

*Contractarianism: On the Incoherence of the Exclusion of Non-Human Beings**

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Abstract

Although the practices of animal experimentation and intensive rearing involve a considerable amount of animal suffering they continue to be supported. Why is the suffering of animals in these practices so often accepted? This paper will explore some of the reasons given in support of the use of animals for such practices. In particular I will focus on contractarianism as one of the many positions that argues that morally relevant differences between species justify animal experimentation and factory farming. These differences include rationality and moral agency. On this position non-humans are excluded from direct moral concern on the basis that they lack such qualities. I will argue that in order for contractarianism to be coherent it necessarily has to include non-humans in the contract. This has implications for the application of contractarianism to the ethics of factory farming and animal experimentation.

1. Introduction

Animal experimentation and factory farming involve a considerable amount of suffering of animals, but continue to be supported by the majority of people. What are the justifications given in support of these practices? In order to answer this question it is necessary to discuss the arguments that justify the exclusion of animals from any genuine moral concern, and thus support the use of animals in these practices.

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The aim of this paper is to give a critical analysis of contractarianism and its exclusion of animals from the moral sphere. My analysis will take as its starting point John Rawls' and, more recently, Peter Carruthers' idea of the "veil of ignorance". Then I will examine the idea that we only have indirect duties toward animals. Finally, I will discuss the idea that rationality and moral agency are the necessary capacities for entry into a moral contract. I will show that although contractarianism excludes animals from direct moral concern animals need to be included if contractarianism is to be coherent.

2. The Veil of Ignorance

John Rawls' contractarianism excludes animals from deserving fair treatment on the basis that they lack the capacity for moral agency. Only rational humans can enter into his contract, whereby questions of justice are answered by those who are impartial in their decision making, and can make moral deliberations behind "a veil of ignorance" (Rawls, 1999, pp. 118-23). For Rawls, only humans can be represented in the moral arena, humans being the only species capable of moral agency (Rawls, 1999, p. 448). More recently, Peter Carruthers has developed a case against the moral standing of animals based on contractarianism, that is, the theory that a system of rules chosen behind a "veil of ignorance" by rational beings would be a just and fair one (Carruthers, 1992, p. 98). The rational beings in the contract would not have any knowledge of their own interests or preferences, and so the rules would be impartial. This position limits moral consideration to rational contracting individuals, which excludes animals.

This is objected to by animal welfarists. Animals do have interests and, as such, they should be given consideration. They argue that contractarianism could extend moral consideration to animals by appointing rational beings into the contract to act as representatives of animals' interests. Carruthers sees this as a problem because, firstly, as representatives are supposed to make choices behind a veil of ignorance it would lead to representatives having to have a prior bias in favour of animals and animals being given equal rights with human beings, and this is not the "common-sense view of animals" (Carruthers, 1992, p. 99).

Carruthers' idea of the contract is that rational agents choose rules impartially. If agents act as representatives of the interests of animals, impartiality no longer exists, since this implies that the agents have a partial belief in the moral standing of animals. Moral rules are no longer chosen behind a veil of ignorance and the original idea of what constitutes morality no longer exists (Carruthers, 1992, p. 100).

Secondly Carruthers sees including animals in the contract as a problem because once animals' interests are included it becomes difficult to find a reason why other things should not be included. Do we also have to include trees, stones or viruses? (Carruthers, 1992, p. 99)

In response to this latter objection, one could reply to Carruthers by pointing out Goodpaster's argument that only living things have interests and moral

standing, and that the distinction between moral significance and moral standing prevents recognition of the moral standing of living creatures generating counterintuitive implications (Goodpaster, 1978, pp. 308-25).

In response to Carruthers' first objection, that including representatives of animals' interests would lead to bias and to animals being treated equally to humans, Carruthers needs to establish, first, that including representatives of the interests of animals would lead to those representatives being biased in favour of animals, and that this would lead to animals being treated the same as humans. One can act in favour of animals without being biased in one's judgments. Besides, if humans are impartial in their decision making, as Carruthers says they should be, then there should be no problem of a bias in favour of animals. Indeed, for Carruthers, the whole point of the veil of ignorance is that individuals in the contract should not be biased or subjective in their decision-making. If contracting individuals can be biased in favour of animals then they can be biased in favour of humans too, and contractarianism, with its "veil of ignorance", would not be coherent.

