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Alison Kimble '11 – Humanities

A Secular Examination of the Moral Difference between Humans and Animals

Introduction

Human and non-human animals' (henceforth referred to as animals) interests come into conflict every day. It is a common intuition that when given a choice between the wellbeing of a human and the wellbeing of an animal, it is morally imperative to prefer the human over the animal. How can we justify our intuition that we should subordinate animal interests to human interests?

There are many accounts of the moral difference between humans and animals that attempt to justify our intuition. They identify various grounds for preferring interests, and tie them to the moral value of a being, the weight of a being's interests, and what a being is owed: duties and rights. Once the difference in moral value, weight of interests, duties, or rights between humans and animals is clear, our preference for human interests can be vindicated.¹

A plausible account must be able to demonstrate that, as our intuition tells us, the basic² interests of an animal are subordinate to the basic interests of a human. Pitting non-basic human interests against basic animal interests would be jumping the gun; until we have determined the difference between an animal and a human in a contest for a prize which is of huge importance, we cannot move on to more complicated cases, such as the basic interests of an entire species pitted against those of a few humans, or the non-basic interests of a human against the basic interests of an animal. Therefore, I will only test accounts of human superiority with cases where basic interests come into direct conflict. If a moral theory can tell us why we should prefer the basic interests of any individual human against the basic interests any individual animal, it has justified our intuition.

Most theories utilize some property which most humans possess, and all animals lack, to explain the moral difference between them. But we can easily imagine a case in which all potentially relevant features (cognitively ability, moral understanding, utility etc.) of a human and an animal are equivalent. There are many humans that are on par with animals in a range of mental capacities, such as dementia patients, babies, and those suffering brain injuries. The same is true for emotional capacities, moral understanding, and being a member of a moral community: psychotic people do not feel for others, and there are isolated individuals lost to human society. For simplicity, we can call all of these humans "marginal cases".

The general problem accounts face is inconsistency: they claim we can accord marginal cases human moral status and give animals less moral weight, even when the two groups possess the relevant properties in equal measure. Peter Singer, an animal liberationist³, believes that this

¹ Whatever rights, duties, or moral consideration we determine that individual humans deserve is not the matter under discussion; what I am concerned with is the alleged difference between the rights and moral status of animals in comparison with humans. An inegalitarian view of human moral worth would be fine, as long as it still results in all humans being more morally weighty than all animals. There must be a clear reason why all humans warrant a level of worth that animals do not. My project is to determine if there is any good reason for the moral subjugation of all animals to all humans.

² Basic interests are those which are related directly to survival: food, water, safety, shelter, health etc. Non-basic interests are more frivolous, such as getting your dream job, or attending a concert.

³ A term for the movement to increase awareness of the true moral worth of animals, which liberationists believe is higher than that which we accord them now.

inconsistency is an expression of our “speciesism,” that is, our desire to prefer the interests of humans and grant them a particular moral status merely due to their species. It is not enough to say that all humans have greater moral worth simply because they are members of the human species, any more than it is permissible to base moral status on membership in a certain race or gender.⁴

Therefore, an account must do two things: it must give us a basis for our intuition, and it must avoid inconsistency in cases involving marginal humans. In other words, a moral theory must describe how, generally, we can prefer the basic interests of a human to those of an animal, and specifically, how we prefer the interests of a marginal human to those of an equally capable animal. With these two questions answered, the account will successfully explain the moral difference between all humans and all animals.

Why is it imperative that we prove that we can prefer the basic interests of all humans to those of all animals? Shouldn't we be satisfied with a moral theory that justifies choosing the basic interests of most humans over those of most animals? No. Because of our harsh treatment of animals, it is imperative that we fully justify it. We use animals for experiments, food, clothing, and labor.⁵ We cull animals as we see fit, and eradicate species in the pursuit of natural resources. If we determine that we cannot describe a difference between all humans and all animals, then we ought to drastically change our behavior in one of two ways: we either ought to treat some animals as we do humans, or treat some humans as we do animals. This could mean that we can go to a mental hospital and start giving the patients cancer in order to test the newest drugs, or that we should immediately stop doing such tests on apes. Doing either, or neither, is a morally weighty decision.

The specific accounts I will examine here are the personhood account, the utilitarian account, and the rights-based account⁶. I claim that though the first two theories account for our intuition, they fail to address, much less solve, the inconsistency of cases involving marginals. In the rights-based account, Carl Cohen directly proposes a solution to the case of marginals, the Argument from Kinds. Nonetheless, there are significant problems with his attempted solution. I posit that these central theories which attempt to verify our intuition are insufficient.⁷

However, I do believe that there is a justification for our intuition concerning humans and animals. I will demonstrate how Rawls social contract theory can provide a consistent account in which all humans are direct recipients of justice and duties, while animals are only indirect recipients. This difference leads to a consistent preference for the basic interests of all humans over the basic interests of all animals.

The Personhood Account

The personhood account claims that moral worth is determined by a being's personhood. “Personhood” refers to a set of capacities -- self-consciousness, a self-concept, abstraction and

⁴ Singer, Peter. "A Utilitarian Defense of Animal Liberation." *Environmental Ethics: Readings in Theory and Application*. By Louis P. Pojman and Paul Pojman. Belmont, CA: Thomson Wadsworth, 2008.

⁵ Note that I am not claiming that any of these practices are what we should be doing even if animals are morally subordinate to humans. I will not be discussing the appropriate conduct toward animals, only how we justify conduct being different for animals.

⁶ I am not examining the correct way to determine the moral value of a being. Again, I am looking at the ways in which philosophers differentiate between humans and animals in their moral theories.

⁷ I am not trying to say that these theories are incorrect methods of determining moral worth, only that they do not justify the stark separation between our treatment of humans and animals.

time perception, rationality, ability to act on principle, etc.”⁸ These capacities are relevant to a being’s moral status because a person can expect a higher quality of life, which is “richer, more comprehensive, and more valuable to the person, than a life of a non-personal being to that being.”⁹ Ernest Partridge also claims that persons possess more rights than non-persons, because they are capable of understanding and exercising those rights. Beings are “accorded such rights as they have the capacity to exercise.”¹⁰

Partridge identifies human as “a biological category” and person “as a moral category.” None of the capacities required for personhood demand that a person be a particular species. An animal could be a person, as could a human, as long as they possess the necessary characteristics. It is a contingent fact that these capacities “are possessed by most members of the species *homo sapiens*, and, to the best of our knowledge, by no other animals in a remotely comparable degree and kind.”¹¹ Animals lack the necessary cognitive abilities, and cannot claim rights, uphold the rights of others, understand or participate in a moral world. The personhood account claims that because animals do not exhibit the necessary attributes for personhood, they are excluded from the rights which only persons, humans, can understand.

