

Chapter 8

The Ethics of Philosophizing: Ideal Theory and the Exclusion of People with Severe Cognitive Disabilities

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What distinguishes ideal theory is the reliance on idealization to the exclusion, or at least marginalization, of the actual. ... [I]deal theory either tacitly represents the actual as a simple deviation from the ideal, not worth theorizing in its own right, or claims that starting from the ideal is at least the best way of realizing it.

Charles W. Mills, “‘Ideal Theory’ As Ideology’

Abstract Care ethics is especially responsive to the actual narratives and practices of care. In the first section of this chapter, I consider why an ethics of care exemplifies a non-idealized ethics. I show that both justice-based theories and care-based theories could be thought of as ideal theory or non-ideal theory—the difference is a question of the point of entry into these theories—but a care ethics is more clearly attuned to the actual practices from which it emerges. In the second section, I consider a brand of philosophizing, exemplified by Peter Singer and Jeff McMahan, that depends heavily on idealizations and hypothetical examples. Insofar as they deal with idealizations, they tolerate empirically inadequate descriptions drawn from stereotype. The misrepresentations justify the exclusion of certain individuals who fail ‘to measure up’, namely people with severe cognitive impairment from the status of moral persons. The exclusion of this group from the protection of ‘moral personhood’ comes to seem inevitable, unavoidable, and fully justified only because these philosophers neglect important maxims of responsible, non-arrogant inquiry, maxims drawn from ‘best practices’ in ethical inquiry and ethical practices. In the final section, I suggest that the omissions and problematic conclusions that result from idealizations are truly *ethical* lapses in the practice of ethics itself.

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8.1 Introduction

Onora O'Neill has criticized idealizations in practical philosophy, particularly idealizations of persons. She writes: 'If the world is to be adapted to fit the conclusions of practical reasoning, and these assume certain idealizations, the world rather than the reasoning may be judged at fault. More concretely, agents and institutions who fail to measure up to supposed ideals may be blamed for the misfit' (O'Neill 1987, 42). As theorists of marginalized groups have demonstrated, whether we make members of the marginalized group in question invisible, or whether we distort and misrepresent the group with false stereotypes, we exclude its members from one's own moral community. There is one theory that I will characterize as a non-idealizing theory, an ethics of care, which in contrast to many ideal theories of justice, is especially responsive to the actual narratives and practices of care.¹ It tries to forgo rigid binary distinctions (including the distinction between care and justice) and remains open to changing contexts of care that require us to consider concepts that have been missing in previous moral theories. Finally, and this may be the greatest challenge, but also the greatest strength of a theory of care ethics, it aims to be inclusive of all and to see the networks of relationships in which and through which ethical norms emerge.

In the first section of this chapter, I will consider why a Care Ethics appears to be an exemplar of a non-idealized ethics, one that is suited to the particularities of the context and the individuals of those affected. In this regard, it appears to stand in contrast to theories that are oriented toward justice and which take ideal theory as their starting point. I shall however argue that both justice-based theories and care-based theories could be thought of as ideal theory or non-ideal theory, but that when we view them as ideal theory what we are really doing is constructing hypotheticals that freeze transitory moments of ethical life and that these 'freeze frames' are drawing upon practices that change with different contexts of moral understanding no less than theories that renounce ideal theory.² But a care ethic, insofar as it is a naturalized theory is less apt to fall into the difficulties O'Neill as well as other theorists have pointed out.

In the second part of the chapter, I consider a brand of philosophizing that depends heavily on idealizations and hypothetical examples. Peter Singer and Jeff McMahan are two philosophers whose work I examine here. Both rely on utilitarian arguments of varying degrees of sophistication. For both the interests of sentient beings are to avoid suffering and experience pleasure. But all sentient beings do not have a similar moral status. Some are persons; others are non-persons. This bifurcation of sentient beings is based on criteria of psychological capacities, chief among which is the capacity to reason. Thus nonhuman animals (except perhaps the higher primates), infants, humans with sufficient mental impairment fall into the class of non-persons. Unlike an ethics of care, these theories are not grounded in the practices to which they are meant to apply. Insofar as they deal with idealizations,

they tolerate empirically inadequate description drawn from stereotype. Their misrepresentations are used to justify the exclusion of certain individuals who fail 'to measure up' in the idealized theories of Singer and McMahan, that is, people with cognitive impairment, from the status of moral persons.

The exclusion of this group from the protection of 'moral personhood' comes to seem inevitable, unavoidable, and fully justified only because these philosophers neglect important maxims of responsible, non-arrogant inquiry. The maxims are drawn from 'best practices' in ethical inquiry and ethical practices. I suggest that the omissions and problematic conclusions that result from idealizations are truly *ethical* lapses in the practice of ethics itself.

8.2 An Ethics of Care as a Naturalized Ethics

A good candidate for a naturalized ethical theory is an ethics of care. It is an ethical theory that is being articulated by *critically* examining practices of care. This contrasts with the justice theories that have been formulated by philosophers by deducing principles through sheer rational contemplation, sometimes with hypothetical examples drawn from our imagination or by greatly simplifying possible situations that may arise. The relation of the two types of theories has sometimes been spoken of as a question of scope, that is, as relations between a few intimates, versus relations that hold among many. Sometimes the relation of care and justice has been construed as a matter of domain: a care ethics governs the intimate domain; a justice ethics is appropriate to the public domain. Walker (2003) speaks of care as a foundation for other moral relationships and justice as the pale substitute for the more robust ethical relationships of care. Virginia Held, a moral pluralist, thinks that the different theories each have a role—none are reducible to the others—and each has a domain where that theory is the most appropriate moral theory.³

There is, however, an important asymmetry in our use of the terms 'care' and 'justice.' When we say of someone that she cares for another, we might mean that she is engaged in activity or that she has a certain feeling and attitude toward the other. Moreover, neither sense of caring necessarily carries a positive evaluation, moral or otherwise. The care may be of a poor quality: neglectful, perfunctory, overbearing, not sufficiently respectful to the cared for. Or it may be exploitative of the caregiver. But when we say that someone is acting justly (toward another), that is immediately a moral evaluation. Of course when we say of someone that 'she is a caring person', it has a positive evaluation different in content, but not different in kind from 'she is a just person.' This asymmetry in the use of the terms is often accounted for by saying that care is a practice as well as a value (or norm or virtue), while justice is purely a value (or norm or virtue). Another way to express this is to say that care is a naturalized ethics (that is, it is an ethic that grows out of looking at the actual activities and interactions and understands norms to be embedded in the actual), and theories of justice, by contrast, are idealized (that is, they begin by adopting or articulating an ethical norm by idealizing). Ideal theories not only abstract from actual situations, but work with idealizations,

for instance, idealizations of the parties to whom and from whom we are to expect justice and idealizations of how we determine what is just. As Charles Mills writes: 'What distinguishes ideal theory is the reliance on idealization to the exclusion, or at least marginalization, of the actual' (2005, 166). Beings in the ideal universes of the philosophers whom we are exploring are interest bearers rather than mothers, fathers, daughters or sons. Not Black, White, or Brown. And human beings are calculators maximizing their utility—something we know humans are actually not that good at.⁴

Nonetheless at least one prominent care ethicist, Virginia Held, is not friendly to the idea that a care ethics is a naturalized ethics (see Held 2002–2003). She worries that if we do not conceive of a care ethics as first and foremost a normative enterprise, a practice fully infused with values, then, as care is associated with 'woman's morality, it plays directly into the misogynist views of women: that [they] lack "deliberative faculty" (Aristotle) or lack a superego (Freud)' (Held 2006).

Instead, she maintains that justice and care *each* are both practices and values—that the values of justice are refinements of primitive untheorized practices of justice, such as revenge. Theories on this view stand outside the practice itself and are there as a standard, a measure, an evaluative tool that helps a practice develop and evolve into a more moral form. Theories are, on this view, not meant to be responsive to practices. Theories are idealizations that generate the values and principles against which we judge the morality of practices. In the case of justice, the primitive practices have yielded to better practices, for example, the legal, judicial and penal practices, and we have developed theories of justice by which to evaluate such practices. In the case of care, practices have also evolved, but without the benefit of theorizing.

