JEFF MCMAHAN

"OUR FELLOW CREATURES"

(Received and accepted 19 February 2005)

ABSTRACT. This paper defends "moral individualism" against various arguments that have been intended to show that membership in the human species or participation in our distinctively human form of life is a sufficient basis for a moral status higher than that of any animal. Among the arguments criticized are the "nature-of-the-kind argument," which claims that it is the nature of all human beings to have certain higher psychological capacities, even if, contingently, some human beings lack them, and various versions of the idea that there is a special form of life that all human beings share but of which no animal can be a full participant. The paper concludes that none of these arguments succeeds in demonstrating that there are moral reasons to permit animals to be treated less well than members of our own species whose psychological capacities and potential are no higher than those of the animals.

KEY WORDS: animals, cognitive disability, common humanity, Cora Diamond, ethics, George Pitcher, James Rachels, moral individualism, Raimond Gaita, Stephen Mulhall

1. Moral Individualism

To my great regret, my personal relations with Jim Rachels were never extensive. But his influence on my thinking and on the way I practice philosophy has been pervasive. Although I am more deferential to moral intuition and to certain elements of common sense morality than he was, the conclusions at which I have arrived about various issues in practical ethics have tended to coincide rather closely with his, which is to say that they are abhorrent to all right-thinking people. For Jim was a great heretic. But not, curiously, a *notorious* heretic. He failed to attract the fury and vituperation that tends to greet the work of heretical philosophers – in those rare instances when anyone pays any attention. Yet Jim certainly did not escape abuse through obscurity; on the contrary, his luminously clear and engaging writing guaranteed him a readership that remains the envy of other philosophers. My guess is that what explains the forbearance with which his work has been received has to do with a certain warmth and gentleness that infuses his writing. The kindly

The Journal of Ethics (2005) 9: 353–380 © Springer 2005
DOI 10.1007/s10892-005-3512-2

sensibility behind the arguments emerges so vividly that it is difficult for readers to feel threatened or provoked despite the author's having evidently been led astray by following the argument to its conclusion.

Among the many commitments I share with Jim is an adherence to a view in normative ethics that he called "moral individualism." This, in his words, "is a thesis about the justification of judgments concerning how individuals may be treated. The basic idea is that how an individual may be treated is determined, not by considering his group memberships, but by considering his own particular characteristics."[1] This definition raises a question of interpretation. Does moral individualism as Rachels understood it hold that only an individual's *intrinsic* properties are relevant to how he may be treated or does it allow that some relational characteristics, other than group memberships, may be relevant as well?[2] If it excludes *all* relational properties – such as this child's being *my* child – as morally significant, then the moral individualism that he defended is stronger than that to which I am committed. For I accept that *some* special relations between or among individuals are morally significant and are a source of moral reasons, though only of "agent-relative" reasons – that is, reasons that do not apply to people generally but only to those who are participants in the relations.

But I also believe that our fundamental moral reasons not to kill or harm other individuals derive from these individuals' intrinsic properties. Thus I agree with Rachels's arguments in what was arguably the most important application of his moral individualism – namely, his comparison between our treatment of animals and our treatment of human beings whose relevant capacities are comparable to those of animals. He argued, for example, that "if we think it is wrong to treat a human in a certain way, because the human has certain characteristics, *and a particular non-human animal also has those characteristics*, then consistency requires that we also object to treating the non-human in that way."[3]

He also, though less explicitly, drew another inference: that if we think it is permissible to treat an animal in a certain way because it *lacks*

[1] James Rachels, *Created From Animals: The Moral Implications of Darwinism* (Oxford: Oxford University Press, 1990), p. 173.

[2] Intrinsic properties are, of course, bases of group membership. For example, the capacity for sentience is an intrinsic property but is also necessary and sufficient for membership in the group of sentient beings. Rachels would say that it is the intrinsic property of sentience that is morally significant and that membership in the group of possessors of the property is morally epiphenomenal.

[3] Rachels, *Created From Animals*, p. 175 (Italics in the original).

certain properties, it should also be permissible, if other things are equal, to treat a human being in the same way if that human being also lacks those properties. This further inference is implicit in what he says about the common view that "the biological life of a Tay-Sachs infant, who will never develop into the subject of a biographical life, may be treated with greater respect than the life of an intelligent, sensitive animal such as a chimpanzee." His comment is: "Moral individualism would ... imply that this judgment is mistaken."[4]

This is where almost everyone disagrees with moral individualism. To explain, let me introduce the notion of a "status-conferring intrinsic property." This is a property that gives its possessor a moral status that is a source of "agent-neutral" reasons – that is, reasons that potentially apply to anyone. Most people believe that some intrinsic properties are status-conferring independently of species membership. Thus, if a genetically anomalous nonhuman animal were discovered to be self-conscious and autonomous, most people would recognize that it would have a higher moral status than that of other animals – perhaps, indeed, a status comparable to that of a human person.

2. The Nature-of-the-Kind Argument

Next suppose that a certain animal lacks any status-conferring intrinsic property that would make it impermissible to kill that animal as a means of saving several people's lives. Suppose further that there are no relational reasons that oppose killing it – for example, it is no one's pet. (Again, Rachels may have thought that such reasons could not be *moral* reasons.) According to moral individualism, if it is permissible to kill the animal, it should also be permissible – again assuming no relational reasons apply – to kill, for the same purpose, a human being who also lacks any relevant status-conferring intrinsic properties. Most people vehemently reject this implication. They believe that it would be seriously wrong to kill any human being as a means of saving several others no matter what intrinsic properties that human being lacks (other, of course, than any intrinsic properties that are essential to being human, *if* being human is more than just a matter of genealogy). Many seek to justify this belief by arguing that membership in the human species is itself status-conferring and is therefore a source of moral reasons that potentially apply to all moral agents. They argue that all human

[4] Rachels, *Created From Animals*, p. 209.

beings, even those with no status-conferring *intrinsic* properties that are not also possessed by certain animals, have a higher status than any animal by virtue of being members of a species whose *nature*, as determined by what is characteristic of its normal or typical members, is to possess certain status-conferring intrinsic properties.

Here is a particular instance of this general form of argument. It is the nature of human beings to have cerebral hemispheres. Because anencephalic infants are human beings, it is their nature to have cerebral hemispheres even though, contingently and because of some defect or misfortune, they do not in fact have them. But their moral status is determined by their nature and thus they have the same status as those human beings who have actually realized their nature by having cerebral hemispheres. As Carl Cohen has put it, human beings "who are unable, because of some disability, to perform the full moral functions natural to human beings are certainly not for that reason ejected from the moral community. The issue is one of kind."[5]

Let us refer to this general form of argument as the "nature-of-the-kind" argument. It has been employed by a number of writers.[6] John Finis contends, for example, that "to be a person is to belong to a kind of being characterized by rational (self-conscious, intelligent) nature."[7] On this view, all human beings, even anencephalic infants that lack the capacity for consciousness, are persons and are owed the forms of respect due to persons. Similarly, Thomas Scanlon claims that "the class of beings whom it is possible to wrong will include at least all those beings who are of a kind that is normally capable of judgment-sensitive attitudes."[8] On this view, while animals can be *harmed*, they cannot be *wronged*. But, according to Scanlon, our treatment of "severely disabled humans...should be governed by principles that they could not reasonably reject, even though they

[5] Carl Cohen, "The Case for the Use of Animals in Biomedical Research," *New England Journal of Medicine*, 315 (1986), p. 866.