Kant is another proponent of the personhood account. He frames it differently, saying that persons are rational, and self-aware.¹² Non-persons, or “things” as he calls them, have only conditional worth, because they have no sense of self, and no rationality. “If the inclination and the wants founded on them did not exist, then their object would be without value.”¹³ Rather, because they cannot understand and value themselves, and that non-persons can only derive value from the appreciation of rational beings.¹⁴ He claims that we only have *direct* duties to persons, because they are the only ones capable of claiming a right which others are obliged to respect.¹⁵ Non-persons can only receive moral attention insofar as persons grant them rights, which means that persons have only *indirect* duties toward them. Indirect duties do not stem from the moral worth of the non-persons, but rather out of respect for persons, who demand rights on the non-persons’ behalf. Humans have the necessary qualities to be persons, while animals lack them. Therefore animals do not have value in of themselves, and are only valuable if humans value them.

It is relatively easy to imagine how the cognitive abilities, or personhood, of most humans could ground a moral status that no animal possesses. In the case of Partridge, it is due to the lesser value of the lives of non-persons, and that they can only intelligibly possess those rights which they are capable of exercising. In the case of Kant, nonpersons have value only if they are valuable to persons, and cannot ever be direct rights bearers themselves. Both consider humans alone to be persons. Therefore, the personhood account provides an initial basis for our intuition that humans warrant greater moral attention.

⁸ Partridge, Ernest. "On the Rights of Animals and of Persons." Thesis. University of California, Riverside. The Online Gadfly.

⁹ Partridge.

¹⁰ Partridge.

¹¹ Partridge.

¹² Kant, Immanuel. Page 63. "Rational Beings Alone Have Moral Worth." *Environmental Ethics: Readings in Theory and Application*. By Louis P. Pojman and Paul Pojman. Belmont, CA: Thomson Wadsworth, 2008.

¹³ Kant, page 63.

¹⁴ Kant, page 63.

¹⁵ Kant, page 64.

This account does not, however, supply a solution to the inconsistency in the case of the marginals. Humans and animals possess cognitive capacities in a continuum; some human properties overlap with animal properties. When drawing the line in cognitive abilities required to be a person, we will either include some humans in the animal category, or some animals in the human category. It does not give us a basis to justify choosing the basic interests of a severely mentally ill human over those of the equally sentient animal. We could either include the animal as a person, or include the irrational human in the non-person category, but we cannot separate the two in moral worth when they possess the cognitive capacities required for personhood in equal measure. Therefore, the personhood account, with either Partridges or Kant's formulation, is insufficient to allow us to prefer the basic interests of all humans over those of all animals.

The Utilitarian Account

One way to understand the moral significance of humans and animals is in terms of the amount of universal harm or benefit that will result from fulfilling or denying their interests. John Stuart Mill defends this understanding of morality, utilitarianism, which "holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness."¹⁶ There are detailed accounts of what "ideas it includes in ideas of pain and pleasure."¹⁷ For example, eating too much cake can bring happiness, but gluttony is ultimately not a good thing. However, for the purposes of this paper, a cut and dry account will suffice: pleasure and fulfillment of interests is good, and suffering and denial of interests is bad.

Utilitarians could justify our intuition by claiming that *only* humans feel pleasure and pain. That way, there would be nothing wrong or right with any action we take toward animals, and we could act toward them in any way we please. As recently as 30 years ago, this argument might have held water, as animals' capacity to suffer physical pain was debated.¹⁸ The advent of behavioral psychology quickly turned the debate into consensus: we have nearly equal basis for believing that animals feel pain as we do for understanding that other humans feel pain, particularly with babies who are not capable of language.¹⁹ Richard Sarjeant reminds us that animals' nervous systems are very much like our own:

[E]very particle of factual evidence supports the contention that the higher mammalian vertebrates experience pain sensations at least as acute as our own. To say that they feel less because they are lower animals is an absurdity; it can easily be shown that many of their senses are far more acute than ours.²⁰

Animals are thought not only to be capable of experiencing physical pain, but also more complex suffering, like emotional pain. There may not be a "single method which, by itself, can tell us about the emotional experiences that animals might have," but through a "synthesis of the pictures given by all methods," we can at the very least understand that animals cannot be

¹⁶ Mill, John Stuart., and Alexander Dunlop. Lindsay. Page 6. Utilitarianism ; Liberty ; and Representative Government. New York: E.P. Dutton, 1951.

¹⁷ Mill, page 6.

¹⁸ Dawkins, Marian Stamp. Page 3. Animal Suffering: the Science of Animal Welfare. London: Chapman and Hall, 1980.

¹⁹ Dawkins, page 3.

²⁰ Richard Sarjeant. Page 72. The Spectrum of Pain. (London: Hart Davis, 1969).

excluded from the utilitarian calculations described thus far without being speciesist. Certainly, humans are not the only beings capable of experiencing pleasure and pain.

Therefore, I accept Singer's expansion of the utilitarian theory, which demands that animal pain and pleasure be considered. Singer asserts that, "[I]f a being suffers, there can be no moral justification for refusing to take that suffering into consideration," because "the capacity to suffer or experience enjoyment or happiness [] is the only defensible boundary of concern for the interests of others."²¹

The capacity for suffering or happiness is the vital characteristic that gives a being the right to moral consideration: "to say that creatures possess equal moral standing is to say that the moral significance of comparably serious harms and benefits to these creatures is the same."²² For the basic interests of a human and an animal to have the same moral weight, they would have to benefit or suffer equally from the fulfillment or betrayal of their interests.

If animals and humans suffer, and their suffering is all that is necessary to give their interests moral weight, then we cannot clearly say that all basic human interests are more morally significant than all basic animal interests. Sometimes, basic human interests will outweigh those of animals, and other times, basic animal interests will outweigh those of humans, depending on the amount of harm or benefit they bring about in the world. How, then, can those who hold a utilitarian account of moral standing keep all basic human interests above all basic animal interests?

Those utilitarians who wish to draw a distinction between human and animal interests no longer argue over whether or not animals are capable of suffering physical pain. Rather than saying "they do not suffer," they claim that they "do not suffer as humans do," or they cannot experience pleasure as humans do. Beings are morally considerable based upon the degree to which they are capable of experiencing pleasure and pain. If animals are not capable of suffering and happiness to the same degree as humans, then though they possess the necessary property to be morally considerable, their basic interests will always be subordinate to those of humans. Then our intuition will be justified.

Claiming to measure the experiences of humans and animals might at first seem problematic due to simple truths about assessing agony. Pleasure and pain are "difficult to study because of one unavoidable property: they are essentially private."²³ It is hard to prove that the rabies shot I receive hurts me less than it hurts an animal. It is also hard to determine if the separation anxiety a dog displays when separated from its human owners is greater or less than the amount I miss my family when they are gone.