But if, as Held suggests, justice as a practice has evolved as it has *because* of its ethical theory, then the implication is that care as a practice could not have evolved as well as justice has. If, on the contrary, care is no less evolved as a practice than justice is, then moral theory is not necessary to refine or reform practice.

Neither implication seems right. Care may not yet be sufficiently refined as an ethical theory, but its practices are no less ethically evolved than are those practices that presumably are guided by theories of justice. One could argue that practices of care are still more evolved, embodying an ethic still more refined than practices of justice. In fact, I think one can make the case that because the values of care are imminent in the practice itself, there is an evolving but constant calibration that aligns the practice and the values. That is, the values care practices express are closely constrained by the telos of the practice. For example, let us say that we believe in the value of discipline. Yet a child may well not flourish if she or he is repeatedly and mercilessly disciplined for every infringement. Different tactics may be better at eliciting the desirable behavior. Thus rather than merely following a rule that demands discipline X for behavior x, caring practices would encourage deliberating about whether in *this* instance carrying out the rule will actually reflect the *point* of restraining behavior x. If the behavior can be restrained or modified using less coercion in *this* situation then a good caring practitioner will modify the disciplinary action according.

Similarly, we may value freedom, but a child who is given no guidance, no limits and restraints can become a menace to herself and to others. The stops we place on both disciplining a child and letting her do whatever, whenever she likes are constraints of the practice itself. That telos is the rearing of children to be adults who are flourishing and can live in sociality with others. In this sense practices of care need to be, above all, *responsive*. They must respond to the demands of the cared for, the carer and the particularities of caring for *this* individual in a particular time and place.

What then is the point of theorizing care? I suggest that it is to extract ‘best practices’ and to garner from these whatever we can about how we ought to engage ethically with one another. In the case of justice, it does appear as if theories of justice stand apart from its practices in just the way Held suggests, although I have been suggesting here that this can be as much of a liability as an advantage to a theory.

If both care and justice require values and practices as Held suggests, but contra Held, we reject the supposition that theories of justice help refine practice, but practices of care have yet to be refined by theories of care, then to what shall we ascribe the source of the asymmetry between the terms ‘care’ and ‘justice’ to which I alluded earlier? The perceived asymmetry, I suggest, results from different *entry points* into the process of theorizing care and justice. The point of entry for a care ethic is an *actuality*—one party is in need of care and another is in the position to meet that need; in the case of justice it is a *fiction* or *idealization*—a hypothetical state of nature or a universalized set of interests.

These different starting points have implications for the theories themselves. In the case of justice, we construct a fictive account, a mythical or hypothetical original situation, in order to ask how we *ought* to proceed. As the original situation is not an empirical one, the work of theory appears to be relatively unconstrained by empirical reality—it appears that the values that are expressed in a theory of justice derive from a normative source that is sharply differentiated from an empirical reality; that is, they derive from an ‘ought.’ The *ought* is not (putatively) derived from an *is*. By proceeding in this manner, we can make the case for constructing a theory for the idealized situation. By virtue of this idealization we can *isolate* those values, which we believe should pertain in the real world. Therein lies the rationale for ideal theory.

In the case of care, we begin our theorizing by considering how an ongoing practice *is* executed. When we ask how such a practice *should* proceed, we are inevitably constrained by the empirical reality that already defines the practice. Still to get at the normative core of care we cannot simply accept that *any* care is good care. Such an uncritical acceptance of the existent activities of care would not yield a coherent ethic, a coherent theory, much less a feminist theory. We need only think of the damaging ways women’s labor has been extracted and made to appear either ‘natural’ or sentimentalized as a glorious form of self sacrifice. These practices are not caring practices for the person who gives the care. There are also ways in which some care is practiced that does not feel like caring care. Impersonalized care at a hospital or nursing home may attend to some of the needs of the person cared for, but it does

not deliver the affective component that is often as needed for healing and protecting the dignity of the patient.

We do indeed speak of *good* care, *true* care or *caring* care, that is, care as it *ought* to be. But whence comes this *ought*? Unless we import our norms from somewhere else, which most all versions of care ethics claim not to do, any *ought* that we determine must arise in some manner from the *is* of the actual activities that constitute the practice. This is just to say that a care ethics *is* a naturalized ethics.

An ethic of care is a naturalized ethic on several grounds. First, it is neither abstract nor disembodied: it is an ethics that begins with the reality of caring, with real women (mostly) tending to embodied beings in all their concrete particularity. Second, it is a naturalized ethics in that the source of the normativity is not outside of the activity or practice to which the norms apply. In this sense it is naturalized in much the same way that current philosophy of science aims to be a naturalized theory. As Alison Jaggar suggests, feminists are in fact doing something analogous to the philosophers of science who similarly begin with scientific practice, itself imbued with norms. Jaggar writes: 'Feminist moral philosophers recognize that women make mistakes, just like scientists. . . Therefore, just as naturalized philosophy of science evaluates which practices of inquiry constitute good scientific method, so naturalized moral philosophy engages in normative assessment of women's empirical practices of morality.'⁵ But we need not have an idealized epistemic theory to gather what constitutes good scientific method. Scientists who are engaged in the scientific enterprise determine that. Goodness is judged by the work that the science aims at doing.⁶ The point of that enterprise has been variously characterized. For some, it is finding the true laws of the universe; for others, it is finding theories that yield reliable predictions, and integrate data into a coherent picture. If we think of naturalizing ethics in this sense, we can speak of a naturalized care ethics without assuming that the term 'naturalizing' means that caring is any more 'natural' than justice or scientific activity.

I suggested above that the apparent asymmetry between a theory of care and a theory of justice is due to different entry points. That is, when we try to develop an ethic of care we proceed by reflecting on practices of care—we effectively try to derive an *ought* from an *is*⁷; when we theorize about justice, we begin formulating an *ought* which is meant then to apply to an *is*. Can we imagine reversing those points of entry? That is, can we conceive of care theory as ideal theory and justice theory as a naturalized theory? What would doing so tell us about the relationship of practice to theory?

Imagine that we start our thinking about justice by looking at the practices of economic exchanges, the legal system, politics and governance, the various practices that constitute civil society, and global arrangements. We call them all practices of justice even though some, or even very many of these practices fall short of what we want to call 'true justice.' We consider what norms govern the best practices and we call these 'the *truly* just practices.' Certain questions would immediately arise: 'Best practice for whom?' 'As viewed by whom?' 'Best practice in what regard?' Let us say that we settle on the best practices being minimally those in which each individual who is affected by the activities constituting the practice is not adversely

affected and receives the maximum value of that practice, compatible with every other such individual getting the maximum value. We now look at the best, most cooperative, most fair and most workable practices, with the expectation that we will discern which norms and values are operative when things go well. We also look at those who are oppressed by these institutions or ‘practices of “justice,”’ and ask how (or why) we are failing some, thus failing to deliver *true or just* justice to those persons. We would doubtless come up with many of the same norms that we arrive at from the hypothetical queries: norms of reciprocity, equality, fairness, a respect for another’s right to get as much out of the practice as we hope to get, and so on. But we would also see some things that don’t arise in the hypothetical case. For instance, we would be face to face with racism, sexism, ablest privilege, etc. We would recognize that these practices are failing to deliver to women, blacks, people with disabilities, and so on, what they hope for from *truly* just practices and just institutions, that is from practices in which all who participate and are affected by them can expect as much good as everyone else whom the practices affect. A practice in question may be governed by law, but that law or its actual functioning serves some better than others. For examples, problems such as rape and domestic abuse continue to be widespread in spite of the legal remedies available. We would have to conclude that either the practice of law is not truly just in these arenas or the legal recourse is not adequate; that the intimate domain in which these abuses occur require other practices of justice to achieve justice in these areas of life. Certainly, we would have to look not only at hypothetical participants or the formal delineation of the law, but at the impact of these practices on actual people. In fact, we do evaluate the adequacy of laws in this way, and sometimes we need serious revisions of our practices of justice to address wrongs.

We may also find norms that we value, which do not emerge when we consider only idealized situations. I believe that trust would stand out as especially salient—imagine any ‘justice practices’ without some modicum of trust. Yet trust appears to be a very subsidiary norm in many theories of justice—not well explored and either assumed when there is no reason to consider participants ‘trustworthy’ or neglected altogether. By looking for the main norms of justice practices, that is examining the features of actual institutions that are supposed to offer justice, we see at the same time how these practices fall short. Doing the sort of work that I have merely adumbrated here would be naturalizing theories of justice.