[6] The earliest instance of the argument of which I am aware is in Stanley Benn, "Egalitarianism and Equal Consideration of Interests," in R. Pennock and J. Chapman (eds.), *Nomos IX: Equality* (New York: Atherton Press, 1967), pp. 62ff.

[7] John Finnis, "The Fragile Case for Euthanasia: a Reply to John Harris," in John Keown (ed.), *Euthanasia Examined* (Cambridge: Cambridge University Press, 1995), p. 48.

[8] T. M. Scanlon, *What We Owe to Each Other* (Cambridge: Harvard University Press, 1998), p. 186.

themselves do not and will not have the capacity to understand or weigh justifications."[9]

While it is likely that the form of moral individualism I accept diverges from Rachels' in allowing certain special relations as sources of agent-relative moral reasons, it is foundational to the moral individualism that we share that only intrinsic properties can be status-conferring and give rise to agent-neutral moral reasons. Only if the property or properties that are essential (that is, necessary and sufficient) for membership in the human species are themselves status-conferring intrinsic properties can membership in the species guarantee all human beings a status higher than that of an animal. But the nature-of-the-kind argument itself presupposes that the essential properties for membership in the human species are *not* themselves status-conferring; for if they were, there would be no point in arguing that all human beings have a higher status than any animal by virtue of belonging to a kind whose *normal* or *typical* members have certain evidently or recognizably status-conferring intrinsic properties.

The way the nature-of-the-kind argument is usually presented is that certain recognizably morally significant properties are identified and asserted to be in the nature of the species – not in the sense of being necessarily present in *all* members but only in the sense of being present in or characteristic of normal or paradigm members. Those individuals who lack the recognizably significant properties but are nevertheless members of the species because they possess the properties that are essential to membership are then said to have the same status as those who actually possess the recognizably significant properties. As I noted, the connecting premise is that because it is the nature of the species to have the morally significant properties, it is true even of those individual members who, for whatever reason, fail to have these properties that it is nevertheless their *nature* to have them.

As in the quotations from Finnis and Scanlon, the recognizably significant properties are usually held to be psychological capacities. And, as in the quotations from Cohen and Scanlon, the nature-of-the-kind argument is usually employed to defend the idea that those human beings whose psychological capacities and potential are comparable to those of animals nevertheless have a higher moral status than any animal – indeed that they deserve the same concern and respect as human beings with psychological capacities that are

[9] Scanlon, *What We Owe to Each Other*, p. 185.

normal for the species. (In what follows I will use the term "radically cognitively impaired human being" to refer to any member of the human species whose psychological capacities and potential are comparable to those of an animal. Although some have denied that there are any such human beings, I will assume that there are.[10] Given what we know about the grounding of our psychological capacities in the structures of the brain, it would be surprising if there were no patterns of human brain development intermediate between the brains of anencephalic infants, which altogether lack the capacity for consciousness, and the brains of human persons whose cognitive capacities exceed those of the most intelligent nonhuman primates.)

But the nature-of-the-kind argument does not succeed in establishing the conclusions it is intended to support. The morally significant properties characteristic of a kind do not get to be a part of an individual's nature simply because that individual possesses the closely but contingently correlated properties that are essential to membership in the kind. Properties that are inessential to membership in the kind do not define the nature of the kind, even if they are characteristic or typical.

I suspect that the nature-of-the-kind argument's appeal derives primarily from the way that in relevant cases it "levels *up*" certain members of our species, giving them a status equivalent to our own and higher than that of the members of other species. But its implications are less appealing if we consider a case in which the logic of the argument requires leveling *down*. Suppose, for example, that the doctrine of original sin is true. Every human being comes into existence burdened with an inherently sinful nature and will deserve eternal punishment in Hell unless he or she is saved by Jesus. But suppose that, working in his usual mysterious ways, God unaccountably left out the original sin when creating one particular person. This one person, alone among human beings, lacks original sin. But she was born in a non-Christian society and has never even heard of Jesus. Ought God to send her to Hell because she belongs "to a kind of being characterized by" original sin or "a kind that is normally" burdened with original sin? The nature-of-the-kind argument implies that, if human beings in general deserve to be sent to Hell, she does as well, for it is human nature to have original sin and therefore it is *her*

[10] For the denial, see Eva Feder Kittay, "The Ethics of Philosophizing: Cognitive Impairment at the Margins of Moral Personhood," unpublished manuscript, pp. 50–52. There she speculates that "there are no individuals about whom one can say with any certainty that they are both human and have the cognitive capacities of an animal."

nature to have original sin, though in fact she lacks it. I suspect that most people would think that a just God would determine her treatment by reference to whether she is actually sinful rather than by reference to the nature of typical members of her kind. And if God would act this way, presumably we should as well.

One possibility, of course, is that the nature-of-the-kind argument is superfluous because there is in fact a status-conferring intrinsic property possessed by all human beings but not by any other animals: the soul. It may not be that the soul is essential for membership in the species. It will not figure in any biologist's account of what distinguishes human beings from the members of other species. But many believe that all and only human beings have souls and that the soul is necessarily status-conferring.

Anyone who attempts to distinguish morally between animals and radically cognitively impaired human beings by appealing to the notion of the soul must provide satisfactory answers to a range of questions. What is the soul? Is one's conception of the soul coherent and compatible with what we know from science about the relation between mind and brain? What evidence is there of the presence of the soul in human beings? How can we tell that it is absent in animals? When in the course of evolution did the soul first appear (assuming that it is not the sort of thing that can occur in degrees and so cannot develop gradually over time)? Did its sudden appearance somewhere in our ancestry make any detectable difference? If human beings begin to exist at conception, what happens to the soul when monozygotic twinning occurs? And so on. I do not believe that any of these questions can be satisfactorily answered, but I will not argue for that claim here, though I have done so elsewhere.[11]

3. Special Relations

I earlier noted that I accept that some relations are sources of agent-relative moral reasons. For example, that a person is a member of my immediate family may give me a moral reason to treat that person more generously than I am required to treat people who are not members of my family. Some have suggested that membership in the human species is a special relation in the way that membership in the same family is. They hold that an individual's membership in the human species gives

[11] Jeff McMahan, *The Ethics of Killing: Problems at the Margins of Life* (Oxford: Oxford University Press, 2002), pp. 7–24.

