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The Anthropomorphic Hegemony of Subjectivity: Critical Reflections on Law and the Question of the Animal

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Citation

Villiers, J. de. (2019, December 16). *The Anthropomorphic Hegemony of Subjectivity: Critical Reflections on Law and the Question of the Animal*. Retrieved from <https://hdl.handle.net/1887/82072>

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Issue Date: 2019-12-16

INTRODUCTION

1.1 Problem statement

One of the most significant and sustained intellectual efforts of our age concerns the human/animal distinction, or, to be more precise, its radical destabilization and displacement. Various disciplines have contributed findings of animal species exhibiting capacities and qualities once posited to be essential and exclusive to the human, thereby eroding the porous borders that we have constructed to separate and sharply delimit ourselves in opposition to other animals. Long lists of extensive studies enumerate mental phenomena possessed by animals, including the capacity to use tools, generate causal hypotheses from particular events, inhabit the experiential perspectives of others, and navigate spatial complexities.¹ Pro-animal philosophers have predominantly utilized this breakdown in support of an interest-based ethics grounded in an ontology of gradual biologicistic continuism that regards humans and animals as equal co-participants in the evolutionary process, with distinctions between them being a matter of degree rather than kind. These theorists follow through on the ethical implications of deep continuity in respect of ethically relevant capacities and traits by calling for recognition and application of the principle that similar interests warrant equal ethical consideration. This principle maintains that all individuals' similar interests (for example, in not suffering or being confined) should feature equally in our ethical deliberations, regardless of who or what the individual is. From this perspective, sound ethical reasoning would dictate that arbitrary disregard for

1 Martha Nussbaum "The Capabilities Approach and Animal Entitlements" in Beauchamp T and Frey G (eds) *The Oxford Handbook of Animal Ethics* (Oxford University Press: Oxford, 2011) 228-51, 231-34.

the interests of other animals based on their species (speciesism)² constitutes unjustifiable prejudice in the same way that arbitrary contempt for the interests of humans based on ethically irrelevant characteristics like race or gender (racism or sexism) constitutes unjustifiable discrimination. Relying on continuity theses and the condition of communal interests, these theorists ultimately regard themselves as exposing a shared fundamental identity or subjectivity that can be utilized to represent and protect the interests of animals in various paradigms.

I find this dominant approach to animal ethics to be theoretically and ethically problematic for several reasons. Firstly, the emphasis on *speciesism* as irrational or inconsistent ethical behavior that can be solely or primarily remedied through sound reasoning fails to adequately frame and address the complexity of the pertinent issues at stake in the contestation of animal subjugation. Rather than being primarily explicable in terms of irrational beliefs and practices, the subjugated status of the animal is the result of complex schemata of power and domination that span numerous historical, institutional, and cultural discourses and practices. As some philosophers have rigorously argued, our subjugating superiority over other animals is intrinsically tied to our historicity, sociality, and indeed what is considered to fundamentally constitute us as human. A destabilization of this complex oppressive schema would require fundamental changes across various discourses and institutions and accordingly necessitates a rigorous deconstruction of the socio-historical processes, relations and conditions that configure our identity. Power relations in the history of Western culture have almost never been constructed on grounds of biological species per se and have, on the contrary, consistently

2 The term “speciesism” is most commonly associated with utilitarian philosopher and bioethicist Peter Singer, who analogizes discrimination based on species membership to (the thinking or worldview that undergirds and ultimately effects) racism and sexism. He argues that “[r]acists violate the principle of equality by giving greater weight to the interests of members of their own race when there is a clash between their interests and the interests of those of another race. Sexists violate the principle of equality by favoring the interests of their own sex. Similarly, speciesists allow the interests of their own species to override the greater interests of members of other species”. Peter Singer *Animal Liberation* 4th ed (Harper Collins Publishers: New York, 2009) 9.

oppressed large sections of humanity.³ Dominant perspectives on ethics and community have unfolded in relation to capacities and traits considered to be *quintessentially* human, and emanating hegemony has always been wielded at the expense of large subsets of the human race and animals alike.⁴ The approach of locating these capacities or traits among animals in order to utilize it as the ground for an egalitarian ethics does not result in a displacement of man's supposed exceptionalism, but on the contrary solidifies our position as patriarchal center of beings, reinstates the anthropocentric system that fails to heed the call of the animal, and effects a problematic neutralization or erasure of animality. Inasmuch as discourse on the animal continues to be shaped by this contour of the human as reference point from which to establish ethical agency and consideration, I support the supposition that the critical target for animal ethicists should rather be *anthropocentrism*, or the "set of relations and systems of power that are in the service of those who are considered by the dominant culture to be fully and properly human".⁵ A central concern with the pervasive ramifications of human-centeredness not only allows us to address what I consider to be the centripetal force at work in the nuanced problematic of animal repression, but also allows us better to understand and identify the implicit anthropocentric constraints at work in certain discourses and institutions and, most notably for the purpose of my project, the challenges accompanying the utilization of law in service of animal liberation. My concern is that we paradoxically retain and reinforce the underlying conceptuality of discourses that are contributory to the very problem at hand when we uncritically add animals into existing frameworks of knowledge and modes of social regulation that are fundamentally anthropocentric.

My project accordingly contemplates the possibility of an ethics of difference that can effect a radical displacement of anthropocentrism and provide

3 Matthew Calarco *Thinking Through Animals: Identity, Difference, Indistinction* (Stanford University Press: California, 2015) 26.

4 Calarco *Thinking Through Animals* 26.

5 Calarco *Thinking Through Animals* 25.

an alternative framework within which to consider human-animal relationality against the multiple differences that subsist not only between humans and animals, but also amongst humans and animals. I am thus developing an argument in support of thinking and approaching *difference* differently from the dominant approaches in animal liberation discourse. The aim of my project is not to construct or propose a programmatic ethics that can be accommodated within the discipline of law so that animals can be represented in the legal arena. On the contrary, I aim to illustrate essential congruence between law and animal subjugation by exposing the anthropocentric underpinnings and orientation of law and arguing that law fundamentally grounds and maintains the subordinate status of animals. I am thus contesting what I perceive to be the insufficiently interrogated supposition that the key to animal liberation and emancipation is to be found in existing legal channels. I propose that the critical focus of animal ethicists should be on law and legal discourse as signifier of anthropocentric power, rather than legal reform as such. By disrupting or de-centering the construct(s) of law, my primary aim is to open a critical space wherein an alternative thought and approach to law and the question of the animal might develop.

1.2 Motivation and background

The motivation for this project arose out of real concerns with the increasingly glorifying approach to law and right(s) in animal studies, and the emanating desire to add a critical voice to the field. The academic discipline of animal law has grown exponentially over recent years, largely in response to the relentless efforts of the animal liberation movement. Yet, despite a growing academic interest and increasing legislative reform, it is hard to find evidence of meaningful change in the lives and deaths of animals. Theoretical and practical efforts aimed at legal reform bear witness to law's non-incorporation of the animal's fundamental interests and, as already suggested, I believe there is a subtle, yet pertinent reason why law is so resistant to the protection of other animals.

The dominant animal rights models proceed from the supposition that existing legal constructs provide a suitable framework within which to effect changes in our thinking and relation with animals. The object or property status of animals is commonly regarded as foundational to the problem of animal subjugation and animal rights theorists effectively seek a displacement of the line that separates the (legal) subject from the (legal) object so that animals can be endowed with the substratum of subjectivity from which rights and correlative legal protection flow. I use the word displacement deliberately in order to underscore that these models aim to effect a shift in the exclusionary boundaries of subjectivity, rather than alternative relational frameworks. These theorists consequently develop a jurisprudence that accepts and espouses the parameters constructed by law. My central concern is with the anthropocentrism implicit in the subject-centered model of law and how these models merely reproduce subject-centrism at an(other) equally problematic annexation, thus reinforcing the dogmatic humanism they seek to destabilize and eradicate. My aim is to articulate a series of interrelated issues that foreground the ways in which the model of (animal) rights forecloses certain ethical possibilities.

