

Contractarianism and Animal Rights

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ABSTRACT *It is widely accepted, by both friends and foes of animal rights, that contractarianism is the moral theory least likely to justify the assigning of direct moral status to non-human animals. These are not, it is generally supposed, rational agents, and contractarian approaches can grant direct moral status only to such agents. I shall argue that this widely accepted view is false. At least some forms of contractarianism, when properly understood, do, in fact, entail that non-human animals possess direct moral status, independently of their utility for rational agents, and independently of whatever interests rational agents may have in them. The version of contractarianism I shall focus upon is that defended by John Rawls.*

Contractarian approaches to morality are generally thought to lend no support to the friend of animal rights. Contractarian approaches, it is assumed, are unable to underwrite the granting of *direct* moral status to non-human animals, although they may be compatible with the granting of *indirect* moral status to the extent that animals hold some sway in the affections of human beings, the bearers of direct moral status. The reason for this is that non-human animals are, it is assumed, not rational agents, and contractarian approaches subsume only rational agents. Thus, for example, according to Carruthers:

Morality is here [i.e. according to the contractarian approach] pictured as a system of rules to govern the interaction of rational agents within society. It therefore, seems inevitable, on the face of it, that only rational agents will be assigned direct rights on this approach. Since it is rational agents who are to choose the system of rules, and choose self-interestedly, it is only rational agents who will have their position protected under the rules. There seems no reason why rights should be assigned to non-rational agents. Animals will, therefore, have no moral standing under Rawlsian contractualism, in so far as they do not count as rational agents. [1]

Carruthers, of course, endorses this conclusion and sees it, if anything, as a *strength* of contractarian approaches that they do not assign direct rights to non-human animals. However, this view of contractarianism seems to be shared by both foes *and* friends of animal rights. Thus, Tom Regan writes:

. . . it [Rawls' position] systematically denies that we have direct duties to those human beings who do not have a sense of justice — young children, for instance, and many mentally retarded humans. [2]

Regan shares with Carruthers the assumption that contractarianism, as represented by

Rawls, only applies to rational agents. And since many, if not all, non-human animals cannot be regarded as rational agents, contractarian approaches will fail to assign them direct moral rights.

I think this view can be questioned at several points. Certainly the all or nothing manner in which discussions of non-human rationality tend to be discussed is eminently questionable, on both theoretical and methodological grounds. However, I shall assume, for the sake of argument, that no non-human animal is a rational agent. What I shall argue, is that there is nothing in contractarianism *per se* that requires the contract be restricted to rational agents. The fact that the *framers* of the contract must be conceived of as rational agents does not entail that the *recipients* of the contract, that is, the individuals protected by the principles of morality embodied in the contract, must be rational agents. In fact, I shall argue, when contractarianism is properly understood, quite the opposite conclusion turns out to be true. If a contractarian position is consistently applied, the recipients of protection offered by the contract *must* include not only rational, but also non-rational, agents.

In this paper, I shall focus on just one form of contractarianism, Rawls' version, since this is (deservedly) the most influential [3]. One point of contrast should, however, be noted. Rawls is primarily interested in political philosophy, and his application of contractarianism is used to determine the nature of the basic structures and institutions of a just society. I propose to use the contractarian idea in a somewhat broader sense as providing a general theory of morality; that is, as providing a framework for the assignation of moral rights in general, and not just political rights of the sort discussed by Rawls. That is, the sort of arguments developed by Rawls will be conceived of as, in principle, capable of deriving general principles of morality, and not simply principles relating individuals to basic societal structures. While this differs in scope from Rawls' view, this application of the contract idea is, of course, by no means idiosyncratic.