other human beings a special moral reason to treat that individual more generously than they are required to treat other beings with comparable intrinsic properties. Scanlon, for example, writes that "the mere fact that a being is 'of human born' provides a strong reason for according it the same status as other humans." Thus "our relation to [radically cognitively impaired human beings] gives us reason to... want to treat them 'as human' despite their limited capabilities."[12]

Even though Scanlon gives this argument together with the nature-of-the-kind argument, the two arguments are quite different. The difference emerges most importantly in the fact that if it were successful, the nature-of-the-kind argument would imply that there is an agent-neutral reason to treat radically cognitively impaired human beings better than animals with comparable psychological capacities, while the appeal to special relations implies that this reason is one that only human beings have. In practice, of course, this makes no difference, since only human beings are moral agents. But in principle it is significant. If Martians were moral agents, the nature-of-the-kind argument would require them to treat radically cognitively impaired human beings with the same degree of respect they would be required to accord to human persons with normal psychological capacities. But the claim that radically cognitively impaired human beings are specially related to all other human beings would not give Martians a moral reason to treat these human beings any differently from animals, except perhaps an indirect reason deriving from their reason to respect those human persons to whom the impaired human beings would be specially related. Martians might, that is, be morally required to accord the radically cognitively impaired special treatment for much the same reason they would be required to give special treatment to people's pets. Otherwise it would be permissible for them to treat the radically cognitively impaired in the ways in which we treat animals, assuming that our treatment of animals is consistent with what is demanded by respect for their intrinsic natures.

This alone is sufficient to show that the appeal to co-membership in the human species as a special relation is of limited significance even if it is true that this relation is a source of agent-relative moral reasons. I think, however, that it is doubtful that the fact that two individuals are related by being members of the same biological species is of any real moral

[12] Scanlon, *What We Owe to Each Other*, p. 185. A similar view was defended by Bernard Williams in a lecture he delivered shortly before his death in 2003. The text is marked as not for citation but one hopes that it will be published in due course.

significance. Some relations – such as the parent–child relation – are widely recognized as intrinsically morally significant. Others – such as co-membership in the animal kingdom – are widely regarded as morally insignificant. Still others – such as co-membership in the same race – are generally perceived, at least among contemporary liberals, as a pernicious basis for loyalty or partiality. Where along this spectrum does co-membership in the human species lie? It is not, like the parent–child relation, a close or personal relation. Nor is it, like cultural membership, a relation that is constituted by shared values; for radically cognitively impaired human beings do not and cannot share our values any more than animals do. Mere co-membership in the human species is instead like co-membership in a racial group in being a purely biological relation: a matter of genealogy, genetics, or capacity for interbreeding, depending on one's favored understanding of the concept of a species. It is hard to see how this could be intrinsically significant.

This leaves it open that species partiality could be instrumentally valuable, in the way that many people claim that national partiality is. Co-membership in a national group is often held to have instrumental significance by virtue of being a natural source of identity and solidarity. It is a relation that prompts people to sympathetic understanding and mutual self-sacrifice. It might be held that loyalty and partiality within the human species have a similarly desirable effect in eliciting special solicitude for the weaker and more vulnerable members of our species, particularly the radically cognitively impaired.

I believe, however, that the net effect is not benign. Just as the darker side of national solidarity is a tendency to denigrate or even dehumanize the members of certain other national groups, so the other side of species partiality is a tendency to treat the interests of animals as morally insignificant. If we compare the number of radically cognitively impaired human beings who benefit from our partiality with the number of animals who suffer from our tendency to regard them primarily as means to our ends, it is hard to believe that the effects of species partiality are desirable overall from an impartial point of view.[13]

4. Mulhall and "Our Common Life"

So, even if my understanding of moral individualism differs from Rachels's in attributing moral significance to some special relations,

[13] I have written at greater length about the moral significance of species membership in McMahan, *The Ethics of Killing*, pp. 209–228.

my view of the comparative status of animals and the radically cognitively impaired converges with his because I do not accept that co-membership in the human species is a morally significant special relation. I have, however, rejected the significance of co-membership in the human species on the grounds that "species" is a purely biological category and that because the biological properties essential for membership in the human species – for example, a distinctive genome or the capacity for interbreeding with other human beings – are not themselves morally significant, the fact that all human beings are related by virtue of sharing these properties is also not morally significant. There is, however, a family of arguments that claim explicitly that what all human beings have in common is *not* merely biological. Our common humanity, these arguments claim, involves our sharing a distinctive form of life and a common fate. Each human being is every other human being's "fellow creature" in a way that no animal is or can be. According to this view, which has been advanced by various philosophers writing in the tradition of Wittgenstein, our common humanity is more than just a special relation in the traditional sense. The necessity of recognizing the moral claims imposed on us by other human beings is inherent in our grasp of certain fundamental moral concepts. The failure to understand the moral significance of our common humanity is thus more than just a failure of imagination; it is a failure to understand the concept of a human being.

The writers who advance one or another version of this general form of argument are usually quite explicit in their repudiation of moral individualism. Eva Kittay, for example, asserts that

> species membership is particularly important to human beings because it means that we partake of a form of life, that is, we share interests, activities, hopes, dreams, fears, forms of sensual and emotional experiences, and ways of knowing the world and other humans, all of which are species-specific, even if culturally differentiated.[14]

She then comments that "such *non-individual based considerations* [are] part of the rich tapestry in which moral considerations are set."[15]

The argument toward which the passage from Kittay gestures is elaborated more fully by Stephen Mulhall, whose statement of the position also explicitly asserts the Wittgensteinian claim that certain moral concepts derive their substance from the form of life in which they have evolved. Here is the relevant passage in its entirety:

---

[14] Kittay, "The Ethics of Philosophizing," p. 24.
[15] Kittay, "The Ethics of Philosophizing," p. 25. Emphases added.

The forms of embodied common life open to distinctively human creatures provide the context within which our notion of personhood has the sense it has. These forms are not the practical enactment of a logically prior intellectual hypothesis about capacity-possession that might turn out to be metaphysically ungrounded. In other words, our concept of a person is an outgrowth or aspect of our concept of a human being; and that concept is not merely biological but rather a crystallization of everything we have made of our distinctive species nature. To see another as a human being is to see her as a fellow-creature – another being whose embodiment embeds her in a distinctive form of common life with language and culture, and whose existence constitutes a particular kind of claim on us. We do not strive (when we do strive) to treat human infants and children, the senile and the severely disabled as fully human because we mistakenly attribute capacities to them that they lack, or because we are blind to the merely biological significance of a species boundary. We do it (when we do) because they are fellow human beings, embodied creatures who will come to share, or have already shared, in our common life, or whose inability to do so is a result of the shocks and ills to which all human flesh and blood is heir – because there but for the grace of God go I.[16]

Both Mulhall and Kittay are concerned to explain why radically cognitively impaired human beings matter more than animals with comparable psychological capacities. The considerations to which they appeal are essentially relational. Because the radically cognitively impaired share in *our* common life and are therefore *our* fellow creatures, they make a claim on *us*. The claims they would make on moral agents from Mars would be no different from the claims of comparably endowed animals, apart from any additional claims they might have by virtue of their relations with other human beings.

