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Three Approaches to the Ethical Status of Animals

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Introduction

In recent years, the topic of the ethical status of n
animals has become a legitimate focus of philosophical
Attempts to justify the widespread practice of giving l
consideration to the vital interests of animals (the mo
one being the interest in avoiding suffering) have been
from several different ethical perspectives. This lectu
explore three of the most common perspectives utilita
ism, natural rights theory, and social contract theory
explain why none of them is likely to justify activitie
factory farming and (at least most) animal experimentat
Despite the existence of a vigorous and vocal animal ri
movement, the majority position is that the moral statu
mals is vastly inferior to that of human beings. While
ple may be somewhat disturbed at learning the details o
tory farming methods and many medical and psychological
experiments involving animals, relatively few seriously
lenge the moral permissibility of such practices. The s
in this regard appears to be that, minor details aside,
ment of animals raises no serious moral questions
discuss the utilitarian approach in section 1, where I
that the utilitarian case against the status quo is ove
In section 2, I will consider various attempts to defen
tus quo from within a natural rights framework, and wil
that all such attempts fail. Finally, in section 3, I w
social contract theory, which appears to hold ou
hope for the defender of the status quo with respect to
treatment of animals. In a recent book, Peter Carruther
vigorously defended the view that social contract theor
justify the claim that all and only humans have basic m
rights. His approach, he claims, provides the only sati
way to justify giving greater weight to the interests o
retarded humans than to those of animals with equal or
cognitive capacities. That is, it gives an answer to wh

monly called the argument from marginal cases. I wil
both that social contract theory fails to give such an
and that all the well›known versions of the theory actu
the question against attributing basic moral s›tanding t
mals. The ways in which both a natural rights approach
social contract approach attempt to answer the argument
marginal cases embody a deeply flawed view of morality.

1. Utilitarianism

Most forms of utilitarianism consist both of a theory
good and a theory of the right. The theory of the good
what states of affairs are intrinsically valuable or de
while the theory of the right tells us what actions are
wrong, morally obligatory or morally forbidden. The sta
utilitarian account of the good is that happiness, or m
broadly, well›being, is intrinsically good, and unhappi
intrinsically bad. The early utilitarians Jeremy Bentha
a certain extent, John Stuart Mill, equated ha›ppiness w
sure and unhappiness with pain. More recent utilitarian
broader account of well›being, some including ›desire sa
tion as an essential component, but most agree that pain
other forms of suffering are intrinsically bad. All suffering is
bad, not just my suffering, or that of my family, or na
race, or species. The standard utilitarian account of t
that the right action is that action, of all possible a
that results in the greatest balance of good over bad.
than one action results in the same balance of good ove
and no actions result in a greater balance, all such ac
right, although none is obligatory. Any action that is
wrong. This approach to the rightness and wrongness of
actions can also be applied to moral evaluations of cha
rules, social practices and institutions, and so
example, a system of government will be judged morally
acceptable or unacceptable by a utilitarian depending c
whether there are any viable alternative systems th
result in a greater net balance of happiness.

So what does utilitarianism say about the ethical sta
animals? Consider an animal abuser who tortures dogs ar

out of malevolent curiosity. Our common moral sensibili
appalled by such behavior. Utilitarianism provides a cl
nation of what is wrong with the abuser s behavior. The
and cats are made to suffer for no sufficient reason. I
respect, the utilitarian answer accords with ordinary i
But the utilitarian approach also calls into question m
monly accepted animal agriculture and experimentation.
short lives of many millions of chickens, pigs, cows, a
raised for human consumption, are filled with suffering
experimental subjects, such as rats, mice, rabbits, and
keys, are also made to suffer in the process of medical
chological, and product research. Perhaps we could deny the
moral significance of this treatment of animals by deny
they feel pain. It is often claimed that this was Desca
tion, though the truth, as I will explain shortly, is m
cated. Whatever Descartes and his contemporaries may ha
thought, however, it is hard to find anyone today who s
ly claims that animals don t feel pain. The evidence th
do, both physiological and behavioristic, is simply ove
ing. It seems, then, that in order to justify the wides
infliction of animal suffering, a utilitarian will have
a pretty hefty outweighing benefit. What are the prosp
such an argument to succeed?

Perhaps a utilitarian defender of the status quo will
she needs to argue for a large benefit to outweigh anim
fering. Perhaps she will say that I was mistaken to cla
all suffering is intrinsically bad. It is only human suff
is intrinsically bad, she might say. Or perhaps she wil
that animal suffering is, indeed, bad, but not nearly a
human suffering. What reason could she supply for such
ential concern for animal suffering? Perhaps she will c
animal suffering is of lesser (or no) moral significanc
animals themselves are of lesser (or no) moral signific
They have less intrinsic value than humans, or maybe no
all. While this line of reasoning is fairly common in
cussions of the ethical status of animals, it is not on
a utilitarian can appeal. Utilitarians hold that certai

states have intrinsic value and disvalue, not types of
Talk of an individual creature s intrinsic valu
stood in terms of the intrinsic value of the life of th
which in turn amounts to the intrinsic value of the sta
ally the mental states) that comprise the life. G
oretical primacy of judgements about the intrinsic valu
mental states of individuals, claims about the intrinsi
the individuals themselves cannot be used to justify cl
about the intrinsic value of the individuals mental st
may well be that the typical human life is of greater i
value than the typical bovine life, but this will be be
human life is comprised of a greater and richer variety
riences, emotions, hopes, aspirations, and the like. Th
ings, however, of a cow, considered in and of themselve
of no lesser (or greater) moral significance than the l
ings of a human being.