Also, recognizing the interests of animals should not lead to the similar treatment of humans and animals. Taking into account animals' interests would actually lead to different treatment of animals and humans. Extending moral consideration to animals would not mean treating them in the same way we treat humans, recognizing that they have the same rights as humans, or, indeed, recognizing that they have any rights at all.

Contractors under the veil of ignorance or in the original position will need to have some idea of the needs and preferences of humans in order to answer questions of justice. For Carruthers and Rawls, contracting individuals in the original position do have some general knowledge of human society, including general knowledge about economics, psychology and social organization. What they do not have is more specific knowledge, including knowledge of their own mental or physical capacities, knowledge of their own ideas of what counts as a good life, knowledge of their own economic place in society, or knowledge of the particular features of their society. Also the contractors will not know what their mental and physical capacities will be once deliberations of justice have been made (Carruthers, 1992, p. 98; Rawls, 1999, pp. 118-9). As contractors they should strive to create a society that is just and fair, if not for everyone else then at least for themselves, for it may be that they are in a disadvantaged position in society.

There is a real problem within Rawlsianism in contracting individuals representing anyone and not being merely egoistic. The contractors are not actual people, adjusted to society. They are imaginary, non-bodily, prospective people, and are not yet embodied. Decisions that are just, for Rawls, are those that a rational, autonomous individual would choose. The contractors in the original position are to recognize individuals as rational, autonomous agents, just like themselves. Just rules are those that the contractors themselves consider to be just. But how are those in the original position supposed to make rules on be-

half of others from such an abstract position? The contractors are assumed to act in their *own* best interests, and assumed to be self-interested, that is, they are to choose rules of justice that any rational, autonomous agent, much like *himself* or *herself*, would choose.

Seyla Benhabib argues that the contractors are “disembodied and disembedded” from actual concrete reality, and that such an abstraction ignores differences, like gender differences (Benhabib, 1992, p. 152). The problem is that the contractors are to make rules based on decisions as to what “I”, as a contracting individual, would choose were I, say, in a disadvantaged position in society, yet the “I” has no knowledge of such a position. Benhabib believes that we need a less abstract account of the self if we are to take seriously the interests of individuals. We can only make just and fair decisions from a concrete, embodied position (Benhabib, 1992, p. 170).¹

The Rawlsian conception of justice proceeds from an assumption that rationality requires abstracting one’s self from society in order to obtain an impartial viewpoint, but, in doing so, it ignores difference and diversity among individuals, cultures and, one should add, species, and thus the Rawlsian goal of equality becomes somewhat unattainable from such a disinterested position.

It should perhaps be said that, for Rawls and Carruthers, the particulars of the situation can be taken into consideration at some point in our moral delib-