But these passages from Mulhall and Kittay both invite the obvious reply that the forms of common life they describe do not include the radically cognitively impaired. Those human beings do not, and cannot, share our language, culture, ways of knowing, and so on, any more than animals can. If, therefore, "to see another as a human being is to see her as a fellow-creature" who shares our common life, it follows that we cannot see the radically cognitively impaired as human beings. But since we *do* see them as human beings, it is false that we recognize as human beings only those who share in our common life.

Perhaps the requirements for participation in the common life are less stringent than those suggested in the passages I have quoted (where language, culture, shared interests, and so on are highlighted), so that even the radically cognitively impaired are capable of certain minimal forms of participation. But if that is so, then it is also true

[16] Stephen Mulhall, "Fearful Thoughts," *London Review of Books* 24 (2002), p. 18.

that some among the more highly developed types of animal often participate more extensively than is possible for human beings with lower psychological capacities. Sometimes the participation is quite intimate, involving strong reciprocal emotional bonds. In order to convey a sense of how deep these bonds can be, I will quote a representative passage from a memoir by George Pitcher. Describing the two dogs that he and his partner in effect adopted, Pitcher writes that "they spoke to us with their actions and with the multitude of sounds they made" and goes on to describe

> their complete and unwavering devotion to us. They showed this constantly, in countless ways. ... We loved them with all our hearts ... and they loved us, too, completely, no holds barred. Such love is perhaps the best thing life has to offer, and we shall always be grateful for having had such an abundance of it to receive and to give for so long a time. ... They were our surrogate children. ... Naturally the love of one's dog cannot be as deep and rich as the love of one's child, but it can be in some ways just as intense. For example, our concern for the welfare of Lupa and Remus was, I believe, as strong as a devoted father's for his child's.[17]

As these passages show, Pitcher's dogs entered very deeply into his and his partner's life – more deeply, I think, than would be possible for some human beings to have entered – certainly anencephalic infants and even some human beings who, though conscious, are so profoundly cognitively impaired as to be wholly or almost wholly unresponsive. This is not, moreover, an isolated instance of the participation of two animals in just the lives of two human beings. These dogs were known to all of Pitcher's friends (and even make an appearance in one of Joyce Carol Oates's novels) and their relations with these various people constituted just one instance of a widespread practice within our common life involving cohabitation and mutual devotion between human beings and their pets.

[17] George Pitcher, *The Dogs Who Came to Stay* (New York: Dutton, 1995), pp. 158–159, 162, and 163. There are, of course, limits to the depth and significance of our relations with certain beings that are imposed by the limitations of those beings' nature. Suppose that I have a pet garden snail, Cecil, whom I love and think of as my best friend. I nevertheless cannot have a genuinely important relation with Cecil because he is simply too insubstantial psychologically, biologically, and otherwise to be a partner in a significant relation. Admittedly, it seems true that there are some important special relations that are effectively unilateral, such as unrequited love. It may, for example, be rational to make great sacrifices for someone about whom one cares but who cares nothing about oneself. But it would not be rational to make such sacrifices for Cecil. Even in unilateral relations, the passive member in the relation must be an appropriate object of the active member's emotions.

There are even some human beings with highly developed capacities for certain forms of rationality who nevertheless cannot enter as deeply into communion with us as some dogs can. Human beings with the severest forms of psychopathy, for example, are emotionally extremely shallow and have almost no capacity for sympathy or emotional intimacy with others, in part because they have no conception of the thoughts and emotions that others have but that are beyond their own range. Some of these people may lie further outside any Wittgensteinian form of life that supposedly generates shared meanings and values than many animals do.

Some animals not only share in personal relations but also perform significant functions in human society. A guide dog, for example, who is affectionate, protective, loyal, and able to guide its owner safely through an artificial human landscape is surely a significant participant in our common life. Assuming that fellow-creatureliness can be a matter of degree, the animals who participate in such robust ways in our common life may assert a stronger claim on us, even within Mulhall's own moral framework, than human beings whose participation is necessarily more modest.

Perhaps because he is aware that the radically cognitively impaired do not participate in our common life any more than certain animals do, Mulhall offers two weaker claims in this same passage. The less plausible of these is suggested by the idea that it is a human being's "embodiment that embeds her in a distinctive form of common life." It is hard to see what this could mean other than that all human beings are in some measure part of our common life simply by virtue of sharing our characteristic physical form. And it is true that our intuitions are moved by the physical human form. This is part of the reason why people are susceptible to various delusions about anencephalic infants and individuals in a persistent vegetative state. But it is hard to believe that Mulhall really supposes that all human beings, including the radically cognitively impaired, are our fellow creatures, and thus make a claim on us, simply because they *look like us*.

The other weaker suggestion that Mulhall makes is that the radically cognitively impaired are relevantly different from animals in that their inability to participate in our common life "is a result of the shocks and ills to which all human flesh and blood is heir." The idea here seems to be that some individuals get to be our fellow creatures even if they are debarred from the common life, provided they are debarred *for the right reason*. One such reason is that an individual cannot share in the common life because it has suffered a misfortune

to which all human beings are vulnerable. Dogs do not qualify because their exclusion from full participation in the common life is not the result of misfortune. And even if being a dog *were* a misfortune, it would not be one that we could share. It is more than just the grace of God that has kept me from being or becoming a dog. But the congenitally radically cognitively impaired *are* our fellow creatures because they are victims of a misfortune that we could suffer, or at least that we *could have* suffered. At least for theists, it *is* but for the grace of God that I do not go the way they do. So, on Mulhall's view, an individual is our fellow creature, and thus asserts a special kind of claim on us, if he or she now shares in our common life, did once share in it, may share in it in the future, or *could have* shared in it if not for some misfortune that could befall or could have befallen us as well.

This suggestion is problematic in various ways. First, it is not obvious that *congenitally* radically cognitively impaired human beings are victims of a misfortune (or shock or ill). Why should we think that their having limited cognitive capacities is a grave misfortune when it is not a misfortune for an animal to have capacities of roughly the same level? Many people believe that the answer appeals to the distinction between individual and kind. When we evaluate how well off an individual is, should we assess its level of well-being relative to the levels that are possible for normal members of its kind (that is, species) or relative to the levels that are possible given the individual's own intrinsic nature? Most people seem to think the former is the appropriate comparison. Because of his or her rudimentary cognitive capacities, a radically cognitively impaired human being's level of well-being must be low relative to that of most human beings with capacities that are normal for the species; and this is the reason that he or she is generally thought to be unfortunate. But the natural view for moral individualists is that an individual's own intrinsic nature, and thus the range of well-being that is possible for it given that nature, sets the scale on which its actual level of well-being is to be evaluated. There is no space to defend this view here, though I have done so at length elsewhere.[18] (This issue is also the subject of Peter Vallentyne's very fine contribution to this memorial collection, which goes well beyond my own discussion of the problem.[19])

A second and perhaps more serious problem with Mulhall's suggestion is that if it is sharing in our common life that makes an

[18] McMahan, *The Ethics of Killing*, pp. 145–149.