Philosopher Tom Regan has developed one of the most influential and comprehensive subject-based theories of animal rights,⁶ rigorously refuting the assumption that animals are objects or things in favor of a view of animals as beings with intrinsic worth and lives “that fare better or worse for them, logically independently of their utility value for others”.⁷ Regan’s egalitarian ethics advances a shared subjectivity (or being a *subject-of-a-life*, to use Regan’s terminology) as the ethically relevant property that establishes animals as individual co-subjects deserving of moral consideration and rights. This notion of subjectivity focuses on advanced cognitive, conative, and volitional

6 See Tom Regan *Defending Animal Rights* (University of Illinois Press: Urbana, 2001); Tom Regan *The Case for Animal Rights* 2nd ed (University of California Press: Berkeley, 2004).

7 Regan *The Case for Animal Rights* 178.

capacities as the constitutive requisites for being considered an experiencing subject-of-a-life.⁸ The paradox of this shared subjectivity, however, is that it excludes the majority of the animal kingdom from its scope. Regan readily admits that his theory only applies to “mentally normal mammals of a year or more”,⁹ which means that his model strictly speaking does not provide a case for *animal* rights, but rather for rights of *subjects*.¹⁰ Because this image of the subject situates the human at its determinative center, Regan’s theory draws a different exclusionary boundary that merely reproduces a slightly more charitable iteration of anthropocentrism. The result is that certain animals are granted ethical consideration based on their propinquity to humanness, whilst those animals further removed from this particular standard of subjective life are regarded as having a lower ethical status. Recent law reforms offering increased legal protection to certain species of animals who manifest relevant human-like traits forcefully illustrate this point. Spain and the Balearic Islands have passed resolutions granting legal rights to the great apes¹¹ whilst Belgium, Austria, New Zealand and the Netherlands have all passed laws banning great ape research.¹² These laws *inter alia* grant the right to life and the protection of individual liberty (Spain, Balearic Islands) and the right not to be used in biomedical research (Belgium, Austria, New Zealand, Netherlands) to the great apes, our closest nonhuman relatives.¹³ Insofar as the

8 For Regan, “individuals are subjects-of-a-life if they have beliefs and desires; perception, memory, and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain; preference- and welfare-interests; the ability to initiate action in pursuit of their desires and goals; a psychophysical identity over time; and an individual welfare in the sense that their experiential life fares well or ill for them, logically independently of their utility for others and logically independently of their being the object of anyone else’s interests”. Regan *The Case for Animal Rights* 243.

9 Regan *The Case for Animal Rights* 78.

10 Matthew Calarco *Zoographies: The Question of the Animal From Heidegger to Derrida* (Columbia University Press: New York, 2008) 8.

11 Includes gorillas, chimpanzees, bonobos and orangutans.

12 Tom Beauchamp “Rights Theory and Animal Rights” in Beauchamp T and Frey G (eds) *The Oxford Handbook of Animal Ethics* (Oxford University Press: Oxford, 2011) 198-227, 214.

13 For more on the starting point, underlying philosophy, and objections of the Great Ape Project see Cavalieri P and Singer P (eds) *The Great Ape Project: Equality Beyond Humanity* (St. Martin’s Press: New York, 1993); Paola Cavalieri “The Meaning of the Great Ape Project” 2015 (1) *Politics and Animals* 16-34.

status and position of other animals remain unaffected, the pertinent question is why would scholars advance a framework that is limited in its application when they would prefer to extend the scope of moral and legal consideration well beyond a small group of animals who possess a certain set of (human) characteristics?

The reason is that both moral philosophy and law mainly function around an inherently anthropocentric subject-centered model and in order to effect any changes within these paradigms, scholars have to translate and fit their claims into philosophically or legally digestible language and constructs. Yet it is precisely these discourses, institutions and constructs that have historically legitimized and facilitated animal subjugation and, ironically, continue to shape animal liberation discourse. In the same way that a specific deleterious definition of the human was constructed to legitimize and normalize prejudicial treatment of some humans, current constructs of animal rights privilege certain groups of animals on account of their perceived similarity to humanness. The critical issue here concerns the implicit anthropocentric constraints that operate within political and legal institutions and the ways in which animal liberation discourse ends up accepting and replicating the constraints that ground and preserve these institutions. By subscribing to these restrictions, these theorists are subtly bound to determine the animal's Being and worth in consonance with anthropocentric standards and ideals¹⁴ and end up granting ethical (and legal) consideration against a standard of humanness.

1.2.1 Towards an ethics of difference and singularity

We can identify a fundamental ethical problematic here, if by "ethical" we understand the notion of being in non-subsumptive relation with a particular Other who radically calls my being into question and awakens me to (ethical)

14 Calarco *Zoographies* 8.

responsibility. This notion of the ethical,¹⁵ developed by Emmanuel Levinas, is grounded in the primacy of the Other and signals a radical withdrawal from the egocentric supremacy entrenched in traditional Western thought:

A calling into question of the same – which cannot occur within the egoist spontaneity of the same – is brought about by the other. We name this calling into question of my spontaneity by the presence of the Other ethics. The strangeness of the Other, his irreducibility to the I, to my thoughts and my possessions, is precisely accomplished as a calling into question of my spontaneity, as ethics. Metaphysics, transcendence, the welcoming of the other by the same, of the Other by me, is concretely produced as the calling into question of the same by the other, that is, as the ethics that accomplishes the critical essence of knowledge.¹⁶

This passage from the opening pages of his first major philosophical text, *Totality and Infinity*, in a sense encapsulates the entire philosophy of this work. Here Levinas reiterates, nuances and expands his original proposition regarding the Other's problematization of the self to eventually designate this relationship as the site where not only ethics, but also knowledge are at stake. Indeed, Levinas's thought largely developed in response to the Western philosophical tradition's suppression of *alterity*, by which concept Levinas refers to both the Other's intrinsic quality of strangeness (or otherness), and the fact of her strangeness. Against the solidification of the individual "I" as central point of reference from which others are grasped and embraced, Levinas characterizes the Western

15 Colin Davis suggests that Levinas's work is not predominantly concerned with *ethics* per se, but perhaps better described as falling within the broader domain of *the ethical*, "where ethical experiences and relationships occur before the foundation of ethics in the sense of philosophically established principles, rules or codes". Levinas's own use of the word *éthique* is furthermore ambivalent, as he most commonly uses it as an adjective or, when used as a noun, in contexts that make it impossible to determine its gender. This nuance is significant as *éthique* as a feminine noun denotes ethics in the English sense, whilst its use as a masculine substantivized adjective would denote something like *the ethical*. See Colin Davis *Levinas: An Introduction* (Polity Press: Cambridge, 1996) 48.

16 Emmanuel Levinas *Totality and Infinity: An Essay on Exteriority* (trans Lingis A) (Martinus Nijhoff Publishers: The Hague, 1979) 43.

philosophical tradition as most often being an ontology that reduces the Other to the self “by interposition of a middle and neutral term that ensures the comprehension of being”.¹⁷ The self has always been the privileged term, conceived as incorporating (be it in actuality or potentiality) that which is other. The Other, as Levinas reminds us, is however radically and wholly other (to the self) and resists subsumption or comprehension within my schematic thought. The Other lies beyond my categories of understanding and an attempt at grasping the Other within my sphere of knowledge denies her irreducible particularity and ensuing difference, in effect suppressing and holding the Other hostage: “Stranger ... means the free one. Over him I have no *power*. He escapes my grasp by an essential dimension, even if I have him at my disposal. He is not wholly in my site”.¹⁸

It is via *the face* of the Other that she is presented to me and interrupts me from a dimension of irreducible infinity:

The way in which the other presents himself, exceeding *the idea of the other in me*, we here name face. This *mode* does not consist in figuring as a theme under my gaze, in spreading itself forth as a set of qualities forming an image. The face of the Other at each moment destroys and overflows the plastic image it leaves me, the idea existing to my own measure and to the measure of its *ideatum* – the adequate idea. It does not manifest itself by these qualities, but ... *expresses itself*.¹⁹

The face, in Levinas’s particular philosophical sense, does therefore not present itself in the form of evidence to be seen and should not be confused with the anatomical landmark of the body. We do not see or experience the face in any manner that would constitute it as the object of my intentions and it cannot be reduced to my own definitions:

17 Levinas *Totality and Infinity* 43.

18 Levinas *Totality and Infinity* 39.

19 Levinas *Totality and Infinity* 50-1.

The face is present in its refusal to be contained. In this sense it cannot be comprehended, that is, encompassed, it is neither seen nor touched – for in visual or tactile sensation the identity of the I envelops the alterity of the object, which becomes precisely a content.²⁰

The face, then, is prior to all else the locus in which alterity is revealed or expressed to me and it therefore dwells outside and beyond that which I can perceive or experience; “the face is signification, and signification without context”.²¹ The relation with the Other is an epiphany or revelation of an appeal that is “totally different from experience in the sensible sense of the term, relative and egoist”.²² Yet the mere appearance (or fact) of the Other in itself does not suffice to occasion an epiphany that reveals an appeal, as it is possible for the Other to merely exist alongside the self without meeting or touching the self.²³ It is only when the self enters into the ethical dimension of the face and is touched as an (impotent) imperative that proximity is established.²⁴ This encounter with the face of the Other is fundamentally ethical because it gives rise to the realization that I am not alone in the world and hence my power and freedom are called into question. The ethical nature of this encounter does however not mean that I will necessarily heed the call of the Other and act in an ethical way. The face is above all vulnerable and destitute in its uniqueness and, against its limitless forms and consequences, expresses the primordial commandment “you shall not commit murder”.²⁵

20 Levinas *Totality and Infinity* 194.

21 Emmanuel Levinas *Ethics and Infinity: Conversations with Phillipe Nemo* (trans Cohen R) (Duquesne University Press: Pittsburgh, 1985) 86.