There is one other line of reasoning open to a utilit
deny moral significance to animal suffering. Consider t
lowing partial characterization of what Derek Parfit ca
Preference›Hedonism:

> On the use of pain which has rational and moral
> significance, all pains are when experienced
> unwanted, and a pain is worse or greater the
> more it is unwanted.[1]

Some might even claim that it is part of the very con
pain that it is unwanted. Even if we deny this, it seem
ble to say that a pain is only bad to the extent that i
ed. If someone really doesn t care about a pain, in and
it is hard to see how the pain could be intrinsically b
could, of course, be associated with something that is
mentally bad, such as bodily damage.) I am told that ce
drugs leave pain qualitatively unchanged, but remove th
ject s desire that the pain cease. I find this hard to
but, to the extent that I can, I would, perhaps, judge
pains were not intrinsically bad. So what does this hav
with animals? Recall Descartes. Although he didn t deny
animals have sensations, such as pain, he did

they have what he called thoughts, which included bot
beliefs and desires. (His argument for this, which I wo
explore here, has to do with animals lack of linguisti
If animals are incapable of desire, they are, a fortiori, inca-
pable of desiring that painful sensations cease. This w
provide a desire-satisfaction utilitarian with a reason
ethical status to animals.

So, what should we say about the denial that animals
desires? At first sight, it seems almost as unbelievabl
denial that they feel pain. Only a philosopher could ma
an obviously false claim with a straight face. Recall s
other outrageous claims made by philosophers over the a
motion is impossible; all is flux; all is water; there
thing as weakness of will; the physical world is just a
of ideas; the unregulated free market will work to the
of all. Of course animals want things. Any pet owner can tel
you that. However, as someone who has been known to mak
some seemingly outrageous claims myself, I cannot dismi
one without at least examining an argument for it.

A philosopher who has recently argued that animals do
have desires is R.G. Frey. Here, briefly, in his own wo
argument:

> I may as well say at once that I do not think tha
> animals can have desires. My reasons for think-
> ing this turn largely upon my doubts that animals
> can have beliefs, and my doubts in this regard
> turn partially, though in large part, upon
> view that having beliefs is not compatible with
> the absence of language and linguistic ability.[2]

So, why does Frey claim that desires require beliefs? H
example he uses to argue for this claim:

> Suppose I am a collector of rare books and
> desire to own a Gutenberg Bible: my desire to
> own this volume is to be traced to my belief that
> I do not now own such a work and that my rare
> book collection is deficient in this regard. . .
> without this belief, I would not have this desire[3]

I don t wish to dwell on this part of Frey s argument,
more interesting claim is that beliefs depend on lingui

ty. However, it is worth pointing out that, even if we
example of the desire for a Gutenberg Bible depending o
belief, it may well be that other, perhaps more basic,
such as the desire for food, don t depend on beliefs. S
of his claim that beliefs require linguistic ability? H
again, still on the example of the Gutenberg Bible:

> Now what is it that I believe? I believe that my collection lacks a Gutenberg Bible; that is, I believe that the sentence My collection lacks a Gutenberg Bible is true. In constructions of the form I believe that, what follows upon the that is a declarative sentence; and what I believe is that that sentence is true. The difficulty in the case of animals should be apparent: if someone were to say, e.g., The cat believes that the door is locked, then that person is holding, as I see it, that the cat holds the declarative sentence The door is locked to be true; and I can see no reason whatever for crediting the cat or any other creature which lacks language, including human infants, with entertaining declarative sentences and holding certain sentences to be true.[4]

The most obvious flaw with this reasoning is that it ge
an infinite regress. According to Frey s approach,
that my collection lacks a Gutenberg Bible just is m
that the sentence My collection lacks a Gutenberg Bibl
true. But by the same reasoning, my belief that the
My collection lacks a Gutenberg Bible is true just i
that the sentence the sentence My collection lack
Gutenberg Bible is true is true. And so on. How plaus
for example, that my belief that my collection lacks a
Gutenberg Bible just is my belief that the sentence th
tence the sentence the sentence the sentence My col
lacks a Gutenberg Bible is true is true is true is

Perhaps a less problematic way of tying beliefs and d
to language could be found, but it seems doubtful t
could do the moral work necessary for justifying the in
suffering on animals. There may well be a whole rang
beliefs and desires that do require linguistic ability. Howev

the ethically significant ones, such as the desire that
cease, do not seem to do so. Even if we define desires
a way that no nonlinguistic creature has them, there is
some mental state of the suffering dog that is im
similar to a human s desire that the pain cease.