Contractarianism and animal rights: the orthodox view

The ideas that form the conceptual heart of Rawls' contractarianism are those of the *original position* and the associated idea of the *veil of ignorance*. For Rawls, the way to think about what would be a just organisation of society is to imagine what principles would be agreed to by people who were denied knowledge of certain facts about themselves. The people here find themselves in the original position, and the facts of which they have no knowledge are excluded by the veil of ignorance. And the sort of facts excluded by the veil can be divided into two sorts. Firstly, the occupants of the original position do not know their socio-economic position in society; nor do they know their own natural talents or endowments. Secondly, they do not know their own conceptions of the good; that is, given that there are alternate possible sets of beliefs about how one should live one's life, the occupants of the original position do not know which set of beliefs they will hold.

Developing the idea in the more general way indicated above, the idea would be that the correct rules of morality are those that would be chosen by rational agents who, while having knowledge of all *general* truths of psychology, sociology, economics and so on, are denied all knowledge of *particular* facts about themselves and their circumstances (e.g. their intelligence, physical strength, qualities of character, desires, socio-economic position, conception of the good, etc).

The occupants of the original position are conceived of as *rational*. And while they do not

suffer from envy, they are concerned to put themselves in as advantageous a position as possible after the lifting of the veil of ignorance. It is the rationality of the occupants which provides the basis of the view that contractarianism is incompatible with the assignation of direct moral rights to non-human animals. More precisely, underlying this view seems to be the following sort of argument:

- P1. The occupants of the original position are rational agents.
- P2. It is these rational agents who are responsible for formulating the contract and the principles of morality embodied therein.
- P3. Therefore, the contract and its embodied principles of morality apply only to rational agents.
- P4. But, non-human animals are not rational agents.
- P5. Therefore, the contract and its embodied principles of morality do not apply to non-human animals.
- P6. But, direct moral rights are possessed only by those individuals subsumed by the contract and its embodied principles of morality

C. Therefore, non-human animals do not possess direct moral rights.

I shall refer to this as the *orthodox contractarian argument with respect to animals* (OCAWA). This argument is of course, compatible with non-humans possessing indirect rights. If I, as a possessor of direct moral rights, am emotionally attached to my dog so that harm to my dog would upset me in some way, then I might have a *prima facie* right to require that you do not harm my dog. My dog has no right not to be harmed by you, but I have a right that my dog not be harmed by you. And any harm visited upon my dog by you is an infringement not of my dog's rights (since he has none) but of mine.

As Regan (correctly) points out, if contractarianism is understood in this sense then it is going to be hard pushed to guarantee direct rights to many human animals [4]. Human animals suffering from advanced senility, certain sorts of brain damage, and even human infants do not meet the requirements typically insisted upon for membership in the community of rational agents. Therefore, a straightforward application of the contract idea as understood above would leave this group of human animals without direct rights also. And a contractarian such as Carruthers, who does interpret the contract idea in the above way, has to jump through intellectual hoops in order to bring these humans back into the fold of those individuals with direct rights (his solution is an extremely unconvincing appeal to slippery slopes and social stability) [5].

However, I shall argue that it is wrong to interpret contractarianism in terms of the above argument. That is, there is nothing in contractarianism itself which entails that the scope of the contract extends no further than rational agents. That is, the fallacy in the above argument lies in the move from P2 to P3. A comparison with Regan's attitude towards contractarianism might prove illuminating here [6]. Regan seems to claim that (i) if contractarianism is a consistent position then it cannot withhold direct rights from non-human animals while assigning them to non-rational human animals, nevertheless (ii) contractarianism does assign rights to non-rational humans while withholding them from non-human animals, and therefore, (iii) contractarianism is an inconsistent position and cannot be used to underwrite the assignation of direct moral rights to non-human animals. I, on the contrary, shall argue that (i) contractarianism is perfectly capable of assigning direct

moral rights to *both* non-rational humans *and* non-human animals, and, therefore, (ii) contractarianism is a consistent position that can be used to underwrite the assignation of direct moral rights to non-human animals.

Understanding Rawls

In *A theory of Justice*, Rawls argues for two principles of distributive justice:

First Principle — Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Second Principle — Social and economic inequalities are to be arranged so that they are both:

- (a) to the greatest benefit of the least advantaged, consistent with the savings principle, and
- (b) attached to offices and positions open to all under conditions of fair equality of opportunity [7].