22 Levinas *Totality and Infinity* 193.

23 Roger Burggraeve “‘No One Can Save Oneself without Others’: An Ethic of Liberation in the Footsteps of Emmanuel Levinas” in Burggraeve R (ed) *The Awakening to the Other: A Provocative Dialogue with Emmanuel Levinas* (Peeters: Leuven, 2008) 13-65, 41.

24 It is important to note that this does not entail an exposure of the Other’s interiority, as “[t]he presentation of the face, expression, does not disclose an inward world previously closed, adding thus a new region to comprehend or to take over”. Levinas *Totality and Infinity* 212.

25 Levinas *Totality and Infinity* 199.

This commandment is not made from a position of compelling authority, but rather absolute passive otherness, a “paradoxical position of majesty and misery”.²⁶ Because the Other is wholly other and resists my efforts at comparison and appropriation, I cannot control or even fathom her and she fundamentally escapes my power in a profound sense; “the face ... invites me to a relation incommensurate with a power exercised, be it enjoyment or knowledge”.²⁷

The ethical relation to the Other is thus characterized by an irreducible asymmetrical distance of nonidentity separating the self and the Other, and the prospect of a nonviolent relation requires that I guard this asymmetry against an appropriation or transmutation that would negate the Other’s quality of otherness. For Levinas, an extension of consideration to the Other on grounds of sameness thus constitutes a fundamental ethical failure and form of killing, in its broad sense. As we will see, it also amounts to a disavowal of my state of being exposed, addressed and dedicated to the Other *before* I direct myself towards her, as my devotion to the Other already existed before I discovered it. Levinas insists that our relation with the Other “precedes all ontology; it is the ultimate relation in Being. Ontology presupposes metaphysics”.²⁸ Indeed the primary value of *Totality and Infinity* arguably lies in its anticipation of the prospect of a different sort of practice that might engage with the otherness of the Other in a nonviolent way. I intentionally characterize it as the anticipation of a certain prospect, because Levinas’s project of articulating why ethics

26 Davis *Levinas* 50.

27 Levinas *Totality and Infinity* 198. Levinas illustrates how the depth of the face radically modifies the very nature of power, which is henceforth not aimed at possessing, but at killing. Because the Other is absolutely beyond my power, it is, for Levinas, “the sole being I can wish to kill”. In the passion for murder, we identify and approach death as nothingness, because the intention here is aimed at annihilation. What Levinas ultimately illustrates, is that violence towards the Other can never accomplish its true aim, as any annihilation will inevitably be a *relative* annihilation. Because the face (of the Other) does not belong to my world, despite appearing in my world, I cannot eradicate it. In a very profound sense, then, the Other remains. See Levinas *Totality and Infinity* 198-99.

28 Levinas *Totality and Infinity* 48.

has primacy over ontology and showing that there is something *outside* or *before* Being, here remains beholden to the constraints of the ontological enterprise through retention of its language and concerns. His second major philosophical text, *Otherwise than Being, or, Beyond Essence*,²⁹ is however more self-conscious and introspective, and better succeeds in critically reflecting on philosophy itself and circumventing the constraints of ontological language.³⁰

The title of this text presents a dual transformative translation of the Platonic Good beyond Being and explicitly identifies the intention of his project to overcome ontology. *Otherwise than Being* is throughout extremely aware of the problematic that its textuality presents to its own intelligibility, and it focuses our attention on the surface irregularities of language that obstruct effortless interpretation and access to philosophical propositions.³¹ The challenges of expression posed to his thought are foregrounded at the outset:

When stated in propositions, the unsayable (or the an-archival) espouses the forms of formal logic; the beyond being is posited in doxic theses, and glimmers in the amphibology of *being* and *beings* – in which beings dissimulate being. The *otherwise than being* is stated in a saying that must also be unsaid in order to thus extract the *otherwise than being* from the said in which it already comes to signify but a *being otherwise*.³²

29 Emmanuel Levinas *Otherwise than Being, or, Beyond Essence* (trans Lingis A) (Duquesne University Press: Pittsburgh, 1998).

30 In the foreword to the German translation of the text, Levinas himself acknowledged that *Totality and Infinity* simultaneously preserved and problematized its own main conceptual tools (see Emmanuel Levinas *Totalität und Unendlichkeit: Versuch über die Exteriorität* (trans Krewani W) (Verlag Karl Alber: München, 1987). There is wide consensus amongst scholars that *Otherwise than Being* can be seen as a re-reading of *Totality and Infinity* that responds to Jacques Derrida's critique in "Violence and Metaphysics" (see Robert Bernasconi and Simon Critchley "Introduction" in Bernasconi R and Critchley S (eds) *Re-Reading Levinas* (Indiana University Press: Bloomington, 1991) xi-xviii; Robert Bernasconi "Skepticism in the Face of Philosophy" in Bernasconi R and Critchley S (eds) *Re-Reading Levinas* (Indiana University Press: Bloomington, 1991) 149-61.

31 Davis *Levinas* 74.

32 Levinas *Otherwise than Being* 7.

The distinction between otherwise than being (*autrement qu'être*) and being otherwise (*être autrement*) is foundational to Levinas's project. In approaching something that transcends Being, Levinas is all too aware of the peril of transmuting this other-than-being into merely another Being, and the danger lies in the ontological assumptions embedded in philosophical language. The oftentimes overwhelming complexity of Levinasian ethics (at least partially) derives from this enterprise of trying to exceed a tradition *from within*, neither accepting nor evading the philosophical heritage that poses as both site and target of the project: "The extreme audacity of Levinas's text lies in its attempt to theorize the limitations of theory, to conceptualize and to exemplify a dimension of language which normally slips through the themes and propositions of philosophy".³³

In *Otherwise than Being* Levinas portrays the radical passivity and primordial exposure to the Other through a distinction between two dimensions of language, which include a pre-original Saying (*le Dire*) or foreword that constitutes the condition of possibility of any type of speech act that breaks silence by verbal (or written) signs in the Said (*le Dit*). We acknowledge the Other through language and for Levinas, "language does not begin with the signs that one gives, with words. Language is above all the fact of being addressed".³⁴ The (ethical) Saying is therefore a pre-condition and ground of the (ontological) Said and my radical responsibility towards the Other originates prior to language or, indeed, my consciousness of the Other's call: "the responsibility for another is precisely a saying prior

33 Davis *Levinas* 75.

34 Emmanuel Levinas "The Paradox of Morality: An Interview with Emmanuel Levinas" (trans Benjamin A and Wright T) in Bernasconi R and Wood D (eds) *The Provocation of Levinas: Rethinking the Other* (Routledge: New York, 1988) 168-80, 169-70. Levinas elsewhere writes that "[s]aying opens me to the other, before saying something said, before the said that is spoken in this sincerity forms a screen between me and the other. It is a saying without words, but not with empty hands". Emmanuel Levinas *Of God Who Comes to Mind* (trans Bergo B) (Stanford University Press: Stanford, 1998) 74.