But the definition of suffering that utilitarians can call upon does not rely upon animals being less sensitive to physical or emotional pain. The claim is that the human mental life will compound whatever physical pain they might experience, and this makes human suffering greater than any animal could ever experience. Also, the human mental life allows for higher kinds of pleasure than animals could ever experience. The betrayal of basic interests may be absolutely equal between a human and an animal, or even greater for the animal. But because of the unique human ability to think about our situation, the human will suffer more in receiving the

²¹ Singer, Peter. Page 571. "All Animals Are Equal." *Bioethics: an Anthology*. By Helga Kuhse and Peter Singer. Malden, MA: Blackwell Pub., 2006.

²² Christopher Knapp. Page 175. "Species Inegalitarianism as a Matter of Principle." *Journal of Applied Philosophy* 26.2 (2009).

²³ Dawkins, page 11.

same treatment. Our intuition could be justified by the greater harm or benefit humans can experience because of the mental capacities that they have and animals lack.

There are different descriptions of exactly which traits humans possess that give them the capacity to suffer more by a betrayal of their basic interests. Proposed qualifications to have the human-level of moral weight include “having desires for the future,” a “continuous mental existence,” and “an understanding of what it is to exist over a period of time.”²⁴ Also proposed are the human capacity for enrichment, memories, fear of the future, self-consciousness, and complex goals.²⁵

Mill believes that human cognitive capacities allow them significantly greater potential for happiness. He assigns “the pleasures of the intellect, of the feelings and imagination, and of the moral sentiments, a much higher value as pleasures than to those of mere sensation.”²⁶ When we save an animal’s life, we allow it to continue to enjoy beastly pleasures. When we save a human’s life, when she has so much more potential for enrichment and self-fulfillment, it results in much greater benefit for the individual and the world. Humans can strive for self-improvement; they can choose a life path and actively follow it, then find fulfillment from the completion of their goals. Animals, on the other hand, will benefit if their basic interests are met, but do not break the mold of instinctual living. A human has vast opportunities when leading a healthy life. If we had to choose between taking the leg of a human or a cow, we could consider the benefit that having all legs would yield to each. If the cow is permitted to keep its leg, it will be able to walk or run, and stand when giving milk. If a human is permitted to keep his or her leg, he or she will be able to play sports, mountain climb, walk his daughter down the aisle, dance, get on and off trains, and a plethora of other activities which can contribute to an enriching and adventurous life. The potential benefit is therefore clearly larger for the human, so we should prefer his or her basic interests, and take the leg of the cow instead.

Peter Carruthers calls the idea of animal suffering being equated with human suffering “intuitively abhorrent” based upon the disparities in the properties humans and animals possess. To illuminate this view, we can look at a specific example of how the human mental life might always result in greater suffering: suppose that a human went through life, without reflection, spending it working as a slave. This is comparable to the way a pack animal might live its life, and so we might be tempted to say that their suffering is the same, and that the servitude is equally bad in both cases. However, the human is capable of reflecting upon his or her life, whether or not he or she actually does so, and feeling “misery, frustration, and the sense of a life wasted.”²⁷ This requires the ability to reflect and remember different stages of his or her life. The idea, more generally, is that humans not only experience pain, but they also anticipate it, know it is coming, and suffer in fear of it. Then later, they suffer the memory of it, and for the opportunity cost of what they can imagine could have been. The awareness that you will get your leg amputated tomorrow is a type of anxiety an animal could not comprehend. After the pain is over, humans can also probably remember it more distinctly, and understand exactly what they are missing out on because of their handicap. The animal would not be able to remember all the ills that had befallen it, consider an alternative life, or mourn for things not having been otherwise.

²⁴ Francione, Gary L. "Animal Rights Theory and Utilitarianism: Relative Normative Guidance." Cal Poly College of Liberal Arts.

²⁵ Leahy, Michael P. Page 152-162. *Against Liberation: Putting Animals in Perspective*. London U.a.: Routledge, 1991.

²⁶ Mill, page 7.

²⁷ Leahy, page 196.

In the case of servitude or an amputation, the animal will suffer the pain in the moment, but will not suffer the mental trauma of mourning the life they could have had if things were different. It is Singer's principle of equality that a being's "suffering be counted equally with the like suffering—in so far as rough comparisons can be made—of any other being."²⁸ If we accept that humans always suffer more than animals, we can determine that basic humans always command greater consideration than basic animal interests.

In terms justifying our initial intuition, it is not clear that we can definitively say that the cognitive faculties like those of most humans result in greater suffering from betrayed interests, or greater benefit from the actualization of interests, than those faculties possessed by a great ape. Though comparisons may be rough, it is questionable whether the suffering of animals has been given due credit. It is true that some suffering is beyond animals: they will not be disappointed by the election this year, or be able to fear what we can tell them is coming. But isn't it plausible that greater anxiety comes from a dog not knowing exactly why he is being taken to the vet? Animals certainly appear to experience a great deal of anxiety when forced to reencounter traumatic places, which might indicate that they remember their past experiences. Perhaps primitive brains are more fear-wracked and engulfed in suffering because they lack the ability to imagine a future after the pain they experience. We could plausibly say that greater intellect results in the ability to rationalize suffering, and have hope for the future, while a primitive intellect will have no such salvation.

However, even assuming that the utilitarian account of how cognitive abilities increase suffering and benefit are accurate, the reasoning utilized does not elevate the basic interests of all individual humans above those of all individual animals, as is the desired result. The utilitarian account has a similar flaw to the personhood account: cognitive ability of the individual in question is a requirement for moral worth. Unlike the personhood account, cognitive properties are not directly being used to assign moral worth. Rather, they are used to increase or decrease the morally relevant characteristic: a being's capacity for suffering. Making cognitive faculties such as memory and intellect requirements for possessing morally weighty interests will result in huge disparities between humans. This may be acceptable in of itself, but more importantly, it puts many humans on par with some animals with regard to their moral consider ability.

Young humans and the mentally ill are often not capable of fearing impending pain, and are not more capable of remembering it than some animals. Therefore, using a mentally ill person to test cosmetics would be no more wrong than using a dog for the same end. The utilitarian view would not support either action, because cosmetics products do not create enough "good" to make up for the ill enacted. However, if laboratories kept mentally ill people in cages to test new cancer treatments in the same way that they currently use monkeys, it might be difficult on the utilitarian view to describe the moral wrongness of either action. More importantly for this paper, it would be difficult if not impossible for a utilitarian to describe any difference in wrongness between what is being done to the human and the monkey. It would be inconsistent treatment to say that the basic interests of all humans are more important than the basic interests of all animals.