(He also defends various priority rules which are not relevant to the concerns of this paper).

It is important to realise, however, that Rawls has *two* essential arguments for these principles of justice and not, as is commonly thought, one [8]. The first type of argument functions by contrasting his theory with what he takes to be the prevailing ideology concerning distributive justice — namely the ideal of equality of opportunity (i.e. ‘liberal equality’ in Rawls’s terminology). He argues that his theory better fits our considered intuitions concerning justice, and that it more consistently spells out the very ideals of fairness that underwrite the prevailing ideology. I propose to call this the *intuitive equality* argument. The second argument I shall refer to as the *social contract* argument. The principles of justice are defended by showing that they are the principles that would be adopted by rational agents in the original position. Rawls has, of course, placed much more emphasis on the social contract argument, and this has led many people to overlook the argument from intuitive equality. However, as I shall try to show, the former is crucially dependent on the latter.

In broad outline, the basis of what I have called the *intuitive equality* argument looks like this:

- P1. If an individual I has done nothing to merit possession of a property P, then I is not morally entitled to P.
- P2. If I is not morally entitled to P, then I is not morally entitled to whatever benefits accrue from the possession of P.
- P3. For any individual I, there is a set S of properties, $\{P_1, P_2, \dots P_n\}$ that I possesses without having done anything to merit such possession.

C. Therefore, for any individual I, there is a set S of properties such that I is not morally entitled to the benefits which accrue from possession of S. [9]

In other words, if a property is *undeserved* in the sense that its possessor has done nothing to merit its possession, then its possessor is not morally entitled to whatever benefits accrue

from that possession. Possession of the property is a morally arbitrary matter, and, therefore, cannot be used to determine the moral entitlements of its possessor.

As stated above, the intuitive equality argument is compatible both with the position Rawls is going to defend and with the prevailing ideology of liberal equality. And Rawls's argument trades on this compatibility. What is distinctive about Rawls's use of this argument is the range of properties he regards as morally arbitrary. It is a commonplace that being born into a certain position in society — in a particular social and economic group — is an undeserved and, hence, morally arbitrary property. And one is, therefore, not morally entitled to the benefits that accrue from possession of this property. In other words, economic and social inequalities are undeserved, and hence it is unfair for one's fate to be made any better or worse by this undeserved inequality. It is this assumption which underlies the politics of what Rawls calls liberal equality which Rawls identifies with prevailing liberal ideology. However, Rawls argues that the same can be said about inequalities in natural talents or capacities. No one deserves to be born athletically gifted, stunningly handsome or with an IQ of 153, any more than they deserve to be born into a certain class or sex or race. Therefore, if it is unjust for someone to benefit from undeserved socio-economic properties, then it must be equally unjust for them to benefit from undeserved natural talents. The reasoning in both cases is the same. Thus, Rawls sees his argument as providing a more coherent and theoretically penetrating expression of the very assumptions which underlie the prevailing liberal account.

The *social contract* argument runs as follows. We imagine a so called *original position* whose occupants are behind a *veil of ignorance*:

No one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favour his particular condition, the principles of justice are the result of a fair agreement or bargain [10].

Many critics have objected to the notion of an original position on the grounds that it is not possible to imagine the nature of the self which occupies it. What is left of one's self when knowledge of the sort listed above is excluded? It is difficult, and probably impossible, to imagine what sort of self might remain after such bracketing. Thus, many communitarian critics of Rawls have argued that he is committed to a spurious metaphysical picture of the self [11].

This criticism is misguided. The veil of ignorance is neither an expression of, nor does it entail, a metaphysical theory of the person. Rather, it is an intuitive test of fairness. Just as we might try to ensure a fair division of cake by making sure that the person who cuts it does not know what piece he will get, so too we ensure a just distribution of rights by making sure that those who might be able to influence the selection process in their favour, due to their better position, are unable to do so. Similarly, the notion of the contract, in Rawls' hands, is not to be confused with any agreement — actual *or* hypothetical — but as a device for teasing out the implications of certain premises concerning people's moral equality. That is, the

idea of the original position is used as a heuristic device to model the idea of the moral equality of individuals.