¹ Susan Okin has interpreted the contractors in the original position as being motivated by empathy, sympathy and benevolence (Okin, 1989, p. 229-49). For Okin, Rawls’ original position is one in which feelings play an important role in making decisions of justice. Rawls does say that “the combination of mutual disinterest and the veil of ignorance achieves much the same purpose as benevolence” (Rawls, 1999, p. 128). But, the question needs to be asked as to how such a combination can achieve this purpose. It is not the case that those in the original position are moved by benevolence, but rather that the original position is supposed to have the same function as benevolence. There is then a problem as to how disinterestedness can serve the same purpose as benevolence. Indeed, it is difficult to see how one can be sympathetic or empathic, yet, at the same time, remain disinterested. Rawls says that “the sense of justice is continuous with the love of mankind” (Rawls, 1999, p. 417). But, he goes on to say that the “difference between the sense of justice and the love of mankind is that the latter is supererogatory, going beyond the moral requirements” (Rawls, 1999, p. 417). For Rawls, moral feelings are independent of our rational choices: “Our moral sentiments display an independence from the accidental circumstances of our world, the meaning of this independence being given by the description of the original position and its Kantian interpretation” (Rawls, 1999, p. 416). Emotions then are independent of decisions made in the original position. They do not influence the disinterestedness of the contracting parties. Besides this, to empathise requires knowledge of a person’s life situation. But those in the original position do not have such knowledge. Even if one accepts that those in the original position are not egoistic, they are still far removed from concrete reality. They are still, as Benhabib says, “disembodied” (Benhabib, 1992, p. 152). Indeed, Benhabib quotes Okin as saying “But what sense does it make to talk of mutually disinterested individuals pursuing their interests when [...] they have no knowledge of them?” (Okin, 1989, p. 242, quoted by Benhabib, 1992, p. 166). While Okin’s interpretation of Rawls theory is insightful in giving one a fuller understanding of the role of the emotions, one should not underestimate the dominance of the role of rationality and disinterestedness. If moral feelings, such as empathy, do play a role in Rawls’ theory then it is only within the context of taking the particulars of a situation into account and, thus, only after moral deliberations have been made from the original position.

erations, but only *after* rules have been made from the unencumbered position. Decisions are made, first, by the abstract individuals under the veil of ignorance and then applied to society, and it is at this point that the particulars can be taken into account. But without prior, specific knowledge of other beings or of one's self, decisions made by those individuals in the contract carry the risk of being unjustified and, to a large degree, dangerous.

From knowledge of one's own interests then knowledge of other beings' interests can be inferred, and it is from this knowledge that deliberations of justice can be made. For example, I can infer from my own interests and preferences that it is wrong, all other things being equal, for humans to be restricted from the freedom to physically move around. I say "all other things being equal" because it may be the case that it is not wrong to confine someone. This is when specific knowledge of a human should be considered. Knowledge of the specifics would enable one to make decisions in the best interests of the individuals concerned and society.

However, Rawls makes decisions and deliberations of justice made by individuals who have *no* specific knowledge of themselves or other beings definitionally just. What counts as just, for Rawls, is based on fundamental assumptions about justice; justice being whatever rational, autonomous, disinterested agents would choose. But a theory of justice based on such assumptions runs the risk of being very unjust.

Contrary to Carruthers' belief, in order for the moral contract to be a fair one it is important that the particulars of the case in question be taken into account. Not all humans have the same interests and needs. The same would apply in the case of animals. For agents to act on behalf of animals they would need to have prior knowledge of themselves, and some sort of specific prior knowledge of animals. They would need to have knowledge of the species-specific interests of different animals, not just the basic interests of animals. Confining some animals may not actually do them any harm, while confining other animals may be detrimental to their well-being. Decisions that promote the well-being of one animal may not promote the well-being of another.

It seems then that answering questions of justice can never be possible without some knowledge of one's own case and of the other relevant individuals, and is not as simple as making decisions from behind a veil of ignorance. Having no knowledge of the particulars of the interests of humans or animals would result in no fair decisions being made. Indeed, it seems that the contrary is actually the case. Acquiring knowledge of the interests of humans and animals (knowledge that is both specific and more general), is all-important if one is to act as a representative of those interests.

Thus, the Rawlsian framework of justice should be rejected. That we can make decisions of justice from such an abstract position as the veil of ignorance seems unlikely at best, incoherent at worst.

3. Contractarianism and Animals

Mark Rowlands tries to rescue contractarianism from this problem of coherence (Rowlands, 1998, p. 58). He argues that ideas about contractarianism's "veil of ignorance" and "original position" have been misunderstood. Being in the original position is not about being able to disembodify oneself. It is about being able to recognize most of one's interests, beliefs and preferences, while, at the same time, being able to withhold the recognition that one has certain specific beliefs, interests or preferences. Being in the original position is about being able to restrict one's reasoning about oneself and morality (Rowlands, 1998, p. 136).