Now let us imagine that we begin our theorizing about an ethic of care through a hypothetical (and the hypothetical I suggest here can have many variants). We imagine a desert island with two human beings, an adult, and at his (or her) feet, an infant—like baby Moses in the bulrushes when Pharaoh’s daughter discovered him. This is our original situation. Now in the original position, we posit that each deliberator must imagine that she or he is one of these two individuals, but cannot know which. (. . . sound strangely familiar?) And we ask, what sort of ethic should govern the adult, and what should be the obligations and responsibilities of the infant as he (or she) develops? The deliberators in the original position are then representatives of the individuals in the original situation. How would such a representative want the adult to behave if it were to turn out that she represents the infant, and how

would she want the infant to respond and act as he matured if the representative were representing the adult? Would the representatives choose to be governed by a utilitarian calculus; would it be workable in this original situation? Would the representatives choose Kantian principles? Or would the representatives have to come up with something else, something appropriate to the inequality between the adult and the child, the neediness of the child, the alterations in the child's capacities over time, etc.? Clearly the representatives would not choose egoism, because in that case we can imagine that the adult might just let the infant die. If food was scarce, he might even slaughter and consume the helpless infant.

Nor are we likely to choose utilitarianism. As a developed individual, it may be argued, the adult has many more interests than the just born infant, who may not yet have even developed the self-consciousness needed for interests other than being fed and avoiding pain.⁸ In a trying circumstance, a utilitarian islander might well reason that neglecting the infant will, overall, serve to promote much more utility than sacrificing food and energy in the service of the infant.

An ethic of fairness would have a similar fate, for how do you tell an infant that it is not fair to keep your caregiver up all night because you happen to have colic? What can fairness mean between two beings of such disparate needs and power? How could you insist on the sort of fairness requiring equal participants when you might be the infant in question?

As a representative of the infant, we would want the adult to be responsive to the needs of the other; we would want the adult to have cultivated a sense of her or his own good as including the good of the infant because in that way she or he would be most invested in meeting the needs of the infant. In fact, we would want the adult to do more than just meet the infant's material needs, we would want him/her to truly care, to be affectionate, kind, and genuinely concerned about the infant's well-being for the infant's own sake. In this hypothetical, especially if the gender of the adult were put under the veil of ignorance, one would be far less likely to say that the adult would be 'naturally caring,' for a representative of the infant could not responsibly simply count on the adult having these natural impulses.

As a representative of the adult, we would want the infant to develop into a being with the greatest use of her/his capacities so that s/he would develop into a fit companion. We would want the infant to develop feelings of love and gratitude towards us for all our troubles, and to care for us when we got ill or became too frail to manage alone. We would see that some of these could not be demanded of the infant unless we ourselves lay the groundwork for it.

Note that in this hypothetical, the 'relationality' of care is not a given—the found infant and adult have no prior existing relationship, but relationality would still emerge as an important value because of its importance in making the adult sensitive to the needs of the infant and making the infant, as she matures, into a worthy companion.

By beginning with a hypothetical we would presumably not be tied, even loosely, to the *is*, for that *is* may be the adult cannibalizing the infant. The ethic that emerges would look clearly normative and would not look like a 'naturalized ethics.' But, of course, in our imagining we are *in fact* drawing on what we know of practices of

care. Analogously, we are also drawing on what we know of just practices when we theorize justice from hypothetical cases.

These musings support Held's claim that there is only a superficial asymmetry between care and justice—that both are norms and practices. But it also supports both the idea that either or both ethics can be naturalized, that is both can be seen as actually emerging out of and being responsive to a set of practices we actually engage in, and concomitantly that both, when conceived as idealized theories, distort many salient features of the practices, fail to be responsive to others, and miss entirely the importance of certain aspects of care or justice.

I already mentioned how *trust*, whose significance is evident when we look at 'practices of justice', falls away or assumes a peripheral place when theories of justice are idealized. In the mini-idealized theory of care I presented, the ethical dimensions of the larger context of care are left out. The ethical dimensions of a caring relationship appear to be limited to a dyadic relationship between carer and cared for, thereby losing the polyadic relationships that actually characterize caring. A carer requires a larger set of relationships that allow her to meet the needs of one who is entirely dependent on her care. The carer always exists in other relationships, has other obligations, etc. And the cared-for too may have many relationships in which she stands that affect the ethical relationships to her carer(s). Among these relationships are the social and economic class of both caregiver and cared-for. For example, in the hypothetical I introduced, all the power is in the hands of the potential caregiver. The infant and the adult are each stripped of any identifying class or race identity; both are presented as lacking any familial relationships that mediate or modify the dyadic relationship of caregiver and cared-for. Thus seen in isolation, it appears that all the power is in the hands of the carer. But consider the power differences in two care relationships: the first between a wealthy yet frail elderly person and her paid caregiver, and the second the relationship between a parent and a hapless infant. The paid caregiver is frequently from a lower social and economic class than the person for whom she is caring.⁹ The caregiver still holds some power over the person in need of care insofar as that caregiver has the wherewithal to grant or refuse aide. But, in most instances, the exercise of such power is checked by the social and economic power of the cared-for, the family, or the institutional setting in which the care takes place. These differences in the way power is distributed have important ethical ramifications. It suggests, for example, that the interests that require protection are not only those of the cared-for, especially as the cared-for is vulnerable to the actions of the carer, but that the carer may need protection against the power of the cared-for (or the cared-for's family or the institutional setting in which she works or all the above).

Similarly the hypothetical abstracts away from any gender relations present in actual care situations. This abstraction may allow us to see that there are dynamics in the relationship that are independent of the gender identities of the participants in the relationship. But these dynamics are at the same time influenced by gender relations in the real world. The fact remains that it is mostly women who give hands-on care, and that women often have to answer to a male authority to whom they are accountable when they give care to a vulnerable person in the male's sphere of

influence. The hypothetical has no way to incorporate the ethical and social repercussions for women in care giving relationships (whether paid or familial).

Just as the lone island inhabitant and a lone babe in the bulrushes is a fiction, so too is a society with only fully functioning, equal, adult contractors. Nor is there, nor could there ever be, any society that even approximates this hypothetical. The idealizations slice off an aspect or moment in ethical life, and take this thin sliver for microscopic investigation, thus revealing features less easily available by looking at the whole context, but also introducing distortions that come from de-contextualization and from the investigative apparatus itself. While a theorist may be fully cognizant of the fictive nature of the representation, a full account of the effects of the distortion is required if an idealized theory is not to become, as O'Neill and Mills have dubbed it, an ideology.

An idealized care ethics would suffer from the same difficulties as an idealized theory of justice, even if the idealization highlights certain features of a care ethics. But as a care ethics has in fact arisen from considering the actual practices of care, it acknowledges this tie to those practices. In the case of justice theories, the necessary link between the ratiocination and the actual practices is either submerged¹⁰ or denied.¹¹ When we place these two approaches to moral life side by side, we see that we probably have lost more insights and encountered more distortions in the latter than in the former. This is not to say that there is *no* value to these hypothetical thought experiments. Insights can be gleaned. But we need to be alert and not be seduced into thinking that they are the distilled essence of either care or justice. The difference in the approaches between care-based theories and justice-based theories, then, is a difference in the attentiveness and responsiveness to the actual and various practices of care and justice, respectively. The detailed working through of justice-based theories may have been facilitated by a 'freeze-frame' approach, but the cost to those whose lives are far from the paradigmatic frames has been substantial. For they have either been excluded, or if included, seriously misrepresented.

8.3 Problematic Inclusion and Effective Exclusion from the Moral Community

When the existence of certain people is ignored in idealized theories the consequence is not simply a theoretical lapse. This lacuna also prepares the philosophical grounds for excluding such individuals from the moral community. When moral theory results in such exclusions we have to ask if the philosophizing itself does not violate an ethic of philosophizing.

We see this exclusion especially clearly when those people who are usually invisible do make an appearance in the theoretical work. Their presence is primarily used to underscore a point, to seal an argument, or to provide a contrast between those within and those outside the scope of the theory. In their role as placeholders rather than participants, as instruments of an argument rather than the subject of discussion, they are invariably misrepresented, and reduced to stereotypes.

