

2018-12-05

Making Covenants with Brute Beasts: Making Room for Non-Human Animals in a Contractualist Framework

Jennifer Burgis

University of Miami, jennburgis@gmail.com

Follow this and additional works at: https://scholarlyrepository.miami.edu/oa_dissertations

Recommended Citation

Burgis, Jennifer, "Making Covenants with Brute Beasts: Making Room for Non-Human Animals in a Contractualist Framework" (2018). *Open Access Dissertations*. 2228.

https://scholarlyrepository.miami.edu/oa_dissertations/2228

This Open access is brought to you for free and open access by the Electronic Theses and Dissertations at Scholarly Repository. It has been accepted for inclusion in Open Access Dissertations by an authorized administrator of Scholarly Repository. For more information, please contact repository.library@miami.edu.

UNIVERSITY OF MIAMI

MAKING COVENANTS WITH BRUTE BEASTS: MAKING ROOM FOR NON-
HUMAN ANIMALS IN A CONTRACTUALIST FRAMEWORK

By

Jennifer Lynn Burgis

A DISSERTATION

Submitted to the Faculty
of the University of Miami
in partial fulfillment of the requirements for
the degree of Doctor of Philosophy

Coral Gables, Florida

December 2018

©2018
Jennifer Lynn Burgis
All Rights Reserved

UNIVERSITY OF MIAMI

A dissertation submitted in partial fulfillment of
the requirements for the degree of
Doctor of Philosophy

MAKING COVENANTS WITH BRUTE BEASTS: MAKING ROOM FOR NON-
HUMAN ANIMALS IN A CONTRACTUALIST FRAMEWORK

Jennifer Lynn Burgis

Approved:

Mark Rowlands, Ph.D.
Professor of Philosophy

Michael Slote, Ph.D.
UST Professor of Ethics

Simon Evnine, Ph.D.
Associate Professor of Philosophy

Guillermo Prado, Ph.D.
Dean of the Graduate School

Bradford Cokelet, Ph.D.
Assistant Professor of Philosophy
University of Kansas

BURGIS, JENNIFER LYNN
Making Covenants with Brute Beasts:
Making Room for Non-Human Animals
in a Contractualist Framework

(Ph.D., Philosophy)
(December 2018)

Abstract of a dissertation at the University of Miami.

Dissertation supervised by Professor Mark Rowlands.
No. of pages in text. (152)

In this dissertation I explore the question of whether T.M. Scanlon's contractualist ethical theory can be revised such that the resulting theory makes room for moral obligations to non-human animals. A number of attempts have been made to justify our intuitions regarding the treatment of animals, but none of these has succeeded. I argue that Scanlon's reliance on the rationality criterion is flawed and that a focus on moral capacities creates both a more inclusive and a more satisfying moral framework. By building on Julia Driver's objective consequentialist account of virtue, I am able to support the claim that, at minimum, animals are capable of virtuous behavior. I follow Mark Rowlands in arguing that while animals are not moral agents, they are more than moral patients – they are moral subjects. This, I argue, is what matters for full contractual status. I demonstrate that Scanlon's attempt to defend his rationality criterion from the charge of speciesism fails, and that my view is not only more successful in avoiding speciesism, but is also capable of direct inclusion of children and the mentally disabled, which his is not. I conclude by considering remaining challenges and possible directions for future research.

For Team Snoopy – We did it!

Acknowledgements

I'd like to thank my committee members for all their help and encouragement – Mark Rowlands, Brad Cokelet, Michael Slote, and Simon Evnine. It was an independent study that I did with Brad during my first semester at UM that led to me writing on T.M. Scanlon. I want to thank my friends and family for hanging in there with me while I pursued something as crazy as a philosophy degree. In particular, I want to thank my mother, Francine Prater, for all the proofreading and my sister, Anna Campbell, for all the cheerleading they did throughout grad school – especially over the last few months! To the animal companions in my life, Mason, Lucy, and Shabazz, who always remind me of what we owe to those who cannot speak for themselves, thank you for the unconditional love. And, of course, thank you to the love of my life, Ben Burgis. He believed in me when I did not believe in myself, and that is an incredible gift.