There is, however, a level of consideration we can offer human babies and children on the utilitarian account. Singer challenges: "would the experimenter be prepared to perform his experiment on an orphaned human infant, if that were the only way to save many lives? ...If the experimenter is not prepared to use an orphaned human infant, then his readiness to use

²⁸ Singer (2006), page 569

nonhumans is simple discrimination.”²⁹ This same point made by Singer would make sense if he was talking about a mentally ill orphan, but healthy human babies come under a different defense than mentally ill people. Human children and babies, the utilitarian could argue, can have the same amount of wrong done to them as an average human adult. Though they lack mental capabilities at the moment, they have greater potential than any animal, and stunting them from achieving that potential by betraying their basic interests is more wrong than any action one could take against an animal.³⁰ No animal has the same potential to lead a fulfilling life on mental, physical and spiritual levels as a human baby.

Yet, the utilitarian cannot account for the moral value of cognitively challenged humans, and does not ensure the value of all humans over all animals. We cannot claim that the basic interests of all humans should be preferred over the basic interests of all animals without inconsistency in the utilitarian account.

The Rights Account

The rights account of the moral superiority of humans defines a distinction between rights and interests: rights are moral claims, while interests are wants with no morality attached. If a being possesses a right, that right warrants some level of moral attention. Beings have moral claims to their rights, which others must respect and ought not to violate without sufficient grounds.³¹ An interest, on the other hand, carries no moral requirement. I may be interested in owning my neighbor’s car, but he certainly has no obligation to give it to me, or even to let me borrow it. I cannot make any moral claim regarding my interest; it is simply my desire or will, and it is impossible for my neighbor to wrong me by ignoring it. However, since I have a right to my own property, my neighbor should give the lawn mower he borrowed back to me. He shouldn’t keep it, or damage it, and he would wrong me if he does either.

Cohen justifies our intuition by distinguishing which beings are capable of having rights. He thinks humans have interests and rights, such as the right to life. He argues that animals do not have rights, and have only interests. Therefore, in Cohen’s view, humans are morally significant in a way that animals are not: humans have certain rights which must be respected, while animals cannot be “wronged” because they don’t have rights which can be violated.³² Animals are not moral agents at all: they can neither do something morally wrong, nor have something morally wrong done to them.

To align this formulation of rights and interests with our feelings, Cohen reminds us of the natural order and predation. If people see a baby zebra being killed by a lion, they will not feel morally obligated to step in. In the natural world, without humans, beings have only interests, not rights. The lion is not committing any moral wrong, and no matter how grotesque the hunt, it is simply natural predation. However, if people see a lion hunting a human baby, they would certainly intervene, as “the human baby has the right not to be eaten.”³³ This example is supposed to reveal our instincts that animals, even cute baby zebras, cannot have right or wrong done to them.³⁴

²⁹ Singer (2006), page 573.

³⁰ Leahy, page 205.

³¹ Cohen, Carl, and Tom Regan. Page 17. *The Animal Rights Debate*. Lanham: Rowman & Littlefield, 2001.

³² Cohen and Regan, page 18.

³³ Cohen and Regan, page 30.

³⁴ Cohen and Regan, page 30.

Why is it necessary for animals to understand moral significance in order for them to possess morally significant interests? To have rights is to be a moral agent, and “to be a moral agent is to be able to grasp the generality of moral restrictions on our will”.³⁵ Cohen claims that the concept of right only applies to beings which understand moral requirements, and therefore animals are wholly excluded. Animals do not know that any conduct is right or wrong in a moral sense. The capacity to understand the difference between right and wrong is uniquely human.

Since we live in a moral community, which Cohen says is uniquely human, we have laws which officially acknowledge certain universal rights of humans’. Animals have made no such moral agreements in a moral community. They do not possess the power to demand a right in our community, and they would lack the ability to invoke or waive a right if we created one for them in our legal structure. This is not due to a lack of an ability to communicate, but to a fundamental disparity in the understanding humans and animals are capable of. Cohen explains that “the concept of a right cannot possibly apply to” animals, because the “concept of a right is essentially human”.³⁶ He claims it is not intelligible to say that animals possess any rights.

Cohen gives us a specific example: “Humans are capable of moral choice; therefore, humans must choose to allow themselves to be instruments of scientific research...this consent that we think absolutely essential in the case of human subjects is impossible for animals to give,” because they “cannot understand possessing moral authority over their own bodies.”³⁷ When a scientist wants to perform tests on a human subject, he may not do so without the human’s consent, both because of the standards of the moral community, and the individual’s ability to invoke them. Animals fall short when it comes to community, and the ability to invoke rights. Thus, Cohen can say that our intuition is accounted for, because the basic interests of humans will be protected by their rights, and we do not owe animals any similar consideration.

Though Cohen’s example does show that animals cannot claim the right to decide whether they are used in scientific experiments while some humans can, it does not show us that all humans can. If Cohen’s argument for what it takes to possess a right consisted in the understanding of morality alone, animals and humans who don’t understand moral stewardship of their bodies would not have a right over their own bodies. Not all humans fulfill the qualities which Cohen deems necessary to be a rights bearer. Some humans cannot understand the moral implications of rights for themselves or others, and they cannot participate in the moral realm of rights any more than animals. Also, not all humans are necessarily member of a moral community: they could be a member of a community with laws that grant rights to some members of society exclusively (such as the Caste system), or they could be socially isolated. It would seem, then, that some humans would not be able to claim rights any more than an animal.

Here, Cohen introduces a second argument, the Argument from Kinds, which is meant to dispel concerns that only some humans are rights-bearers on the rights account. The conclusion of this argument is intended to allow humans who do not have the necessary characteristics to possess rights to be rights bearers, without broadening the necessary characteristics to include any animals. If successful, Cohen would successfully answer our intuition, and avoid the inconsistency other accounts fall prey to, which Singer blames on speciesism.

Cohen states that all humans have rights because humans are the kind of thing to which rights obtain, while “animals are of such a kind that rights never pertain to them.”³⁸ He believes

³⁵ Cohen and Regan, 35.

³⁶ Cohen and Regan, pages 29-30.

³⁷ Cohen and Regan, page 37.

³⁸ Cohen and Regan, page 37.

that the criticism that some humans may lose or not possess the necessary characteristics to receive rights “mistakenly treats the essentially moral feature of humanity as though it were a screen for sorting humans, which it most certainly is not.”³⁹ Cohen believes this because “humans are of such a kind that rights pertain to them as humans; humans live lives that will be, or have been, or remain essentially moral.”⁴⁰ He thinks it is ridiculous to suppose that a failure of health could exclude some humans from their place in the moral realm, when rights only exist due to humans and their moral community. Individual humans cannot lose the moral consideration warranted to their kind just because they are personally not capable rights bearers. Animals are the kind of being which can never possess a right. Thus, the argument of Kinds separates all humans from all animals, even the marginal cases.