to anything said ... [It is] an interruption of essence".³⁵ This interruption and infinite responsibility is furthermore inescapable; whilst I may decide not to answer the Other's call that originates responsibility, I cannot silence her. I am hostage to the Other and her interruption derives from a past removed from my consciousness and will. For Levinas, philosophy has traditionally focused on the Said and in doing so, failed to recognize our primordial exposure to the Other that is effected in Saying. It is precisely through the Saying that Levinas offers a defense of subjectivity from the context of a poststructuralist critique that undermines and disrupts the fundamentality of the classical humanist subject's sovereignty. Levinas's subjectivity is not formulated in terms of autonomy, consciousness, intentionality or choice, but rather heteronomy, subjection, passivity and responsibility. My exposure to the "alterity, the radical heterogeneity of the other"³⁶ is a condition of my subjectivity, rather than a mere aspect of it:

There is an abandon of the sovereign and active subjectivity, of undeclined self-consciousness, as the subject in the nominative form in an apophansis. And there is in subjectivity's relationship with the other, which we are here striving to describe, a quasi-hagiographic style that wishes to be neither a sermon nor the confession of a "beautiful soul" ... One must show in saying, qua approach, the very de-posing or desituating of the subject, which nonetheless remains an irreplaceable uniqueness, and is thus the subjectivity of the subject. This passivity is more passive still than any receptivity, in which for philosophers the supreme model of the passivity of the subject resides.³⁷

The crucial importance that Levinas's conception of ethics accords to otherness has made it an appealing framework for scholars working in various areas,

35 Levinas *Otherwise than Being* 43.

36 Levinas *Totality and Infinity* 36.

37 Levinas *Otherwise than Being* 47-8.

including queer theory,³⁸ feminist studies,³⁹ and animal ethics.⁴⁰ Yet the application of Levinasian ethics outside of his circle of interest is not without complications. Some scholars have argued that Levinas's account of femininity depicts women as sexed beings that are determined and differentiated in relation to man,⁴¹ and that aspects of his writing revert "back within the boundaries staked out by the philosophical constitution of the masculine subject".⁴² Similarly, it needs to be noted that Levinas's writings on the animal are problematic in denying (albeit inconsistently) that the animal is capable of eliciting an ethical response, or, put simply, that all animals have a face. Indeed, Levinas's insistence that the ethics he contemplates is a *humanism of the other man* should be taken seriously and warrants sustained consideration.⁴³ In my project I defend the proposition that Levinasian ethics, despite having its genesis in a mainly anthropocentric context, can make a valuable contribution to the field of animal ethics. My reasoning here is twofold and necessitates elaboration.

Firstly, I read the underlying logic of Levinas's notion of the ethical as fundamentally belying any form of anthropocentrism. A rigorous reading of Levinas's logic opens onto a deeper conception of "*universal ethical consideration*, that is, an agnostic form of ethical consideration that has no a priori constraints or boundaries".⁴⁴ I believe this reading is best supported through a close

38 See Matthew Bolton "The Ethics of Alterity: Adapting Queerness in *Brokeback Mountain*" 2011 (5) *Adaptation* 35-56.

39 See Tina Chanter "Feminism and the Other" in Bernasconi R and Wood D (eds) *The Provocation of Levinas: Rethinking the Other* (Routledge: New York, 1988) 32-56; Alison Ainley "Amorous Discourses: 'The Phenomenology of Eros' and Love Stories" in Bernasconi R and Wood D (eds) *The Provocation of Levinas: Rethinking the Other* (Routledge: New York, 1988) 70-82.

40 See Jonathan Crowe "Levinasian Ethics and Animal Rights" 2008 (26) *Windsor Yearbook of Access to Justice* 313-28.

41 Simone De Beauvoir *The Second Sex* (trans Borde C and Malovany-Chevallier S) (Vintage Books: London, 2011) 6.

42 Luce Irigaray "Questions to Emmanuel Levinas: On the Divinity of Love" (trans Whitford M) in Bernasconi R and Critchley S (eds) *Re-Reading Levinas* (Indiana University Press: Bloomington, 1991) 109-18, 113.

43 John Llewelyn "Am I Obsessed by Bobby? (Humanism of the Other Animal)" in Bernasconi R and Critchley S (eds) *Re-Reading Levinas* (Indiana University Press: Bloomington, 1991) 234-45, 244.

44 Calarco *Zoographies* 55.

examination of the texts in which Levinas directly addresses questions of animality, against the backdrop of his larger oeuvre.⁴⁵ The unresolvable internal contradiction that an anthropocentric predilection transposes into Levinas's thought is most evident in his struggle to logically metabolize the possibility of the "you shall not commit murder" commandment being expressed in the face of the animal. When provoked with the question of *animal* ethics, Levinas confirms "the ethical extends to all living beings"⁴⁶ whilst also paradoxically maintaining "one cannot *entirely* refuse the face of an animal"⁴⁷ and that "a more specific analysis is needed"⁴⁸ before he can say whether a specific animal (for instance a snake) has a face. These statements are incompatible with his defense of subjectivity as the direct responsibility emanating from a call that precedes my consciousness and any form of conceptualization that would foreshadow the transference of an "idea" in the Said,⁴⁹ and his conceptualization of the Other as wholly other with a face that expresses an infinity that resists any appropriation within cognition. It is precisely the unknowability of the Other that, for Levinas, initiates our relation, and this means that the Other cannot be delimited in advance of an encounter with this infinity.⁵⁰ Because of his tendency to revert

45 Focusing on different foundational questions than I do, Peter Atterton also argues that "the logic of Levinas's own arguments concerning the otherness of the Other militates against interpreting ethics exclusively in terms of human interests and values, and, furthermore, that Levinas's phenomenology of the face applies to all beings that can suffer and are capable of expressing that suffering to me". Peter Atterton "Levinas and Our Moral Responsibility Toward Other Animals" 2011 (54) *Inquiry: An Interdisciplinary Journal of Philosophy* 633-49, 633.

46 Levinas "The Paradox of Morality" 171-72.

47 Levinas "The Paradox of Morality" 169, own emphasis.

48 Levinas "The Paradox of Morality" 172.

49 Levinas elsewhere emphasizes "I speak of responsibility as the essential, primary and fundamental structure of subjectivity. For I describe subjectivity in ethical terms. Ethics, here, does not supplement a preceding existential base; the very mode of subjectivity is knotted in ethics understood as responsibility". Levinas *Ethics and Infinity* 95.

50 Derrida articulates a more radical critique around Levinas's notion of otherness and his illogical reluctance to recognize the animal as Other, arguing that it "can be a surprise, coming from a thinking so 'obsessed' (I am purposely using Levinas's word), so preoccupied by an obsession with the other and with his infinite alterity. If I am responsible for the other, and before the other, and in the place of the other, on behalf of the other, isn't the animal more other still, more radically other, if I might put it that way, than the other in whom I recognize my brother, than the other in whom I identify my fellow or my neighbor? If I have a duty [*devoir*] – something owed before any debt, before any right – toward the other, wouldn't it then also be toward the animal, which is still more other than the other human, my brother or my neighbor?" Jacques Derrida *The Animal That Therefore I Am* (trans Wills D, ed Mallet M) (Fordham University Press: New York, 2008) 107.

to anthropocentrism, Levinas risks reinforcing certain aspects of the traditional metaphysical humanism that he finds problematic. Acknowledging the ground of “the crisis of humanism” being the notion that man (of Western metaphysics) is the central point of reference of the universe, Levinas admits “the unburied dead in wars and extermination camps make one believe the idea of a death without a morning after and render tragic-comic the concern for oneself and illusory the pretension of the rational animal to have a privileged place in the cosmos and the power to dominate and integrate the totality of being in a self-consciousness”.⁵¹ Yet despite the displacement (of classical metaphysical humanism) brought about by the radical openness to alterity that characterizes Levinas’s subject, his self-confessedly non-metaphysical humanism remains grounded in the unquestioned metaphysically humanist assumption that the imperative of ethics can only arise from another *human* being. It is this aspect of Levinas’s thought that presents a counter-movement that forecloses the prospect of a true openness to Otherness, and that Jacques Derrida is implicating in his charge that Levinas’s discourse, despite disrupting “a certain traditional humanism ... nonetheless remain[s] [a] profound humanism”.⁵² I would suggest, along with Derrida, that the role of animality in Levinas’s thought can be carefully considered as not only presenting a latent logical inconsistency, but also the site where Levinas risks betraying his own project of decentering the “Man” of classical humanism. I am therefore, in a sense, offering an ethical reading of Levinas, because my reading is based in his structures of thought and examined against the criteria dictated by his own texts. My neo-Levinasian approach to the question of the animal thus also presents an attempt to salvage Levinas’s formulation of the ethical relation as Other by preserving it as the unsayable.

