact, leaving the question of sustenance aside, if only momentarily, could we seriously argue it was not living before it started moving now that scientists have concluded it started moving at some point? This question may seem non-rational, and perhaps even nonsensical, but it is sensible in the manner I have now come to understand sense through my reading of Borges’ poem. Let us therefore contemplate the sense of this question.

If we look at any object in terms of an ontologically predefined mobility that is structured on the binary mobile/immobile, let us say at the sponge I use in my home, it would seem obvious it is not moving, not living, etc. But, when I move from my living room to my kitchen to pick up the sponge from the kitchen table to clean the windows, is the sponge not moving towards me as I move towards the sponge? Is my ability to perceive the sponge moving towards me, or even to perceive the sponge perceiving itself moving towards me as I move towards the sponge, an illustration of my being “as such”, an illustration of my capacity to deceive because my perception pays no heed to the laws of physics, or could it be conceived of as something I do, that I experience, sense and, thus, as a law of perception that is – and this is key to my argument – only corrected or neutralized as a deception by the laws that are supposed to define me ontologically. Of course, this has only been a thought experiment or, better, an experiment of sense, a making sense of experience. The fundamental point is that to ask the question whether the sponge is not moving towards me as well is not to interrogate its mobility, is not to interrogate the laws of physics, if you will, but to interrogate its mobility as predefined ontologically; namely, as operating on the binary immobile/death, on the one hand, and mobile/living on the other.

Hence, what both Ferry’s example of the figure of the plant and my contemplation on the figure of the sponge illustrate is that mobility does not
need to be defined ontologically, with immobility, on the one hand, and mobility, on the other. Rather, an arguably more convincing case can be made for conceiving of mobility as speed, flow, as movement in space, of being as sharing this space with others rather than of being in the world. Yet, if today we must reject the idea of the plant as not living for its immobility, it is not because we have now suddenly let go of living/mobility as ontologically predefined. Rather, as Ferry rightfully points out, our modern conception of the living, as denoting a capacity for finalized movement and the ability to act freely, is still part and parcel of our collective and juridical imagination. In short, the idea of the living is still structured around an ontologically predefined conception of mobility and the categorizations such a conception implies. In this view, the expansive model, with its potentially endless demarcation problem on the difference between the human and the animal is, again, only a troublesome symptom of a much wider problem. This problem, I suggest, is that we are still conceptualizing the living in the ontologically predefined vocabulary of a liberal rights discourse, which cannot accommodate a living mobility in terms of speed and flow, let alone address the question of the animal from within the juridical sphere we inhabit today. Let us further explore this issue through a contemplation of the workings of, on the one hand, the binary living/non-living and, on the other, the binary living/dying and the way in which they function within our modern techno-juridico-politico context.

I choose to do so by looking at what Jonathan Safran Foer identified as the animal we are most directly involved with today, the animals that we eat. As we observed earlier, these animals, which we use for our sustenance, for living, for our lifestyle, are, in more than 95% of all cases, factory-farmed animals. These are the animals that, whilst qualified ontologically as living, cannot be murdered, but can only become the objects of what Derrida in “Eating Well” has called a “noncriminal putting to death.” For Derrida, this noncriminal putting to death resulted from what he envisaged as the sacrificial discourse of carnophallogocentrism. Without wanting to rehearse Derrida’s elaborate and complex line of thought on this issue, suffice it to say that what Derrida meant by this was a discourse that constructs human subjectivity by allowing for the noncriminal putting to death of animals and, hence, of those humans that, at any given time, lose their human status and are viewed as animals.

At first glance, this noncriminal putting to death seems to be an adequate description. In light of my present discussion on mobility, however, I find Derrida’s specific terminology problematic; first, because his noncriminal putting to death performs a revitalization of the ontological operation of the binary living/death within his very critique, which ultimately must render it
ineffective on a discursive level if not in practice. Second, because the term noncriminal revitalizes the vocabulary of a liberal rights discourse with its intentional subject. More specifically, it narrows the discussion on the animal question down to the punitive sphere of penal law, in which, generally, a wrong committed must be intended to be judged as criminal. 140 Third, and more importantly, because the noncriminal putting to death of animals in factory-farms today cannot be qualified as criminal, as Derrida’s provocative indictment seemingly wants to suggest, since, as we have seen in my second chapter, our very laws facilitate it. More specifically, nobody can seriously maintain it is noncriminal for being non-intentional. On the contrary, the putting to death of animals in the factory-farming-industry is intended from the beginning to the end of the process, which suggests, again, that the animal today refuses to be conceptualized within a liberal rights discourse on which an expansive model is centred.

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In this respect, I believe mobility, as a predefined ontological marker, has come back to haunt us today in a most literal way as our factory-farmed animals are not (living) animals in any traditional sense. Instead, we have now seen that they are always already defined ontologically as non-living, immobile and uniform material, both for the discursive and physical spaces in which they are cramped. I am not talking here about the literal and metaphorical spaces that enfold them and that operate as systems that effectively register their bodies as immobile bodies. These “enfoldings” do not just have an impact on those bodies by preventing them from moving and by destining them for immobility, but they also effectively diminish and alter the spaces their very bodies occupy. If we reframe this issue in Heideggerian terms, it is as if these animals are not only not allowed to exist, but it is as if they are not even allowed to be captive. In short, the processing of the “animal” that concerns us most directly today, and what happens within this process, cannot be thought as a noncriminal putting to death, because the ontological stage such a critique sets when read in terms of mobility, implies the animal has stopped living ever since the invention of factory-farming, and thus can no longer can be put to death, let alone be murdered. Hence, the figure of the animal contemplated by Heidegger, but also the figure of the animot proposed by Derrida, i.e. the figure of the animal as living, no

140 For a classic elaboration on the general tendency to understand law as primarily concerned with the punitive sphere and for a convincing argument why law should not be conceived of in such a reductive manner, see: H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961).
longer bears any resemblance to what we must conceive of as the animal for the way it is used within our modern techno-juridico-political context.