Jeff McMahan objects to Cohen’s argument of Kinds in several ways. Cohen wants to extend rights to all humans by using strange tool, “kinds.” McMahan illustrates the main problem with kinds: “the morally significant properties characteristic of a kind do not get to be a part of an individual’s nature simply because that individual possesses the closely but contingently correlated properties that are essential to membership in the kind.”⁴¹ Cohen wants to say that morality is essentially human, but clearly, the characteristics that we are addressing do not define humanity. The ability to understand morality is not required to be human. If it were, then those people who do not possess moral understanding would not be human at all. Human DNA is a property which is strongly correlated with moral understanding, but that doesn’t mean that the rights entailed by moral understanding can be extended to those who don’t have it, just because they also have human DNA. Since the features Cohen wants to call essentially human are not, in fact, required to be human, he cannot claim that resulting moral prize, rights, are universally human.⁴²

If however, one accepts the logic of kinds, it is not clear where the argument can and cannot be applied. If ordinary members of a particular kind have property B, then all members of that kind warrant the moral consideration demanded by B. Many assignments of rights, or judgments, are based upon the degree to which one has a particular characteristic. But if we ignore the individual and default to an individual’s “kind” to determine their moral status, moral considerations for the individual will be based upon their group.

Let’s assume that the argument from Kinds is in the right, and that men are smarter than women on average.⁴³ The difference between men and women may be slight, but it is still there. Consequently, an individual man will receive whatever moral consideration is warranted to more intelligent people, because he is of that kind. If two people apply for a spot at a top college, it is safe to assume that the smarter, more qualified individual should be granted entry. With these assumptions, if a dimwitted man and an intelligent woman applied for the same spot at a top college, the man should be accepted over the woman, because men are of the kind which is smarter. The individual man must be included in the moral consideration given to his kind, regardless of his personal characteristics. The woman cannot rise above the moral consideration of her kind, even though she possesses the properties which would seem to make her the better

³⁹ Cohen and Regan, page 37.

⁴⁰ Cohen and Regan, page 37.

⁴¹ Jeff McMahan. Page 358. [“Our Fellow Creatures”](#). *Journal of Ethics*. Volume 9 (3-4), 2005.

⁴² McMahan, page 358.

⁴³ After all, gender could easily be kind category as well. Cohen cannot claim that “kinds” only apply to different species, because that would be speciesist.

choice for higher education. This is sexist, and seems to be against our moral intuition, but if we believe in the logic that Cohen wants us to accept, it follows.

The argument from kinds is appealing because it “levels up” certain members of our species, giving them a status equivalent to our own and higher than that of the members of other species.”⁴⁴ But the same logic which allows us to level beings up also requires the possibility of “leveling down.”⁴⁵ McMahan illustrates the problem with the example of original sin. We can assume, as some theologians do, that if one has original sin, one should be sent to Hell, and that all humans have original sin. Therefore, we can determine that humans are of the kind that has original sin. If a human happened to be born without sin, she should still be sent to Hell. The status conferring property which her kind has, though she as an individual lacks it, still dictates the moral ramifications she should face. This is contrary to our current individualistic moral understanding. If a wildly intelligent ape emerged from the jungle, and had moral understanding rivaling a professor of ethics, scientists would be justified in taking the ape to a lab to perform cancer research on it. Even though this ape has the characteristics which Cohen deems necessary to have rights, it is of a kind which only has interests, and is therefore not capable of being wronged. Thus, the argument from Kinds results in consequences which are far too troubling for it to salvage the inconsistency of the rights account.

I reject personhood accounts, utilitarianism, and rights-based accounts as possible ways of justifying our intuitions regarding the moral status of animals. I propose, though it requires expansion beyond this paper, social contract theory as a legitimate position from which to prefer the interests of humans against those of animals.

Justifying our Intuitions through Rawls’ Social Contract Theory

I propose social contract theory as a legitimate position from which to prefer the interests of humans over those of animals. The social contract theory I will introduce for this purpose is Rawlsian contractualism.

Rawls’ project is meant to give us a tool to access principles of justice. Rawls provides a thought experiment to allow us to discover justice through an imaginary social contract.⁴⁶ We can use this thought experiment to understand what just treatment between people is. Rawls then intends us to model social institutions, like laws and other social contracts, after it.

In his thought experiment, Rawls wants to discover a just contract, which will reveal fair treatment and what each of us is due. To do this, he simplifies the world to an idealized society made up of people he calls “citizens.” Unlike in the real world, human citizens are the only potential subjects of direct duties. Other beings with interests that could potentially be morally significant, such as animals or plants, are not mentioned. Rawls requires two moral powers of the citizens: citizens must have a “sense of justice” and “the capacity for a conception of the good.”⁴⁷ These two powers give them the desire to find the good and the ability to contract.

But if all of the citizens got together and tried to create a contract to run their society, they would not make a fair one. Citizens would be swayed by all kinds of morally irrelevant factors. Those who are more powerful and forceful would be more likely to get their way, and

⁴⁴ McMahan, page 358.

⁴⁵ McMahan, page 358.

⁴⁶ He is not claiming that contracts create morality.

⁴⁷ Freeman, Samuel, "Original Position", *The Stanford Encyclopedia of Philosophy (Spring 2009 Edition)*, Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/spr2009/entries/original-position/>>.

those who were weak would be more likely to be ignored.⁴⁸ They would all be swayed by their particular philosophy and conception of the good, and the contract they created would not bring out the true principles of justice, which Rawls believes are based in fairness.⁴⁹

Therefore, Rawls maintains that the citizens must create their contract from behind the veil of ignorance, where they will not know the particular details of their actual lives. He uses this set-up because he believes that citizens do not, in a morally relevant sense, deserve their particular intellect, wealth, health, race, gender, philosophy etc. When these morally irrelevant details are stripped from a person she is in what Rawls calls the original position. Each contractor in the original position will become a citizen when the veil is lifted, but has no knowledge of what his or her identity will be.⁵⁰

The qualities that a contractor must have in order to create a contract that reflects justice are freedom, “in the sense that they are able to press claims on each other,” equality, as in “each can make proposals, submit reasons for their acceptance, and so on,” and independence, in that “they are mutually disinterested” concerning the interests of other contractors.⁵¹ These characteristics will not be stripped from a citizen when she is behind the veil.