51 Emmanuel Levinas *Collected Philosophical Papers* (trans Lingis A) (Martinus Nijhoff Publishers: Dordrecht, 1987) 127.

52 Jacques Derrida and Jean-Luc Nancy “‘Eating Well,’ or the Calculation of the Subject: An Interview with Jacques Derrida” (trans Connor P and Ronell A) in Cadava E, Connor P and Nancy J (eds) *Who Comes after the Subject?* (Routledge: New York, 1991) 96-119, 113. Matthew Calarco correctly notes that Derrida’s use of the word “profound” should here be understood as meaning something like “dogmatic” or “metaphysical”. See Matthew Calarco “Deconstruction is not Vegetarianism: Humanism, Subjectivity, and Animal Ethics” 2004 (37) *Continental Philosophy Review* 175-201, 180.

Secondly, Levinas's engagement with the ethical provides a fitting framework within which to deconstruct and critique the current models of animal rights because it allows us more clearly to understand and articulate why the very starting point of these models can be seen as unethical. Given the disparate nature and scope of Levinas's vast oeuvre, it is impossible to do justice to the complexity of his thought in the scope of a few chapters. Despite being foundational to my project, my engagement with Levinas's ethics will be schematic and focus on the main lines of his thought and development as they pertain to my project. Levinas's ethical philosophy of alterity is not concerned with a programmatic ethics in search of a behavioral system of rules, nor an attempt at articulating how one determines the right way of behaving. Rather, he is concerned with that which precedes the above, namely "the fundamental condition and conditions of possibility that lie at the foundation of every concrete encounter, whether with friend or foe: the face-to-face itself".⁵³ Levinas's thought is often called an "ethics before ethics" precisely because it concerns our ethical mode of being that precedes any decision or action of an ethical nature.⁵⁴ Whilst a concrete or practical ethics can (and I will argue *should*) indeed proceed from a Levinasian basis, Levinas saw his primary task as illustrating that the foundation of ethics does not entail an identification with another being in terms of either sameness or distinction,⁵⁵ but that it rather inheres in an encounter with the radically Other whose face beckons from a dimension of irreducible infinity that interrupts the totality of the self's existence and gives rise to an inescapable ethical responsibility.

Levinas's insights into the meaning of ethics (understood as being borne from the radically Other) is especially apposite for both understanding the

53 Roger Burggraeve "Awakened into Vigilance – In Conversation with a Recalcitrant Thinker" in Burggraeve R (ed) *The Awakening to the Other: A Provocative Dialogue with Emmanuel Levinas* (Peeters: Leuven, 2008) 1-11, 4.

54 Burggraeve "Awakened into Vigilance" 4.

55 Levinas insists that "[t]he alterity of the Other does not depend on any quality that would distinguish him from me, for a distinction of this nature would precisely imply between us that community of genus which already nullifies alterity". Levinas *Totality and Infinity* 194.

violence and erasure effected by what I here term *the anthropomorphic hegemony of subjectivity*, and the possible configuration of a positive animal ethics that can think through and respond to the singularity and absolute alterity of the animal Other. I have coined the phrase *anthropomorphic hegemony of subjectivity* in order to designate the tacit anthropocentric contours of the construct of subjectivity that guide a determination of animal Being and ethical worth against a standard of humanness. This focus forces us to (re)turn to our traditional conceptions of animality and interrogate critically the functioning of our reductionistic and essentialist accounts of animals. The significance of drawing attention to these aspects cannot be overstated, as it fundamentally concerns the very possibility of locating the disruptive power inherent to an encounter with the animal, and thus of an alternative thought of relationality that might develop from nonanthropocentric grounds. These reflections awaken us to the question of the animal as a transgressive and transgressal experience of limitrophy, one that exposes the limits of existing discourses and also the crucial need for alternative thoughts and practices.

In situating and characterizing the current epoch of human-animal relations against a historical background of exponential proliferation in violence towards animals despite the increasing presence of the animal liberation movement's counter-voice, Derrida describes this struggle (for compassion) as passing through a critically important phase:

We are passing through that phase, and it passes through us. To think the war we find ourselves waging is not only a duty, a responsibility, an obligation, it is also a necessity, a constraint that, like it or not, directly or indirectly, no one can escape. Henceforth more than ever. And I say 'to think' this war, because I believe it concerns what we call 'thinking'.⁵⁶

Derrida's reference to "thinking" suggests that the question of violence and compassion towards animals is positioned at the limits of extant discourses

56 Derrida *The Animal That Therefore I Am* 29.

- be it philosophical, scientific or legal - and he is calling for an alternative approach and thought in regard to the question of the animal.⁵⁷ More than just a call to *think*, Derrida is foregrounding our ethical responsibility to engage in *a thinking* that allows us to critically reflect on the underlying assumptions and anthropocentric constraints at work in the resources we use to address the plight of the animal. I share the position that our ethical duty towards animals requires no less than radically new discourses, ethical frameworks, and determinations of animality that destabilize the problematic of anthropocentrism from a context it no longer controls at its center. This need arises because the anthropocentric discourse from which the subject emerges remains expressive of its constitutive presuppositions of human chauvinism and continues to assimilate animals to a norm of humanness. The problematic necessitates a critical deconstructive project to be situated at the limit(s) of the subject in order to firstly gain insight into the significance of the anthropocentric and carno-phallogocentric metaphysical structure from which the concept of subjectivity emanates, and to secondly open up a space within which an alternative thought and approach to (the question of) the animal might develop. Matthew Calarco situates deconstruction at precisely this level, “namely, the level of trying to articulate another thought of relation (ethics) and practice (politics) that moves beyond the limits of anthropocentric traditions and institutions”.⁵⁸

1.2.2 *Deconstruction and limitrophy*

Very important to the practice of deconstruction, as already alluded to above, is the notion of *limit*. Critics of deconstruction have repeatedly misinterpreted the concept over the years, oftentimes willfully engendering negative preconceptions of nihilism and fatalism. Drucilla Cornell’s remarkable project of re-conceptualizing deconstruction as *the philosophy of the limit* allows us to

57 See Calarco *Zoographies* 113-14.

58 Calarco *Zoographies* 115.

better comprehend the philosophical foundations of deconstruction and, very importantly for the purposes of my project, its implications for a legal system.⁵⁹ Cornell's designation responds to the misinterpretations that depreciate deconstructive theory to an "'unreconstructable' litter"⁶⁰ by illustrating that the philosophical tradition allows for the discovery and preservation of standards for ethical conduct and thereby reserves the possibility of ethical engagement within deconstructive thought.

Proceeding through what Derrida calls "the logic of parergonality",⁶¹ Cornell's project "exposes the quasi-transcendental conditions that establish any system, including a legal system as a system"⁶² and, in turn, demonstrates the inevitability of an excess or "beyond" to a system, that which the system inescapably excludes. The primary significance of Cornell's notion of ethics for my project is the way in which it helps us better to understand justice as the limit to a system of positive law and the attendant increase in our ethical responsibility, precisely because it reveals the ethical aspiration impelling the exposure of the system's limit and Other. Cornell's reading of deconstruction reflects deep insight into the limitrophe nature of deconstruction and the relevance of the way in which deconstruction exposes the limit of a system or concept. The limit cannot be positively described as an oppositional cut or self-limitation and thereby reduced to a dichotomy or excess that can be incorporated into the system. As I will repeatedly emphasize, the work of deconstruction is not to efface a limit, but rather to complicate, multiply and delinearize the limit(s). The consonance between Derrida and Cornell, the two philosophers most intimately linked to my project, perhaps resonates strongest and most pertinently in Derrida's later claim with regards to his deconstructive interventions into animality, that "*limitrophy* is therefore

59 See Drucilla Cornell *The Philosophy of the Limit* (Routledge: New York, 1992).

60 Cornell *The Philosophy of the Limit* 1.

61 See Jacques Derrida *The Truth in Painting* (trans Bennington G and McLeod I) (University of Chicago Press: Chicago, 1987).