[19] Peter Vallentyne, "Of Mice and Men: Equality and Animals," this issue.

individual our fellow creature, it ought not to matter *why* an individual is excluded from the common life. Those who are excluded supposedly because of shocks and ills are excluded all the same, just as those are who are excluded by virtue of being members of the wrong species. If Mulhall recognizes as our fellow creatures now both those who do not but may later share in the common life and those who never will but could have if they had not suffered shocks or ills, then clearly it cannot be by virtue of sharing in our common life that an individual is our fellow creature. Sharing in the common life may be sufficient but it is clearly not necessary, even on Mulhall's own view.

Perhaps, on the other hand, Mulhall is working with a very generous conception of "sharing." Perhaps the radically cognitively impaired *share* in our common life even if they do not *participate* in it. They share in it simply because it is a feature of our common life that we *recognize* them as our fellow creatures. This recognition permeates the shared meanings and values that are constitutive of the common life.

On this interpretation, the moral status of the radically cognitively impaired is conferred or bestowed by our practices. The mere fact that it is our practice to regard the radically cognitively impaired as having a higher status than animals is sufficient to make it so. But this cannot be right. It would make whatever we collectively do automatically self-justifying. It implies that when, in the relatively recent past, the radically cognitively impaired were for the most part abandoned to neglect and social invisibility in dismal institutions, their moral status was lower than it is now. In the past when our practice was to hide them away and ignore them, they were, on this interpretation, less our fellow creatures and made a weaker claim on us than is the case now. But that conclusion is plainly unacceptable.

Suppose, as I suggested earlier and as seems entirely plausible, that fellow-creatureliness is a matter of degree. Suppose that the extent to which an individual is my fellow creature is a function of various different and overlapping forms of commonality and common life. Mulhall seems to assume that this is so, since he concedes that even animals are our fellow creatures in an attenuated way. "Nonhuman animals, too," he writes,

> are our fellow creatures in a different but related sense. Their embodied existence, and hence their form of life, is different; but in certain cases, the human and the nonhuman forms of creaturely existence can overlap, interact, even offer companionship to one another, and in many cases, nonhuman animals can be seen as sharing a common fate with us. They too are needy, dependent, subject to birth, sexuality and death, vulnerable to pain and fear. Seen in this light, the worst

excesses of factory farming stand out clearly enough without further metaphysical analysis.[20]

Presumably on this view the strength of the moral claims that our fellow creatures make on us varies, other things being equal, with the degree of an individual's fellow-creatureliness; otherwise the claims of animals would be equal in strength to those of our fellow human beings. But this view has troubling implications if we also recognize that there can be variations in the degree to which different human beings are our fellow creatures. Suppose, for example, that there is a tribe of hunter-gatherers in Africa whose language, culture, ways of knowing, and so on are utterly alien to me. And suppose that many of them are suffering from sickle-cell anemia. It seems that on Mulhall's view the claim that their misfortune makes on me must be weaker than that made by the lesser misfortunes of people with whom I share more. After all, their shocks and ills are not among those to which I am heir. Just as I could not have been an animal, so I could not have had different parents of a different race and thus could not have been vulnerable to sickle-cell anemia, which does not afflict members of my race. If, therefore, it is not the grace of God that keeps me from being an animal, it is also not the grace of God that keeps me from having sickle-cell anemia.

If fellow-creatureliness is a matter of degree and an individual's claim on me varies with the extent to which he, she, or it is my fellow creature, it also follows that the claims of the radically cognitively impaired will in general be weaker than those of most cognitively normal human beings and may be no stronger than those of some animals that share in important ways in our common life.

Notice, too, that in the passage in which Mulhall concedes that animals can be our fellow creatures in a second-class sort of way, what he actually says is that they have certain significant intrinsic properties, among which is that they have interests – for example, in avoiding pain, fear, and death – and that they can be related to us in significant ways, for example, as companions. This is no different from what moral individualists who recognize the significance of certain special relations might say. The difference comes only in the final sentence, with its sturdy common sense dismissal of the sort of over-refined moral analysis of which Mulhall thinks that some philosophers are guilty. His suggestion is that no normative bridge is necessary between the embodied creaturely existence of animals and

[20] Mulhall, "Fearful Thoughts," p. 18.

certain moral claims, such as that the worst excesses of factory farming stand condemned. No argument for that claim is required. But what real guidance does the claim about the attenuated fellow-creatureliness of animals provide? What does Mulhall's view imply, for example, about the less bad excesses of factory farming, or about factory farming that is not excessive, or about farming of animals that is not factory farming? I do not see that merely invoking the notion of fellow-creatureliness or calling attention to some shared elements in their lives and ours offers any help at all.

5. Diamond and "Our Shared Humanity"

The notion of a fellow creature also figures prominently in the work of Cora Diamond, another philosopher writing in the tradition of Wittgenstein. Noting that "fellow creature" is not a biological concept, she too accepts that animals can be our fellow creatures, though again in only an extended sense. A fellow creature, she writes, is

> a being in a certain boat, as it were, of whom it makes sense to say, among other things, that it goes off into Time's enormous Nought [quoting Walter de la Mare], and which may be sought as *company*. The response to animals as our fellows in mortality, in life on this earth..., depends on a conception of *human* life. It is an extension of a non-biological notion of what human life is.[21]

But why should our recognition of animals as fellow creatures be a mere echo of our notion of human beings as fellow creatures? Pitcher's dogs were mortal (their deaths are described with grief and tenderness, but without mawkish sentimentality, in his book) and were very successfully sought as company. Why cannot our sense of commonality be a product of our recognition of the importance of what we share with all beings that have a life to lead, for whom things matter, who suffer, and who will ultimately share our fate in death?

In a pair of essays, Diamond has offered a defense of "the importance of being human" that is different from, though related to, that advanced by Mulhall.[22] Both papers open with an explicit rejection of moral individualism and of the arguments by which moral individualists have sought to bring pressure on people to

[21] Cora Diamond, *The Realistic Spirit* (Cambridge: The MIT Press, 1991), p. 329. Emphases in the original.

[22] Cora Diamond, "The Importance of Being Human," in David Cockburn (ed.), *Human Beings* (Cambridge: Cambridge University Press, 1991), pp. 35–62; and Diamond, *The Realistic Spirit*, pp. 319–334.

achieve consistency between their beliefs about the permissible treatment of animals and the permissible treatment of radically cognitively impaired human beings. Indeed, within the space of just a few pages, she variously characterizes these arguments as fundamentally confused, beside the point, shallow, distressingly obtuse, nattering, naggingly moralistic in tone, and also – no surprise here – totally wrong.[23] Her central claim is that "*merely being human* has a role in moral thought, a role quite different from that of properties like sentience or rationality or the capacity for moral personality."[24] Imagination, she says, reveals the "otherness" of animal life, which contrasts with what she refers to as "human boundness."[25] She appeals repeatedly to "our imaginative sense of what it is to be human," our "imaginative sense of human life," and claims that what binds us together is our "common humanity," the fact that we are all "fellow[s] in having a human life to lead."[26]

This is the background to her explanation of why radically cognitively impaired human beings matter in a way that animals do not. Here is the crucial passage.