Given the possibility that they could be anybody, contractors will endeavor to make a contract that is fair to all people, and will not undercut any member of society. Their choices will not be motivated by “sympathy or by envy, but rather each by a desire to do as well for himself as he can.”⁵² Rawls assumes that the contractors understand how to attain what they want, and therefore the rules they agree upon will ensure fairness. Rawls believes that ideas about justice in this ideal situation will converge, and much of his project is devoted to discovering that convergence. After all, everyone will want exactly the same thing: to do as well for himself as he can despite the lack of knowledge concerning personal identity.⁵³

It might seem, however, that not knowing what one’s conception of the good is might make it difficult to create any sort of agreement from the original position. Rawls believes there are good things that one would hope for regardless of his or her identity, such as health, income, liberty, powers, rights, a chance for self-respect, and opportunities.⁵⁴ These are good things which can be achieved through societal structures and agreements, which gives the contractors incentive to create a just contract these institutions can be modeled after.

The convergence on most matters the contractors would discuss is not important for this paper. Surely some of these issues would be more difficult than others: for example, it is difficult to imagine whether the contractors would agree that abortion is right or wrong, because it is unclear if a contractor could in actuality become the aborted citizen. This and other issues would be difficult to imagine from the original position because of our personal philosophies on moral issues.⁵⁵ However, I posit that the contractors in Rawls’ ideal society would agree that the basic

⁴⁸ Rawls, John. Page 136-137. *A Theory of Justice*. Cambridge, MA: Belknap of Harvard UP, 1971.

⁴⁹ Rawls, page 141.

⁵⁰ Rawls, page 137-141.

⁵¹ Cureton, Adam. Page 14. "A Rawlsian Perspective on Justice for the Disabled," *Essays in Philosophy*: Vol. 9: Iss. 1, Article 5. 2008.

⁵² Scanlon Jr., Thomas M. Page 1023. "Rawl's Theory of Justice." *HeinOnline*. University of Pennsylvania Law Review, 1972-1973. <<http://heinonline.org/HOL/Page?collection=psbasic>>.

⁵³ Rawls, page 140.

⁵⁴ Scanlon, page 1023.

⁵⁵ I am going to assume that Rawls can respond to critics of the social contract theory, and generally can defend it as a tool for discovering just principles, and what beings are owed.

interests of the citizens they will become should be preferred to those beings with interests which are not party to the contract. In Rawls' ideal society, and, as I will discuss more fully later, in the real world, animals cannot be contractors.

Regan levels a criticism against Rawlsian contractualism, saying: "Contractarianism⁵⁶ could be a hard view to refute when it comes to the moral status of animals if it was an adequate theoretical approach to the moral status of human beings" He challenges contractualism in the same manner as I have challenged many other theories attempting to exclude animals. He claims that Rawlsian contractualism "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."⁵⁷ Direct duties would be those which we owe to the children and the mentally challenged themselves, whereas indirect duties would be those duties which we perform for these groups, but not due to their own moral weight or respect for their interests.

Since Rawls' rational, free, and moral citizens are the only ones included in the contract he discusses, Regan accuses Rawls of denying that we have direct duties to marginal cases. He claims that Rawls' account leaves only indirect consideration for those humans who do not meet the qualifications to be citizens. Regan correctly finds fault with indirect duty views: something seems wrong if I can punch a child without wronging him or her, and instead only wrong those rational beings who are party to the contract and care for the child's welfare. If Rawlsian contractualism excludes marginal cases in the way Regan describes, we would grant babies moral consideration due to rational contractors who are concerned for the wellbeing of children, and include their interests in the contract. We would not give any moral weight to the children themselves.

However, Regan's criticism is not crafted against Rawls' intended project. Rawls says: "I put aside for the time being these temporary disabilities and also permanent disabilities or mental disorders so severe as to prevent people from being cooperative members of society in the usual sense."⁵⁸ The world Rawls describes for his thought experiment does not include cognitively disabled people, much less animals, as potential contractors. Rawls never meant to account for the real world and just principles in it, so his exclusion of marginal cases is not intended to be mirrored in a world which contains them. Rawls isn't even talking about ordinary people in our world: his project concerns idealized citizens in a single ideal society. Rawls "directs us to supplement and qualify the limited project when we set out to find principles of justice for a society like ours."⁵⁹ Modifying the nonessential features and the perfection of the world Rawls is describing in *A Theory of Justice* to give it qualities like our own, we can use Rawls' ingenious tool in our world. We can imagine the beings of our world creating a contract behind the veil of ignorance, and discover what each is justly due.

The pertinent feature of justice that Rawls focuses on is justice as fairness. He thinks that we ought to make moral decisions regarding the treatment of other humans as if we were all rational and just beings, ignorant of our personal identities.⁶⁰ He encourages us to imagine that

⁵⁶ Although many characterize Rawls' theory as contractualism rather than contractarianism, the differences between them are not important for this paper. Regan describes Rawls' theory as contractarian, but his challenge has nothing to do with the changes in terminology.

⁵⁷ Regan, Tom. Page 78. "Duties to Animals: Rawl's Dilemma," *Ethics and Animals*: Vol. 2: Iss. 4, Article 4, 1981.

⁵⁸ Rawls quoted in Cureton, page 15.

⁵⁹ Cureton, page 6.

⁶⁰ Friend, Celeste. "Social Contract Theory." Internet Encyclopedia of Philosophy.

upon completing the contract, our worst enemy would assign us our role in the world, because it tests our contract's consideration for the lowliest members of society.⁶¹ These are important features of Rawls' thought experiment, which will carry through to a thought experiment about our world.

In the real world, there would be more possibilities for personal identities than Rawls himself puts forth. He discusses identities that differ in matters such as one's conception of the good, and race, whereas we must consider people who have no conception of the good at all, who resemble vegetables more than rational citizens. However, just as in the contract of Rawls ideal society, the characteristics of the citizens do not match up with the characteristics of the contractors. "The original position is a purely hypothetical device" where "there is no presumption...that the characteristics of the parties in the original position must be the same as the features of the citizens for whom the principles are chosen."⁶² Even though young children lack the rationality that Rawls deems essential for contract making, this does not mean that they will also lack rationality and the ability to act as contractors in the original position.

However, if the characteristics that a being has in reality indiscriminately fail to match up with the characteristics of its corresponding contractor, all beings with interests could potentially participate in the social contract.⁶³ We could assign trees contractors to defend their interests from the original position, with all of the necessary characteristics of freedom, equality, and independence. Even though trees themselves lack these characteristics, they could still demand rights with humans from the original position. Anything with a conceivable interest could get to stake their claims in the contract. When the veil is lifted, we would have to consider those claims that were accepted by all contractors as the tenants of justice. If contractors were revealed to be representing animals, plants, and trees, we would have direct duties to them like we do to human contractors. Animal's basic interests would surely be equal to those of humans if they could contract as equals. How do we know which beings can make claims in the contract?