This being so, there is no dubious metaphysical conception of the self embodied in the original position. Firstly, the concept of the original position does not require that there could actually be a self, or selves, which inhabit the original position. That is, Rawls is not committed to the *metaphysical* possibility of occupants of the original position. Secondly, the concept of the original position does not even entail that it is possible to imagine the nature of the occupants of the position. That is, Rawls is not even committed to the *conceptual* possibility of a self existing behind the veil of ignorance. Rawls is, in fact, quite clear on the heuristic status of the concept. He writes:

Some may object that the exclusion of nearly all particular information makes it difficult to grasp what is meant by the original position. Thus, it may be helpful to observe that one or more persons can at any time enter the original position, or perhaps, better, simulate the deliberations of this hypothetical situation, simply by reasoning in accordance with the appropriate restrictions . . . To say that a certain conception of justice would be chosen in the original position is equivalent to saying that rational deliberation satisfying certain conditions and restrictions would reach a certain conclusion. [12]

One can enter the original position not by becoming a radically unencumbered self, but by reasoning in accordance with certain restrictions. More precisely, one can put oneself in the original position simply by imagining oneself to be without a certain natural attribute that one does in fact have, or without a certain conception of the good life that one does in fact hold. This does *not* require that we imagine ourselves without *any* natural attribute or without *any* conception of the good life. It simply requires that we are able to bracket these features of ourselves in a one-by-one piecemeal manner. Rawls indicates that he will go on speaking in terms of the original position because such talk is more 'economical and suggestive', and brings out certain essential features that one might otherwise overlook. The concept of the original position is, thus, heuristic through and through.

It is important to realise that the intuitive equality argument and the social contract argument are not independent of each other but, rather, are mutually reinforcing. Rawls's argument has been objected to on the grounds that he rigs the description of the veil of ignorance so as to yield the principles of justice he requires (e.g. the difference principle) [13]. This sort of objection is, however, misconceived, since Rawls is perfectly willing to admit this. He recognises that 'for each traditional conception of justice there is an interpretation of the initial situation in which its principles are the preferred solution' [14]. There are many descriptions of the original position that are compatible with the goal of creating a fair decision-procedure, and the difference principle would not be chosen in all of them. So in order to determine which principles would be chosen in the original position, we first need to know which description of the original position to accept. And, according to Rawls, one of the grounds on which we choose a description of the original position is that it yields principles we find intuitively acceptable. That is, one important way of justifying a description of the original position is that it yields the sort of principles which emerged from the intuitive equality argument. Hence, in deciding on the preferred description of the original position we 'work from both ends'. And, if the principles which are yielded by a given description of the original position do not match our convictions of justice, as expressed in the intuitive equality argument, then we have a choice:

We can either modify the account of the initial situation or we can revise our existing judgments, for even the judgments we take provisionally as fixed points are liable to revision. By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming them to principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted. This state of affairs I refer to as reflective equilibrium [15].

The latter state of affairs is described as an equilibrium because the principles yielded by the original position and the judgments yielded by the intuitive equality argument coincide; and it is reflective since we now know to what principles our intuitive judgments of equality conform.

It is important to realise that Rawls, in this passage, is advocating working from *both* ends. Not only can our description of the original position be modified by our intuitive judgments of equality, but so too can our intuitive judgments of equality be modified by our description of the original position. The relation, in other words, is genuinely dialectical. Failure to appreciate this point can often lead to an ultra conservative interpretation of Rawls, according to which our description of the original position is wholly at the mercy of our intuitive judgments of equality, themselves seen as not subject to this kind of review or modification. This is far from Rawls's notion of reflective equilibrium. Indeed, it seems much more akin to what we might call *unreflective* equilibrium. And it is this sort of unreflective equilibrium which often lies at the heart of the view that contractarianism does not provide an adequate basis for animal rights. And, once again, in deciding when our intuitive but unreflective judgments concerning justice should be overridden, the intuitive equality argument is crucial.