> The sense of mystery surrounding our lives, the feeling of solidarity in mysterious origin and uncertain fate: this binds us to each other, and the binding meant includes the dead and the unborn, and those who bear on their faces 'a look of blank idiocy,' [Dostoyevsky] those who lack all power of speech, those behind whose vacant eyes there lurks a 'soul in mute eclipse' [de la Mare again]. I am not arguing that we have a 'moral obligation to feel a sense of solidarity with all other human beings' because of some natural or supernatural property or group of properties which we all have, contingently or necessarily. I am arguing, though, that there is no need to find such a ground; there is the possibility of deep moral concern for retarded people, in which they are seen as having, however incomprehensible we may find it, a human fate, as much as anyone else's. They are seen as with us in being human, where that is understood not in a biological sense, but imaginatively. Someone may be very touched by the response of a severely retarded person to music; and there may be in that being touched an imaginative sense of shared humanity. That is a non-moral example of the way the sense of shared humanity, embracing the retarded, may enter thought and feeling.[27]

---

[23] Diamond, *The Realistic Spirit*, pp. 319–323.

[24] Diamond, "The Importance of Being Human," p. 59. Emphasis in the original.

[25] Diamond, "The Importance of Being Human," p. 41 and 55. Emphasis in the original.

[26] Diamond, "The Importance of Being Human," pp. 43, 56, and 58.

[27] Diamond, "The Importance of Being Human," p. 55. It is perhaps worth noting that Mulhall too is impressed by the mysteriousness of fate, by the idea that we can see "ourselves as mortal creatures subject to a common and uncanny fate" (Mulhall, "Fearful Thoughts," p. 18).

In this passage, the adjective "human" is all-important. Diamond denies that she is using it in its biological sense; she wants it instead to be understood imaginatively. But what it is to be human, other than to be biologically human, is never explained. The closest Diamond comes to an explanation is that "a human being is someone who has a human life to lead, as do I, someone whose fate is a human fate, as is mine."[28] This, however, is not very illuminating. It leaves us with the question what it is to have a human life to lead, or a human fate. And the answer had better be other than that it is to have the kind of life or fate that human beings have.

So let us ask: is there a mysterious origin that all human beings, including the radically cognitively impaired, have in common but that no animal shares? We all, it is true, have our origin in being born of human parents, and that is something that no animal shares. But it is neither very mysterious nor of any obvious moral significance. Is there something distinctive about our uncertain fate, something that is shared by the radically cognitively impaired but not by my dog? Rachels's work on Darwin, which stresses the continuities between the human and the nonhuman, is of obvious relevance here. If we evolved from animals, we should expect our origin to be much the same as theirs – no more mysterious, though no less so either. And we should expect our fate to be much the same as theirs as well. (Whether Diamond believes in human preexistence or an afterlife I do not know. But I doubt that she has either of these possibilities in mind in her cryptic remarks about our "mysterious origin and uncertain fate.")

Diamond stresses that there is something about being human that is supposed to be apprehended imaginatively. But I am not the only one whose imagination does not seem to be up to the task of apprehending the significance of having a *human* life to lead. "I have," she writes, "been asked (by John Marshall) what it means to say of a severely retarded person that he or she has a human life to lead. I do not mean by 'having a human life to lead' having a life in which distinctively human capacities are exercised. Someone may be deprived, for part or all of his life, of distinctively human capacities like reason. A human life *without* the exercise of these capacities is *his* human life. The one human life he is given has that terrible deprivation; that, in his case, is what his having a human life to lead has been. We may perfectly well think of that as a particularly terrible human fate."[29]

[28] Diamond, "The Importance of Being Human," p. 59.

[29] Diamond, "The Importance of Being Human," p. 59. Emphases in the original.

Recall that Diamond says that having a human life to lead is what it is to be human, and that being human is to be understood imaginatively rather than in biological terms. Having a human life to lead should therefore not be a matter of biology but something to be apprehended imaginatively. This raises questions about my dog's life and fate. My dog, like a radically cognitively impaired human being, lacks the distinctively human capacity of reason. He is deprived of that capacity by his individual biologically determined nature. Is my dog's life without the capacity for reason *his* human life? Is that his terrible human fate? Diamond would of course say that my dog cannot have a human life or a human fate. But why not if the relevant sense of "human" is not biological? What exactly does a radically cognitively impaired human being have that my dog lacks that is not just a matter of biology?

In the lengthy passage I quoted, Diamond offers one concrete example of what may be involved in our "sense of shared humanity" – namely, our being moved by a retarded human being's response to music. Notice, first, that this has nothing to do with mysteries of origin or fate but instead focuses on exactly the kind of intrinsic property that moral individualists take to be relevant to moral status. Second, if an animal were to manifest an appropriate response to music, would not that be moving as well? Or, if an aesthetic response to music is beyond the capacity of any animal, then any human being capable of that response is not radically cognitively impaired in my stipulated sense, because he or she would have at least one higher psychological capacity not shared by any animal. This example would then fail to address the question of the moral status of those human beings whose psychological capacities and potential are no higher than those of certain animals.

Diamond seeks to support her argument with two examples of ways in which merely being human seems to matter morally. She observes that we do not eat our dead, though even moral individualists should have no objection to eating an animal that has been killed by natural forces. And she notes that we hold a funeral for a dead newborn but not for a puppy. She then contends that we have to explain these differences "in terms of what [the relevant practices mean] *to us*, a form of explanation which for [the moral individualist] is evidently very dangerous."[30] It is dangerous because these practices

[30] Diamond, *The Realistic Spirit*, p. 323.

do not seem to be dictated by the intrinsic natures of human beings but seem instead to be matters of meaning for us as human beings.