Overlooking the stretch from the earliest domestication of animals towards the only very recent advent of factory-farming, then, the animal has stopped living. It has stopped living in a double sense, ontologically, and in that it does not speak to us anymore. In the process of its processing, it has become a genetically engineered creature for which no suitable vocabulary, neither philosophical, nor juridical, has emerged. Instead, we are still thinking about the animal that has not yet withdrawn itself from itself and from the sphere of our experience. In fact, perhaps the best way to grasp the status of the “animals” today is by citing a supporter of Chelsea Football Club overheard complaining about his breakfast at an Amsterdam hotel: “I had a croissant and a carrot for breakfast. A carrot is not food, it is what food eats.” In my view, this comment illustrates the status of (factory-farmed) animals in a most acute way, namely as non-living raw material. At the same time, the idea that food eats is astonishingly poetic and, as such, catches us off guard, working to playfully complicate the ontological dimension as that which eats is generally conceived of as sustaining itself, as living. More importantly, it testifies, once again, to the totalitarian streak we identified within our modern discourse on factory-farming. This totalitarian streak appears to be constituted by the way in which factory-farmed animals are demarcated as other than animals as a result of the complementary juridical and popular performances of this demarcation, rather than because of an underlying philosophical split between factory-farmed animals and other animals. On the contrary, we may conclude that within a modern animal rights discourse, the animal is still framed in terms that we have found to be still very traditional, namely as living.

The point here, then, is that reading against Heidegger and Derrida as, I have done, now seems to require an urgent worrying of the concept of the animal in our time. Indeed, if even the animals that we are most directly involved with are not the animals we still take them to be, and if our pets are anthropomorphized creatures with a humanlike individuality, and hence, can be murdered, where on earth do we encounter the animal today? One might argue that the living animal we are discursively accommodating may still be encountered in wildlife, in those exotic creatures, tigers, for example, that are not mediated by human contact. But are there any such creatures left? Of course there are, but could they be accommodated under the category animal as it stands? Apart from the nostalgic and worn out “return to nature” attitude this would imply, a critique I do not wish to rehearse here, I do not think we should make the exception the rule, since it would not help us to renegotiate the space
of the animal. Moreover, the sad fact remains that whenever we are confronted with “wildlife” it is more often than not because a “species” is on the verge of extinction, at which moment they are undergoing the same fate as our pets, in that they become individualized humanlike beings that merit legal protection under a liberal rights discourse.

This conclusion, that the animal does not seem to exist or live anymore, must have implications for our traditional conception of the human, as it has forever been defined against the animal, both within and outside of the juridical sphere. This implies that we will not just have to worry the concept of the animal but all those concepts, human, animal, stone, again and again before we can even start to talk about animals as subjects of rights. A good point of departure for undertaking this massive task, in my view, and as I hope to have demonstrated, would be to return to Bentham’s footnote and to adopt his commitment to suffering in ways that accommodate a re-sensing of the relations between ourselves with the other within our thinking. In this respect, rethinking subjectivity as speech, whereby speech does not stand in a conceptual relation to language, a matter I purposely left open and wish to leave open here for others to explore, may be a thread to follow. One way of addressing this matter would be, again, to return to Bentham’s footnote: “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” and start with the recognition that we do not have to read this line as accommodating a potentially endless demarcation polemic within the confines of an expansive model. Rather, we could begin our exploration of subjectivity as speech by choosing to take Bentham’s notion of a “conversable animal” in a more literal way and original Latin sense, not so much of conversare but of conversari: to keep company with.

6. Conclusion

In this final chapter, I have taken up the continuity of the traditional Human-Animal opposition within an expansive model. In previous chapters, this appeared to be symptomatic of the way in which the question of animal rights is theorized in our time. It has become clear that this continuity of the traditional

141 For a well-documented research on the role of “Nature” and the various ways in which nostalgic ideas concerning “a return to Nature” are discursively informed by our construction of the natural as opposed to the cultural or artificial see: Kate Soper, What is Nature: Culture, Politics and the Non-Human (Cambridge, Massachusetts: Blackwell Publishers, 1995). See also: Neil Evernden, The Social Creation of Nature (Baltimore: Johns Hopkins University Press, 1995).
Human-Animal opposition stems from an underlying demarcation problem that cannot be resolved as long as we think through the question of the animal from within a framework in which the stakes are set by tradition. This is evidenced by my analysis of the way in which Derrida deconstructed the Human-Animal opposition in Heidegger through the notion of animot. More specifically, my close reading of Derrida has shown that even the deconstruction of this Human-Animal opposition is not enough if we wish to take on the question of the animal in a manner that may accommodate its position in our modern political techno-juridical context.

In order to open up space for renegotiating the limits posed to our thinking through of the question of the animal, I have, in this chapter, radicalized my concern in the previous chapters with demarcation as a performative act constituted by tropological forces that constitute different types of allegorical reading. My strategy here has consisted of an attempt at moving beyond deconstruction by moving before it, an effort which has forced me to shift my focus from the tropological forces that sustain demarcation as performative acts towards an exploration of the way in which language is conceptualized within our thinking through of the question of the animal.