Table of Contents

Chapter 1: Introduction	1
Chapter 2: Singer, Scanlon, and the Moral Basis of Animal Liberation	6
Chapter 3: Contractualism, Animals, and Rationality	34
Chapter 4: Empathy and Virtue	61
Chapter 5: Virtues, Contracts, and Consequences	104
Chapter 6: Moral Responsibility in Humans and Animals	116
Chapter 7: Further Conclusions and New Directions	134
Bibliography	146

“To make covenants with brute beasts is impossible...”
- Thomas Hobbes, *Leviathan*

“The greatness of a nation and its moral progress
can be judged by the way its animals are treated.”
- Mahatma Gandhi

Chapter 1 – Introduction

This Gandhi quotation is often seen on calendars, bookmarks, or bumper stickers. It is generally accompanied by a cute kitten or puppy, or perhaps a chimpanzee holding its young. All of us act, to one degree or another, as if animal welfare is important to us. Hardly anyone who was about to hit a dog in the street would not at least swerve to avoid him, and a great many people do more than that. We rescue animals from the shelter, donate to the World Wildlife Fund, buy free-range eggs. But how many of us truly understand what our duties to nonhuman animals encompass?¹

Peter Singer, in the preface to his groundbreaking work *Animal Liberation*, tells the story of a woman who wanted to meet him because she had heard he was writing a book about animals. “I do love animals,” she told him. As refreshments were served, she took a ham sandwich, and went on to ask what pets he had.²

This is not an uncommon occurrence. How many people claim to love animals but have sausage for breakfast, a chicken sandwich for lunch, and roast beef for dinner? How many purchase cosmetics and other items tested on animals? How many support the use of animals in scientific research? But even those people recognize that there is some degree to which the treatment of

¹ Going forward, nonhuman animals will be referred to simply as animals.

² Peter Singer, *Animal Liberation* (New York, Harper Collins, 1975).

animals is a moral issue. Ask them whether it's acceptable to torture a kitten, for example, and you will receive a horrified look and an emphatic "No!"

While most of us *just know* that there is something wrong with the mistreatment of animals, no moral theory – not even Singer's utilitarianism – has been completely successful in arguing why this is true. I will be arguing that there is, in fact, a way to do this – a way of making moral obligations to animals a firm component of a sound ethical structure.

My main focus will be defending a revised version of Scanlonian contractualism as the moral theory that best captures our intuitions that animals are part of the moral framework. The core of Scanlonian contractualism is T.M. Scanlon's claim that morality is based on principles that we could not reasonably reject. He rests this wrongness = unjustifiability principle in what he sees as the distinctive value of human life – rationality. While this is indeed one way to ground this principle, it is not the only way. It is possible to restructure the theory in a manner that maintains its central focus on justification while at the same time making it more inclusive and in line with our intuitions. This is what I intend to do in the remaining chapters of this dissertation.

The **second chapter** will be dedicated to a discussion of the utilitarian position regarding animals – in particular that of Peter Singer. I will look at Singer's case against treating the interests of animals as lesser than our own (in other words, speciesism). However, the theory that grounds it is seriously flawed. Furthermore, Tom Regan has pointed out significant problems with Singer's utilitarian approach to animal welfare.

I will go on to discuss Scanlon's critique of utilitarianism and his inclusion of what is most plausible about the theory in his version of contractualism. I will use this discussion as a starting point from which to develop a more inclusive contractualist theory – one that provides direct moral protection to animals.

The **third chapter** will briefly discuss the history of contract morality before proceeding to give a detailed account of Scanlonian contractualism. I will examine the various attempts that these theories have made to accommodate our intuition that animals are deserving of moral consideration and explain why these attempts fail. Again, detailed attention will be paid to Scanlon. He states that his theory is not intended to cover the whole of morality, and that the treatment of animals is a moral issue that falls outside the contractualist scope.

It is my view that although this demonstrates a weakness of contractualism, it is the theory that is best positioned to provide protections for animals. I will argue that by modifying Scanlonian contractualism so that value arises from moral capacities rather than rational ones, the theory will be strengthened and more inclusive. I will demonstrate that because many animals are moral beings despite lacking rationality, the grounding of contractualism in rationality is simple speciesism.

The **fourth chapter** will begin my argument that animals are moral beings by focusing on empathy – what it is and the role it plays in moral behavior. There is scientific evidence that animals experience what we would intuitively think of as empathy, and I will argue that what these animals feel fits the most sophisticated and plausible definitions of empathy offered by philosophers. I will follow Mark

Rowlands in arguing that while animals are not moral agents, they are more than moral patients. We may instead call them *moral subjects*. I will argue that actions motivated by emotions experienced by moral subjects can be called virtuous, and that virtue can be seamlessly integrated into Scanlonian contractualism.

In the **fifth chapter**, I will turn to Julia Driver's objective consequentialist account of virtue and defend her account against several objections. This creates further support for my claim that animals are, at minimum, capable of performing virtuous acts and may even possess virtues. It also demonstrates that Scanlon's grounding of his theory in rational capacities rather than moral ones has served to exclude a category of beings that deserve inclusion.