For Rowlands, contractors in the original position need to imagine *that* they do not have a particular property, or interest. They do not have to imagine *what* it would be like not to have any interests, preferences, or other properties all at the same time.

The rational beings in the contract choose rules by imagining what they would want those rules to be if they did not have certain properties. In this way those in the original position are debarred from knowledge of their characteristics, and also (or so Rowlands suggests) from any knowledge of their species. When making decisions from behind the veil of ignorance those in the original position do not know that they are men or women, human or nonhuman. If they can imagine, say, that they are not men, it is also possible for them to imagine that they are not human. Furthermore, it is not necessary for the contractors to imagine what it would be like, say, not to be man, or not to be a human, in order to imagine that one is not a man, or not a human.²

Rowlands applies his view of contractarianism to the ethics of factory farming and animal experimentation. The bad consequences humans would have to endure if they were to become vegetarians, and animal experiments were phased out, can be compared with the bad consequences animals have to endure from the practices of intensive rearing and animal experimentation. Humans would actually suffer very little by becoming vegetarians and by a phasing out of animal experiments compared to what farm animals and experimental animals actually suffer through intensive rearing methods and animal research (Rowlands, 1998, p. 149). The contractors in the original position do not know what species they belong to and if one does not know whether one is a human or an animal subjected to suffering in the practices of factory farming or animal research then the most sensible choice for humans would be a large scale implementation of vegetarianism and funding into other methods of research (Rowlands, 1998, p. 150).

² I believe that Rowlands makes the distinction between imagining that one does not have a certain property and imagining what it would be like not to have that property in order to somehow try and counteract the abstractness of the veil of ignorance and to reply to a common objection to including representatives of animals interests, the objection being that we can not include representatives of animals' interests because we do not know what it is like to be an animal. It is often argued that since we can not imagine what it would be like to be an animal, we can not, therefore, represent animals' (or that animal's) interests.

Rowlands' would-be rescue of contractarianism and inclusion of animals is creditable but unconvincing, as the notion of rational choosers of indeterminate species is barely coherent. Again, if we had no knowledge of our needs or species then it would be impossible to make any kind of moral choices.

How is one to make rational choices if one has to, at the same time, imagine that one is not rational? This does not seem possible. Also the distinction between imagining that one does not have a certain property and imagining what it would be like if one did not have that property is a false dichotomy. When one imagines that one is not, say, female, one automatically imagines what it would be like if one were not female. Indeed, to imagine that one does not have a certain property *is* to imagine what it would be like if one did not have that property. It is hard to see how the two imaginings are so distinct.

The only way to rescue contractarianism from the problem of coherence is to move away from the original position as the starting point upon which moral deliberations are made, and move toward a more coherent position whereby rules of justice are made by those who have knowledge of the particulars and not just generalized knowledge. For the contract to be a just and fair one interests need to be represented and, for interests to be represented, differences and diversities need to be recognized, and this includes animal interests and species differences. Ignoring the diversity of interests would result in no just or fair decisions being made.

4. Indirect Duties

Carruthers' contractarianism is based on the idea that rationality is the characteristic deemed necessary for inclusion in the moral sphere and that only humans are capable of rationality. For Carruthers, only those that are capable of moral agency are able to enter into the contract, and as rationality is required for moral agency it follows that only humans are included in the contract.

Animals, though, do have indirect consideration. Many people care about animals, and are upset at the sight of animals suffering, and we should, therefore, not treat them in any way we please. For Carruthers, it is not because of the moral standing of the animals themselves that we should not inflict unnecessary suffering upon them, but because "suffering to an animal would violate the right of animal lovers to have their concerns respected" (Carruthers, 1992, p. 107).

It is in the interests of humans that we should be constrained in our treatment of animals. The mistreatment of animals in public is therefore prohibited as it upsets humans. For Carruthers, this indirect duty is in line with our common-sense view of morality, which is that although we should not treat animals as we please, the interests of humans will always override those of animals (Carruthers, 1992, p. 107). Such a constraint does not prohibit the practices of factory farming or animal experimentation, as Carruthers sees these as involving necessary suffering for important human interests, and, since these practices should all be hidden from the public, distress caused to people by seeing the animals suffer is where

possible ruled out (Carruthers, 1992, p. 107).