My reading of Borges’ poem The Other Tiger has been key to this effort. In Borges’ poem the relation between the human and the animal appeared to be complicated through the utterances of the figure of the “I” that operate the poem. My analysis of the complex roles of the figure of the “I” in Borges’ poem has ultimately led me to qualify this figure of the “I” as a dividual, multiple, heterogeneous “I,” which, as a poetical figure of mobility, operates various modalities of sense. I have then contrasted this poetical figure of the “I” with the way in which the philosophical figure of the “I” as a general singular has been taken up in relation to language in Derrida’s deconstructive reading of Heidegger. This has led me to conclude that the question of response, on which Derrida’s deconstructive reading of Heidegger was centred, is perhaps not the most important question to ask if we want to move beyond the endless renegotiating of how to demarcate the human from the animal that characterizes our modern animal rights debate. The question of response has appeared to be a question that, in its own specific way, installs a demarcation problem. It does so, not so much because the difference between reaction and response must ultimately remain undecidable, as Derrida rightfully argued. Nor does it do so because it ultimately comes up against the question of consciousness, as I argued. More fundamentally still, the demarcation problem it installs appears to stem from the fact that the question of response in Derrida’s reading – even though Derrida radically redefines response – remains indebted to a preordainedtraditional framework whereby language is registered as a concept.
that can be abstracted from speech and which, therefore, cannot offer a way out of the Human-Animal opposition and its insistent demarcation problem.

For this reason, I propose that we must think language as speech if we want to re-sense, rather than rethink, the question of the animal. It has not been a matter of denying the possibility of understanding language as a concept that can be abstracted from speech. Rather, I propose that our thinking through of the animal question in our modern political juridico-technical context demands an imaginative and counterintuitive leap of faith that consists of thinking through language as speech if we want to do justice to the dividual, multiple, heterogeneous figure of the “I,” and if we wish to move away from the traditional Human-Animal opposition and the general singular figure of the “I” that has appeared to govern it. Given the fact that in this same modern political juridico-technical context the traditional boundaries are increasingly under strain, and again taking my cue from Borges’ poem, my subsequent proposition has been that we must begin to rethink the Human-Animal opposition in terms other than those of the opposition itself and, hence, must look for a missing third.

I have attempted to bring in this missing third by re-introducing the figure of the stone that Derrida, in his reading of Heidegger, left unturned. In an admittedly highly speculative gesture I have reconsidered Heidegger’s tri-partition Man-Animal-Stone, which has led me to contemplate that the question of the animal cannot be taken on within a framework that is centred on an ontologically predefined mobility as opposed to immobility. I have then steered my argument back to what has gradually become my main object of concern in the preceding chapters, namely the performative instances of language – both within the popular and the juridical sphere – that operate the demarcation policies that discursively sustain the incomparable suffering of the vast majority of animals, which are factory-farmed animals. This is why it seems appropriate to end this final chapter by offering some remarks on factory-farming, which I have come to view as the most challenging issue within the animal rights debate.

To begin with, if, today, factory-farmed animals are imagined as raw, organic material, as food, the legal thinking through of the subjectivities of animals seems pointless. Not just because, as Gary Francione has observed elsewhere, we eat animals and because they are legally our property, but, as I hope to have demonstrated through my analysis of Heidegger’s tri-partition, because there is no juridical language available for addressing the subjectivity of the non-living.142 In this respect, the language of a liberal rights discourse with

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its autonomous individual, its intentional subject on which the expansive model is centred is only one side of the issue. A more fundamental side is the juridical categorization of the animal that follows from characterizing the animal in terms of world, for, as my reading of Heidegger has shown, any categorization in terms of world cannot but install a juridical order in which the category animal is ontologically predefined both as living and as standing in a relation of deprivation to the human. This, as I have established in the previous chapters, would indeed be the case within an expansive model as it masks the hierarchical subjection of the animal-other by presenting itself as a system of equality. In this final chapter, I have established that a non-ontological outlook on living, which becomes unavoidable if we want to think through the question of the animal from without the Human-Animal opposition, unmasksthe way in which the animal is performed as living since our modern animal rights discourse effectively does not even allow the animal to be captive.

The huge gap I identified between the way in which animal rights discourse registers our treatment of factory-farmed animals, both discursively and physically, is evidenced by our modern thinking through of animals across the political spectrum. Effectively, this spectrum is constituted by, on the one hand, those advocates of a limited legal protection of factory-farmed animals by way of rights, for example, to avoid more suffering than what is considered strictly necessary for “the animal” to be produced as food. On the other hand, we may identify the more radical animal rights activists and liberation movements, that wish to abolish factory-farming altogether. Both sides face two separate problems. First, they are bound by a liberal rights discourse that cannot address animal subjectivity as other than as in terms of dignity, intentionality, autonomy, etc. Second, when either group does try to appeal to the law within such a liberal rights discourse, let us say, with the admirable intention of protecting factory-farmed animals from unnecessary suffering, their critique becomes part and parcel of the juridical fiction that installs the animal as living. There is, in a non-ontological setting – the setting that I insist is required for thinking through animal subjectivity in the first place – no reason to do so, however, not in our modern imagination of those animals, and especially not in the practice on factory-farms.

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143 For an elaboration on this problem, especially with regard to the way in which corporations escape liability for the cruel treatment of animals, and for causing massive environmental damage as the scattered responsibility they assume cannot be addressed by a liberal rights discourse see: Ted Benton, *Natural Relations, Ecology, Animal Rights & Social Justice* (London: Verso, 1993).
Conclusion / Animal Rights

In my introduction I proposed that the way in which animal rights are discussed today hinges on an irresolvable demarcation problem that is implied within a discourse that is still very much indebted to a traditional framing of the question of the animal. My wish to intervene in the discussions in order to progress an animal rights debate caught in a polemical deadlock, prompted a radical turn to language. This is why, in the above three chapters, I have explored the way in which tropological formations operate the fundamental juridical concepts implied within demarcation. This strategy ultimately forced me to consider the question of the animal as a problem of language itself, which I attempted through a close reading of Derrida’s deconstruction of Heidegger on animals.