Thus, while people with 'normal' characteristics and capacities enter the theoretical stage as idealized versions of themselves, usually featuring selves with all and only desirable characteristics, the others bear all the weight of that which in our human existence is 'abjected.'¹² Women have long complained about their absence or stereotyped presence in such theories, as have people of color and those oppressed because of their gender identities. But the exclusion of people with disabilities, especially those with cognitive disabilities, has, until very recently, gone without comment.

I will illustrate the problematical inclusion of this group in idealized theorizing within bioethics. The work of philosophers Peter Singer and Jeff McMahan illustrate a philosophical strain in biomedical ethics that relies especially heavily on ideal theories of justice, especially utilitarianism. Much medical ethics and bioethics are practice-based. This more practice-based ethics encourages clinical experience (such as participation in medical rounds) and actual case studies. Bioethics is frequently practiced in a multidisciplinary setting that includes scholars of academic specialties other than philosophy, medical practitioners, patients and families. Such bioethics dips into ideal theory when it looks to theory to determine ethical norms. Some bioethics is closer to care ethics insofar as it deduces norms from the practices themselves. But it is the top-down, theory-driven idealized approaches of philosophers such as Singer and McMahan which has gained them acceptance by philosophers who otherwise have been reluctant to acknowledge 'applied' areas of philosophy such as biomedical ethics.¹³

Singer and McMahan are the major proponents of the view that I wish to examine because this view has serious implications for people with severe mental disabilities.¹⁴ Namely, the position that the category of human being is not a morally significant one, and that moral personhood ought to be assigned on the basis of cognitive capacities, as those capacities are determined on a transgenic spectrum, that is, as comparison may be made across species. The case they make for our obligations to animals is tied to the possibility of making such comparisons, and making them intelligible. Therefore their arguments depend heavily on the putative capacities of those who lack what philosophers have presumed to be the central requirement for personhood, the capacity for rationality. As those who will acquire these capacities and those who may have had them at some point, but lost them through accident or disease might be accorded the status of personhood in deference to their past capacities or in anticipation of those that will develop, the hard case is that of those who have never had and never will acquire the requisite cognitive capacities.

Peter Singer focuses on infants who are severely disabled, especially those with severe mental retardation (not those who are beyond the stage of infancy however), while Jeff McMahan considers the congenitally severely mentally retarded (henceforth CSMR) of any age. The examples in their works are meant to establish that our moral preference toward our own species is unwarranted. The point is hammered in by questioning the extension of that preference to those humans who lack the requisite moral capacities for personhood, and denying that status to animals who supposedly demonstrate higher mental functioning than the impaired humans.

In his book *The Ethics of Killing* McMahan makes the argument that it is less bad to kill a CSMR person than to kill 'one of us'. In the most provoking of Singer's books, *Should the Baby Live?* he and co-author Helga Kuhse state quite baldly: 'We think that some infants with severe disabilities should be killed' (1985).

Both authors set forth their arguments so that the conclusion seems inescapable that some nonhuman animals deserve better treatment than they now do and that some humans deserve treatment on par with animals. I do not dispute the soundness of the moral conviction shared by Singer, McMahan, and others that our treatment of animals, especially those who are our close cousins on the evolutionary scale, is ethically unjustifiable. The moral disenfranchisement of human beings born with severe mental retardation, is however, no less morally repugnant than the moral disenfranchisement of any other group of fellow human beings, whether it serves as a premise or as an outcome of a philosophical argument, and whether or not that argument is used in the service of another morally worthy proposition.

The arguments that lead Singer and McMahan to their conclusions are not free from prejudicial input. The bias enters in through the idealized presumptions that establish the premises and guide the line of argument. Furthermore, by declaring themselves to be engaging only in pure argumentation, they free themselves from the need to be constrained by empirical realities, namely the actual lives of people with severe cognitive disabilities and the fact that some of these speculations can have disastrous implications for those lives—lives of people who are not party to the discussions. The problematic use of idealizations can be found in

1. the ontologies deployed in both sets of writings,
2. the detachment of the theory from empirical data,
3. the willingness to 'go where the argument leads' even when the moral implications of the conclusions are unpalatable, and
4. the use of hypothetical examples which are imported into the theory without considering the methodological distortions inherent in such thought experiments.

The use of such moral theorizing fails to meet the standards of what I would suggest are found in the 'best practices' of ethical inquiry. These 'best practices' are attentive to an ethics of philosophizing. This ethic will be developed in Section 8.4 of the chapter.

8.3.1 Singer's Arguments

Singer's arguments are familiar. He avers that there is no justification for privileging those who belong to a certain group for no other reason than that they belong to that group. Justifying differential treatment based on group membership has, claims Singer, the same logical form as the defense of racism, sexism and other forms of discrimination we reject. Arguments that privilege humans simply because they

belong to the group of humans is speciesism, and is as much a prejudice to be overcome as racism. Instead, if humans have some privileged status morally, it is by virtue of their possession of attributes that turn out to have moral relevance. If beings other than humans possess these attributes, then they too have the same moral standing. Those humans who do not possess these attributes do not share this moral standing. Human animals that do *not* have those attributes have no moral priority over non-human animals. For example, when considering whose organs to harvest for the purposes of organ transplants, Singer argues that to take the life of a 'brain-dead' individual, or an infant who is so severely impaired that it will have very minimal cognitive functioning¹⁵ is morally preferable to killing a perfectly healthy primate or pig for the purpose of harvesting its organs.

To make his argument in its latest version, Singer invokes a provocative example. In *Rethinking Life and Death* Singer asks us to think about a 'special institution' for the retarded that is found in the Netherlands. Here mentally retarded individuals are confined, but live a life without many of the constraints to which residents of such institutions normally are subject. They are free to wander about, free to form associations with one another, even free to engage in sexual activity, and have and raise children when they result from sexual encounters. None of the residents have language, but indicate their desires and wants with grunts and gestures. From Singer's description it appears that they have no physical problems, other than their cognitive deficits. They communicate perfectly well with one another. These residents, he tells us, raise their children, pick leaders, get elderly females to help with raising the little ones. Close to the end of the description he notes that when one of the residents kills another, the death is not treated as would be the death of a non-resident, and the killer is not thought to have done the same sort of injury. This 'special institution' for the retarded, it turns out, is not for people at all, but for Chimpanzees. From the description we are meant to think that the behavior of the chimps is adequate to a description of a group of retarded persons, and so conclude that both populations share the same morally relevant attributes determining their moral standing.

Singer's use of this elaborated image of the 'special institution' illustrates well the features I pointed to above. A hypothetical example, one that is not tethered to any actual circumstance (and how loosed it is from reality will be discussed below), is used to establish an argument that has results we would otherwise find unpalatable, namely that there is no moral difference between humans with mental retardation and chimpanzees. The social ontology underlying the example is one where persons are distinguished by the possession of certain cognitive capacities that make killing them more serious than killing nonpersons. There is little reflection on how the simplifications and representations demanded by a hypothetical of this sort create serious distortions of the reality of people with cognitive impairments, the notion of community and the relationships we bear to people and to nonhuman animals. Finally, his use of the example makes it clear that he is willing to go where the argument leads, even when the results are strongly counterintuitive and would adversely affect the population of human beings under discussion.

8.3.2 *Jeff McMahan's Arguments*

Jeff McMahan argues in 'Cognitive Disability, Misfortune, and Justice' (1996) (henceforth CDMJ), that those with congenital severe cognitive impairments fall below the threshold of capacities needed for personhood and thus are not subject to the claims of justice. In *The Ethics of Killing: Problems at the Margins of Life* (2003) (henceforth *EOK*), McMahan sets out to determine when and why killing is wrong. He is especially interested in cases where those concerned are ones 'whose metaphysical or moral status . . . is uncertain or controversial.' In contrast to 'them,' there are 'us.' But who are 'we'? McMahan's answers by determining what 'we' are, when we come into existence, and when we cease to exist (2003, vii).