I do not know why or how animal suffering supposedly violates the rights of animal lovers. Indeed, if animals do not matter in themselves why would anyone get upset about animals suffering? Claiming that we do not even have an indirect duty to constrain our treatment of farm animals simply because their suffering cannot be seen by the public is absurd. For whether we can see their suffering or not the fact remains that the suffering still occurs.

Suppose there were no animal lovers and everyone was a Cartesian? On Carruthers' view it follows that we can treat animals as we please because there are no humans who will become upset at the sight of animals suffering. It also follows that it is unreasonable for humans to campaign against the suffering of animals in other countries, as the campaigners cannot see the suffering taking place. The suffering of animals in countries other than one's own would not be wrong because it cannot be seen.

Pet animals, too, can be abused at will on Carruthers' view. It follows from this view that it is not wrong for us to kick our pets as long as no human, who may be upset at the sight of this cruelty, sees what we are doing. There is obviously a serious contradiction here. Pets are by definition cared for and, because of this, in line with Carruthers' view, they should be given some protection in the interests of humans. However, on the other hand, this view actually permits unlimited cruelty to pets.

His view also implies that if we hear someone being cruel to an animal we should not interfere in any way, because, although we can hear the cruelty going on, we cannot see it, and, therefore, it is not wrong. It would also follow that media exposures of practices that cause suffering to animals are all immoral. However, this is absurd. People should perhaps in reality recognize more of an obligation to have tighter restrictions on the treatment of animals in the private domain, as they will probably suffer more abuse where their suffering can be hidden.

We may regard human life as of greater significance than animal life, and we may give human interests greater significance than animal interests, but this does not mean that animal interests should not be taken seriously and it certainly does not follow that the suffering of animals is permissible if this suffering cannot be seen. Another problem with this indirect duty is that most people believe that it is wrong to inflict suffering on animals because of what is done to the animals themselves independently of human concerns. Most people do not like seeing animals suffer, but this is because the animals themselves are hurt, and not because these people feel that, as animal lovers, they should be respected.

If it really is the concerns of animal lovers that matter why should people even be concerned about animals, and how could they even be concerned? That is, if animals are of no moral worth, are there even indirect duties to them? Indeed, is it possible or rational to say that we could be cruel to something that has no moral value, or does not matter? It is as if one could say, "Why are you getting upset over the sight of that dog whining in pain? The dog doesn't matter, and

is no concern of yours. Indeed, how can you get upset over such a thing? It is irrational to get upset over it, just as it irrational to get upset over a stone being kicked down the road. Stones don't matter either. They have no value in themselves and can not suffer." Is it that Carruthers denies that animals can suffer, as well as denying that they have value in themselves? He does not seem to deny that animals can suffer. But, how does he suppose that people can care about animals if animals do not matter in themselves? Such feelings would seem to be extremely unreasonable.

Most people do believe that we have duties toward animals whether the animals are in the public eye or not. Carruthers' reply to this problem is that animals that are suffering in the private domain may, for some reason or another, be exposed to the public resulting in the upset of humans (Carruthers, 1992, p. 108). This consideration does not even touch upon the problem of animals suffering in the private domain. It is not that Carruthers refuses to accept that animals may have interests of their own, but that he just denies that their interests are important (Carruthers, 1992, p. 9).

5. Rationality and Moral Agency

The differences between animals and humans are used as a justification for their use in experiments and intensive rearing and as a justification for not giving them the moral consideration we give to humans. In fact, objective differences are appealed to as a justification for not giving animals any moral concern at all.