In the chapters leading up to this overall conclusion, we established that the conceptualization of personhood within an expansive model was embedded in a philosophical discourse centred on the concept of dignity, which we retraced – via Kant – to the advent of human rights. In the first chapter, my exploration of the way in which the notion of “person” is performed, rather than taken as given, through a comparison of the trope of personification and anthropomorphism, has enabled me to tease out an important conceptual distinction between anthropomorphism and trope. This has helped me to develop another outlook on person; namely, as a name that is to be understood in a homonymic vein if we want to do justice to the fundamental arbitrariness any demarcation decision within the law implies.

This has led me to conclude that the law, if it wants to come to responsible decisions, must acknowledge itself as “an expert in the unknowable,” since it cannot operate but in an arbitrary way. Hence, instead of compulsively invoking its mythical foundation each time a demarcation decision has to be made, the law should perhaps not address those questions it is not equipped to answer; that is, if it does not want its “natural” arbitrariness to be excessive and, hence, irresponsible. One poignant example of such a dynamic whereby arbitrariness turns to excess has been the prisoner’s council case, which I read through the lens of Barbara Johnson and which offered a striking parallel to the position of animals within the animal rights debate. The different homonymic notion of person I developed not only exposed the fundamental arbitrariness involved in the law’s decision not to grant the prisoner’s council personhood, it also illustrated that the law could not address the prisoner’s council question to get their cigarettes restored but that its decision on the prisoner’s council’s personhood led to the denial of their cigarettes anyway. It is
here that we may find arbitrariness becoming excessive and spinning off into irresponsibility. This irresponsibility became even more apparent when we explored the reasons for not granting the prisoner’s council personhood. It appeared that this decision was motivated by an interpretation strategy of legal texts that were formulated in such a way that there was enough room for the judge to make a policy decision that exempted the prisoners from qualifying for legal protection under personhood.

In the second chapter, we explored the fundamental concepts of harm and cruelty and recognized the way in which those concepts that structure the animal rights debate were performed rather than given. This has become especially apparent within my reflection on the analysis of Wolfson and Sullivan’s research on the impact of animal cruelty laws in relation to factory-farming in both the United States and Europe. It appears that animal cruelty laws across both continents provide an exemplary case of the type of irresponsibility that is implied within an excessive form of arbitrariness. In this respect, we may now observe that animal cruelty laws generate the cruelty they are installed to protect against as they have appeared to create a legal climate of exemption, which effectively generates its own unprotected animals. My exploration of this climate of exemption for factory-farmed animals has also suggested that those animals we may have expected to be subsumed under the general singular the animal, making up the vast majority of animals, are actually registered as other than animal. This troubles the boundaries between the Human-Animal opposition in a fundamental way.

My subsequent zooming in on the exceptional status of factory-farmed animals through a close reading of George Orwell’s Animal Farm has not just fostered a better understanding of the demarcations between humans and animals, but it has also shown how, within this traditional demarcation, another demarcation, namely between animals, is always already implied and performed in relation to this opposition. Whereas Wolfson and Sullivan focused on the legal aspects of the climate of exemption that animal cruelty laws installed, I have attempted to explore the underlying forces that discursively install this climate of exemption. This has led me to identify a conceptual gap between harm and cruelty within the juridical sphere that hinges on the impossibility of the law to conceptualize animal dignity. Since this conceptual gap is reinforced by the way in which the relation between harm and cruelty is performed both within and outside of the strictly juridical sphere, but also within the context of the animal rights debate, I have come to qualify the way in which factory-farmed animals are accommodated within juridical discourse as representing a totalitarian streak that has nested itself in the animal cruelty laws. At the same
time, it is constitutive of a much wider variety of disciplinary discourses that operate the biopolitical situation we now live in, globally.

My findings here have not just led me to conclude that animals cannot be accommodated within an expansive model for the endless polemic on demarcation that such a model installs, but also that granting more animal rights is not the solution if we want to live in a world with animals in a responsible way. This is why, in the third chapter, I have proposed other ways of thinking through the way in which we might imagine the relation between ourselves and animals, through a reflection on their victimhoods as other than constructed through the fundamental concepts of harm and cruelty. Here, my alternative and necessarily heuristic notion of “pain” has opened up to imaginative identifications with the victimhoods of animals. These imaginative identifications, rather than having remained indebted to the traditional Human-Animal opposition and all the demarcation problems implied, have offered the prospect of a zone of identification we might share with animals and hopefully spurred the idea that we may try to re-sense our relation in terms of connectivity, rather than opposition, through emphatic readings of the world we share with animals. In this re-sensing of the question of the animal, thinking has by no means appeared to be out of fashion but to operate as an important constitutive mode.