To see this, recall how Rawls was able to override the intuitive but unreflective judgments underlying the politics of liberal equality, identified by Rawls as the prevailing liberal ideology. The prevailing justification for economic distribution in our society is based on the idea of 'equality of opportunity'. Inequalities of income and prestige etc. are assumed to be justified if and only if there was fair competition in the awarding of the offices and positions that yield those benefits. This conflicts with Rawls's theory, for while Rawls also requires equality of opportunity in the allocation of positions, he denies that the people who fill the positions are thereby entitled to a greater share of society's resources. A Rawlsian society may pay such people more than average, but only if it benefits all members of society to do so. Under the difference principle, people only have a claim to a greater share of resources if they can show that it benefits those who have lesser shares. Thus, Rawls's theory conflicts with what passes for common sense in capitalist societies. What motivates this common-sense view is the idea that it is fair for individuals to have unequal shares of social goods if those inequalities are earned and deserved by the individual and, conversely, that it is unfair for individuals to be disadvantaged or privileged by arbitrary and undeserved differences in their social circumstances. As Rawls points out however, there is another source of undeserved inequality that this argument ignores. While it is true that social inequalities are undeserved, it is also true that inequalities in natural talents are equally undeserved. No one deserves to be born handicapped, or with an IQ of 70, any more than they deserve to be born into a certain class, sex, or race. Therefore, distributive shares should not be influenced by these factors either. What is going on here is that Rawls is using the intuitive equality

argument to undermine a widely accepted, indeed commonsense, view of just distribution. This commonsense idea of just distribution is intuitive, but not sufficiently reflective. And to rely on such a principle and use it to determine the interpretation of the original position would not be a case of reflective equilibrium, it would, as we might say, be a case of unreflective equilibrium. Thus, what determines whether an intuition of justice is a reflective intuition or not is the consistent application of the intuitive equality argument. This will prove important later, where I shall argue that most of the arguments against extending a Rawlsian conception of justice to non-humans, remarks issuing from Rawls as well as others, are based on unreflective intuitions; intuitions not compatible with the consistent application of the intuitive equality argument.

The original position and animal rights

When Rawls's argument is properly understood, and the convergence of the intuitive equality argument and the social contract argument properly grasped, there is no reason to think that the bearers of the rights derivable from the original position are restricted to rational agents. That is, the inference from P2 to P3 in the OCAWA argument has no plausibility. The fact that it is (ideally) rational agents who are responsible for formulating the terms of the contract does not entail that the contract, therefore, only subsumes rational agents. Indeed, given the nature of the intuitive equality argument, and the dependence of the social contract argument on the intuitive equality argument, it is clear why Rawls *should* reject this inference. The intuitive equality argument, in essence, runs as follows: If a property P is undeserved, then it is morally arbitrary and one is not morally entitled to it. If one is not morally entitled to P, then one is also not morally entitled to whatever benefits stem from the possession of P. However, rationality seems to be an undeserved property if any property is. A person plays no role in deciding whether or not she is going to be rational; she either is or she is not. The decision is not hers, but nature's. Therefore, according to the terms of the intuitive equality argument, it is a morally arbitrary property, and one is not morally entitled to its possession. Therefore, also, one is not morally entitled to whatever benefits accrue from its possession. Therefore, to restrict the beneficiaries of the protection afforded by the contract to rational agents would be to contravene the intuitive equality argument. But it is the results of this argument which, in large part, determine the description of the original position, and hence the principles we derive from the original position. Therefore, it is a restriction we cannot legitimately apply.