62 Cornell *The Philosophy of the Limit* 1.

[his] subject. Not just because it will concern what sprouts or grows at the limit, around the limit, by maintaining the limit, but also what *feeds the limit*, generates it, raises it, and complicates it".⁶³

In this vein, my project identifies the human/animal oppositional limit, specifically its constitutive functioning in relation to the construct of subjectivity, as the starting point for the clearing of a critical space for the development of an alternative thought of relation. Western metaphysical discourse has consistently entrenched a human/animal binary in order to oppositionally define and delimit man in relation to the rest of animalkind. Within this analytic, man has been defined by contrast to its animal-supplement and, in turn, the animal has been juxtaposed privatively as a site of dis-possession by being differentiated as lacking certain capacities and traits considered proper to the human. Through this juxtaposition, the differences between humans and other animals are conceptualized as a contradiction grounded in deficiency and the oppositional limit operates as architect of man's position of mastery. As with most classical philosophical oppositions, this limit does not involve "the peaceful coexistence of a *vis-à-vis*, but rather with a violent hierarchy. One of the two terms governs the other (axiologically, logically, etc.), or has the upper hand".⁶⁴ A critical engagement with these concepts elucidates their metaphysical functioning which, when placed in opposition, never effects the face to face of two concepts, but a "conflictual and subordinating structure".⁶⁵

The single oppositional line has not only functioned to solidify anthropocentric hegemony, but has eradicated the complex matrix of existences and relational structures on both sides of the rupture by effacing differences and reverting to the homogenous. Just as the pseudo-concept of "the animal" suggests a homogenous group of beings that encapsulates the single essence of ants, gorillas, kangaroos, and everything in between, "the

63 Derrida *The Animal That Therefore I Am* 29.

64 Jacques Derrida *Positions* (trans Bass A) (University of Chicago Press: Chicago, 1981) 41.

65 Derrida *Positions* 41.

human” absorbs all racial, historical, and gender differences and is charged with various violent hierarchies that have accompanied the figuring of this grouping in opposition to people of color, women, homosexuals, and other Others. It is only through a rigorous deconstruction of these oppositions that we are able to clear a critical space wherein we can rethink the dissimilarities between (distinctive) humans and animals through a logic of difference and singularity, rather than oppositional distinction. The task, then, is to revisit the radical heterogeneities that exist beyond the reductive homogeneity engendered by the human/animal categorization. The starting point of this project, I argue, is a reflection on the importance or internal necessity of this reductive disengagement in Western philosophical discourse and law, and I subsequently deconstruct its constitutive functioning in relation to man’s becoming-subject and the subjugating mastery facilitated in its historicity. In line with much of the scholarship written in the posthumanist tradition, I thus also take the metaphysics of subjectivity as the point of departure and critical target of my project. I am in particular concerned with *anthropocentrism* as a guiding thread of the Western metaphysical tradition and its implications for an attempt to assimilate animals to the model of (legal) subjectivity born from that tradition.

My aim in approaching the deconstructive exercise from this specific vantage point is twofold. I firstly wish to clarify the larger stakes involved in the critique of the metaphysics of subjectivity. As Calarco has argued, the work of philosophers like Jacques Derrida, Giorgio Agamben, Gilles Deleuze and Félix Guattari⁶⁶ has often been misread as leading “to a political dead

66 Although I do not touch on their work here, the critical contributions that Agamben, Deleuze and Guattari have made to animal studies helped clarify my thinking and shape my project aimed at effecting a radical displacement of metaphysical humanism and anthropocentrism. See especially Giorgio Agamben *Infancy and History: Essays on the Destruction of Experience* (trans Heron L) (Verso: London, 1993); Giorgio Agamben *Homo Sacer: Sovereign Power and Bare Life* (trans Heller-Roazen D) (Stanford University Press: California, 1998); Giorgio Agamben *The Open: Man and Animal* (trans Attell K) (Stanford University Press: California, 2004); Gilles Deleuze and Félix Guattari *A Thousand Plateaus: Capitalism and Schizophrenia* (trans Massumi B) (Bloomsbury Academic: London, 2013); Gilles Deleuze *Francis Bacon: The Logic of Sensation* (trans Smith D) (University of Minnesota Press: Minneapolis, 2003).

end”.⁶⁷ More than just exposing the consequences of a lingering legacy of Cartesian subjectivity in postmodernity, the critique of subjectivity, if properly understood, allows us more clearly to see and articulate the relationship between metaphysical humanism and metaphysical anthropocentrism.⁶⁸ I aim to contribute a deeper understanding of the way in which discourses that critique metaphysical humanism whilst remaining beholden to an essentialist logic of opposition between human and animal, ultimately leaves us with a more rigorous delimitation of man that remains tributary to precisely what it aims to displace.

I secondly wish to (re)turn animal rights discourse to the technical language and theoretical discipline of law and right(s). Whilst there is no shortage of theories advocating the reformation of humanist liberatory discourse to ground the animal’s ethical agency, there is a dearth of scholarship that addresses the juridical register and conditions of existence of animal rights at a critical and theoretical intersection. By undertaking a jurisprudential positioning of the animal in law, I aim to foreground the anthropocentric conditions that limit law’s ability to logically and ethically take account of its construction and destruction of animal life, and problematize approaches that advocate a hasty retrieval of legal subjectivity towards an end of rights for animals. Being very cautious and skeptical of movements grounded in classical models of subjectivity, I ultimately urge that any engagement with law (and especially a resort to law) in service of animal liberation should be tentative, reflective and cautious.

My reservations concerning the liberatory discourse of animal rights are obviously controversial given the unimaginable suffering that millions of animals endure every day and the significance of the law reforms achieved by

67 Calarco *Zoographies* 13.

68 Calarco *Zoographies* 13. Not unrelated to this thesis, scholars like Kelly Oliver have argued that the human/animal binary opposition is intimately linked to the man/woman and heterosexual/homosexual binaries, and that a dismantling of the former binary inevitably has important implications for the latter binaries. See Kelly Oliver “Sexual Difference, Animal Difference: Derrida and Difference ‘Worthy of Its Name’” 2009 (24) *Hypatia* 54-76.

some animal rights groups. It is therefore important that I briefly give a broad contextualization of my views and project in relation to animal rights strategies and discourse as a whole. It is important to note that I am sympathetic towards the initiatives of animal rights groups for two reasons; I firstly support the general abolitionist goal of the animal rights movement, and secondly appreciate that the animal rights model presents one of the very few concrete and feasible options that currently exist for the realization of a positive political project in support of animal protection. I would however insist that such sympathy neither negates nor contradicts the importance and need for my critical project of thinking through the limitations and shortcomings of the animal rights approach in order to open a space within which we can develop a more sophisticated ethical disposition towards animals. To critique the theoretical presuppositions and underlying metaphysical support of animal rights theory does not by the fact itself constitute a critique of its underlying ideology. On the contrary, I aim to illustrate that the theoretical conditions of existence of animals rights and equality discourse does not allow for the realization of its emancipatory ideal because it fails to address more fundamental issues around conceptions of “(hu)man”, “animal”, and “right(s)” that both constitute and preserve precisely what is in question. The philosophy of animal rights paradoxically solidifies an anthropocentric way of thinking about animals via an uncritical reproduction of the juridical concept of human rights, and entrenches relations of subordination through a disavowal of difference. As I will repeatedly illustrate, my project furthermore supports the thesis that animal liberation will, unfortunately, inevitably be a slow and gradual process. I will indeed advance a critical approach of *slowness* as one way of rigorously deconstructing the (functioning of the) human/animal limit and its relation to different discourses and institutions, particularly law. I believe that any approach failing to take on the laborious, time-consuming task of confronting the nuanced problematic of metaphysical anthropocentrism will foreclose the possibility of destabilizing and moving beyond the very interpretation of the human (as subject) that lies at the heart of animal subjugation.

What is needed, then, is a ceaseless deconstruction of “the whole conceptual machinery, and its interestedness, which has allowed us to speak of the ‘subject’ up to now”.⁶⁹ Concomitant to my focus on the anthropocentrism of the metaphysics of subjectivity, this task necessitates an engagement with the complex network of relations and traditions that configure the sacrificial structure characterizing the subject. Derrida’s neologism *carno-phallogocentrism* underlines and further complicates the violence embedded in the partitions that institute the anthropo-centric subject beyond the privative space that the animal occupies at the border of the human (subject)/animal (object) rupture, foregrounding carnivorousness (*carno*), masculinity (*phallo*) and rationality (*logo*) as constitutive prerequisites of classical conceptions of subjectivity. Derrida’s concept firstly highlights a constitutive scheme of ingestion that underlies the relation between subjectivity and the animal’s body. Derrida furthermore emphasizes that the violence of the metaphysics of subjectivity reaches well beyond the human/animal divide and has historically excluded other beings from the construct of subjectivity, particularly women and children.