Finally this re-sensing, rather than re-juridifying, of the question of the animal has begged more questions and territory to be explored than I could have imagined when I started this project. What has become clear, though, is that this re-sensing involves introducing a “third” in more than one way. On the one hand, the proposal to introduce this “third” may be understood as a reading strategy, where each time one reads one text through the lens of the other, rather than going to the “source” of a text. This is what I have aimed for in each and every chapter. On the other hand, and still more fundamentally, at a time when the boundaries between the human and the animal are increasingly blurred, this introduction of a “third” appears to be indispensable if we want to renegotiate the traditional Human-Animal opposition that the animal rights debate is still too exclusively caught up in. This is what I have attempted in my final chapter in the shape of a speculative analysis of Heidegger’s tri-partition, which I hope will stimulate further debate.
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Voorliggende studie intervenieert in het sinds de jaren zeventig steeds nadrukkelijker op de voorgrond tredende dierenrechtendebat. Dit debat is grensoverschrijdend in de zin dat het wereldwijd zowel binnen de academie, het publieke domein als in de politiek gevoerd wordt. Dat is ook niet zo verwonderlijk wanneer we bedenken dat dieren een economische waarde vertegenwoordigen en circuleren in een globale economie. Deze omstandigheid zorgt namelijk tegelijkertijd voor een spanning die erin bestaat dat lokaal culturele verschillen in opvattingen over dieren noodzakelijk door het globale dierenrechtendebat heen schemeren en zodoende elke poging te komen tot enige juridische objectivering van het dier bemoeilijken, wat vraagt om een juridische doordenking van hoe verschillen ten aanzien van de positie van het dier zowel over grenzen heen als lokaal kunnen worden bepaald.

In het publieke domein wordt het dierenrechtendebat vaak aangewakkerd als gevolg van een via de media bemiddelde publieke verontwaardiging over wat op enig moment als ‘pertinente misstand’ wordt aangeduid. Het gaat dan bijvoorbeeld om ophef over het “ruimen” van varkens of kippen ter bestrijding van ziekten die de volksgezondheid bedreigen, de behandeling van dieren in de vlees- en bontindustrie, het doorfokken van huisdieren, het uitsterven van soorten en de vernietiging van leefomgevingen, of over de wijze waarop proefdieren worden gebruikt voor onderzoek. Het zijn juist dit soort typische aanleidingen voor publieke verontwaardiging geweest die hebben geleid tot het formulieren van allerlei dierenrechten en tot de oprichting van activistische groeperingen en politieke partijen die dierenrechten als prioriteit op hun agenda hebben gezet.

Deze populaire ontwikkeling vindt in zekere zin haar pendant in de academische wereld, waarbinnen er de laatste jaren sprake is van een groeiend aantal nieuwe disciplines dat zich richt op de positie van het dier en waarbij dierenwelzijn en de meer specifieke doordenking van dieren als mogelijk rechtssubject onderwerp van een polemisch debat zijn geworden. Die polemiek bestaat er in de meest algemene zin in dat tegenstanders van dierenrechten de voorstanders verwijten dat ze in hun pleidooi voor ‘rechten’ dieren antropomorfiseren, waarbij dieren ten onrecht allerlei menselijke eigenschappen zouden worden toegedicht, terwijl voorstanders juist pleiten voor een kritisch antropomorfisme door te stellen dat in elk geval sommige dieren eigenschappen bezitten die voorheen als exclusief menselijk gezien werden.

Deze polemiek zou nog overzichtelijker zijn ware het niet dat er binnen beide kampen al evenmin sprake is van overeenstemming voor wat betreft de
criteria die we precies moeten gebruiken om op een verantwoorde manier te kunnen bepalen of althans sommige dieren als zelfstandig subject van recht moeten worden gezien. Zo gebruikt de rechtsfilosoof Tom Regan de term ‘being-subject-of-a-life’ om een aantal criteria te clusteren waaraan dieren zouden moeten voldoen om in aanmerking te komen voor zelfstandige rechten. Het gaat Regan vooral om een zekere mate van zelfbewustzijn, om dieren waarvoor het leven zogezegd een waarde voor hen zelf heeft in de zin dat ze bijvoorbeeld doelen kunnen nastreven en een aantoonbare geheugenfunctie uitoefenen. Voor Regan komt het er daarmee in de praktijk op neer dat alleen een selecte groep zoogdieren voor zelfstandige rechten in aanmerking komt. Anderen, zoals de filosoof Gary Francione, beweren juist dat het simpele gegeven dat een dier zou kunnen lijden al voldoende is de mens het recht te ontnemen het dier te gebruiken ten behoeve van zijn eigen doeleinden. Martha C. Nussbaum baseert haar doordenking van dierenrechten op een notie van menselijke waardigheid zoals die verankerd ligt in het recht en verkent hoe deze naar dieren uitgebreid zou kunnen worden.

Deze benaderingen en de wisselende criteria die erbij worden aangelegd kennen hun eigen specifieke theoretische problemen op detailniveau. Het gaat me daarbij niet alleen om de uit de polemiek blijkvende betwistbaarheid van criteria, maar ook om het daaraan gerelateerde praktische probleem van hoe te meten of een dier aan bepaalde criteria voldoet en op welke wijze aan de daaruit voortvloeiende rechtspositie gevolg zou kunnen worden gegeven. Deze ogenschijnlijk onoplosbare complexiteit stel ik weliswaar aan de orde, maar het doel van deze studie is niet een directe bijdrage te leveren aan de heersende polemiekendebat. Veeleer is het mijn bedoeling het debat verder te brengen door deze polemiek aangaande criteria te lezen als problematisch op een meer fundamenteel niveau. Mijn studie begint daarom met de bewust bescheiden vaststelling dat zowel de opkomst van het academische dierenrechtenendebat als de publieke belangstelling voor de kwestie van het dier laat zien dat er een zekere urgentie wordt gevoeld om de ethische positie die we in de moderne tijd ten opzichte van dieren zouden moeten innemen te onderzoeken.