So much for any utilitarian attempt to dismiss the in
ethical significance of animal suffering. Isn t it none
sible that the suffering involved in factory farming an
experimentation is outweighed by the benefits thereby p
duced? Notice that a utilitarian demands of
or institution not that it result in a greater amount o
than unhappiness, but that it resul balance of hap greater
piness than available alternatives (ignoring the possib
ties). This detail is important, though sometimes ignor
discussions of the justifiability of factory farming an
experimentation. Let me illustrate the difference, with
erence to a common criticism of utilitarianism. Some cr
charge that utilitarianism is defective on the grounds
could be used to justify the institution of slavery. Im
say, a society with a small number of slaves and a larg
ber of free citizens. Perhaps the slaves are exceedingl
py. Perhaps, indeed, the unhappiness of each slave is m
times greater than the happiness of each free citizen.
if there are enough free citizens, their happiness will outw
the unhappiness of the slaves. But this is still not en
the system to be justified on utilitarian grounds. Perh
free citizens could have been just as happy, or even ha
a society without slaves. In which case, assuming that
slaves would have been happier not being slaves, there
have been a bigger balance of happiness over unhappines
the free society. (The point of this example is not to
utilitarianism couldn justify some system of slavery, but to
point out that the possibility of such a system
fied on utilitarian grounds is even more remote than it
initially appear.)

The relevance of this point to the moral status of fa
farming and animal experimentation should be clear. To

a particular practice that inflicts significant sufferi
it is not enough to argue that the benefits of› the prac
ably to humans) are greater than the suffering of the a
What needs to be argued is that nothing like as much be
could be achieved without significant animal suffering.

Consider first the system of factory farming. What ar
benefits to humans from such a system? Many will claim
the chief benefit is a plentiful supply of cheap
other animal products. Given the health risks of consum
large amounts of animal products, however, it is
doubtful whether this is a benefit at all. If ›meat and
mal products were in shorter supply and consid
more expensive, many people would in fact live healt
lives. Let s suppose, however, what is almost certainly
that many people s lives would be, on balance, worse wi
the availability of cheap factory farmed meat and other
products. Nonetheless, would the difference such availability
makes be greater than the suffering of the animals? Giv
availability of cheap nutritious vegetarian foods, the
obviously no. Even if you correctly believe that your l
be worse without cheap meat, it strains credibility to
that it would be worse by even as much as the suffering
factory›raised chicken. Although my concern in this tal
practices that inflict significant suffering on
worth pointing out that there are also strong utilitari
to object to the whole practice of raising animals for
including genuinely humane farming techniques. In addit
considerations of health, there is the point that it is
efficient use of natural resources to grow plant protei
animal protein. In a world whose human populat›ion has r
ly surpassed six billion, this constitutes a p›owerful m
son.

What of animal experimentation, though? Aren›t there
mous benefits to humans (and maybe other animals) that
only be achieved through the use of animals in research
won t explore this empirical question in detail here. I
require more than a cursory glance at the literat

though, to conclude that huge numbers of animal
iments provide little or no benefit, and could never ha
reasonably expected to do so. Many drugs are tested on
mals in order to compete on a market already glutted wi
drugs that do the same job. Much psychological research
ly confirms what commonsense tells us, and serves only
advance the career of the researcher. Even many of thos
experiments that do, arguably, give results that have b
applications may not be justified on utilitarian ground
only a lesser benefit could have been achieved without
suffering. Nonetheless, the difference in benefit may w
smaller than the suffering in question.

It is sometimes objected that we cannot apply a utili
approach to the justification of individual experiments
we simply never know when we might make a significant
breakthrough. If we had to justify each experiment in a
we wouldn t justify any, and would thereby miss out on
that do lead to great benefits. If the utilitarian appr
been used in the past, it is claimed, we would have mis
on many of the beneficial advances in medicine. This li
reasoning, though, either fails in its own terms or beg
question against the utilitarian approach. Either the
fits from the use of animals in research really do outw
animal suffering or they don t. If they do, an expected
calculation will give the result that at least some exp
are justified. If they don t, the fact that we would mi
the benefits if we abandoned animal research is not
cient, morally, to justify such research. But perhaps s
of research will claim that we simply never know w
experiments will result in benefit, even though, on bal
benefits outweigh the harms. So we can never justify an
iment in advance, on utilitarian grounds, even though w
good reasons to believe that the practice of animal exp
tation as a whole can be so justified. This response as
too pessimistic a view of our powers of prediction. Res
don t select lines of enquiry at random, simply hoping
lucky. There is plenty of evidence on which to base dec

It is surely reasonable that, in order to justify the c
tion of suffering on animals, there has to be some reason to
expect a significant benefit. In the absence of such a
we cannot simply resort to the claim that the unexpecte
sometimes happens. Despite these considerations, there
well be some animal experiments that are justified on u
an grounds, but it is likely to be a small fraction of
actually performed.

To summarize the conclusions of the present section,
seems clear that a utilitarian approach to morality wil
such widely accepted practices as factory farming and a
most animal experimentation. Whatever benefit, if an
comes from such practices is simply not enough to just
amount of suffering involved.