It is true that it is difficult to justify these differences in our eating and funerary practices in terms that a moral individualist would find acceptable. The question is whether the practices challenge moral individualism or whether moral individualism challenges the practices. For it is not obvious that the intuitions behind the practices are any more rational or defensible than those that underlie other divergences, which cannot be justified in individualist terms, between our treatment of human beings and our treatment of animals. Perhaps our willingness to eat animals killed by natural forces *is* morally objectionable – even if it is less objectionable than killing animals in order to eat them. Perhaps to eat an animal, even without killing it, fails to accord that animal the respect it deserves. I certainly would not eat my dog if he were to die naturally. This would be a violation not only of what my relation to the dog demands but also of what is required of me by respect for my dog's intrinsic nature.[31]

Yet perhaps we should also reevaluate the nature and strength of the moral reasons we have not to eat the flesh of dead human beings. If a lunatic were credibly to threaten to kill my dog unless I ate a piece of flesh from a dead human body, I would do it (or try to) for my dog's sake, though with the utmost repugnance. I believe that it would be the right thing to do. I suspect, moreover, that if it were discovered that eating a certain small part of a human corpse would significantly increase the consumer's longevity, we would very soon have no more qualms about this limited form of cannibalism than we currently have about transplanting organs from corpses into the bodies of the living. After all, oral consumption and transplantation are just different means of assimilating material from dead human bodies into our own. (It is interesting that while most people are happy to eat the bodies of dead animals, they are more squeamish about the prospect of having an

[31] The protagonist in J. M. Coetzee's novel, *Disgrace*, volunteers to take the corpses of dogs that have been killed at the Animal Welfare clinic to the incinerator and to burn them, refusing to allow the incinerator crew to dispose of them later. For "that would mean leaving them on the dump with the rest of the weekend's scourings: with waste from the hospital wards, carrion scooped up at the roadside, malodorous refuse from the tannery – a mixture both casual and terrible. He is not prepared to inflict such dishonour upon them." He acts in earnest, though with a self-mocking irony: "He saves the honour of corpses because there is no one else stupid enough to do it." It is clear, however, that the reader is meant to take seriously the idea that even the corpse of an anonymous animal is susceptible to being dishonored [see J. M. Coetzee, *Disgrace* (New York: Viking, 1999), pp. 142–146].

animal's organ transplanted into their body than they are about the transplantation of a human organ.)

Why, one may ask, would a moral individualist be so profoundly averse to anthropophagy? To the extent that the aversion can be explained other than biologically (and Diamond wants a moral explanation, not a Darwinian one), it is because we regard the eating of a dead person as a failure of proper respect for the person, even though he is now dead. Just as it is disrespectful of a dead person to fail to honor the terms of his will, so it would be disrespectful to violate his wishes concerning the treatment of his corpse. But there is more to it than this. Anthropophagy would be morally objectionable even with the prior consent of the victim. Our treatment of the bodies of dead human beings has symbolic significance for us in a way that the eating of animals does not (even, perhaps, the eating of our dead pets). Perhaps this is just what Diamond has in mind. But if it is, it does not do much to advance her case. In part this is because the general idea of respect for the dead can take different forms in different cultures.

Here again Rachels is helpful when he reminds us of Herodotus's story of King Darius of Persia, who summoned before him some Greeks, whose custom was to cremate their dead, as well as some Callatians, whose custom was to eat their dead fathers. Each group was horrified by the practice of the other.[32] Rachels comments that

> eating the flesh of the dead could be understood as a sign of respect. It could be taken as a symbolic act that says: We wish this person's spirit to dwell within us. Perhaps this was the understanding of the Callatians. On such a way of thinking, burying the dead could be seen as an act of rejection, and burning a corpse as positively scornful. If this is hard to imagine, then we many need to have our imaginations stretched. Of course we may feel a visceral repugnance at the idea of eating human flesh in any circumstances. But what of it? This repugnance may be, as the relativists say, only a matter of what is customary in our particular society.[33]

[32] James Rachels, *The Elements of Moral Philosophy*, Second Edition (New York: McGraw-Hill, 1993), p. 15.

[33] Rachels, *Elements of Moral Philosophy*, p. 27. The question of the appropriate treatment of corpses is similar to the question of the acceptability of homosexuality in two respects – namely, that neither issue is about considerations of harm yet both evoke visceral and volatile passions that are difficult to defend by rational argument. It may well be that commonly accepted beliefs about respectful treatment of corpses will be – or could be – transformed in a relatively short period of time, just as beliefs about homosexuality that were prevalent for many centuries have been greatly transformed in our society in the space of only a few decades.

It is also true, however, that, while *both* the Greeks and the Callatians had the concept of respect for their own dead, however they might have expressed that respect, *neither* accepted that there was any reason to respect the dead bodies of animals. So perhaps Diamond's core idea is vindicated after all. Perhaps there is acceptable variation in how respect for human corpses may be manifest but no acceptable variation in how to understand the boundaries of the class of beings whose corpses are owed respect.

That may well be right. Yet it is clearly possible for people to be mistaken about the extension of the class of beings to whose corpses respect is owed. Many earlier societies, for example, assumed there was no more reason to respect the corpses of human beings of different tribes or societies than there was to respect the corpses of animals. We believe, rightly, that this was mere prejudice, a form of moral blindness. But even in our own society we hold a funeral when a newborn infant dies but simply discard the corpses of late-term fetuses that die through spontaneous or induced abortion (though in Japan funerals are often held even for fetuses that have been killed through intentional abortion). This seems arbitrary. What reason is there to suppose that a day-old premature infant is our fellow creature while a late-term fetus that may be chronologically older and more fully developed is not? However this issue is to be resolved, the important point here is that if people have clearly been mistaken in the past about whose corpses are owed respect, and if even now there are conflicting tendencies in common sense thinking about which corpses demand respect, it seems that we should concede that what passes for common sense today – that the requirement of respect for the dead extends to the boundaries of the human species but no further – may well turn out to be mere prejudice.

But Diamond seems to think that it *cannot* be. In a passage that echoes Mulhall's claim that our ways of respecting the status of other human beings "are not the practical enactment of a logically prior intellectual hypothesis about capacity-possession," Diamond writes that

> it is not respect for our interests which is involved in our not eating each other. [This is instead something that goes] to determine what sort of concept 'human being' is. Similarly with having duties to human beings. This is not a consequence of what human beings are, it is not justified by what human beings are: it is itself one of the things which go to build our notion of human beings. And so too – very much so – the idea of the difference between human beings and animals. We learn what a human being is in – among other things – sitting at a table where *we*

> eat *them*. We are around the table and they are on it. The difference between human beings and animals is not to be discovered by studies of Washoe or the activities of dolphins. It is not that sort of study... that is going to tell us the difference between us and animals: the difference is... a central concept for human life and is more an object of contemplation than observation. ... In the case of the difference between animals and people, it is clear that we form the idea of this difference, create the concept of the difference, knowing perfectly well the overwhelmingly obvious similarities.[34]

If this were right, there might be no escaping Diamond's substantive view, which she implies is not something we can argue about. For the passage suggests that because her view is implicit in the very concepts in terms of which we must conduct our thinking, those of us who think we disagree are simply impervious to the conceptual instruction we received as children at the dinner table. Yet the fact that we can coherently discuss the possibility of socially approved forms of anthropophagy (for example, if they offered significant medical benefits) seems to demonstrate that Diamond's moral commitments are not in fact embedded in our concepts. But even if they were, because some of the concepts we have inherited bear the stamp of our ancestors' moral views, that alone could not bind us to an acceptance of those views. We could form new concepts that would allow us to articulate different and more reasonable views. We could, in particular, reject as a mere figment of our collective imagination any alleged difference between human beings and animals that had been *formed* or *created* in the way Diamond describes. What Diamond believes we must grasp through the faculty of imagination turns out, by her own admission, to be indeed purely imaginary: formed or created by our patterns of thinking rather than discovered in the world.