Vooralsnog heeft dit geleid tot een zeer breed en gediversifieerd onderzoeksgebied. Het gevolg hiervan is dat het tegenwoordige dierenrechtenendebat gekenmerkt wordt door een soms wat lastig te doorgronden vermenging van vakgebieden als biologie, filosofie, rechten en literatuur vanwege de wisselende samenhang waarin deze disciplines de veelheid van posities stutten die worden ingenomen ten aanzien van dierenrechten. In deze studie probeer ik daarom in de eerste plaats enige ordening aan te brengen in het dierenrechten-
Debat door de fundamentele kwesties die er steeds weer in terugkeren te benoemen en te bevragen, om deze vervolgens vanuit een literaire invalshoek te analyseren en waar mogelijk verder te brengen. Ik haak hier in op twee relatief nieuwe disciplines die een prominente plek in het dierenrechtendebat zijn gaan innemen, te weten Animal Studies en Law and Literature Studies. Ik maak daarbij een beweging die noodzakelijkerwijs voor een deel parallel loopt met het actuele debat maar die tegelijk sterk afwijkt van de benaderingen die in het debat courant zijn.

Die afwijkende benadering betekent concreet dat ik ingrijp op de oorzaak van bovengenoemde polemiek door het naar mijn gevoel belangrijkste onderliggende probleem dat binnen het huidige dierenrechtendebat telkens opnieuw aan de orde komt tot inzet van mijn onderzoek te maken. Het gaat daarbij om wat ik het demarcatieprobleem noem. Het demarcatieprobleem bestaat hierin dat er ter bepaling van onze positie ten aanzien van dierenrechten ergens een grens moet worden getrokken. En of deze grens nu tussen mens en dier wordt getrokken, zoals door de tegenstanders van dierenrechten, of tussen dieren onderling, zoals door de voorstanders, het trekken van die grens zal beargumenteerd moeten worden en dus idealiter op wetenschappelijke gronden moeten berusten als we willekeur willen vermijden.

Echter, zoals blijkt uit de polemiek die het dierenrechtendebat kenmerkt is de vraag naar hoe we dieren moeten behandelen, welke rechten voor welke dieren zouden moeten gelden en waaraan ze die dan zouden ontlenen niet eenduidig te beantwoorden. Een verkenning van de verschillende hoedanigheden waarin gepoogd wordt deze vraag toch te beantwoorden kan daarom inzicht verschaffen in de wijze waarop het demarcatieprobleem de heersende polemiek structureert. In de meest algemene zin kan ten aanzien van dit punt gesteld worden dat ongeacht de wetenschappelijke positie die wordt ingenomen, de wijze waarop de relatie mens – dier wordt ingevuld de mate van morele consideratie en / of de rechten bepaalt die we althans sommige dieren zouden moeten toekennen. Dit betekent dat een sluitende argumentatie voor het al dan niet toekennen van rechten aan bepaalde dieren alleen geleverd kan worden wanneer we de relatie dier – mens objectief zouden kunnen duiden. Hier stuiten we op een onmogelijkheid en daarmee op de kern van het demarcatieprobleem.

De reden hiervoor is dat het toekennen van rechten aan dieren een expansie zou betekenen van het juridische model zoals we dat eeuwenlang hebben gekend en dat vrijwel uitsluitend op de mens was geënt. Een dergelijke expansie gaat voorbij aan het feit dat de mens zichzelf historisch gezien steeds weer gedefinieerd heeft in oppositie tot het dier, wat de grondig voor de gelijkstelling van dieren en mensen onder een potentieel expansief juridisch
model frustreert. Met andere woorden: een expansief juridisch model maakt een objectieve positie principieel onmogelijk omdat het verschil tussen mens en dier het rechtenmodel fundeert in de zin dat een geloof in een unieke ‘menselijkheid’ het hebben van rechten rechtvaardigt. Dat betekent dat het binnenbrengen van dieren bij mensenrechten het fundament van het rechtenmodel zelf aantast omdat we als mens zelf in relatie tot het dier staan en we daarom geen buitenperspectief kunnen hanteren.

De oplossingsrichting die ik in deze studie voor deze principiële onmogelijkheid aandraag bestaat in het openbreken van de praktische en discursive ruimte waarin mensen en dieren binnen een expansief model onder het mom van gelijkheid worden samengebracht. Dat doe ik door het demarcatieprobleem te lezen als symptomatisch voor de binnen het huidige dierenrechtrecht debat langs talige weg gefabuleerde ontkennings van verschillen in praktische en discursive ruimten, zowel tussen dieren en mensen als tussen dieren zelf. Deze fundamenteel andere lezing van het demarcatieprobleem betekent dat ik ga kijken naar literaire teksten waarin gereflecteerd wordt op demarcatie. Mijn doel is hier inzicht te verkrijgen in de wijze waarop in het dierenrechtrecht debat demarcatie wordt begrepen in termen van aan te leggen criteria en de daaraan inherente polemiek om vervolgens te verkennen hoe talig zelf verschil structureert. Het is deze alternatieve benadering van het demarcatieprobleem die er hopelijk toe bijdraagt een andere weg in te slaan en zodoende de heersende polemiek te ontstijgen.

Binnen Animal Studies manifesteert het demarcatieprobleem zich in de vorm van een voortdurende verschuiving van criteria die de ene groep dieren recht op wettelijke bescherming zou geven en de andere groep niet. In Law and Literature Studies, het veld waarop mijn studie meer direct aansluit, wordt de kwestie van het dier doorgaans op twee verschillende manieren ter hand genomen. Zo is er een stroming te onderscheiden die recht in literatuur onderzoekt en reflecteert op specifieke juridische kwesties en rechtszaken zoals die in de literatuur voorkomen door ze te herleiden naar juridische teksten. Daarnaast is er een stroming die recht als literatuur denkt en waarbij problemen in een juridische tekst worden besproken door middel van een narratologische, retorische en semiotische analyse van de tekst.