McMahan develops a complex metaphysics derived from the work of Derek Parfit. Here the self we are at any one time is only contingently related to the selves that preceded and that might succeed our present self. To the extent that we can recall previous selves and can anticipate future ones, we are more closely connected to these selves. The more continuity we have to our previous selves and our future selves, the more we can think of our own interests at this moment as tied to the interests of the past and future selves. If we have little continuity with a future self then our current interests have little in common with the interests of that future self. Being able to have that continuity requires, for McMahan, a set of psychological capacities—the ones that characterize us, namely rationality and other higher order cognitive capacities. This metaphysics is then based on the idealization of an 'us'—'us' persons who have rationality and higher order cognitive capacities—and the 'us' is exclusive of all who lack these capacities. Infants and, arguably, those who are congenitally severely mentally retarded (CSMR) lack these.¹⁶ This means that they lack the interests of folks like us, that is to say, persons. In particular, they lack the same sort of interest in not being killed as persons. The CSMR are not persons on at least two counts. First, they fall outside the descriptive bounds of personhood as traditionally philosophically defined. Second, they fail to be persons on metaphysical grounds, which similarly require psychological capacities that they appear to lack. That they are not persons also leads to the conclusion that we treat CSMR as we treat animals. Although this does not comport with common beliefs, McMahan eventually concludes that we have to bite the bullet and accept that those with the same cognitive functioning and psychological capacities should be given the same moral status regardless of their species. This means treating many animals better than we do now and treating some humans worse than we do now. To support the need to accept this counterintuitive conclusion, he makes the following appeal in this remarkable passage, which I quote at length:

It is arguable. . . that a[n] . . . effect of our partiality for members of our own species is a tendency to decreased sensitivity to lives and well-being of those sentient beings that are not members of our species.

One can discern an analogous phenomenon in the case of nationalism . . . [where] the sense of solidarity among members. . . motivates them. . . But the powerful sense of collective identity within a nation is often achieved by contrasting an idealized conception of

the national character with caricatures of other nations, whose members are regarded as less important or worthy or, in many cases, are dehumanized and despised as inferior or even odious. . . . [I]n places such as Yugoslavia and its former provinces—the result is often brutality and atrocity on an enormous scale. . . .

I believe our treatment of the severely retarded and our treatment of animals follows a similar pattern. While our sense of kinship with the severely retarded moves us to treat them with great solicitude, our perception of animals as radically ‘other’ numbs our sensitivity to them. . . . We are not . . . aggressively hostile, . . . we are simply indifferent. But the indifference . . . when conjoined with motives of self-interest . . . involve[s] both killing and the infliction of suffering on a truly massive scale. . . . When one compares the relatively small number of severely retarded human beings who benefit from our solicitude with the vast number of animals who suffer at our hands, it is impossible to avoid the conclusion that the good effects of our species-based partiality are greatly outweighed by the bad. (2003, 221–222; emphasis is mine)

Here McMahan uses the results from a theory whose idealizations are embedded in a metaphysics of the person and follows the argument to wherever it may lead. Where it leads is to the ‘impossible to avoid’ conclusion that we pamper the cognitively incompetent at the expense of the well-being of non-human animals.

McMahan’s indignation at the coddling of individuals merely because they bear the relation of same-species membership to ‘us’ is palpable. And yet, his own portrayals of the severely mentally retarded are mere ‘caricatures’ of the ‘other,’ viewed ‘as less important or worthy,’ ‘dehumanized,’ and—if not ‘*despised* as inferior’—regarded as inferior. Elsewhere I also argue that the analogy is inapt, but I leave that point for the purposes of this chapter.¹⁷

The moral dangers of drawing lines among human beings, even in the worthy cause of advancing the well-being of animals, are not hypothetical. As Nozick warned in his review of Reagan’s *Animal Rights*, it is less likely to bring about better treatment of animals than much worse treatment of humans (Nozick 1983). Furthermore, cultivating moral sensitivity to the suffering of animals is no guarantee that the same sensitivity will extend to the nonperson humans, as we learn from the history of Nazism.

The law for the protection of animals was passed by the Nazis on November 24, 1933, very shortly after they took power. It was a law ‘designed to prevent cruelty and indifference of man towards animals and to awaken and develop sympathy and understanding for animals as one of the highest moral values of a people.’¹⁸ The law called on Germans to not regard animals in terms of mere utility. Experimentation involving animals had to avoid causing them pain, injury, or infection, except in very special circumstances, and special authorization was required for the use of animals for experimental or medical purposes. As we learned from the Nuremberg Trials, the same doctors who rendered certain humans as beyond moral protection were filled with noble moral sentiments toward animals. They could not only experiment but could neglect these precautions in the case of those who were outside the bounds of moral consideration. Sensitivity to the suffering of nonhuman animals did nothing to foster sensitivity to the suffering of human nonpersons. In the hands of people less moral than McMahan, Reagan, and other ethicists who hold similar views, the

recalibration of the moral worth of some humans and the moral worth of animals may be at least as pernicious as the nationalism with which McMahan compares the solicitude toward the CSMR.

8.4 The Ethics of Philosophizing and the Best Practices of Ethical Thinking

The exclusion of the mentally retarded from the community of human persons and its moral consequences result, I want to claim, from some highly questionable ways of theorizing. Such theorizing rides roughshod over empirical realities and descriptive adequacy, takes the values of a privileged group as the principal values worth endorsing, and fails to consider the consequences of one's theorizing on those whom the theory deems outside the purview of its principal considerations.

In light of these faults, I want to articulate four maxims that are not heeded in this philosophizing, maxims too easily ignored when we are no longer tethered by the actuality of practices. Two (1 and 4) are maxims of responsibility; two (2 and 3) are maxims of humility:

1. Epistemic responsibility: Know the subject that you are using to make a philosophical point.
2. Epistemic Modesty: Know what you don't know.
3. Humility: Resist the arrogant imposition of your own values on others.
4. Accountability: Pay attention to the consequences that may be implied by your philosophical account.

8.4.1 The Practice of Epistemic Responsibility: Know the Subject that you are Using to Make a Philosophical Point

Let us consider the thought experiment set up by Singer: that of a community of cognitively subpar humans which turns out to be a description of a community of chimpanzees. From the description, we are meant to think that the behavior of the chimps is adequate to a description of a group of retarded persons, and so conclude that both populations share the same morally relevant attributes determining their moral standing. However, the description is suspect because human impairments are multiple and the sorts of deficits in a population of retarded persons would vary considerably. Yet these residents are pretty much alike—function at pretty much the same level—in large measure because they are chimps without the sort of deficits of the severely cognitively impaired human. To borrow from Tolstoy, 'all unimpaired human are alike; all humans with severe impairments are impaired in their own special way.' We can retain some characteristically human capacities and lose

others. What's lost and what is retained determines how much of the scope of human existence we can partake in. Therefore it is most unlikely that one could have a community of humans who all have the same cognitive impairments, all functioning at the same level, and able to function as a human community without the assistance of humans without such impairments—if they could, then they would be capable of the moral capacities of other humans and the last somewhat shocking claim that killing among them would be of no moral consequence would be inconsistent with the premises of the thought experiment. What the example indicates is that the author has a very little knowledge of people with the sorts of impairments he is presumably speaking about. Now this is a thought experiment, and so it can surely include counterfactual elements. What is counterfactual, however, is exactly what is at stake in the example—that is, whether chimps are functionally indistinct from mentally retarded humans. So it cannot be effective in proving that very point without begging the question. As Singer is an astute philosopher, it is probably more likely that he erred in the empirical claims embedded in the example than in the form of argumentation. Moreover, the example *depends* on the reader's ignorance of what mental retardation in humans looks like.

The sense that it is unnecessary to acquaint oneself sufficiently with the empirical realities of mental retardation is still more evident in the work of McMahan. McMahan defines the severely mentally retarded (in a note he excludes the mildly and moderately retarded and those with subsequent brain injury) as human beings 'who not only lack self-consciousness but are almost entirely unresponsive to their environment and to other people' (1996, 5). He also says, 'The profoundly cognitively impaired are incapable . . . of deep personal and social relations, creativity and achievement, the attainment of the highest forms of knowledge, aesthetic pleasures, and so on' (1996, 8).