I propose that in order to be able to participate in the social contract, a being must be capable of participating in the social contract from its own original position. The qualifications for one to be capable of being a contractor are rationality, independence, equality, and freedom. Admission into the contract is having these characteristics when stripped⁶⁴ of life stage, defect,

⁶¹ Freeman

⁶² Cureton, page 12.

⁶³ It would be speciesist to say that only humans can participate in the contract. Any being that has interests may possibly have rights, regardless of species.

Rawls' veil of ignorance removes particular knowledge of morally irrelevant features of the citizens in order to prevent them from altering the contract in unjust ways in order to grant themselves rights they aren't truly owed (such as a rich man trying to get better terms for rich men in the contract). One of the modifications of his project that is important for our world is not to remove knowledge of morally irrelevant features from the contractors, but rather to remove morally irrelevant features from the contractors. This is just as easy to imagine, and allows beings with full life stories to receive just consideration in more plausible ways. I will give two examples in Rawls' ideal account to describe the importance of this modification: Even ideal citizens will be babies at some point, but Rawls does not discuss the justice owed to citizens when they are very young. All people will lack moral understanding when they are infants, yet it would be troublesome for us to say that infants are not recipients of justice. Even if an infant dies, and never has moral understanding, we want to be able to say that it was still a recipient of justice. But infants cannot be capable contractors behind the veil of ignorance if the knowledge of their age is all we remove; not knowing that one is a baby will not allow one moral powers that one is capable of only after infancy. However, removing infancy from the equation, citizens will have

and other morally irrelevant details, such as religion, personal philosophy, gender, and economic status.⁶⁵ A contractor will have the necessary characteristics for contracting when all disease, age related impairments, accidents, and misfortunes are no longer hindering them.

How does this principle pick out humans, but not animals and other beings with interests? A tree, when stripped of its particular characteristics such as its particular leaf shape, size, broken branches and age, will not be able to contract. So, when using our tool for determining justice, we would not consider the submissions of a tree in the original position for inclusion in our contract. Quite simply, there would be none; the tree in the original position does not have the necessary attributes to uphold promises or claim rights in a contract. Therefore, when we are modeling our actual laws and actual social contracts after the contract created in the original position, there is no need to imagine that trees have rights, or that we have direct duties toward them.

An individual animal, free from accidents, could also not imaginably participate in a contract. Animals lack the ability to make and uphold promises, the understanding to demand rights, and the desire to seek justice. Never has an animal demonstrated the level of rationality and moral understanding required to be capable of participating in a contract. However, Singer questions: “if it is unfair to take advantage of an isolated defect, why is it fair to take advantage of a more general limitation,” such as being an animal?⁶⁶ The crucial difference between a “general limitation” and “defect” is what that means for an individual behind the veil of ignorance. Defects are part of a life story which could have been otherwise for an individual, and are not morally relevant. Limitations are part of all individual beings and particular things, no matter how events unfold. All humans, animals, and rocks have limitations. But it is only those things which could have been otherwise for an individual which reflect “the arbitrariness of the world,” and must “be corrected for” in the circumstances in which the contract is created.⁶⁷ An individual animal is limited in its cognitive capacities, because no matter the conditions it is faced with in life, it will never have moral understanding. When referring to a cat in the original position, where it is free from accidents or particular features, such as a love of tuna or dislike of vets, it would not be capable of contracting. No alternative life story of a cat would result in it

the moral understanding that they would have just in case they were not infants, but some other age instead. If we remove knowledge, rather than morally irrelevant factors, it seems that people can lose their place in the contract in troublingly common situations, because they will still suffer what morally irrelevant situations can make them lack. If a sleeping man were thrust behind the veil of ignorance, and then knowledge of his sleep were removed, he would not be a capable contractor, because the contractor would not *gain* consciousness. He would merely lose knowledge of whether or not he was asleep in the real world, along with knowledge of his gender, political views, age etc. The contractor will not, when he loses the knowledge of his state of consciousness, regain the cognitive capacities that were lost when the man he is representing went to sleep. But if a sleeping man is not a capable contractor, he is not a recipient of justice. It would be far too troubling to claim that when people sleep they are not recipients of justice, even if they do not wake up at the end of it. Being asleep is not a morally relevant factor, yet removing knowledge of sleep does not remove the restriction sleep places upon one’s cognitive faculties. That is why it is essential that we remove sleep from the man behind the veil, rather than just making him ignorant of it. This new method of describing the original position follows Rawls’ conception of what morally irrelevant features are, and achieves Rawls’ end for the original position: to allow contractors to create a contract without being influenced by morally irrelevant factors of their life on earth.

⁶⁵ Rawls, page 137.

⁶⁶ Singer (2008), page 81.

⁶⁷ Rawls, page 141.

having the necessary cognitive capacities to contract. If all the beings with interests were behind the veil, the contract was made, and then the veil was lifted, no being which was revealed to be an animal would have participated in the contract's creation.

On the other hand, no human is excluded from participating in the contract in the original position. Dementia, youth, fetal alcohol syndrome, head injuries, mental disorders etc. are all defects which will be stripped away from individual contractors. Without these defects, individual humans of every race, class, gender, and personal identity will be capable of understanding and participating in the contract. There is no cognitive or physical disability a human can be stricken with that can result in him or her not being a direct participant in the contract. Even if a mentally ill person cannot understand moral rules in reality, from the original position, she will not be stricken with disease. Her inability to contract in actuality does not change her imaginable participation in the social contract, when details of a life story such as mental illness are removed. It is not until the veil is lifted, and the contract is already made, that maladies will be inflicted.

All humans in the original position would be on equal footing when it comes to the possibility of disability when our identities are revealed. Every contractor would want to be afforded certain rights and decent treatment in the event that they turned out to have dementia. Whether or not the actual dementia patient can understand rights or demand them does not affect his or her wanting them from the original position. Therefore, our social contract, which in and of itself reveals just principles, will no doubt include rights and direct duties for those who are not capable of claiming it themselves, including children, the disabled, and socially isolated people.⁶⁸

One might think, however, that the features we pick to strip away in the original position are speciesist. We remove the defects and parts of personal identity, while leaving others (rationality, independence etc). With this specific trait removal process, it becomes questionable whether the traits selected are legitimate, or whether they are merely traits designed to pick out humans and exclude other beings from being contractors. On what grounds can we strip away some features, and leave others? To say that a contractor must not be stripped of its species in the