De overeenkomst tussen mijn onderzoek en de benaderingen in Law and Literature Studies is dat ik ook juridische en literaire teksten analyseer. Het verschil is dat ik niet zozeer de ene tekst als representatief van de andere lees, maar dat ik literaire werken inzet om een aantal van de fundamentele juridische concepten te bevragen die het dierenrechtrecht debat structureren en die daarin als onproblematisch worden voorgesteld. Deze her-problematisering heeft als doel:
het demarcatieprobleem inzichtelijk maken om te komen tot een fundamenteel andere visie op de mens – dier relatie en daarmee op het huidige dierenrechtendebat. Meer specifiek is mijn inzet hier weg te bewegen van de descriptieve alternatieven voor geschikte criteria die het tegenwoordige debat kenmerken. Daartoe plaats ik het dierenrechtendebat in een talige context en onderzoek ik welke strategieën en aannames over taal ten grondslag liggen aan de positie van het dier zoals die in zowel juridische als literaire teksten wordt vormgegeven. Deze methode behelst dat ik niet zozeer vanuit de literatuur naar het recht kijk, maar veeleer dat literatuur ingezet wordt als middel om te doordoen hoe het dierenrechtendebat functioneert en een juridische orde voortbrengt die gebaseerd is op haar talige kracht.

In de eerste drie hoofdstukken presenteert ik telkens een korte case-studie om de aandacht te vestigen op steeds weer een ander aspect van demarcatie. De praktische vragen die deze case studies oproepen vormen een startpunt voor een steeds verdere theoretische verkenning van het demarcatieprobleem. In het vierde en laatste hoofdstuk verleg ik de aandacht van het doordenken van de mens – dier relatie naar een benadering die uitnodigt tot een fundamentele andere vorm van denken over de ethische positie van dieren. Dit betekent niet dat ik hier pasklare oplossingen voor het dierenrechtendebat kan aanreiken. Het betekent wel dat de argumentatieve grondig in de mens-dier relatie die onlosmakelijk met het demarcatieprobleem verbonden is niet langer houdbaar zal blijken te zijn en dat als alternatief voor de gestokte polemiek waarin het dierenrechtendebat is beland een andere, meer talig-sensitieve benadering ten aanzien van onze relatie met dieren verdedigd wordt.

In hoofdstuk 1 zoem ik in op zonder twijfel het meest beladen begrip binnen het recht in het algemeen en binnen het dierenrechtendebat in het bijzonder, het begrip personhood. In plaats van de criteria voor personhood tot onderwerp van discussie te maken, roep ik de vraag op wat het eigenlijk betekent om een mens of dier persoon te noemen, zowel in juridische als extra-juridische zin, en hoe verschillende noties van persoon het demarcatieprobleem structureren.

Binnen de talige benadering die ik voorsta verken ik dit probleem door de relatie tussen personificatie en antropomorfisme te onderzoeken. In mijn benadering sluit ik hier aan op “Anthropomorphism in Lyric and Law”, een essay van Barbara Johnson waarin eenzelfde vraag naar de relatie tussen personificatie en antropomorfisme wordt gesteld. Echter, waar Johnson haar essay eindigt met de vaststelling dat het verschil tussen antropomorfisme en personificatie onbeslisbaar blijft, beargumenteer ik aan de hand van een close reading van Johnson’s tekst dat er wel degelijk een praktisch onderscheid tussen
personificatie en antropomorfisme is te maken. En dat het dus gemaakt moet worden als we kritisch willen kijken naar de personificering van dieren binnen een expansief model en naar het demarcatieprobleem dat hierdoor wordt geïnstalleerd. Dit praktische onderscheid tussen antropomorfisme en personificatie vormt vervolgens de talige basis voor mijn ontwikkeling van een notie van persoon die principieel verschilt van hoe ‘persoon’ in het tegenwoordige dierenrechtendebat wordt gedacht en fungeert daarmee primair als aanzet tot het doordenken van andere aspecten van het demarcatieprobleem in de volgende hoofdstukken.

In hoofdstuk 2 bevraag ik twee fundamentele juridische concepten die telkens weer terugkeren in het dierenrechtendebat, te weten harm en cruelty, termen die ik hier ter verduidelijking vertaal als aangedane pijn en wreedheid. De reden voor mijn focus op deze termen is dat ze naar mijn overtuiging - evenals persoon - binnen een expansief model niet zomaar naar het domein van de dieren kunnen worden getransporteerd omdat de betekenis ervan door deze expansie wezenlijk verandert en dus opnieuw gedacht moet worden. Deze betekenisverandering laat zich eenvoudig illustreren door te stellen dat voordat er sprake was van een expansief model de pijn waaraan dieren werden blootgesteld buiten de juridische orde viel omdat dieren geen subject van recht waren. De implicatie van een expansief model dat potentieel van toepassing is op althans een aantal dieren zou daarmee zijn dat de blootstelling aan pijn van dieren die binnen een dergelijk model geen personhood krijgen toegekend, door de juridische orde wordt gelegitimeerd.

Met het oog op dergelijke potentiële betekenisverschuivingen onderzoek ik de conceptuele distinctie tussen aangedane pijn en wreedheid zoals die binnen het dierenrechtendebat talig wordt geïnstalleerd en verken ik welk effect dit heeft op de wijze van demarcatie, zowel tussen mens en dier als tussen dieren. Ik stel daartoe voor de inbedding van niet-menselijke dieren binnen een expansief model te lezen als het creëren van een enkele discursive ruimte. In de literatuur zouden we dit een allegorische beweging noemen en dat is de aanleiding dat ik George Orwell’s Animal Farm (1945) inzet als literair model om de invloed van allegorisch denken op demarcatie binnen een expansief model te verkennen.