This is seriously misinformed. Most severely retarded people can speak at least a few words and can be and are involved in activities and relationships. Even profoundly mentally retarded individuals are far from being unresponsive to their environment and to other people. My daughter, Sesha, was diagnosed as severely to profoundly retarded. She is enormously responsive, forming deep personal relationships with her family and her longstanding caregivers and friendly relations with her therapists and teachers, more distant relatives, and our friends. Although she will tend to be shy with strangers, certain strangers are quite able to engage her. I have written quite a bit about her love of music, especially but not exclusively classical symphonic music, with the master of this form, Beethoven, being on the top of her list. So much for the assertion that persons with severe mental retardation cannot experience aesthetic pleasures!

Since I wrote the article in which I counter McMahan's claims and arguments, I experienced one of the most profound learning experiences of my life. My daughter now lives in a group home with five other people who are all considered to be severely mentally retarded, and have been so since birth. Two of her housemates lost their fathers within the period of a month. One, a young woman diagnosed with Brett's syndrome, would be found sitting with tears streaming down her face after

she was told that her father was extremely ill and would die. In the case of the other, a young man who invariably greets me with a huge smile, I myself witnessed the howling, wailing grief minutes after his mother and sister informed him of the death of his father. He waited till they left before he began his heart-wrenching sobbing. They most likely left not knowing what he had understood, and only learned of his response when they later spoke to the staff. It is not unreasonable, in the case of this young man, that he held back his grief to spare his mother and sister. We are speaking here of the capacity to understand the very abstract concept of death, the death of a beloved person. So much for cavalier claims that the severely retarded cannot form profound attachments.

McMahan has other characterizations of the CSMR. In EOK, he sometimes speaks of them having the capacities of a chimp, in other places maintains that they have psychological capacities equivalent to that of a dog.

I am not going to rehearse the things that Sesha can or cannot do and what a dog can or cannot do. Such comparisons are otiose and odious. They are also senseless, for nowhere do we learn what it means to say that a human individual has *the same level* of psychological capability as a nonhuman animal. What Sesha can do, she does as a human would do them, though frequently imperfectly, but it is humanly imperfect, not canine perfect. However, even with all that Sesha cannot do and seems not to be able to comprehend, her response to music and her sensitivity to people is remarkably intact—or more correctly, quite simply remarkable. What a discordant set of abilities and disabilities she exhibits! This unevenness, a feature of many severely and profoundly retarded persons, is neither evident in the transgenic comparisons of McMahan or those of Singer. Such unevenness is not a feature of the animals with whom McMahan and Singer equate them.

8.4.2 Epistemic Modesty: Know What You Don't Know

What cognitive capacities Sesha possesses I simply do not know, nor do others. And it is hubris to presume. Every so often, I am shocked to find out that Sesha has understood something or is capable of something I did not expect. Although she has consistently been exposed to some of the most progressive teaching available and her gains have been modest, the surprises keep coming. And, as I related above, other people with similar diagnoses keep surprising me and their caregivers. These surprises can only keep coming when their treatment is based not on the limitations we know they have but on our understanding that *our* knowledge is limited. If my daughter's housemates had not been told of their fathers' death, on the premise that they could not possibly understand the concept of death, we never would have known that they could. Matt's response to his father's death was identical to that of any son who learns of a much beloved father's death. The grief expressed was as full and as profound as any I have seen or experienced.

8.4.3 Humility: Resist the Arrogant Imposition of Your Own Values

This humility in the face of our ignorance of what others know and do not know must extend to humility in the face of our uncertainty of what people care about as well. This means that we need to be alert to the possibility that the values we hold dear blinker us and allow us to presume that these values *must* have the same importance for others. To a certain extent such projection, in the face of our ignorance of what another finds salient, may be a gesture of solidarity. To stay with the example at hand, we know that the death of a parent is a momentous occasion in our own lives, and we think that it may be no less so in the lives of people with severe mental retardation. So we conclude that we should at least expose an individual to the fact, and do so in a sensitive manner. In so doing we refuse to distance the individual with mental retardation as an Other who bears scant resemblance to ourselves.

But when we pay little heed to what others have to say about what they believe to be important, create hierarchies in which our own values always trump those of another, unreflectively rely on such hierarchies when we appeal to ‘what is evident’ or what is ‘surely’ the case, then we act out of hubris.¹⁹ While, we cannot help but make appeal to our own values and perspectives, we need to pay close attention to the role these are playing and not presume our logical argumentation is untouched by the importation of such values.

When philosophers hold that contemplation is the highest human endeavor or that logical inquiry is the crown jewel of the human mind, they either fail to perceive the source of that value, namely that of a philosophical temperament, or fall prey to a hubris, which takes that which philosophers hold dear to be what all *should* hold *equally* dear. Such projection is disrespectful of the lives of others, or of other conceptions of the good, and is contrary to any liberal principles that maintain the plurality of goods.

Violations of this principle occur in both Singer’s and McMahan’s work, both of whom place excessive emphasis on the importance of cognitive capacities, and depend on what they take to be self-evident claims that are not at all self-evident. The violation is found in McMahan’s presumption, one shared widely among philosophers, that a life without developed cognitive skills is always and inherently an inferior life. McMahan extends this presumption to the life of animals, arguing that they have less good in their lives than we have since they have reduced cognitive capacities. By closing off the horizons of those whose life is not centered on cognitive capacities, we help make a self-fulfilling prophecy of the claim that such a life is a lesser life.

8.4.4 Accountability: Attend to the Consequences of Your Philosophizing

It is ethically irresponsible to fail to consider the real-world consequences of one’s philosophical position, especially upon those who are not—and cannot be, in a

crucial sense—a party to the debate. Where there is a danger that some will be harmed if policies based on a theory are put in place, the philosopher must be ready to acknowledge responsibility for these harms, or, better still, reconsider the theoretical options. Clearly philosophers often engage in this sort of reflection; it is part of the practice of philosophizing that keeps it responsive to the actuality of what is being discussed. The method of reflective equilibrium, for example, aims to reconcile philosophical theorizing and common moral intuitions in part because of the possible negative consequences of abandoning common moral intuitions in favor of philosophical theory. McMahan appears cognizant of the potential harm of treating the CSMR as animals, and so is not unaware of the negative consequences of his theoretical conclusions. He weighs the negative consequences for the CSMR against the improvement in the treatment of animals, and, taking into account mitigating factors that allow us to treat CSMR somewhat better than animals, concludes that he is satisfied with the outcome. But this version of ‘reflective equilibrium’ seems very inadequate.

But how can he seriously suppose that sentences such as: ‘allowing severely retarded human beings to die, and perhaps even killing them, are correspondingly somewhat less serious matters than we have believed,’ are responsible statements, especially given the history of murder and abuse of this highly vulnerable population? Imagine McMahan the parent of such a child who finds himself without the financial means to save his child because some legislator was responsive to McMahan-type arguments. Could McMahan find this acceptable? If he cannot, can he really allow his own results to stand?

McMahan acknowledges that the line between those who are persons and those who are not is somewhat arbitrary, and that we might want to draw the line so as to offer ourselves maximum protection, but asserts that this argument implicitly acknowledges that there is no difference between the CSMR and animals. It seems to me that what is suggested is not that the line between humans with mental retardation and non-human animals is arbitrary, but that making cognitive capacity the criterion for personhood is arbitrary.

We have seen clearly in the Nazi experience—and it is not only in the case of Nazis—how quickly lines dissolve when someone draws a line between humans who are like us and those who are not—how easily those on the right side of the line pass to the wrong side. We also know that what is a severe impairment and a mild impairment, what is a disability and what is not, is frequently determined by the way in which the persons with impairments are viewed.

McMahan has responded to some of my criticism by saying that he did not intend the term ‘CSMR’ to refer to people such as my daughter or her housemates; that he was using the term stipulatively.²⁰ That is, the CSMR are just those people who have just the characteristics he attributes to them—it is merely shorthand for just that description. This he believes leaves him off the hook for the first principle. But if it does, it merely adds weight to the charge that he violates this last principle. To claim that a diagnostic term such as ‘congenital severe mental retardation’ can be used stipulatively is to ignore the fact of its circulation in medical, treatment, and policy contexts; thus, it is to ignore the consequences of the philosophical

argument on all those who bear that label. And, it lands McMahan with another sort of charge of violating the first principle since this is empirical information it is crucial to have in thus using language. Furthermore, in his ‘stipulative definition’ he employs all the stereotypes of people who are in fact labeled ‘severely mentally retarded’ even though these, like stereotypes in general, are based on ignorance, misrepresentations, and prejudice. It is as if I argued for conclusions that supported adverse policies to deal with people who are avaricious, loud, pushy, too smart for anyone’s good. For convenience, I *stipulate* that I will call those who fit the description, ‘jews.’ Now, suppose that a policy maker, influenced by my arguments, then imposes severe restrictions on actual Jews. Can I beg out of any responsibility for this anti-Semitism on the grounds that my use of the term ‘jew’ was merely stipulative?