Feminists and sociologists such as Carol Smart have made similar arguments in other contexts by illustrating the exclusionary and hierarchical logic of classical conceptions of subjectivity and the implications for institutions that evoke this construct. Smart has argued that any challenge to exclusionary mechanisms of power “require no less than a major change in forms of subjectivity and understanding”⁷⁰ and, having convincingly argued that the law is deeply resistant to the concerns of women, warned feminists to “avoid the siren call of law”.⁷¹ Smart illustrates how the law produces and sustains a gendered order and draws parallels between a feminist resort to law and the iatrogenic potential of medicine to create illness and disease in the strive for cures. Providing examples of what she terms *the juridogenic*

69 Derrida and Nancy “‘Eating Well’” 109.

70 Carol Smart *Feminism and the Power of Law* (Routledge: New York, 1989) 2.

71 Smart *Feminism and the Power of Law* 160.

potential of law to generate harm as a consequence of its operations, Smart argues that emancipation cannot be sought within a system of knowledge that celebrates and sustains the very oppression in question. Smart's wider thesis on the paradox of challenging a form of power whilst accepting its own terms of reference holds value for all liberation movements seeking to effect change within a space of marginalization and disqualification. For reasons not unrelated to Smart's appeal to feminists to de-center law wherever feasible rather than using the law hardheadedly "in the hope that new law or more law might be better law",⁷² I call for an engagement with the underlying metaphysical support of animal rights at a conceptual level, rather than a simple pragmatic utilization of law as an instrument of immediate resolution.

1.3 Approach and methodology

The main conceptual framework of this project draws from the work of Derrida and Cornell. I explore the question of the animal from a critical perspective that seeks to illustrate the significance of deconstruction for animal ethics and foregrounds various elements of the theoretical and ethical problematic surrounding the traditional rights-based approach that has come to dominate animal ethics discourse. My project is also grounded in a critical understanding of theory itself and my engagement with concepts and aesthetic ideas problematizes the notion of a single rigidly disengaged or circumscribed theory that can provide an all-encompassing account of animal Being and effect an exhaustive revolution. My approach acknowledges the pervasiveness of anthropocentrism and the profound hold that it has over Western culture, including extant sciences and philosophies. As Calarco notes, "there is no doubt that we need to think unheard-of thoughts about animals, that we need new languages, new artworks, new histories, even new sciences and philosophies. The field of animal studies is interdisciplinary precisely for this reason: it is

⁷² Smart *Feminism and the Power of Law* 160.

seeking out every available resource to aid in the task of working through the question of the animal".⁷³ My particular study is animated by the urgency to add to this list the need for not only a new (kind of) law, but also new ways of approaching law and understanding law's role as operative architect of animal oppression. In this regard I also challenge the view that there can be a meaningful disentanglement of a strive for (formal) justice in the public legal sphere and in the (informal) sphere of social relations, as prevailing societal norms and assumptions will inevitably be replicated in the legal system.

1.4 A note on terminology

As already explicated, the reductive functioning and violent consequences effected by the concept of "the animal" (as homogenous contradistinctive to the human) lay central to the argument that I am developing. Having facilitated a disavowal of our own animality and a veritable war of the species, the concept is deeply embedded in the Western philosophical tradition and inextricably linked to man's position of mastery. The task for thought here concerns designation of the unsubstitutable singularity of an existence that refuses conceptualization. In response, Derrida invents the portmanteau word *animot*, which as a homophone of (the plural) *animaux* reverberates the plural for animals in the singular form and "envisage[s] the existence of 'living creatures', whose plurality cannot be assembled within the single figure of an animality that is simply opposed to humanity".⁷⁴ The suffix "*mot*" ("word") implicates language, which the animal has always been deprived of, in order to accede to a certain type of thinking that does not approach this difference privatively. It is thus not "a matter of 'giving speech back' to animals", but of thinking the absence of the word as asymmetrical separateness rather than a privation.⁷⁵ I use the plural "animals" and general singular "(the) animal" in this dissertation to represent all animal

73 Calarco *Zoographies* 6.

74 Derrida *The Animal That Therefore I Am* 47.

75 Derrida *The Animal That Therefore I Am* 48.

species other than humans, in full awareness of the biologicistic inaccuracy and violent metaphysical baggage that these terms carry. Whilst their retention is necessary for the work of deconstruction, I ask, following Derrida, that these terms be silently substituted by *animot* and read as if appearing under erasure as ~~animals~~ and ~~the animal~~ in acknowledgement of their insufficiency and limitation.⁷⁶

1.5 Chapter overview

This dissertation consists of eight chapters. It comprises this introductory chapter in which I outline the proposed problem statement and aims of my study, a concluding chapter in which I offer a holistic overview of the issues pursued and argument developed, and six substantive chapters in the form of research articles that have been published in accredited peer-reviewed journals.

In chapter 2 I jurisprudentially position the question of the animal in relation to law, justice, and the call for a deconstruction of the human (subject) by examining the philosophical foundations of- and reciprocation between justice and deconstruction through Derrida's notion of "(un)deconstructibility". I draw on Cornell's reconception of deconstruction as the *philosophy of the limit* in order to highlight the ethical significance of deconstructive theory for law and more clearly articulate the operational force of justice as *aporia* or the limit to a system of law. I examine the deconstructive potential of veganism against the carno-phallogocentric schema of sacrifice that constitutes the human as subject and patriarchal center of beings, and argue that veganism provides one possible mode of effecting a destabilization of this sacrificial configuration

76 For a concise explanation of Derrida's use of erasure, see Jacques Derrida *Of Grammatology* (trans Spivak G) (Johns Hopkins University Press: Baltimore, 2016) xxxii-xxxix. Christopher Norris explains the functioning of the marks of erasure as an acknowledgement "of both the *inadequacy* of the terms employed – their highly provisional status – and the fact that thinking simply cannot manage without them in the work of deconstruction. By this graphic means, much akin to the anomalous spelling of *différance*, concepts are perpetually shaken and dislodged". Christopher Norris *Deconstruction: Theory and Practice* 3rd ed (Routledge: London, 2002) 68.

and a vehicle through which we can respond to our ethical responsibility to the animal Other in thought and praxis. My contemplations on veganism as a form of deconstruction and mode of being should not be misunderstood as an attempt at concretizing justice in relation to a programmatic ideality or advancing the same link between veganism and deconstruction that Derrida theorizes between justice and deconstruction.⁷⁷ On the contrary, I draw on Charles Pierce's notion of *secondness* as a prism through which to illustrate the inescapability of a sacrificial existence and develop an understanding of the ethical as a necessary impossibility. As certain manifestations of sacrifice inevitably remain in the impossibility of its delimitation and "one eats [the Other] regardless and lets oneself be eaten by [the Other]",⁷⁸ it is ultimately not a question of eating, but of addressing the metonymy of introjection configuring the question of eating well. I accordingly explore and propose veganism as one way of eating well.

In chapter 3 I consider law's relation to animal subjugation, both as facilitator of animal sacrifice and possible enabler of animal liberation, by philosophically examining the relationship between the two most prominent theories aimed at addressing the plight of the animal, namely animal welfarism and the rights-based approach. I return to the problem of sacrifice by reflecting on the logic that undergirds the exclusion of animals from the *thou shalt not kill* proscription, and examining its ideological translation into the respective theories. A destabilization of the enabling hegemonic framework requires that we "sacrifice sacrifice"⁷⁹ by rigorously deconstructing the underlying assumptions of discourses and practices that see the killing of animals as a noncriminal putting to death, and adapting our engagement with animals accordingly. I utilize Karin van Marle's deconstructive approach of *slowness* as

77 See Jacques Derrida "Force of Law: The 'Mystical Foundation of Authority'" (trans Quaintance M) in Anidjar G (ed) *Acts of Religion* (Routledge: New York, 2002) 230-98.