In mijn benadering van Animal Farm wijk ik bewust af van de traditionele lezingen van Animal Farm als een allegorie van de koude oorlog. Dat doe ik door Animal Farm te lezen als een verhaal over dieren die in opstand komen en een eigen rechtsorde instellen ter bescherming tegen de pijn en wreedheid die ze op de boerderij ondergaan. Naast een talige verkenning van de conceptuele distinctie tussen aangedane pijn een wreedheid binnen allegorisch denken biedt deze lezing van Animal Farm me de gelegenheid te reflecteren op een probleem.
dat binnen het huidige dierenrechtendebat niet of nauwelijks wordt
geadresseerd, namelijk de positie van dieren in de voedselindustrie. Dat doe ik
door te reflecteren op het concept van de boerderij zoals we dat ten tijde van het
verschijnen van *Animal Farm* begonnen te kennen en de verandering die dit
concept in onze tijd heeft ondergaan. Het gaat me daarbij niet om het innemen
van een morele positie ten aanzien van de positie van dieren in de voedsel-
industrie, maar om de doordringen van de wijze waarop er binnen het
dierenrechtendebat een demarcatie plaatsvindt ten aanzien van juist die dieren
die kwantitatief de overgrote meerderheid van de dieren uitmaken. De relevantie
van deze exercitie is niet alleen dat ermee wordt aangetoond dat de positie van
juist deze dieren talig wordt geïnstalleerd via fundamentele concepten als
aangedane pijn en wreedheid, maar ook dat de inconsistente wijze waarop dat
gebeurt een blinde vlek in het dierenrechtendebat laat zien die vraagt om een
heroverweging van deze fundamentele concepten.

Dat is waarom ik me in hoofdstuk drie richt op wat deze concepten
verbindt, namelijk de kwestie van het lijden als mogelijk criterium om dieren al
of niet als rechtssubject aan te merken. Grofweg kan bij voorstanders van
dierenrechten het uitgangspunt ten aanzien van lijden als volgt worden
samengevat: dieren delen met mensen het vermogen tot lijden en daarom
verdienen ze in elk geval enige juridische bescherming tegen blootstelling aan
lijden. Dit geldt zowel de zoogdieren van Regan omdat bewustzijn ook altijd een
bewustzijn van pijn impliceert, als bijvoorbeeld de positie van Francione en
anderen. Deze moderne posities gaan dus binnen een breed spectrum van criteria
terug op de kwestie van het lijden. Ze zijn daarmee schaplichtig aan de filosoof
Jeremy Bentham, die aan het eind van de achttiende eeuw in een beroemde
voetnoot de vraag opwierp of de vraag naar het lijden niet het toekomstige
criterium zou kunnen worden om te bepalen of “the rest of animal creation”
rechten zou moeten krijgen. Vanwege Bentham’s focus op lijden als potentiële
alternatief voor capaciteiten als rationaliteit of het vermogen tot spraak, wordt
zijn houding in het tegenwoordige dierenrechtendebat geïnterpreteerd als een
radicale breuk met het gedachtegoed van Immanuel Kant, die in zijn werk
rationaliteit als exclusief menselijke eigenschap opvoerde.

In mijn lezing van de kwestie van het lijden ga ik ook terug op Bentham. Maar ik doe dat niet door het onderzoeken van lijden als mogelijk weten-
schappelijk verifieerbaar criterium. In plaats daarvan ontwikkels ik een notie van
lijden die voortkomt uit mijn verkenning van de conceptuele distinctie tussen
aangedane pijn en wreedheid die gebaseerd is op hoe de verbeelding van het
slachtofferschap in onze relatie met anderen talig tot stand wordt gebracht. Meer
specifiek verken ik hier in welke mate het verschil dat demarcatie impliceert
beschrijft is en op welke wijze verschil wordt gemaakt door wat taal doet. Deze benadering van de kwestie van het lijden brengt mijn werk hier in een principiële discussie met theoretici als Singer, Rachels en Derrida. Nadat ik inzicht heb verschaft in de wijze waarop de kwestie het lijden in het werk van deze theoretici gestalte krijgt motiveer ik waarom een andere benadering noodzakelijk is.

Deze benadering geeft ik vorm door George Orwell’s *Shooting an Elephant* (1936) in te zetten om mijn alternatieve notie van het lijden talig te doordenken. Deze talige doordenking betekent dat ik mijn eerdere bevindingen aangaande het verschil tussen antropomorfisme en personificatie test. Daarnaast onderzoek ik hoe mijn alternatieve notie van lijden via een verbeelding van het slachtofferschap van anderen gestructureerd wordt door de wijze waarop betekenisfiguren opereren en gelezen kunnen worden. Uit mijn lezing blijkt dat een alternatieve doordenking van het slachtofferschap van anderen niet langer vanuit de mens – dier relatie kan worden begrepen maar dat er steeds een derde element nodig is.


Hiermee wil ik laten zien dat het ter sprake komen van een expansief juridisch model sinds het actuele dierenrechtdebat is opgekomen niet slechts symptomatisch is voor de wijze waarop de mens – dier relatie onze juridisch orde installeert, maar dat deze ontwikkeling gelezen moet worden als een dringende behoefte aan een andere verdeling van ruimte, zowel discursief als
praktisch, in onze tijd. Dit is het punt waarop kunst, wetenschap en technologie kunnen interveniëren, in het uitonderhandelen van deze ruimten. En het is aan deze ontwikkeling dat mijn onderzoek een bijdrage vanuit literatuurwenschappelijke hoek wil leveren.
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Curriculum vitae