Works as apparently rigorous and authoritative as McMahan’s, or as seemingly cogent, readable and widely read as Singer’s have serious destructive possibilities, even when their motive is a worthy one, to improve our treatment of animals.

8.5 Concluding Remarks: Ethical ‘Best Practices’

Granted that it is always important to act responsibly and with some humility, but where, one might ask, do these particular maxims come from? I would suggest that first, they can be traced to certain values within the practice of philosophy itself, even though much philosophizing ignores these maxims. Second, in the practices that constitute our ethical life, acting responsibly and with appropriate humility are among the best of our ethical practices. They are among those ‘best practices’ that allow us to live together harmoniously. In a naturalized ethics such as care ethics, for example, it is relatively easy to identify each of these maxims in the ‘best practices’ of the ethical practice of giving care.

Consider the first maxim, *epistemic responsibility*. Philosophy, by many accounts, is concerned with ‘truth’. The truth cannot be served if philosophers do not acquaint themselves with the basic facts about the subject under consider. As I have indicated, both Singer and McMahan fail to do so in their discussions of individuals with mental retardation. One might ask, ‘Why is such a clear violation of a philosophical value tolerated?’ Here a pernicious effect of idealization displays itself. Empirical realities give way to idealized descriptions and ‘stipulative definitions,’ in order to construct a theory which then can be ‘applied’ to the real world. But these idealizations and stipulative definitions may well construct a theory that is not applicable, or not applicable to that part of the real world that it purports to cover.

Consider, in contrast, the way in which a naturalized care ethics is theorized. The practice of caring requires attention to the actual condition of the individuals who need care. Broad generalizations and presumptions—such as ‘the severely mentally retarded cannot have aesthetic experiences’—cannot be the basis of good care for the severely mentally retarded, since the principal source of joy for many people with cognitive impairments derives from aesthetic experiences. A carer intent on giving good care must reject stereotypes and be attentive to what and how the

person in front of her responds. (Certainly this no less true of health care situations, although practical pressures result in a considerable relaxation of this demand of care.) A care ethic thus expresses the central values of attentiveness and responsiveness to actual conditions, and with that the responsibility to make oneself knowledgeable about the facts on the ground. That is to say, it values epistemic responsibility of the sort that I discuss above.

Not only do we need to be responsible and insure that our philosophizing does not ignore salient empirical realities that are known, we have to be humble in the face of that which is as yet unknown (the third maxim). It seems hardly necessary to remind philosophers of what Socrates taught, that the greatest wisdom is to know what one does not know. Yet idealized theorizing, with its tendency to prefer clear lines of definition and opposition, makes it easy to forget to keep a focus on knowing what we do not know.

Humility in the face of ignorance also reflects a value, one might say a necessary virtue, in the practice of caring. When we presume to know what we don't know we are likely to fail in truly meeting the needs of the one for whom we care. In the practice of medical care, such hubris can easily cost lives.

With respect to the third maxim, we can point out a dominant philosophical position is that of liberalism. Central to liberalism is the recognition of a plurality of goods. This elevates the avoidance of an arrogance of imposing one's own values as the true and sole values to a central precept of contemporary philosophy. Reasonable value pluralism (as distinguished from value relativism, where anything goes) is, if you will, the received view. But philosophers frequently neglect this very maxim by presuming the overriding value of reason.

An antidote for such presumption is found in the very practice of care. Many who need care are not in a position to exercise their rational functioning (to whatever degree they possess it). Yet for the carer who does good care the value of, and respect owed, the person is never in doubt. The very act of care (when it is good care and not a merely perfunctory carrying out of assigned duties) attests to the value we place on the person's life and well-being whether or not they are capable of rational deliberation. Caring for one who is seriously dependent on our ministrations can, however, tempt one to presume to know what is good for another and what is of value. It can tempt us to think that we can (or even should) impose our own view on the other. However, such caring, I maintain, is not respectful caring, caring that respects another's agency. Thus, I believe, best practices of care equally demand that we do not presume that what we value is the only thing that is valuable.²¹

Finally, there is the issue of accountability, the final maxim. Most practices require some accountability. The need for accountability is inherent in any practice, for without it, one cannot guarantee a consistency of standards. This is evident in practices of care. Parents are held accountable for their children's actions when harmful actions were foreseeable and preventable. In medical practice, physicians similarly must be held accountable for foreseeable consequences. Any ethic of care must include the importance of being accountable for what we do.

Yet, philosophical practice has been strangely inattentive to the importance of accountability. In this philosophers appear to take their cue from theoretical science,

in which practitioners claim that they are only after the truth, and if others use their discoveries in a harmful fashion, that is not the pure scientist's concern.

There may be a conceit in philosophy that philosophy is of interest only to other philosophers, thus philosophers need not worry about accountability. Again consider the influence of idealization in philosophy. If one is doing ideal theory, one is not writing about philosophy that can apply in a straightforward way to the world. Another related conceit is that philosophy is so abstruse and prone to misunderstanding and multiple interpretations that the philosopher ought not to be held to account for the misreadings and misapplications. Consider how Socrates was unjustly held to account for his teachings and one sees quickly why philosophers have chafed at the idea of accountability.

Yet people who write about ethics often do want their work to have an impact outside the confines of academic philosophy. Clearly, it would seem, this is true about applied and practical ethics such as bioethics. The particular writings under discussion are a sort of hybrid. Like other bioethical writings they take up issues that are of immediate relevance—questions about euthanasia, the infanticide of neonates, abortion, prenatal testing, the rights of animals. But while most bioethicists who are closely tied to clinical work, these writers develop their positions by deducing their conclusions from theories that are full of idealizations. This hybridity, which partakes in the idealization of much philosophical theory and yet is meant to be immediately applicable, can be quite pernicious when the levels of discourse are not clearly delineated and when the central concepts and conceptions are only loosely related to the facts on the ground.

For instance, when McMahan speaks of the great harm our 'solicitude' directed at the congenitally mentally retarded causes to animals, is he engaged in metaphysical speculation, or is he laying the groundwork for a policy recommendation about the use of public resources? And when he speaks of the CSMR in this context, is he speaking only about those who fall under his stipulation or about people such as my daughter? If he means to speak of those who fall within the limit of his stipulated definition, it is not clear whom these people might be and how much 'solicitude' they receive. If he is speaking about the latter, then it is hard to draw any policy conclusions from this theorizing. If he is speaking of the former, then surely he should be held to account for the foreseeable consequences of such philosophizing. These are real people and the consequences for their lives and those of their families would be profound if an eager young policy maker, influenced by the book, were to implement cost-cutting by slashing funding for the severely mentally retarded.

Biomedical writings, whether of the philosophical sort or the more practice-based sort do have a reach beyond the academic community. And those of us who engage in this work must understand ourselves to be engaged in a practice that holds people accountable for the foreseeable consequences of their writings. By remaining attuned to the practices themselves, I suggest, we are better equipped to accept such responsibility, even when we reach out to ideal theory for guiding norms. But it is still better to do bioethics on the model of a care ethics that finds the guiding norms within the practice itself.