The **sixth chapter** will address a different obstacle to the idea that animals possess moral capacities – the connection between moral responsibility and autonomy. I will present Nomy Arpaly's argument that understanding is the foundation for moral responsibility rather than autonomy. I will then go on to demonstrate that she is mistaken in her claim that animals cannot respond to moral reasons because they lack the necessary understanding. When animals react to the elements of a situation that they *can* understand in a virtuous way, they show themselves to be deserving of moral praise. Again, this strengthens my view that Scanlon's theory must be revised to expand its scope. The explicit exclusion of beings that demonstrate moral capacities must show that the value he is seeking to affirm – rationality – is not the correct one.

The **final chapter** will establish that Scanlon fails to adequately defend his rationality criterion from the charge of speciesism. The only way for him to escape the speciesist label without sacrificing the rationality criterion would entail the exclusion of certain categories of human beings. My view is more successful regarding both the avoidance of speciesism and the inclusion of children and the mentally disabled. That being said, some individuals will still be left without full contractual standing. I go on to explain why this is not necessarily a shortcoming of my view, and also to suggest a further avenue for exploration.

Chapter 2 – Singer, Scanlon, and the Moral Basis of Animal Liberation

The central concern of this dissertation is overcoming the difficulty that moral theories face with regard to grounding our duties to animals. I want to begin by considering the theory that seems best positioned to do so: utilitarianism. Why does it seem so convincing, and why does it ultimately fail – both with regard to animals and in general as a theory? And how can we take its most plausible elements and better accommodate them in a different moral system?

I. Peter Singer and Speciesism

The most prominent contemporary philosopher to address the issue of animals and ethics is Peter Singer. His 1975 book *Animal Liberation* was a major influence on the modern animal liberation movement, and his article “All Animals Are Equal” is frequently used in introductory ethics classes.

Singer asks why we believe that all humans deserve equality when humans are clearly not all literally equal. Humans vary widely in such things as physical characteristics, athletic ability, intelligence, and personality, just to mention a few examples. As he says, “The plain fact is that humans differ, and the differences apply to so many characteristics that the search for a factual basis on which to erect the principle of equality seems hopeless.”³ But equality in a moral sense has nothing to do with alleging actual equality – “it is a prescription of how we should treat human beings.”⁴ While equality does not require equal treatment, it requires the equal consideration of the interests of

³ Peter Singer, *Practical Ethics* (Cambridge, Cambridge University Press, 2001), 17.

⁴ Peter Singer, *Animal Liberation* (New York, The New York Review of Books, 1990), 5.

individuals. We must thus begin by asking: which individuals should have their interests taken into account?

Singer presents two types of arguments regarding equality. The first is based on the idea of a “range property” – properties that are possessed to different degrees by different people.⁵ Intelligence, rationality, and the capacity for speech are all examples of range properties. Using these to determine whose interests should be taken into account leaves us with what is known as the problem of marginal cases. Certain categories of humans, such as infants, small children, and individuals with serious cognitive disabilities lack these properties. To say that all humans are equal except for very young or intellectually disabled ones is a serious violation of our considered moral judgments.

It might be responded that by including the potential to possess these properties, we have addressed the difficulty, but this still leaves irreparably cognitively disabled individuals on the outside. At this point, the only thing left to do is appeal to norms of species membership, but this is to blatantly beg the question.

The second type of argument begins by acknowledging the differences of human beings but claiming that these differences are not morally significant. Knowing someone’s gender or race does not enable us to draw any moral conclusions – humans differ along individual lines, not gender or racial lines.

⁵ This argument is based on one focused on moral capabilities in John Rawls’ *A Theory of Justice*.

To choose this type of characteristic to mark the boundary of whose interests matter is simply arbitrary. As Singer says, “Why pick on race? Why not on whether a person was born in a leap year? Or whether there is more than one vowel in her name?”⁶ What we must do is to take into account every being that has interests – in other words, every being that has the capacity for suffering and enjoyment. Singer tells us that this capacity “is a prerequisite for having interests at all, a condition that must be satisfied before we can speak of interests in any meaningful way.”⁷

Singer states that acceptance of the notion that the principle of equality applies to almost all humans entails a commitment to extending it to some animals.⁸ As he puts it, “No matter what the nature of the being, the principle of equality requires that the suffering be counted equally with the like suffering – in so far as rough comparisons can be made – of any other being.”⁹ (PE 50). He introduces the term *speciesism*¹⁰ – “a prejudice or attitude of bias in favor of the interests of members of one’s own species and against those of members of other species.”¹¹ He states:

Racists violate the principle of equality by giving greater weight to the interests of members of their own race when there is a clash between their interests and the interests of those of another race.

⁶ Singer, *Practical Ethics*, 21.