2. Natural Rights Theory

In this section I will discuss an approach to the eth
tus of animals that, for the sake of convenience, I ref
natural rights theory. This approach focuses on ident
certain natural features or properties of individuals c
as the basic grounds for the attribution of differing e
tus. So, for example, rationality has often been claime
grounds for the superior ethical status of human beings
animals. For the purposes of this discussion, to claim
humans have a superior ethical status to animals is to
that it is morally right to give the interests of human
weight than those of animals in deciding how to behave.
claims will often be couched in terms of rights, such a
rights to life, liberty or respect, but nothing turns c
minological matter. One may claim that it is generally
kill humans, but not animals, because humans are ration
animals are not. Or one may claim that the suffering of
counts less than the suffering of humans (if at all), b
humans are rational, and animals are not. These claims
proceed through the intermediate claim that the rights
humans are more extensive and stronger than those (if a
animals. Alternatively, one may directly ground the jud

about the moral status of certain types of behavior in
about the alleged natural properties of the individuals
Much of the debate over the moral status of abortion pr
along these lines. Many opponents of abortion appeal to
tures that fetuses have in common with adult humans, in
to argue that it is, at least usually, just as s
to kill them as it is to kill us. For example, John Noo
that it is the possession of a full human genetic code
grounds the attribution to fetuses of this exalted et
tus. Such an argument may, but doesn t have to, proceed
through the intermediate claim that anything that posse
full human genetic code has a right to life. Many propo
the moral permissibility of abortion, on the other hand
features such as self-consciousness or linguistic abili
essary conditions of full moral status, and thus deny s
tus to fetuses.

What can a proponent of this approach say about the e
cal status of animals? The traditional view, dating bac
to Aristotle, is that rationality is what separates hum
morally and metaphysically, from other animal
greater understanding of the cognitive powers of some a
mals, recent philosophers have often refined the claim
the kind and level of rationality required for moral re
Let s start with a representative sample of three. Con
these claims of Bonnie Steinbock:

> While we are not compelled to discriminate among people because of different capacities, if we can find a significant difference in capacitie between human and non-human animals, this could serve to justify regarding human interests as primary. It is not arbitrary or smug, I think, to maintain that human beings have a dif ferent moral status from members of other species because of certain capacities which are characteristic of being human. We may not all be equal in these capacities, but all human beings possess them to some measure, and non-human animals do not. For example, human beings are normally held to be responsible for what they do. . . . Secondly, human beings can be expected to

> reciprocate in a way that non›human animals cannot. . . . Thirdly, . . . there is the desire self›respect.[5]

Similarly, Mary Anne Warren argues that the rights of are generally stronger than those of sentient beings wh not persons. Her main premise to support this conclusi following:

> [T]here is one difference [between human and non›human nature] which has a clear›moral rel evance: people are at least sometimes capable of being moved to action or inaction by the force of reasoned argument.[6]

Carl Cohen, one of the most vehement modern defenders o what Peter Singer calls speciesism states his positio lows:

> Between species of animate life, however between (for example) humans on the one hand and cats or rats on the other the morally rele vant differences are enormous, and almost uni versally appreciated. Humans engage in moral reflection; humans are morally autonomous; humans are members of moral communities, recognizing just claims against their own inter est. Human beings do have rights, theirs is a moral status very different from that of cats or rats.[7]

So, the claim is that human interests and/or rights are or more important than those of animals, because humans sess a kind and level of rationality not possessed by a How much of our current behavior towards animals justifies depends on just how much consideration should given to animal interests, and on what rights,› if any, sess. Both Steinbock and Warren stress that animal int need to be taken seriously into account. Warren claims mals have important rights, but not as important as hum rights. Cohen, on the other hand, argues that we shoul actually increase our use of animals.

One of the most serious challenges to this defense of status quo involves a consideration of what philosopher to as marginal cases. Whatever kind and level of rati

selected as justifying the attribution of superior mora
humans will either be lacking in some humans or pre
some animals. To take one of the most commonly suggeste
features, many humans are incapable of engaging in mora
reflection. For some, this incapacity is tem
the case with infants or the temporarily cognitively di
Others who once had the capacity may have permanently l
it, as is the case with the severely senile or the irre
comatose. Still others never had and never will have th
ity, as is the case with the severely mentally disabled
base our claims for the moral superiority of humans ove
mals on the attribution of such capacities, won t we ha
exclude many humans? Won t we then be forced to the cla
that there is at least as much moral reason to use cogn
deficient humans in experiments and for food as to use
mals? Perhaps we could exclude the only temporarily dis
on the grounds of potentiality, though that move has it
problems. Nonetheless, the other two categories would b
nerable to this objection.

I will consider two lines of response to the argument
marginal cases. The first denies that we have to attrib
ferent moral status to marginal humans, but maintains t
are, nonetheless justified in attributing different mor
animals who are just as cognitively sophisticated as ma
humans, if not more so. The second admits that, strictl
ing, marginal humans are morally inferior to other huma
proceeds to claim pragmatic reasons for treating them,
usually, as if they had equal status.