It is true that we sometimes speak of a person cultivating their rationality, or of endeavouring to do the rational thing in a given situation. And this may lead one to think that possession of rationality is something that we have control over, or even have to earn. However, this is not the sense of rationality that is relevant to Rawls's argument. Rawls would not want to claim that the more rational a person is, the more rights they have. Rationality, like a sense of justice, is what Rawls calls a *range property*. For example, the property of being on the interior of the unit circle is a range property of points on a plane. All points inside this circle have this property although their co-ordinates vary within a certain range. And they all have this property equally [16]. It is rationality conceived of as this sort of range property that is employed by Rawls. We all possess rationality, and we all do so equally, even if some of us do better on IQ tests than others. And conceived of in this way, it is clear that our possession of rationality is not something over which we have any control.

Our possession of this property depends on nature, and not on our own decisions and actions. It is, therefore, a morally arbitrary property in Rawls's sense.

Therefore, given the interdependence of the intuitive equality argument and the social contract argument, it seems that knowledge that one is a rational agent should be bracketed off in the original position. This is what the intuitive equality argument tells us. It is also worth noting that the claim that knowledge of one's own rationality should, in the original position, be bracketed coheres much better with one of Rawls's ways of characterising the original position as one in which the participants have knowledge of all general principles of psychology, sociology, economics and the like, but *no* particular knowledge about themselves [17]. Since knowledge that one will be a rational agent is an obvious case of particular knowledge of the properties of one's self, it seems that this must be bracketed in the original position. And if one does not know whether one is going to be a rational agent, then, if Rawls is correct, one will, in the original position, inevitably formulate principles that take this into account. And, at the very least, this would bring non-rational beings under the scope of the difference principle.

Therefore, when Rawls's argument is properly understood, it is seen that knowledge of one's own rationality must, for the sake of consistency, be bracketed in the original position. Hence, there is nothing in Rawls's position which entails that non-rational creatures fall outside the sphere of justice. So, there can be no objection to according non-human animals justice on the grounds of their non-rational status.

In fact, once the connection between the intuitive equality argument and the social contract argument is made clear, it seems that knowledge that one is a human being must also be bracketed in the original position. The property of being a human being is, again, something over which we have no choice. The property is, in Rawls's sense, as morally arbitrary as the property of belonging to a given race, or class, or gender. It is something over which we have no control. Therefore, according to the intuitive equality argument, we are not morally entitled to whatever benefits accrue from possession of this property. Therefore, given that the considerations underlying the intuitive equality argument are partly constitutive of the description we give of the original position, knowledge of one's human status is knowledge that should be bracketed in the original position. Therefore, if the above arguments are correct, the sphere of justice should not be restricted to human beings.

Reflective and unreflective intuitions

The first, and most obvious objection, to the above argument is that Rawls himself has ruled out bringing non-humans under the scope of the principles of justice. And, if that is true, how can we expect the suitably extended version of his argument to bring non-human animals under the scope of the principles of morality in general. This interpretation of Rawls is widespread and tenacious, but I think that Rawls's actual position is a lot more equivocal. Rawls says that it is *moral persons* who are entitled to equal justice, where,

Moral persons are distinguished by two features: first they are capable of having (and are assumed to have) a conception of their good (as expressed by a rational plan of life); and second they are capable of having (and are assumed to acquire) a sense of justice, a normally effective desire to apply and to act upon the principles of justice, at least to a certain minimum degree. [18]

Most would agree that non-human animals are not moral persons in this sense. Does this mean that they are not owed justice in Rawls's sense: Only if being a moral person is a *necessary* condition of being owed justice. But, in fact, Rawls is quite clear that being a moral person is only a *sufficient* condition of falling under the scope of the principles of justice.

We see, then, that the capacity for moral personality is a sufficient condition for being entitled to equal justice. Nothing beyond the essential minimum is required. *Whether moral personality is also a necessary condition I shall leave aside.* [19]

Unless, Rawls is willing to claim that possession of moral personality is both a sufficient *and* necessary condition of being entitled to equal justice, there is nothing in his theory as such which rules out non-humans being entitled to equal justice. Since he is not willing to make this claim (and for good reason I think) we can conclude that there is nothing in Rawls's theory as such which rules out according equal justice to non-humans.