⁷ Singer, *Practical Ethics*, 50. Strictly speaking, it does not follow from the premises that animals have the capacity for suffering and enjoyment and that this capacity is a necessary (or even sufficient) condition for having interests that we must take these interests into account in our moral calculations. Singer thinks that we should do so because doing otherwise is simply arbitrary.

⁸ Singer does mention one exception – human beings who are not and have never been conscious. The moral standing of such individuals is outside the scope of this dissertation.

⁹ Singer, *Practical Ethics*, 50.

¹⁰ The term “speciesism,” while both popularized by and most associated with Singer, originated with a 1970 pamphlet written by British psychologist Richard D. Ryder. This pamphlet was entitled “Speciesism” and protested against animal experimentation.

¹¹ Singer, *Animal Liberation*, 6.

Sexists violate the principle of equality by favoring the interests of their own sex. Similarly, speciesists allow the interests of their own species to override the greater interests of members of other species. The pattern is identical in each case.¹²

Singer illustrates what it looks like to take the interests of members of different species equally into account with the example of the baby and the horse:

If I give a horse a hard slap across its rump with my open hand, the horse may start, but it presumably feels little pain. Its skin is thick enough to protect it against a mere slap. If I slap a baby in the same way, however, the baby will cry and presumably does feel pain, for the baby's skin is more sensitive. So it is worse to slap a baby than a horse, if both slaps are administered with equal force. But there must be some kind of blow – I don't know exactly what it would be, but perhaps a blow with a heavy stick – that would cause the horse as much pain as we cause a baby by a simple slap. That is what I mean by 'the same amount of pain,' and if we consider it wrong to inflict that much pain on a baby for no good reason then we must, unless we are speciesists, consider it equally wrong to inflict the same amount of pain on a horse for no good reason.¹³

While most of us would consider it equally wrong to cause the same amount of pain to two people regardless of race, gender, intelligence, etc., our first reaction to Singer's scenario is to think that it is more wrong to inflict pain upon a baby than a horse. Of course, this has limits – most people would consider it worse to torture a horse than to prick a baby with a pin. But unless we are talking about causing egregious pain to an animal, we generally favor our own species. Singer's claim is that this is unfounded and immoral.

Not only do we systematically fail to take human and animal interests equally into account, we often consider the latter to be completely subservient to the former. Singer points out that many of our commonly accepted practices are

¹² Singer, *Animal Liberation*, 9.

¹³ Singer, *Practical Ethics*, 51.

instances of this, and as such are morally unacceptable and need to be ended. He mentions “the food we eat, the farming methods we use, experimental procedures in many fields of science, our approach to wildlife and to hunting, trapping, and the wearing of furs, and areas of entertainment like circuses, rodeos, and zoos.”¹⁴ Even if we were just concerned with preventing animal suffering only when the interests of humans are not as great as the interests of the animals, this would still require a massive overhaul of all of these areas.

Animal experimentation, for example, is a clear example of speciesism. First, experiments such as animal testing of cosmetics and many other products do not benefit humans to the extent that would justify the pain caused to the animals. Second, experiments on drugs that would prevent or cure human diseases would be more effective if they were conducted on humans. Thus, if we believe the benefits of the experiments outweigh the harms caused to the subjects, shouldn't we use cognitively disabled orphaned infants instead? If we believe that these experiments are acceptable when performed on animals but wrong if performed on humans, we are guilty of speciesism.

Famously, Singer's central focus is on animals raised for food in factory farms. As he states:

The case against using animals for food is at its strongest when animals are made to lead miserable lives so that their flesh can be made available to humans at the lowest possible cost. Modern forms of intensive farming apply science and technology to the attitude that animals are objects for us to use. Competition in the marketplace forces meat producers to copy rivals who are prepared to cut costs by giving animals more miserable lives. In buying the meat, eggs, or milk produced in these ways, we tolerate methods of meat production that confine sentient animals in cramped,

¹⁴ Singer, *Practical Ethics*, 53.

unsuitable conditions for the entire duration of their lives. They are treated like machines that convert fodder into flesh, and any innovation that results in a higher 'conversion ratio' is liable to be adopted. As one authority on the subject has said, 'cruelty is acknowledged only when profitability ceases.'¹⁵

While eating meat satisfies our interest in having enjoyable food, the interest that the animals have in avoiding the incredible pain and suffering that comes their way on factory farms is much greater. People living in societies like ours do not require animal flesh – or any animal products at all – in order to have a healthy diet. Eating animals is a luxury – not a need. Continuing the practice of factory farming is simple speciesism – giving the relatively minor interests of human beings preference over the fundamental interests of animals simply because of species. Here are two examples, from the beginning and end stages of their lives, of what cows suffer because of our desire for beef:

Nearly all beef producers dehorn, brand, and castrate their animals. All of these processes can cause severe physical pain. Horns are cut off because horned animals take up more space at a feeding trough or in transit and can harm one another when packed tightly together. Bruised carcasses and damaged hides are costly. The horns are not merely insensitive bone. Arteries and other tissue have to be cut when the horn is removed, and blood spurts out, especially if the calf is not dehorned shortly after birth.¹⁶

Animals who die in transit do not die easy deaths. They freeze to death in winter and collapse from thirst and heat exhaustion in summer. They die, lying unattended in stockyards, from injuries sustained in falling off a slippery loading ramp. They suffocate when other animals pile on top of them in overcrowded, badly loaded trucks. They die from thirst or starve when careless stockmen forget to give them food or water. And they die from the sheer stress of the whole terrifying experience.¹⁷

¹⁵ Singer, *Practical Ethics*, 54.

¹⁶ Singer, *Animal Liberation*, 145.

¹⁷ Singer, *Animal Liberation*, 149.

Of course, these are not the only horrible facts about the lives of cows raised on factory farms, and it is not only cows that live such degraded lives in service of our love of meat.

It is important to note that Singer does not make the unequivocal claim that killing animals is wrong. He draws a distinction between self-conscious beings and those that he calls “merely sentient.” Killing the latter is not morally wrong as long as they are replaced by another being that is also capable of experiencing pleasure. This is the Replaceability Argument, which asserts that “the capacity to see oneself as existing over time, and thus to aspire to longer life (as well as to have other non-momentary, future-directed interests), is the characteristic that marks out those beings who cannot be considered replaceable.”¹⁸

Merely sentient animals are incapable of desires that, in their own minds, project their existence into the future. He says, “If they become unconscious, for example by falling asleep, then before the loss of consciousness they would have no expectations or desires for anything that might happen subsequently; and if they regain consciousness, they have no awareness of having previously existed.”¹⁹ Thus, a painless killing of such an animal is not a wrong as long as the animal is replaced – the same amount of pleasure is present in the world.

It’s worth noting that it’s possible to endorse Singer’s original argument regarding equality of interests without going along with the Replaceability Argument. In fact, an Anti-Replaceability Argument can be constructed from

¹⁸ Singer, *Practical Ethics*, 111.

¹⁹ Singer, *Practical Ethics*, 112.

premises that he himself endorses. As he states, animals have an interest in experiencing pleasure – even those who are not self-conscious. Death brings an end to pleasure. Therefore, it seems that all animals would, in fact, have an interest in the continuation of their lives even if they do not have a concept of their own futures. What a being is capable of conceptualizing does not define what interests they might have – after all, animals cannot conceptualize pleasure, either.

Another question that must be asked concerns Singer's stance that whatever is true of merely sentient animals is also true of humans that fall into the classification of marginal cases, such as infants, the seriously mentally disabled, etc. Infants, young children, and some people with serious mental disabilities do not possess the concept of their future existence. The Replaceability Argument thus applies to all of these groups, meaning that it is morally permissible to kill a child or a seriously mentally disabled person as long as he or she is replaced with another human being. Or perhaps more than merely permissible – it may even be mandatory. It might be said that the killing of a child with a serious medical condition that, though not causing the child to suffer, will restrict his ability to experience pleasure, is a moral requirement as long as he is replaced by another child. After all, the sick child is not self-conscious and the existence of his replacement rather than his continued survival will increase the amount of happiness in the world. Most people will find this stance morally repugnant and consider it to be a serious objection.

Of course there will be those who are willing to bite the bullet (including Singer himself) and accept this consequence of the Replaceability Argument, but as the permissibility of infanticide when a child is not suffering is not in accord with our considered moral judgments, this seems dubious. However, the unsoundness of this argument has no impact on that of the equal consideration of interests and its conclusion that animals are deserving of moral consideration.

II. Utilitarianism vs. Kantianism

Taking a look at the origins of utilitarianism will allow us to see how it is easy for Singer to make sense of our obligations to animals. Jeremy Bentham expressed his belief that morality should be based on a realistic conception of human beings. He says, “Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do.”²⁰ In other words, because the natural aims of human beings are the seeking of pleasure and the avoidance of pain, this is where the basis of morality is found.

From this, Bentham derived his underlying moral principle: the “greatest happiness principle,” or the principle of utility. This is expressed as, “It is the greatest happiness of the greatest number that is the measure of right and wrong.”²¹ Whatever maximizes happiness is morally right.

Bentham is also seen not just as the founder of utilitarianism, but as one of the earliest proponents of moral treatment for animals. He disagreed with the

²⁰ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Oxford: Clarendon Press, 1789), 6.