As representatives of the first line of defense, I wi
arguments from three philosophers, Carl Cohen, Alan Whi
and David Schmidtz. First, Cohen:

> [The argument from marginal cases] fails; it
> mistakenly treats an essential feature of human
> ity as though it were a screen for sorting
> humans. The capacity for moral judgement that
> distinguishes humans from animals is not a test
> to be administered to human beings one by one.
> Persons who are unable, because of some dis

> ability, to perform the full moral functions natu ral to human beings are certainly not for that reason ejected from the moral community. The issue is one of kind. . . . What humans retain when disabled, animals have never had.[8]

Alan White argues that animals don t have rights, on grounds that they cannot intelligibly be spoken of in t guage of a right. By this he means that they cannot, fo ple, claim, demand, assert, insist on, secure, waive, o der a right. This is what he has to say in response to argument from marginal cases:

> Nor does this, as some contend, exclude infants, children, the feeble-minded, the comatose, the dead, or generations yet unborn. Any of these may be for various reasons empirically unable to fulfill the full role of right-holder. But . . . logically possible subjects of rights to whom the full language of rights can significantly, howeve falsely, be used. It is a misfortune, not a tautol ogy, that these persons cannot exercise or enjoy, claim, or waive, their rights or do their duty or fulfil their obligations.[9]

David Schmidtz defends the appeal to typical characte of species, such as mice, chimpanzees, and humans, in m decisions on the use of different species in experiment also considers the argument from marginal cases:

> Of course, some chimpanzees lack the charac teristic features in virtue of which chimpanzees command respect as a species, just as some humans lack the characteristic features in virtue of which humans command respect as a species. It is equally obvious that some chimpanzees have cognitive capacities (for example) that are superior to the cognitive capacities of some humans. But whether every human being is superior to every chimpanzee is beside the point. The point is that we can, we do, and we should make decisions on the basis of our recognition that mice, chimpanzees, and humans are rele vantly different types. We can have it both ways after all. Or so a speciesist could argue.[10]

There is something deeply troublesome about the line argument that runs through all three of these responses

argument from marginal cases. A particular feature, or
features, is claimed to have so much moral significance
presence or lack thereof can make the difference to whether a
piece of behavior is morally justified or morally outra
then it is claimed that the presence or lack of the fea
particular case is not important. The relevant question is
whether the presence or lack of the feature is normal. Such an
argument would seem perfectly preposterous in most othe
cases. Suppose, for example, that 10 famous people are on trial
in the afterlife for crimes against humanity. On the ba
clusive evidence, five are found guilty and five are fo
guilty. Four of the guilty are sentenced to an eternity
ment, and one is granted an eternity of bliss. Four of
cent are granted an eternity of bliss, and one is sente
an eternity of torment. The one innocent who is s
to torment asks why he, and not the fifth guilty person
go to hell. Saint Peter replies, Isn t it obvious, Mr.
are male. The other four men Adolph Hitler, Joseph Stal
Richard Nixon, and Milton Friedman are all guilty. Ther
the normal condition for a male defendant in this trial
The fact that you happen to be innocent is irrelevant.
of the five female defendants in this trial, only one w
Therefore, the normal condition for female defendants i
trial is innocence. That is why Margaret Thatcher gets
heaven instead of you.

As I said, such an argument is preposterous. Is the r
the argument from marginal cases any better? Perhaps it
be claimed that a biological category such as a species
natural, whatever that means, than a category like a
male (or female) defendants in this trial. Even se
the considerable worries about the conventionality of biolo
categories, it is not at all clear why this distinction
morally relevant. What if it turned out that there were
cally relevant differences in the mental abilities of m
women? Suppose that men were, on average, more skilled
manipulating numbers than women, and that women were, o
average, more empathetic than men. Would such differenc

what was normal for men and women justify us in prefe
an innumerate man to a female math genius for a
an accountant, or an insensitive woman to an ultrasympa
icman for a job as a counselor? I take it that›the biol
tinction between male and female is just as real as tha
between human and chimpanzee.

A second response to the argument from marginal cases
to concede that cognitively deficient humans really
an inferior moral status to normal humans. Can we, then
such humans as we do animals? I know of no one who takes
the further step of advo› cating the use of marginal
for experimentation or food. How can we advocate this s
response while blocking the further step? Warren sugges
there are powerful practical and emotional reasons f
tecting non›rational human beings, reasons which are ab
the case of most non›human animals. Here is Steinbock
similar vein:

> I doubt that anyone will be able to come up with a concrete and morally relevant difference that would justify, say, using a chimpanzee in an experiment rather than a human being with less capacity for reasoning, moral responsibility, etc. Should we then experiment on the severely retarded? Utilitarian considerations aside, we feel a special obligation to care for the handi capped members of our own species, who can not survive in this world without such care. . . In addition, when we consider the severely retarded, we think, That could be me. It makes sense to think that one might have been born retarded, but not to think that one might have been born a monkey. . . . Here we are getting away from such things as morally relevant dif ferences and are talking about something much more difficult to articulate, namely, the role feeling and sentiment in moral thinking.[11]

This line of response clearly won t satisfy those who
that marginal humans really do deserve equal moral cons
ation with other humans. It is also a very shaky basis
to justify our current practices. What outrages human

bilities is a very fragile thing. Human history is litt
examples of widespread acceptance of the systematic
treatment of some groups who didn t generate any sympat
ic response from others. That we do feel a kind of symp
retarded humans that we don t feel for dogs is, if true
tingent matter.