⁶⁸ This is not to say that we have no duties toward animals, or that they have no moral status at all. My result would be problematic if it could not provide an explanation for why people should not torture animals for fun. When imagining the contract from the original position, I think contractors would grant non-contracting beings with interests some level of moral consideration. Wilderness, flora, and fauna cannot be owed anything, but they still could be included in the contract. They cannot impose direct duties on contractors, but contractors can serve as trustees, and include protection for animal interests in the contract. As discussed above, basic interests of active contractors will be respected above interests of non-contractors, but puppy skinning will probably not be morally acceptable to rational contractors. If contractors include in their contract appropriate treatment of pets, domestic animals, and wild animals, these beings will receive some moral consideration indirectly. If we put in the contract that we must not kill other's pets, then pets cannot be killed without wronging another contractor. The pet itself cannot be wronged, because it is not promised anything. We also need not worry that animals will achieve equal moral status to humans through their trustees: No matter my personal identity, I will want my fellow contractors to prefer my interests to those of animals who are not party to the contract. I will want my fellow citizens to give me food and shelter before a starving animal in the case that I am poor, to protect me from being eaten by starving animals in the case that I am not physically fit, and to allow me to kill animals for my own basic interests without legal repercussions. Therefore, it is relatively easy to imagine that the basic interests of humans would be preferred to those of animals if humans alone are contracting behind the veil of ignorance.

original position is to say that species is a morally relevant feature. This claim is speciesist, as pointed out by Regan:

To allow that the original contractors know that they will become human beings, when they are “incarnated,” is to prejudice the question of who is owed the duty of justice in favor of human beings and against animals from the outset. This prejudicial backdrop of the original position not only offends against the requirement that we be impartial in our assessment of relevant interests; what is more, to allow the original contractors to know that they will be human beings but not animals runs counter to what the “veil of ignorance” is supposed to accomplish. That veil cannot be thick enough if, while denying those in the original position knowledge about, for example, what race or sex they will, when they come to be in the actual world, it nevertheless allows them to know the species to which they will belong.⁶⁹

If I contract considering all personal traits and maladies I could face as defects in the real world, it seems that being a different species is not too far a stretch of the imagination. In addition to imagining that I could become a person with Down syndrome, I could also contract considering the possibility that I could be a horse or a chicken when the veil is lifted.

From behind the veil, however, these concerns can be allayed: First of all, species will be stripped away in the original position. If I am a contractor, it is a safe bet that I will be human when the veil is lifted, judging by all evidence of the world we live in thus far. But if it turns out when the veil is lifted that I am a super-intelligent animal, the rights I have claimed in the contract will still be mine. If we are presented with an animal with the mental capability of an ethics professor, we can surely imagine it contracting with humans in our thought experiment.

If species is a feature which can be stripped away, should contractors attend to the possibility that they could be any species when the veil is lifted? If I am a contractor considering the possibility that, among other defects and personal identities, I might in fact be a horse or a chicken, I am a horse or a chicken that possesses an intellect never before seen in such an animal. I could not be contracting if I were an ordinary horse or chicken, because ordinary horses and chickens do not possess the necessary characteristics to contract when stripped of defects. If it turns out that I am a very intelligent cow, then I am owed exactly what I claimed in the contract before I knew my species.

One might also claim that our conception of defect is speciesist. If we are determining that defect is based upon what is expected of a particular kind of being, and the normal features of a species, we fall into the same pit as Cohen. But I do not appeal to kind in my account. It is not a question of “is this the *kind of* being which can participate in the social contract from the original position,” it is a question of “is this a being which can participate in the social contract from the original position.” The original position brings out the potential of the individual life when stripped of defect, not about the norm which the being could have been closer to. Defect is not matter of deviation from the norm; it is a matter of deviation from what an individual being could have been had circumstances been different. With this notion of defect, I avoid the problems that the rights view had, of individuals receiving the moral consideration warranted to normal members of their group. We are not looking to the norm of a group to determine who is a contractor behind the veil; we are looking to individuals and their capacities, and imagining what

⁶⁹ Regan, page 78.

they themselves would have been when free from defects. When the veil is lifted, among all of the humans could be revealed a super intelligent dog. This dog would then receive the moral consideration it would have claimed in the social contract. It will not be evaluated based upon its kind, but rather its individual characteristics.

The claim that “being an animal” is somehow a defect that must be strip away and *replaced* with rationality, freedom etc., is an abuse of our intuition concerning the definition of “defect.” No alternate life path for an individual animal would render it a contractor. We can point to where a marginal human lost their contracting capability, and how if things had gone differently for them, they could have retained it. A child who suffered fetal alcohol syndrome might fail to understand promises because it has a defect. We understand that the child would have grown up differently, and had the necessary capability, had its mother not drank while it was in vitro. Therefore, behind the veil and ignorant of life path, the child can understand promises. A dog does not have a defect which renders it incapable of understanding promises. Erasing fetal alcohol syndrome from a person’s life story would leave us with a being capable of contracting. Removing “dog” from a being’s life story would not.

For example, let’s imagine twin apes walked out of the jungle, and one had the intellect rivaling an ethics professor, and the other acted like an ordinary ape. Due to his mental capacity, the first ape would surely be a contractor behind the veil of ignorance, and is owed the appropriate moral consideration. If he told us that his twin was of a comparable intellect, and contracted a disease, or hit his head, or suffered some other tragedy, his twin would receive the same moral consideration. If the details of the twin’s life, save his rationality, freedom, etc., were removed, he would be a contractor. It would merely be a surprise when the veil was lifted that he was actually an ape, and it is merely a defect of his life that he no longer retains his rationality, freedom, etc.

What status does participation in the contract grant to humans, but not to other beings which possess interests? The contract we create in the original position is meant to inform us of justice, and the result is that humans are warranted a kind of justice which animals are not. Because they are contractors, humans are direct recipients of justice, which are owed things, have rights, and are subjects of direct duties. Even if in reality they can’t actively claim or understand these things, Rawls thought experiment shows that justice applies directly to all contractors. Since humans can directly include their basic interests such as the right to flourish, the right to life, rights to their own body, and the right to protect themselves in the contract, these interests are warranted by justice. A human will wronged if his or her basic interests are violated, while an animal cannot be wronged, because it itself not promised anything by the principles of justice. Therefore, we can justify our intuition that the basic interests of humans deserve greater consideration than the basic interests of animals through Rawlsian contractualism.

What does this tell us about how we should treat animals? This paper leaves many questions about the appropriate treatment of animals unanswered. For example, for many people, it is not a matter of life and death whether or not animals can be used for food or clothing. Since this paper only addresses the basic interests of humans and animals, I have made no comment on farming animals for food or fashion when it is not essential to human life. Yet, I have taken an important step toward the discovery of what the appropriate treatment of animals is, and why conduct should be different toward animals when basic interests are in conflict. We can kill animals when human lives depend on it, and when humans need essential resources, the interests of animals should always be secondary. This is true for all humans and all animals: my account avoids inconsistency when treating the basic interests of marginal humans differently than the

basic interests of animals. Without first knowing that we can treat the basic interests of all humans and all animals differently, we cannot begin to understand the full picture of how animals should be treated.

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