It is true that Rawls, at several points, claims that non-humans are not entitled to equal justice:

Our conduct towards animals is not regulated by these principles, or so it is generally believed. [20]

Presumably this excludes animals; they have some protection certainly but their status is not that of human beings. [21]

While I have not maintained that the capacity for a sense of justice is necessary in order to be owed the duties of justice, it does seem that we are not required to give strict justice anyway to creatures lacking this capacity. [22]

There is nothing in Rawls's theory as such, however, that entails, or in any way supports, these claims. In fact, if the arguments of earlier sections are correct, consistent application of the intuitive equality argument would rule out these claims. The consistent application of the intuitive equality argument, that is, entails the negation of these claims. Since it is the consistent application of the intuitive equality argument which determines the description of the original position, and since it is the description of the original position which determines what principles of justice are derivable from it, the above claims are not compatible with the correct understanding of Rawls' theory. Rawls is, therefore, not entitled to make them.

The hesitation Rawls has in making the above claims is in fact quite evident in the qualifications involved in them: 'or so it is generally believed'; 'presumably'; 'it does seem'. Hardly ringing endorsements. The claims, in fact, seem to have the status of what I earlier referred to as *unreflective intuitions*: intuitions enshrined in common sense, but not compatible with the consistent application of the intuitive equality argument. Since the consistent application of the intuitive equality argument is essential to achieving a state of reflective equilibrium, the above claims are not ones we would accept in a state of reflective equilibrium.

Other objections

In the literature, there are two further objections to using contractarianism to underwrite the notion of animal rights.

The first of these runs as follows. Once we start extending the scope of morality to include non-humans, there is, in principle, no limit to this extension. If we are willing to accord moral rights to non-humans, why not accord it to plants, even to inanimate objects? This objection is easily handled. The limits of morality are, on the contractarian approach, determined by what occupants of the original position should rationally care about. That is, the scope of morality is restricted to things that an occupant of the original position could rationally worry about being. I can, in the original position, worry about being at least certain sorts of non-human animal since there is something that it is like to be them (at least for some of them). That is, non-human animals can, for example, suffer, and if I were one of them I wouldn't want this to happen to me. But, if I were told that I was going to be a plant, or a car, then I couldn't care less what happened to me. Plants and cars are not sentient, hence do not suffer. Therefore, in the original position, I would not vote to include these under the scope of justice just in case I became one. The contractarian position, therefore, makes sentience the cut-off point for moral considerability. And there is no worry of extending the scope of the principles of morality beyond this limit [23].

One further objection merits reply. According to Carruthers, extension of the contract to non-rational agents would 'destroy the theoretical coherence of Rawlsian contractualism'. He writes:

As Rawls has it, morality is, in fact, a human construction . . . Morality is viewed as constructed *by* human beings, in order to facilitate interactions *between* human beings, and in order to make possible a life of co-operative community. [24]

Actually, I think that Rawls really says nothing of the sort. His theory is completely independent of any story concerning the origin of morality. I shall, for the sake of argument, ignore this rather obvious difficulty.

Even if we ignore this, however, the appeal to the origin of morality is rather curious since it automatically leads to a charge of *genetic fallacy*; roughly, the fallacy of confusing the *origin* of morality with the *content* of morality. Carruthers is quick to attempt to head off this charge by emphasising that he is not claiming that moral statements are really disguised claims about the conditions for the survival of the species. This is all very well, but there is, of course, more than one way of committing the genetic fallacy. The basic problem is this. Even if the morality were constructed by human beings in order to facilitate interactions between human beings, it does not follow that this sort of origin exhausts the present content of morality nor that it delimits its current scope.