Perhaps we could claim that the practice of giving gr
weight to the interests of all humans than of animals i
fied on evolutionary grounds. Perhaps such differential
has survival value for the species. Something like this
be true, but it is hard to see the moral relevance. We
ly justify the privileging of human interests over anim
ests on the grounds that such privileging serves
interests!

Although the argument from marginal cases certainly p
a formidable challenge to any proposed criterion of ful
standing that excludes animals, it doesn t, in my view,
tute the most serious flaw in such attempts to justif
tus quo. The proposed criteria are all variations on th
Aristotelian criterion of rationality. But what is the
vance of rationality? Why should we think that the poss
of a certain level or kind of rationality renders the p
interests of greater moral significance than those of a
sentient being? In Bentham s famous words, The questio
not, Can they reason? nor Can they talk? But, Can they

What do defenders of the alleged superiority of human
ests say in response to Bentham s challenge? Some, such
Carl Cohen, simply reiterate the differences between hu
and animals that they claim to carry moral significance
are not members of moral communities; they don t engage
moral reflection; they can t be moved by moral reasons; there
fore(?), their interests don t count as much as ours. O
such as Steinbock and Warren, attempt to go further. He
Warren on the subject:

> Why is rationality morally relevant? It does not
> make us better than other animals or more
> perfect. . . . But it is morally relevant insofa

> it provides greater possibilities for cooperation
> and for the nonviolent resolution of problems.[12]

Warren is certainly correct in claiming that a certain kind of rationality is morally relevant. Where she, and who give similar arguments, goes wrong is in speci what the moral relevance amounts to. If a being pable of moral reasoning, at even the most basic level, incapable of being moved by moral reasons, claims, or a ments, then it cannot be a moral agent. It cannot be to moral obligations, to moral praise or blame. Punishi for doing something wrong is no more than an attempt alter its future behavior. So long as we are undeceived the dog s cognitive capacities, we are not, except metaphorically, expressing any moral judgement about th dog s behavior. (We may, of course, be expressing a mor judgement about the behavior of the dog s owner, who di train it very well.) All this is well and good, but wha nificance for the question of what weight to give to an interests? That animals can t be moral agents doesn t seem to be relevant to their status as moral patients. Many, perhaps most, humans are both moral agents and patients. Most, perhaps all, animals are only moral patients. Why would lack of moral agency give them diminished status as mor patients? Full status as a moral patient is not some reward for moral agency. I have heard students complain regard that it is unfair that humans bear the burdens of moral responsibility, and don t get enhanced consideration of interests in return. This is a very strange claim. Huma subject to moral obligations, because they are the kind tures who can be. What grounds moral agency is simply diff ent from what grounds moral standing as a patient. It i more unfair that humans and not animals are moral agent than it is unfair that real animals and not stuffed toy patients.

One other attempt to justify the selection of rationa criterion of full moral standing is worth considering. suggestion that rationality is important insofar as it

cooperation. If we view the essence of morality as reci
the significance of rationality is obvious. A certain
all›too›common, interpretation of the Golden Rule is th
should do unto others in order to get them to do unto
There s no point, according to this approach, in giving
any, consideration to the interests of animals, because
simply incapable of giving like consideratio
ests. In discussing the morality of eating meat, I have
times, heard students claim that we are justified in ea
meat, because the animals would eat us, if given half
chance. (That they say this in regard to our practice
cows and chickens is depressing testimony to their know
of the animals they gobble up with such gusto.) I
as there is a consistent view being expressed here
concerns self›interest, as opposed to morality. Whether
serves my interests to give the same weight to the inte
animals as to those of humans is an interesting questio
is not the same question as whether it is right to give animals
interests equal weight. The same point, of course, appl
the question of whether to give equal weight to my inte
or those of my family, race, sex, religion, etc., as to
other people.

Perhaps it will be objected that I am being unfair to
gestion that the essence of morality is reciprocity. Re
important, not because it serves my interests, but because it
serves the interests of all. Reciprocity facilitates co
which in turn produces benefits for all. What we shoul
about this depends on the scope of all. If it include
tient beings, then the significance of animals ina
reciprocate is in what it tells us about how to give their›inter
ests equal consideration. It certainly can t tell us th
give less, or no, consideration to their interests. If,
hand, we claim that rationality is important for recipr
which is important for cooperation, which is important
efiting humans, which is the ultimate goal of morality
clearly begged the question against giving equal consid

to the interests of animals.

It seems that any attempt to justify the status quo w respect to our treatment of animals by appealing to a m relevant difference between humans and animals will fai least two counts. It will fail to give an adequate answ argument from marginal cases, and, more importantly, it fail to make the case that such a difference i relevant to the status of animals as moral patients as to their status as moral agents.