The problem with this is that animals do have interests. At the very least sentient animals have an interest in not suffering. Indeed, the reason why researchers use sentient animals in their experiments is because they are so similar to us. If this were not the case then the results of medical research could never be extrapolated to humans. Researchers would be unable to claim that experiments on animals can tell us things about humans, or give us new, beneficial medical knowledge if they were not like us. They assume the obvious fact that animals do feel pain. Therefore they do have interests. This is what makes them objects of our moral concern and gives them standing in the moral sphere.

Appeals to differences between "them" and "us", like rationality or moral agency (as justifications for such practices) will just not do. Obviously there are many humans whom we would not consider rational or moral agents, such as babies or severely mentally disabled people. However, we would think it wrong if we did not give such humans moral consideration. So why use this as the criteria that make it justified to cause, or not to cause, suffering?

Also, how is one to judge what level of rationality entitles a being to be an object of moral concern? And if we assume we can make such judgments there is the further problem of how one is to judge levels of rationality between individual members of species. And how is one to compare the rationality of one species with the rationality of another?

There are, then, problems concerning the quantification of rationality, but

whether the level of rationality has to be high or low for moral entitlement there will always be some animals that will qualify. How can we experiment on animals because they have a lesser degree of rationality than most humans when we would see experimenting on a newborn baby as morally wrong? If rationality is the criterion for moral standing, how can we say that babies, or the insane, are to be given the same moral consideration as healthy, adult humans? I do not think we can. Also, how can we say that all humans should be given equal consideration, irrespective of objective differences, such as rationality? We can not do this either if we base moral considerations on the capacity for rationality.

6. Conclusions

By restricting members of the contract to rational humans capable of moral agency it would seem that contractarianism denies moral consideration to non-rational humans who lack moral agency. However, Carruthers argues that humans that are not capable of moral agency or rationality can be accounted for in the contract by humans that are capable (Carruthers, 1992, pp. 114-8). But this leaves contractarianism open to the question of why animals should be excluded from the contract. If humans that are not capable of agency or rationality can be accounted for by those that are capable, then contractarianism must also include animals as suitable candidates, otherwise Rawls' theory of "justice as fairness" (Rawls, 1999, p. 10) seems very unjust and unfair. Besides this, contractarianism has not shown that animals are not rational. If humans who are not capable of rationality are included it is hard to justify excluding animals.

If contractarianism is to work as a consistent theory then animals and humans not capable of moral agency fail to qualify as candidates for moral consideration. However, the suggestion that these humans should be excluded is unacceptable to most contractarians. But there is no justifiable reason for supposing that humans not capable of agency should be included as candidates for moral consideration while animals are excluded. Since contractarianism includes these humans then, to be coherent, it also needs to include animals.

However, contractarianism's lack of consistency in its treatment of humans and animals is not the only reason why the theory is problematic. The idea that contractors can make moral and just decisions from under a "veil of ignorance" is barely coherent. It seems impossible that any individual could make just rules from such an abstract position. A coherent theory of justice needs to seriously consider individual interests, and this would require acquiring knowledge of those interests, including animal ones.

Contractarianism also needs to recognize direct duties toward animals. Saying that our obligations to animals are really obligations toward animal lovers is not plausible in the least.

7. Summary

I have looked at appeals to rationality and moral agency as arguments in favor of excluding animals from moral consideration. Although these characteristics are often appealed to as justifications for factory farming and animal experimentation, such appeals can be refuted, since it is clear that many humans also lack these characteristics.

Besides this, however, appealing to species differences as a justification for animal exploitation is detrimental, in particular, to the case in favor of experimentation. For if there are such significant differences between species, how is one to extrapolate research results from animals to humans? One cannot argue that animal experiments are justified because animals are so different from humans and then say that similarities between animals and humans allow us to extrapolate research results to humans. One cannot have it both ways.

Appeals to characteristics cannot be used as a means for the justification of factory farming and animal experimentation. The possession of particular capacities, such as rationality or agency, is not what gives a being standing in the moral sphere. It is a being's interests that make that being an object of moral concern. Farm and experimental animals do have interests. They, therefore, do qualify as candidates for our moral concern. The fact that they do have interests means that there are moral questions that should be asked about our treatment of them in modern day practices.

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