²¹ Jeremy Bentham, *A Fragment on Government* (London: T. Payne, 1776), 1. As many have pointed out, this is a misleading way of stating his own position. It is a matter of maximizing happiness itself, not of counting the number of people made happy.

notion that reason ought to be the criterion used to determine who should and should not have moral consideration. His objection was the previously mentioned problem of marginal cases – that using reason as the dividing line results in infants and adults with particular mental disabilities being excluded. This is obviously seen as a negative consequence and is a serious problem for the view that reason equals being deserving of moral treatment.

While it must be noted that Bentham's proposal for a different criterion was put forth in the context of the rights accorded to slaves in the French West Indies, it has come to be a commonly used quotation in the animal rights community. In questioning what should be the "insuperable line," Bentham says the following:

Is it the faculty of reason or perhaps the faculty of discourse? But a full-grown horse or dog, is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day or a week or even a month, old. But suppose the case were otherwise, what would it avail? The question is not, Can they *reason*? nor, Can they *talk*? but, Can they *suffer*?²²

Bentham did not object to the killing of animals for food, as long as there was no unnecessary suffering. Nor did he object to the use of animals for medical experimentation, as long as the research was undertaken with a clear goal that would benefit humanity and there was reason for believing that the goal could be achieved. Otherwise, he had a "decided and insuperable objection" to making animals suffer.²³

Another major utilitarian, Henry Sidgwick, also explicitly mentions animals as a group with moral standing. In a discussion of the "individualistic principle"

²² Bentham, *An Introduction to the Principles of Morals and Legislation*, 144.

²³ Jeremy Bentham, "To the Editor of the Morning Chronicle" (London, *Morning Chronicle*), 2.

found in *The Elements of Politics*, he points out that it reflects the sociological supposition that “the common welfare is best attained by each pursuing exclusively his own welfare and that of his family in a thoroughly alert and intelligent manner.” Sidgwick calls individualism “in the main sound,” but provides a list of qualifications, including “the humane treatment of lunatics, and the prevention of cruelty to animals.” It is clear that Sidgwick believes that animals are deserving of moral concern.²⁴

Utilitarianism is much better equipped to handle the notion of moral obligations to animals than its main ethical rival, Kantianism. Immanuel Kant argued for the proper treatment of animals, but not because of any value that animals hold in themselves. Kant’s belief was that the only intrinsically good thing is a good will. Because animals are not capable of critically examining their desires and making reasoned choices, they do not have wills, much less good wills. This deprives them of any intrinsic value.

However, Kant believed that cruelty to animals is wrong. This is because behaving cruelly to animals makes a person more likely to behave cruelly to other humans. He states:

So if a man has his dog shot, because it can no longer earn a living for him, he is by no means in breach of any duty to the dog, since the latter is incapable of judgment, but he thereby damages the kindly and humane qualities in himself, which he ought to exercise in virtue of his duties to mankind. Lest he extinguish such qualities, he must already practice a similar kindness towards animals; for a person who already displays such cruelty to animals is also no less hardened towards men. We can already know the human heart, even in regard to animals.²⁵

²⁴ Henry Sidgwick, *The Elements of Politics* (London: MacMillan and Company, 1919), 141.

²⁵ Immanuel Kant, *Lectures on Ethics* (Cambridge: Cambridge University Press, 1997), 212.

He goes on to talk about the progression of cruel behavior in a man who pulls the dog or the cat's tail in childhood, goes on to run over a child, and eventually becomes a murderer. There is evidence of such a correlation between childhood cruelty to animals and later violent behavior. In 2003, one study of prison inmates termed violent offenders showed that 56% admitted to animal cruelty.²⁶ A 2004 study found a link between repeated animal cruelty and violence against humans among prisoners in maximum and medium security prisons.²⁷ These are just two of many examples. However, the idea that the effect on human beings alone makes it wrong to mistreat animals is highly counterintuitive. The position that we have at most indirect duties to animals, either because of the effects upon ourselves or because harming an animal is to injure someone else's property, leaves no space for the idea that animals themselves can be wronged.

Furthermore, Kant's argument carries the consequence that if the empirical research demonstrated that cruelty to animals was correlated with impeccable moral behavior toward humans, cruelty to animals would be acceptable – or perhaps even required! Or if some people were unusually good at bracketing their attitudes toward humans and animals, there would be nothing wrong with them being cruel to animals. Both consequences seem absurd.

Imagine a theory claiming that we only have direct duties to members of our own race or nation but that cruelty to members of other races or nations is

²⁶ McClellan, J. "Animal cruelty and violent behavior: Is there a connection?" *Journal of Security Education* (2007), 2.