3. Social Contract Theory

For the would-be defender of the status quo, the most promising ethical approach is social contract theory, o tractualism. Given its classical expression in Hobbes s *Leviathan*, Rousseau s *The Social Contract*, and Locke s *Second Treatise on Government*, contrac-tualism views morality a some sense a human construct. If human beings were to l without rules, in what Hobbes and Rousseau refer to as of nature, life would be, in Hobbes memorable phrase tary, poor, nasty, brutish, and short. It would then b interests of everyone to agree to abide by certain rule as a rule against killing others, on condition that oth agree. The content of the agreement, or contract, provi rules of morality. It is no part of the theory that the such an agreement. The contract itself is an enlighteni tion, useful to discover the requirements of morality. same way, a utilitarian can appeal to the fiction of an informed, impartial, and benevolent observer to explain content of that theory s requirements. James Rachels ex es the basic idea of contractualism as follows:

> Morality consists in the set of rules, governing how people are to treat one another, that ratio nal people will agree to accept, for their mutual benefit, on the condition that others follow those rules as well.[13]

In a recent book, Peter Carruthers has argued that a co tualist approach to ethics supports the status quo with to animals. He claims that the most plausible versions

tractualism accord full direct moral status to› all huma
ing the severely cognitively impaired, and deny direct
status to all animals. He further claims that such an a
can explain the wrongness of many instances of› cruelty
mals, without accepting that factory farming or animal
mentation is wrong, or that the animals who are the vic
wrongful cruelty have direct moral significance. Carrut
bases his discussion on two influential contemporary ve
of contractualism: the theories of John Rawls and Tho
Scanlon. Here are Carruthers summaries of the main poi
the two theories:

> The basic idea, then, is that we are to think of
> morality as the rules that would be selected by
> rational agents choosing from behind what
> Rawls calls a veil of ignorance. While these
> agents may be supposed to have knowledge of
> all general truths of psychology, so›ciology, eco
> nomics, and so on, they are to be ignorant of
> their own particular qualities (their intelligence
> physical strength, qualities of character, project
> and desires), as well as the position they will
> occupy in the society that results from their
> choice of rules. . . . The point of the restrictio
> is to eliminate bias and special pleading in the
> selection of moral principles. . . › Hence his pro
> posal is, in fact, that moral rules are those tha
> we should rationally agree to if we› were choos
> ing from a position of complete fairness. . . .
> Most importantly, the agents behind the veil of
> ignorance must not be supposed to have, as yet,
> any moral beliefs. For part of the point of the
> theory is to explain how moral beliefs can arise.
> [Scanlon s] account of morality is roughly this:
> moral rules are those that no one co›uld reason
> ably reject as a basis for free, unforced, genera
> agreement amongst people who share the aim
> of reaching such an agreement. . . . here the
> agents concerned are supposed to be real
> ones, with knowledge of their own idiosyncratic
> desires and interests, and of their› position with
> in the current structure of society› The only ide
> alisations are that choices and objections are
> always rational . . . , and that all concerned wi
> share the aim of reaching free and unforced

> agreement . . . the contractors will know that there is no point in rejecting a proposed rule on grounds special to themselves, since others would then have equal reason to reject any pro posed rule.[14]

So, how do animals fare on these approaches? It is fair that they won t be assigned more than indirect›moral si cance. Since the contractors, on both models, are ratio agents motivated by self›interest, only rational agent assigned direct rights.[15] The reasoning that leads to›this con clusion is slightly different on the two approaches, so sider Carruthers treatment of each in turn. First, Raw ry:

> Since it is rational agents who are to choose the system of rules, and choose self›interestedly, it only rational agents who will have their position protected under the rules. There seems no rea son why rights should be assigned to non›ratio nal agents. Animals, will, therefore, have no moral standing under Rawlsian contractualism, in so far as they do not count as rational agents.[16]

The story on Scanlon s approach is slightly different, contractors are there conceived as real people with dif preferences. In particular, some of them may care deepl animals, and thus may be inclined to reject a proposed gives little or no weight to the interests of animals. objects to this suggestion on the grounds that such a r would not have a reasonable basis:

> It cannot be reasonable, therefore, to reject a rule merely because it conflicts with some inter est or concern of mine. For every rule (except the entirely trivial) will conflict with someone s concerns. . . . If I can reasonably reject rules that accord no weight to the interests of animals then others can equally reasonably reject rules that allow us to dress and make love as we wish, and to worship or not worship as we please.[17]

What rules, then, can reasonably be rejected? Carruther answer is, rules that accord no weight to my interests

eral, or rules that allow my privacy to be invaded, or
jects to be interfered with, at the whim of other peopl
basic principle that we should agree upon is one of res
the autonomy of rational agents.[18] Of course, if one of my pro
jects is to safeguard the interests of animals, a rule
others to disregard those interests allow my project to be
interfered with. It seems that respect for autonomy wil
incorporate a very strong moral asymmetry between what
done and what is allowed to happen. Let s assume, for t
of argument, that such an asymmetry is justified. There
two serious objections that arise from within Carruther
approach.