6. Gaita and Our "Individuality"

I will conclude this survey of arguments explicitly opposed to moral individualism by briefly noting the view of one other philosopher in the same broad camp as Mulhall and Diamond. In a recent book dedicated to Cora Diamond, Raimond Gaita seeks to defend the view that "every human being is unique and irreplaceable as nothing else

[34] Diamond, *The Realistic Spirit*, p. 324.

we know in nature is,'' and that this means that every human being can be wronged in ways that no animal can.[35] He claims that the basis of each human being's irreplaceability is a certain kind of ''individuality''; but it is *not* a person's ''individuating features, the distinctive personality that would make him the glory of liberalism's celebration of individuality,'' that grounds the

> kind of individuality... that makes him irreplaceable in the sense that goes together with a conception of his preciousness. It is the idea that every human being, whatever their distinctive characteristics or lack of them, is precious and irreplaceable that informs our sense of what it means to wrong them. The difference in our responses to animals is a function of the degree to which that kind of individuality is attenuated in them. Insects have no share in it at all.[36]

The claim that a human being's ''individuality'' – that which underlies her status as precious and irreplaceable – has nothing to do with her *distinctive* characteristics suggests that it has to do instead with what is *not* distinctive – that is, what she shares in common with all other human beings. And, indeed, Gaita goes on to refer to ''the knowledge, full and in our hearts, that all human beings are alike,'' presumably in ways that establish our individuality and hence our preciousness and irreplaceability.[37]

So in what important respect are we all alike? Gaita never says, though he does note certain properties that are *not* the ground of our individuality. He writes that ''no elaboration on'' the fact that human beings ''are persons, that they are rational beings, that they are beings with interests and desires and so on – can take one to an understanding of what it means for us to wrong one another.''[38] Recall that it is a certain kind of individuality that makes a human being irreplaceable and that it is ''the idea that every human being... is precious and irreplaceable that informs our sense of what it means to wrong them.'' It seems to follow that if our being rational and having interests and desires does not explain why we can be wronged, it cannot be the basis of the individuality that makes each of us irreplaceable.

What is puzzling is that Gaita immediately goes on to claim that ''animals lack almost entirely'' these properties that human beings

[35] Raimond Gaita, *The Philosopher's Dog: Friendships With Animals* (New York: Random House, 2002), p. 174.
[36] Gaita, *The Philosopher's Dog*, p. 171.
[37] Gaita, *The Philosopher's Dog*, p. 175.
[38] Gaita, *The Philosopher's Dog*, p. 176.

have – that is, rationality, the possession of interests and desires, and so on – and says that

> that is one reason why we cannot wrong them when we are cruel to them as we would wrong a fellow human being to whom we are cruel. It is why we cannot wrong them when we kill them as we would wrong a human being if we murdered him. And that is why we speak so naturally of us and them, of human beings and animals, rather than human beings and other animals.[39]

This passage is at the center of Gaita's argument but is baffling in various ways. Does he really mean to assert that animals are almost entirely lacking in interests and desires (or indeed all forms of rationality)? His own surrounding text, in which he recounts moving stories about his own relations with animals, suggests otherwise. But even more curious is the fact that in this single passage he denies that our being rational or having interests and desires can explain why we can be wronged, and thus implicitly denies that this could be the basis of our individuality or irreplaceability, and yet also asserts that it is animals' lack of precisely these properties that explains why they cannot be wronged, at least in the way human beings can be, and thus why they are not precious and irreplaceable.

Perhaps the assertion and the denial are ultimately compatible, but they leave us utterly in the dark about why Gaita believes that all human beings are precious and irreplaceable while no animals are. His text is sprinkled with the familiar references to our "common humanity" and our "human form of life," but, as in Mulhall and Diamond, there is never any determinate indication of what it is that is constitutive of our common humanity other than our membership in the same species, which is merely a construct of biological taxonomy.[40]

Near the end of his book, Gaita makes an assertion for which I, at least, was unprepared by anything that came earlier. There he writes: "My claim is that at the deepest point in our ethics there is a conception of individuality that is groundless, formed from our attachments, justified neither by reason nor merit, deepened in love, and made to seem more tractable in a language of rights and obligations."[41] The final clause concedes the utility of employing the language of rights and obligations but the text makes it clear that for Gaita rights and obligations are not the appropriate concepts for the

[39] Gaita, *The Philosopher's Dog*, p. 176.
[40] Gaita, *The Philosopher's Dog*, pp. 174 and 42.
[41] Gaita, *The Philosopher's Dog*, pp. 206–207.

articulation of his position. Our individuality, and hence our preciousness, irreplaceability, and susceptibility to being wronged are not matters of our rights or obligations. They are in some sense groundless, products of our own love for and attachment to each other.[42] This is an extraordinary admission but it is also hard to interpret. Does it imply that *whatever* we become attached to and deeply love (or even what *each* of us loves and is attached to) thereby becomes precious and irreplaceable? The claim that our individuality is literally groundless does suggest the absence of objective constraints on what can be made precious through attachment and love. As in Diamond's view, our status seems to be formed or created, conferred on us by ourselves, by our own acts of caring, rather than being inherent in any objective feature of our nature.

I cannot see that this view gives one any *reason* to accept that a radically cognitively impaired human being makes a stronger moral claim on one than an animal with comparable psychological capacities and potential – particularly if one is specially related to the animal but not to the human being. Indeed, all the claims by Mulhall, Diamond, and Gaita about our common humanity, our common life, our common fate, our fellow creatures, and the importance of being human seem, when we press for clarification or elucidation, either to be translatable into claims about morally significant intrinsic properties or else to dissolve into empty notions of a moral status that is created by imagination or by some form of caring that is dubiously attributed to "us."

At one point Diamond objects that the one thing that moral individualists have in common with pragmatists such as Richard Rorty is the belief that "there is available no notion of *human being*, embracing [the retarded] and us, capable of playing a substantial role in moral life (capable, that is, of being anything more than inspirational rhetoric)."[43] The irony is that what emerges from a careful exploration of the writings of these Wittgensteinians is that the notion of a human being, divorced from its basic biological meaning, has no determinate substance there at all: it is merely a rhetorical ornament that takes over the function of persuasion when the argument runs out.

---

[42] For a critical discussion of the idea that we can explain the significance of special relations in terms of an entitlement to give priority to those we specially care about, see McMahan, *The Ethics of Killing*, pp. 218–220.

[43] Diamond, "The Importance of Being Human," p. 54.

Department of Philosophy
Rutgers University
New Brunswick, NJ 08901-2882
USA
E-mail: McMahan@Philosophy.Rutgers.edu