This sort of point is well made by Singer in *The Expanding Circle* [25]. The origin of morality, in fact, might well lie in various mechanisms built in to social animals by a process of natural selection. These mechanisms, in various ways, facilitated social cooperation. If we want to talk about who 'devised' these mechanisms, then the only remotely plausible answer can be *genes*. The mechanisms were 'devised' by genes in order to facilitate the survival of genes through the social cooperation of their gene vehicles (i.e. animals). Now I'm not suggesting for a moment that any of this is true (and, as it stands, the picture thus presented is hopelessly simplistic; it is, however, still more plausible than Carruthers's account). The point is that even if it is true, it does not follow that the scope and content of morality is restricted to genes, the interaction of genes, and the survival of genes. As Singer points out, morality can develop in ways that are quite distinct from, or even incompatible with, its origin. Therefore, to think that the origin of morality determines the scope and content of

morality is to commit the genetic fallacy, and Carruthers has committed this fallacy whatever his protestations to the contrary.

Conclusion

This paper has been concerned with a contractarian approach to morality in general, and its application to the concept of animal rights. The approach developed here has been based on the position developed by Rawls, but is not restricted merely to the development of principles of justice, conceived of as governing interactions between individuals and the basic structures of society, but to incorporate the delineation of principles of morality in general. I have argued that a contractarian approach to morality based on the sort of position developed by Rawls can provide a sound theoretical foundation for the attribution of rights to non-human animals. The key to this is understanding how two key aspects of Rawls's position necessarily converge. The social contract argument depends on the intuitive equality argument in the sense that the latter determines the acceptability of the description of the original position, and this determines which principles of morality we shall accept. Consistent application of the intuitive equality argument, I have argued, will yield a certain sort of description of the original position. This description of the original position will, in turn, yield principles of morality which apply not only to human beings (i.e. rational agents) but also to many sorts of non-human animals.

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NOTES

- [1] PETER CARRUTHERS (1992) *The Animals Issue*. (Cambridge, Cambridge University Press), pp. 98–99.
- [2] TOM REGAN (1985) The case for animal rights, in P. SINGER, ed., *In Defence of Animals*. (Oxford, Basil Blackwell, p. 17). For Regan's more detailed critique of contractarianism, see his (1983) *The Case for Animal Rights* (University of California Press).
- [3] JOHN RAWLS (1971) *A Theory of Justice*. (New York, Oxford University Press).
- [4] REGAN (1983) pp. 163–93.
- [5] CARRUTHERS, op. cit., pp. 114–121.
- [6] REGAN (1983) pp. 163–93.
- [7] RAWLS, op. cit., pp. 302–303.
- [8] WILL KYMLICKA (1990) *Contemporary Political Philosophy* (Oxford, Oxford University Press), 55ff.
- [9] RAWLS, op. cit., pp. 100–108.
- [10] *Ibid*, p. 12.
- [11] MICHAEL SANDEL (1982) *Liberalism and the Limits of Justice*. (Cambridge, Cambridge University Press).
- [12] RAWLS, op. cit., p. 138.
- [13] R. M. HARE (1975) Rawls' theory of justice', in N. DANIELS, ed., *Reading Rawls* (New York, Basic Books).
- [14] BRIAN BARRY (1973) *The Liberal Theory of Justice* (Oxford, Oxford University Press).
- [15] RAWLS, op. cit., p. 121.
- [16] *Ibid*, p. 20.
- [17] *Ibid*, p. 508.
- [18] *Ibid*, p. 131.
- [19] *Ibid*, p. 505.
- [20] *Ibid*, pp. 505–6. Emphasis is mine.
- [21] *Ibid*, p. 504.
- [22] *Ibid*, p. 505.

[22] Ibid, p. 512.

[23] I say 'no worry', but this is tendentious. Some might want to extend the scope of morality in precisely the way that I have argued contractarianism rules out. I think, in fact, that contractarian approaches can yield a substantive environmental ethic. However, the rights they will accord the non-animate environment will necessarily be indirect ones.

[24] CARRUTHERS, op. cit., p. 102.

[25] PETER SINGER (1981) *The Expanding Circle: ethics and sociobiology* (Oxford, Oxford University Press).