Notes

1. For an extended discussion about the limitations of ideal theory, which I also refer to as 'idealized theory' to form a contrast with 'naturalized theory', see Charles W. Mills (2005). See also, Onora O'Neill (1987).
2. The point is effectively made by Onora O'Neill (1987) and Charles Mills (2005) when they claim that ideal theory ignores the condition of those who are already excluded from justice and really is an idealization of just a few, if at all. My claim here is that many ideal theories of justice, at their best, model only a few practices and thereby exclude many aspects of human life, as the notion of model is defined in John Rawls (1980).
3. For the latest statement of this position see Virginia Held (2005). At the same time, Held believes, within each domain, there is room for other moral considerations, considerations not adequately dealt with by the ethics that is generally applicable. So, for instance, the intimate sphere of the family cannot be exempt from all considerations of justice. Similarly, there are salient aspects of political life—both global and domestic—that do not go well when the care and concern for our fellow citizens, the environment and co-inhabitants of our globe are left out.
4. A large body of work, mostly by psychologists Amos Tversky and Daniel Kahneman attests to our deficiency in calculating risks and potential gains.
5. Jaggard (2000, 464); see also Margaret Urban Walker (1998).
6. In this sense naturalizing science is a project that is allied with, though not necessarily identical to, pragmatic theories of truth.
7. But the naturalizing avoids many of the objections to deriving the is from the ought (which is usually identified as a fallacy, 'the naturalistic fallacy') because it understands practices as already having embedded norms, norms which have to do with the effective carrying out of the practice. Clearly however some judgment (which is not contained within the practice) is needed to determine if the aim of the activity is itself ethical. There may be norms embedded in 'the practice' of thievery. But we can make an external judgment about the ethical nature of thievery itself.
8. For a metaphysical justification of this view of an infant see McMahan (2003).
9. Of course in a misogynistic culture, a female carer, even when she is the mother, has a lower status than a male child. A male child may learn to exercise that power even while the mother is still physically more powerful, knowing well that her physical strength is matched by the backing he receives within the family and the larger society if he wishes to defy her. Note how often punishment is meted out by fathers, who carry the full authority of parenthood, rather than the mother, who is on site to respond to infractions.
10. For an account of the submergence of gender in the social contract see Pateman (1988). For an analogous account concerning race, see Mills (1997). Also, Pateman and Mills (2007).
11. See Kant (2005). Kant, for example, writes that ethics has an empirical part and a rational part. The rational part he calls 'morality' while the empirical part he calls 'practical anthropology' (2005, 50).
12. The concept of 'abjection' originated with Julia Kristeva. She writes, 'There looms, within abjection, one of those violent, dark revolts of being, directed against a threat that seems to emanate from an exorbitant outside or inside, ejected beyond the scope of the possible, the tolerable, the thinkable' (1982).
13. It is noteworthy, for example, that until recently, a premier philosophy department such as Princeton has not offered any course in biomedical ethics and would not even accept a course offered in the religion department on medical ethics to count toward its undergraduate philosophy major. Perhaps because of Peter Singer's leading presence at the Princeton Center for Human Values, the current curriculum does offer a course in Practical Ethics that is co-sponsored by the Center for Human Values.
14. Others who are well-known proponents of variations of this view include Rachels (1990), Regan and Singer, ed. (1989), Tooley (1984).

15. In fact, Singer believes this is true of infants with Down Syndrome as well and their cognitive functioning is generally not minimal. They are usually classified as having mild to moderate retardation. But I put the point this way to put forward what many may think is the stronger argument.
16. 'Congenital' is often added to this list of adjectives characterizing the individuals in question, so as to exempt those who have at some point in their lives been sufficiently cognitively able to fall under the philosophical use of the term 'person.' This narrows the category of individuals whom these discussions concern. However, the concept of 'person' these philosophers favor involves a continuity of mental life that is often disrupted by severe injury to the centers of cognitive activity. It is arguable that the individual in question is no longer the 'same person' and so it becomes mysterious why they ought to have a different moral status than those who were born with the cognitive deficits that they believe disqualify human individuals from personhood.
17. For a fuller elaboration of this argument see Kittay (2005).
18. Telford Taylor, *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10* (October 1946–April 1949); available from <http://www.humanitas-international.org/holocaust/drtrial4.htm>.
19. This is fairly close to what Iris Young calls 'cultural imperialism,' which she takes to be one 'face of oppression.' See Young (1990). For a skeptical take on Iris Young's conception, however, see Appiah (2006).
20. Stipulative definitions are another constant in idealized theories.
21. Arrogance in the practices of medicine and healthcare are often easy to detect but can also enter into the practices in ways that are not easily seen. When it does it is deemed paternalistic and currently is not considered to be the standard of (good) care. But aside from the respect we believe a patient is due, a physician or healthcare worker can subvert the very care they intend to give by the often unreflective imposition of their own values, values that may not be shared by their patients or that patients have not been given the opportunity to think about. For two excellent accounts of how medical care is undermined by such imposition, see Feder (2002) who discusses the interaction between parents of intersexed children and their physicians; and Fadiman (1998) for an account of a collusion of values between a Hmong family and well-meaning physicians and the disastrous results for the child.

References

- Appiah, A. 2006. *Cosmopolitanism: Ethics in a World of Strangers* (New York: W. W. Norton).
- Fadiman, A. 1998. *The Spirit Catches You and You Fall Down* (New York: Farrar, Straus & Giroux).
- Feder, E.K. 2002. 'Doctor's Orders: Parents and Intersexed Children.' In *The Subject of Care: Feminist Perspectives on Dependency*, Eds. E.F. Kittay and E.K. Feder (Lanham, MD: Rowman and Littlefield), 294–320.
- Held, V. 2002–2003. 'Moral Subjects: The Natural and the Normative.' *The American Philosophical Association* 76 (Proceedings And Addresses): 2.
- Held, V. 2005. *The Ethics of Care: Personal, Political, and Global* (Oxford, New York: Oxford University Press).
- Held, V. 2006. 'Author Meets Critics: Virginia Held, the Ethics of Care.' In *American Philosophical Association, Pacific Division*, Portland, Oregon.
- Jaggar, A. 2000. 'Ethics Naturalized: Feminisms Contribution to Moral Epistemology.' *Metaphilosophy* 31 (5): 452–468.
- Kant, I. 2005. *Groundwork for the Metaphysics of Morals*. Translated by T.K. Abbot. Ed. L. Denis (Toronto: Broadview Press).
- Kittay, E. 2005. 'On the Margins of Moral Personhood.' *Ethics* 116: 100–131.

- Kristeva, J. 1982. *Powers of Horror: An Essay on Abjection*. Translated by L.S. Roudiez (New York: Columbia University Press).
- McMahan, J. 1996. 'Cognitive Disability, Misfortune, and Justice.' *Philosophy & Public Affairs* 25(1): 3–35.
- McMahan, J. 2003. *The Ethics of Killing: Problems at the Margins of Life* (New York: Oxford University Press).
- Mills, C. 1997. *The Racial Contract* (Ithaca, NY: Cornell University Press).
- Mills, C. 2005. '“Ideal Theory” As Ideology.' *Hypatia* 20(3): 165.
- Nozick, R. 1983. 'About Mammals and People.' *New York Times Book Review*, November 27, 11.
- O'Neill, O. 1987. 'Abstraction, Idealization and Ideology in Ethics.' In *Moral Philosophy and Contemporary Problems*, Ed. J.D.G. Evans (Cambridge: Cambridge University Press).
- Pateman, C. 1988. *The Sexual Contract* (Stanford, CA: Stanford University Press).
- Pateman, C. and C. Mills. 2007. *Contract and Domination*, Cambridge: Polity Press.
- Rachels, J. 1990. *Created from Animals: The Moral Implications of Darwinism* (New York: Oxford University Press).
- Rawls, J. 1980. 'Kantian Constructivism in Moral Theory: The Dewey Lectures 1980.' *The Journal of Philosophy* LXXVII (9): 515–572.
- Regan, T. and P. Singer, Eds. 1989. *Animal Rights* (Engelwood, NJ: Prentice Hall).
- Singer, H. and P. Kuhse. 1985. *Should the Baby Live? The Problem of Handicapped Infants Studies in Bioethics* (New York: Oxford University Press).
- Taylor, T. October 1946–April 1949. Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10. In, <http://www.humanitas-international.org/holocaust/drtrial4.htm>. (accessed.)
- Tooley, M. 1984. *Abortion and Infanticide* (Oxford: Oxford University Press).
- Walker, M.U. 1998. *Moral Understandings: A Feminist Study in Ethics* (New York: Routledge).
- Walker, M.U. 2003. *Moral Contexts* (Totowa, NJ: Rowman and Littlefield).
- Young, I.M. 1990. *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press).