²⁷ Tallichet, S.E., Hensley, C. "Exploring the Link Between Recurrent Acts of Childhood and Adolescent Animal Cruelty and Subsequent Violent Crime." *Criminal Justice Review* (2004, 29:2), 304-316.

indirectly wrong because, for example, an Aryan who begins by being cruel to Jews will end by being cruel to his fellow Aryans. This clearly does not satisfy the intuition that cruelty toward either Aryans or Jews is wrong for the same reasons.

Kant would plausibly reject my analogy on the grounds that Jews (and Aryans as well) are members of the Kingdom of Ends, while animals are not. At this point, then, it might look like my difference with Kant boils down to a simple clash of intuitions. But it can be demonstrated that Kant's position is not only implausible, but arbitrary as well.²⁸

Let us suppose, for the sake of argument, that the pleasure one takes in the cruel treatment of animals leads one to behave cruelly toward human beings. The only way this would be possible is if the results of both types of behaviors have a strong resemblance between them. If putting out cigarettes on the limbs of animals (for example) did not produce any behavioral evidence that this action caused them pain, there would be no basis for the inference that doing the same to human beings would produce suffering. For the causal link to hold, it must be the case that animals can in fact suffer and that this is manifested in behaviors similar to those of suffering human beings.

Thus, if causing suffering to human beings is a violation of a direct duty, as Kant believes it is, then we cannot non-arbitrarily hold that causing suffering to animals is not also such a violation. Animals and humans have a shared capacity for suffering that invokes the demands of justice – to deny that we have

²⁸ The following argument is based on a similar one in Tom Regan's book *The Case for Animal Rights*, p. 183

any direct duties to only one of these is to allow differential treatment in relevantly similar cases. Therefore, Kantianism clearly cannot be our guide regarding the ethical treatment of animals.

Should we turn to the utilitarian theory represented by Singer instead? Utilitarians have more resources than Kantians for explaining why we have moral obligations to animals (for their own sake), but that tradition comes with a host of familiar problems.

III. Objections to Utilitarianism

The first objection to utilitarianism strikes at the very heart of the theory. Because utilitarianism requires the comparison of created utility among various actions, utility must be quantifiable. Bentham introduced the hedonic calculus as a method of doing so. According to the calculus, pleasures and pains are measured according to intensity, duration, certainty/uncertainty, propinquity/remoteness, fecundity, purity, and extent.

There are many problems with this idea. How far into the future are we to look when making our calculations? How far does "extent" extend? Do people who do not yet exist count? And furthermore, the notion of turning well-being into a sort of mathematical formula is simply a category mistake. Different kinds of well-being and different kinds of suffering simply cannot all be evaluated on the same scale. If the very notion of maximizing utility is undermined, the theory is doomed to fail.

While Singer was, for much of his career, not a classical utilitarian but a preference utilitarian, both types of utilitarianism are vulnerable to these

objections.²⁹ Preference utilitarianism defines utility as the satisfaction of preferences. But again, there must be some sort of mathematical weighting involved in order to determine what the morally correct action is. This seems to assume that all instances of preferences being satisfied or violated are sufficiently similar in kind to evaluate on a single scale. Just as with classical utilitarianism, this notion seems dubious at best.

A second objection to utilitarianism is the demandingness objection – that utilitarianism cannot be the correct moral theory because it demands too much of us. Shelly Kagan expresses the objection this way: “Given the parameters of the actual world, there is no question that. . . (maximally) . . . promoting the good would require a life of hardship, self-denial, and austerity. . . a life spent promoting the good would be a severe one indeed.”³⁰ Because the costs of maximizing overall well-being are so enormous, a theory that requires it cannot be correct.

A third objection is that utilitarianism has no room for justice. An excellent depiction of this is found in Ursula K. Le Guin’s short story “The Ones Who Walk Away from Omelas.”³¹ Omelas is a joyous community where every day is like a festival. It is described in the story as “like a city in a fairy tale.” The narrator realizes that Omelas is so wonderful that the reader may not be fully convinced that it is real. Thus, the one negative point of the city is revealed – its constant

²⁹ Singer announced in 2014’s *The Point of View of the Universe* that he has converted to classical hedonistic utilitarianism.

³⁰ Shelly Kagan, *The Limits of Morality* (Oxford, Oxford University Press, 1989), 360.

³¹ Ursula K. Le Guin, “The Ones Who Walk Away from Omelas,” *New Dimensions*, vol. 3, 1973.

state of wondrousness depends upon the keeping of a single child in perpetual filth, darkness, and misery.

All the citizens of Omelas, once they reach an appropriate age, are brought to see the child. At first, they are all horrified by the sight, but only a few ever leave – these are the ones who walk away from Omelas. Most, however, come to accept that this is simply the way things are.

As obscene as this situation is, the utilitarian has no basis upon which to condemn it. If the degradation of the one child is required to bring about the optimum amount of well-being in Omelas, then so be it. The idea that the child “deserves” to be removed from its situation does not make sense under utilitarianism.