First, there is the problem of marginal cases again.
same reasons that animals don t get assigned moral star
in the contractualist framework, nonrational humans don t
seem to count either. Carruthers response is to sugges
arguments that the contractors would use to justify rul
accord full moral standing to marginal humans. First, t
the following slippery slope argument:

> There are no sharp boundaries between a baby and an adult, between a not-very-intelligent adult and a severe mental defective, or between a normal old person and someone who is severely senile. The argument is then that the attempt to accord direct moral rights only to rational agents would be inherently danger ous and open to abuse.[19]

It is because starting out with a rule that distinguish
between rational and nonrational humans might lead to the
mistreatment of rational humans, that the rule has to i
all humans. Excluding animals, on the other hand, wouldn
have the same dangerous consequences. Anyone who
argued from the accepted denial of moral standing to ch
panzees to the conclusion that some humans shouldn t ha
moral standing either would not be taken seriously.
Carruthers second argument has a similar reliance on
chological claims. It is simply a fact about human bein
says, that they care deeply for their offspring, irres

age and intelligence. Given this fact,

> a rule withholding moral standing from those who are very young, very old, or mentally defec tive is thus likely to produce social instability that many people would find themselves psy chologically incapable of living in complianc with it.[20]

There are two pertinent questions with respect to the cho› logical claims. First, are they true? Second, if t true, do they provide the appropriate grounds for the c the interests of marginal humans have the same moral we as those of other humans? The answer to both questions We already distinguish between marginal humans and othe the allocation of some rights. The severely mentally de don t get to vote, although the current makeup of Congr might suggest otherwise; neither do they go to college perhaps, at Texas A&M). This selective treatment has ne led to the withholding of such benefits from ordinarily nal humans, nor to widespread social instability. It mi objected that these are examples of different treatment of marginal humans, not different consideration of their i Severely cognitively deficient humans don t vote college, because it is not in their interests to do so. tinction is morally significant, but it is only relevar Carruthers psychological claims to the extent that it the ordinary thinking of most people, which is har

Suppose, though, that Carruthers psychological claim true. They would provide a very shaky basis on which to attribute moral standing to marginal humans. To see thi ine that a new kind of birth defect (perhaps associated beef from cows treated with bovine growth hormone) prod severe mental retardation, green skin, and a complete l emotional bond between parents and child. Furthermore, pose that the mental retardation is of the same kind ar ity as that caused by other birth defects that don t ha other two effects. It seems likely that denying moral s such defective humans would not run the same risks of a and destruction of social stability as would the de

moral status to other, less easily distinguished and mo
defective humans. Would these contingent empir›ical diff
ences between our reactions to different sources of men
retardation justify us in ascribing different dir
tus to their subjects? The only difference between them
color and whether they are loved by others. Any theory
could ascribe moral relevance to differences such as th
doesn t deserve to be taken seriously.

Carruthers might reply that my own treatment›of my ex
ple undermines its force. My argument demonstrates, he
say, why the denial of moral status to the green›skinne
humans really would be subject to the slippery slope an
stability arguments. It is because philosophers such as
show the moral irrelevance of the differences between t
green›skinned humans and other marginal humans that we
couldn t justify rules that distinguished between them.
response is unavailable to Carruthers, of all people. F
demonstration of the moral irrelevance of the differenc
between green›skinned humans and other humans ›is no dif
ent from other demonstrations of the moral irrelevance
differences between many animals and humans. If we can
appeal to the supposed per› suasive force of one argu
we can appeal to a similar persuasive force for the oth

Unfortunately, neither argument has the requisite psych
force.

Contractarianism fails, then, to give a convincing an
the argument from marginal cases. It also fails to acco
what Carruthers calls our common›sense attitudes toward
mals. It seems to deny direct moral status to animals a
prevailing view may be that animals interests› are not
ni cant as those of humans, but it is not that they cou
nothing. According to this view, the cat torturer may n
doing something as bad as the child torturer, but his b
is nonetheless morally abominable. Furthermore, it is w
done to the cat itself that is morally objectiona
tractarian approach might suggest rules against cruelty
mals, on the grounds of protecting the interests of ani
ers and lovers. But this doesn t capture the central wr
torturing a cat. It would still be wrong, even if it we
and no one else found out about it. Carruthers response
problem is similar to Kant s, who objected to cruelty t
on the grounds that he who is cruel to animals becomes
also in his dealings with men. We can judge the heart o
by his treatment of animals. Similarly, Carrut
that cruelty to animals (in venues other than factory f
laboratories) is a sign of a defective character. An
treats animals with wanton cruelty will also probably t
nal agents with disregard for their legitimate int
Rational contractors, therefore, would have a good reas
agree to rules that discouraged the development of such
acters.

This argument is subject to the same two objections a
Carruthers response to the argument from marginal case
Even though there is fairly strong evidence of a correl
between cruelty to animals and antisocial behavior towa
people, it is by no means obvious that everyone who is wan›
tonly cruel to animals is a danger to people. But even
dence as exists doesn t apply to factory farms› or most
tory experiments. Are we supposed to say that the inter
such animals don t count at all, because they are tortu
ways that don t warp their torturers characters? Besid

ordinary view that the cat torturer s behavior is moral
inable is in no way contingent on the belief th
turer is also likely to mistreat people. If you were
er that Mother Teresa routinely tortured cats for fun,
wouldn t think, Well, what do you know! I guess tortur
for fun isn t always wrong. Neither would you think,
what do you know! I guess Mother Teresa was actually a
danger to people. What luck that she died before she go
around to torturing any. You would probably be dismay
learn that someone who had so much compassion for peopl
could be so callous towards animals. The reason for you
may, though, would be your belief that such callousness
towards animals is wrong in itself.

The problem with the contractarian approach, at least
presented by Carruthers, is that the speci cation of th

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