78 Derrida and Nancy "'Eating Well'" 114.

79 Derrida and Nancy "'Eating Well'" 114.

theoretical framework for a critical reflection on the philosophical foundations of the two approaches and the channels and strategies we employ in the pursuit of animal liberation. Slowness, as a strategy of delay, calls for a suspension or disruption of a chronological and linear conception of time in order to understand the configuration of a particular contemporary problematic as situated in the past, present and future, and to create a (moment of) thinking that can adequately reflect on the underlying assumptions and constraints at work in the resources we use to address the plight of the animal. After critically engaging with the historical-ideological trajectory of the animal defense movement, I demonstrate that animal welfarists accept and operate within a sacrificial anthropocentric configuration whilst animal rightists are ideologically committed to a recalibration of the animal's status as sacrificial being. These ideological inconsistencies, I argue, demand a conceptual separation of the two paradigms if we are to preserve the possibility of transforming the juridicism and sacrificial logic that underpins our thinking and the legal institutions that legitimize our sacrificial practices.

Having identified animal rights theory as grounded in a more progressive ideology than the welfarist paradigm, I turn to a theoretical problematization of the construct of animal rights in chapter 4 in order to examine whether the theoretical conditions of existence of animal rights allow for the realization of its emancipatory ideals. In the first part of this chapter I employ a semiotic approach to consider the composition of rights and its symbolic functioning. I illustrate that rights do not stand in concrete relation to any specific thing or entity but rather comprise of legal and linguistic signs, words, symbols and ideals, and that this expansive potential of the construct makes it possible for animals to be bearers of rights. My focus in the second part of this chapter concerns a deconstruction of the similarity principle that grounds the current conceptions of animal rights. I argue that the similarity principle arrogates the human at its determinative center and measures

animals against a standard of humanness, thereby not only (re)instating an anthropocentric human/animal hierarchy, but also creating a pecking order amongst animals based on their proximity to humanness. At an ontological level the similarity principle functions around reductive disengagements that privilege selfness over otherness and appropriates the Other as a reflection of the self, thereby disavowing alterity and collapsing the ethical relation into absolute symmetry.

In chapter 5 I expose the ontology of similarity underlying rights theory as absorbedly related to the metaphysics of subjectivity by uncovering the genesis, development and completion of the metaphysical tradition as the founding and unfolding of cognate conceptions of subjectivity that increasingly situate man as the relational center of all that is. The main purpose of this chapter is to (re)turn the discourse of animal rights to its dependency on the event of subjectivity through a modest and focused engagement with the most fundamental pre-condition of rights: the question of the subject. To this end, the first part of this chapter undertakes a critical analysis of (the history of) subjectivity through an exposure of the metaphysical and anthropocentric quasi-transcendental conditions that guide the unfolding conceptualization and concluding identification of man as subject. I locate a critical moment for the metaphysical subject in the work of Martin Heidegger which, whilst sadly not sustained in his later writings, provides a point of departure for an examination of the significance that animality plays in the metaphysical tradition and its constitutive relation to the construct of subjectivity. Heidegger identifies the question of Being (or *Seinsfrage*) as the guiding question of philosophy and critiques the metaphysical tradition for developing theses on the meaning of Being that progressively obfuscate its original sending by passing over the question of Being itself. I further problematize the Heideggerian critique of the metaphysics of subjectivity by approaching it from an interdependent,

but differentiated vantage point, shifting the focus from the implications of the human becoming *subject*, to the significance of the human becoming subject. By recognizing that human(ity) was consistently juxtaposed to animal(ity) throughout the development of Western metaphysics, we can begin to reflect on the anthropomorphic hegemony of subjectivity and its implications for discourses and institutions that evoke this construct. By assimilating animals to the traditional model of subjectivity, I argue, animal rights theorists paradoxically re-construct the classical humanist subject of metaphysics and re-establish the subject-centered system that silences the call of the animal Other. In the second part of this chapter I examine how we can address, incapacitate and move beyond this schemata of power through a rigorous deconstruction of the partitions that institute the subject and how deconstruction clears a space for a *de novo* determination of the animal “subject” that can proceed from different sites of nonanthropocentric interruption. The duty inherent to the practice of deconstruction inheres at precisely this level, namely the level of thinking through and beyond the limits of the anthropocentric (sub)structures that we have inherited. I argue that this problematic is pronounced in its translation into the subject-centered model of law, as animal rights theorists are ultimately forced to establish rights for animals *as subjects* by assimilating a human-like subjectivity, thereby (re)producing another iteration of anthropocentric subjectivism and extending the legitimacy of a discourse and mode of social regulation that is fundamentally anthropocentric. I accordingly accentuate my call for a critical engagement with law at a conceptual level.

Chapter 6 offers a critical discussion of a recent decision by the highest court in South Africa in order to illustrate the significant theoretical and ethical difficulties accompanying the utilization of law as a channel for animal liberation. Whilst interpreting the right of a statutory body to privately prosecute cases of animal cruelty, the Constitutional Court in *National Society*

for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another [2016] ZACC 46 made significant pronouncements that destabilize the ground of the animal's legal status. The court does however not consistently maintain this position and, by entangling ideologies that I have argued to be fundamentally discordant in chapter 3, delivers a ruling that is puzzling and paradoxical. The court's struggle to logically metabolize its construction and destruction of the animal is a symptom of the anthropocentric constraints that inhere in legal institutions and the challenges accompanying the representation of animals in a (legal) system that is fundamentally anthropocentric. Despite reinforcing the object or utility status of animals in certain parts of the judgment, the court also recognizes that animals are individuals with intrinsic value and suggests that the foundation for animal protection has shifted from an external utilitarian calculus towards an understanding of animals as individuals whose experiential lives fare well or ill for them independent of their usefulness to others. Whilst the most obvious implication of the court's pronouncements concerns a destabilization of the (human) subject/(animal) object dichotomy entrenched in law, the judgment foregrounds the sobering reality that full legal emancipation of animals requires the utilization of legally digestible constructs that will have to be stripped of the very presuppositions that constituted and continues to ground them. This inherent characteristic of the law, I continue to argue, necessitates a rigorous problematization of law and right(s) and should make animal ethicists very cautious of how, and indeed whether, they utilize law.

Having articulated a series of interrelated issues that foreground the ways in which standard philosophical and legal approaches to the question of the animal foreclose certain ethical possibilities, chapter 7 reflects on the capacity of literature to problematize the authority of traditional philosophical and legal discourses and circumvent some of the theoretical and ethical constraints that they pose. The potential of literature to destabilize

meaning and challenge the authority of a singular interpretation are central to the argument being developed here. I examine what literature brings to law through the lens of literary theorist Mikhail Bakhtin's writings on the dialogical properties of the novel and I offer reflections on ways in which literature might begin to open up new potentialities and risks for thought in relation to the question of the animal (in law). The ethics of the novel proceed from a relational structure where identity is in flux and neither the self nor the Other is solely human, allowing us to employ literature as a vehicle to ethically "write" the animal and "read" her response that is silenced by the law. A Bakhtinian approach to the relationship of law and literature de-emphasizes the role and importance of literary content or subject matter in favor of increased attention to the style and structure of the novel, which is fundamental to understanding the nature of literature and its implications for other discourses. Bakhtin calls the novelistic structure that allows for the expression of diverging views through a multiplicity of voices the *polyphonic* novel, and identifies the genre of Socratic dialogue as originating the artistic prose composition from which the novel evolved. Bakhtin accordingly advances a notion of literature as communal process in which meaning is pluralistically conversed and collectively constructed by multiple voices that subsist in a constant relation of dialogicality and resist interpretative closure. For Bakhtin, the structural instability that is generated by the novel's style and structure not only leans towards a problematization of any pontifical authority, but also places the novel's own authority in question. This characteristic, I argue, holds great ethical value in the face of unequal power relations, as its volatile nature and susceptibility to interruption and inversion is revealed. I advance a reading of J.M. Coetzee's *The Lives of Animals* as polyphonic novel through an interpretation of the protagonist as Socratic figure and voice of refusal. My reading is grounded in van Marle's reflections on a politics of refusal as a mode of abnegation that destabilizes traditional ways of theorizing and engaging politics and law. This chapter explores

how a politics of refusal is fundamentally engaged in the task of exposing a limit, in turn preserving the possibility of an alternative thought of human-animal relationality and ultimately another law. In considering the relevance of the insights and subversive force that literature brings to law, I turn to van Marle's notion of a *risking law* and tentatively reflect on the capacity of literature to gesture a decentered and humbled law that is challenged in its ignorant complacency and realistically approached as a method with both advantageous and pernicious consequences.