Of course, at this point the utilitarian may reply that this objection is only effective against act utilitarianism (in which every action is judged independently), but not against rule utilitarianism (in which acts are judged on their adherence to a system of rules that generally maximize utility). The rule utilitarian might claim that since the rule “Do not keep people in a state of perpetual filth, darkness, and misery” generally maximizes utility, any instance of so doing is wrong, and thus the situation in Omelas is not morally acceptable.

But it is not as if rule utilitarianism is immune to objections – one of which is that it ultimately collapses into act utilitarianism. Suppose the rule forbidding the keeping of people in filth, darkness, and misery is Rule 35 in our Official Moral Code. Why should this be the only rule that applies to such a situation? Why not a Rule 36, mandating that if it’s possible to create a city where almost

everyone is extremely happy, you should do so. The conflict between the rules could be resolved by changing 35 to 35* – a rule that decrees that keeping people in filth, darkness, and misery cannot be allowed unless it enables the existence of a fairy-tale-like city. This returns the state of things in Omelas to the realm of the morally permissible.

In general, Rule 35 – or any rule at all – can be amended to include an infinite number of exceptions. The result, then, is a rule stating, “Do not keep people in a state of perpetual filth, darkness, and misery unless doing so maximizes utility.” And this is simply act utilitarianism.

We saw earlier that Singer bases his case for moral obligations to animals on the principle of the equal consideration of interests. As he says:

The principle of equal consideration of interests acts like a pair of scales, weighing interests impartially. True scales favor the side where the interest is stronger or where several interests combine to outweigh a smaller number of similar interests, but they take no account of whose interests they are weighing.³²

This sounds compelling when Singer is wielding his principle against the racist and the speciesist, but is it plausible to think that the scales of morality always do favor the stronger interest? Let us consider the case of Robert Nozick’s utility monster.

The utility monster is a hypothetical being that will “get enormously greater sums of utility from any sacrifice of others than these others lose.”³³ Any utility-based determination of what is morally right must take its capability to experience such amounts of pleasure into account. As Nozick points out, this is a serious

³² Singer, *Practical Ethics*, 20.

³³ Robert Nozick, *Anarchy, State, and Utopia* (New York, Basic Books, 1974), 41.

criticism of the theory, saying that it “seems to require that we all be sacrificed in the monster’s maw, in order to increase total utility.”³⁴

Some people have argued that it is too difficult to imagine what a being with such an enormous capacity for pleasure would be like, and as such we cannot have clear intuitions about this case. One of these is Derek Parfit, who says the following:

How could it be true that, if all mankind’s resources were given to Nozick’s monster, this would produce the greatest total sum of happiness? For this to be true, this Monster’s life must, compared with other people’s lives, be millions of times as much worth living. We cannot imagine, even in the dimmest way, what such a life would be like. Nozick’s appeal to his Monster is therefore not a good objection to the Total Principle. We cannot test a moral principle by applying it to a case which we cannot even imagine.³⁵

However, it is possible to run a similar objection simply by imagining immense numbers of ordinary people being impacted by some decision. The utilitarian explanation for the wrongness of slavery is that even if only a minority is enslaved to serve the majority, the suffering of the minority will be so great that the benefits to the majority will not make slavery morally worthwhile.

The problem with this argument is that it relies on ultimately contingent facts. For example, it is almost certainly true that the entertainment experienced by the spectators at the Roman Coliseum, where enslaved gladiators fought to the death, was not sufficient to “make up” for the pain of the gladiators and the lifetimes of lost pleasures resulting from their deaths. (This is, of course, to assume that such calculations are possible.) However, we can imagine a society

³⁴ Nozick, *Anarchy, State, and Utopia*, 41.

³⁵ Derek Parfit, “Overpopulation and the Quality of Life.” *Applied Ethics* (New York: Oxford University Press), 1986.

with similar games being televised and viewed by billions of people. Many of us have read or seen this very thing in *The Hunger Games*.³⁶ No theory that would, once some sufficient number of spectators has been reached, sanction such a forced competition is a plausible account of justice and morality.

IV. Objections to Singer

Despite all this, utilitarianism seems to have such an advantage over deontological theories with regard to animals that even someone as staunchly deontological as Nozick was willing to consider it as his moral theory “for animals.”³⁷ As we’ll see, however, the flaws in the theory that generate the counterintuitive consequences we’ve been looking at with regard to humans generate similar and similarly counterintuitive results with regard to animals. It is a standard utilitarian position that the suffering of factory-farmed animals outweighs the human desire for meat. While this adequately explains our obligation to an ordinary cow, it does absolutely nothing to protect Mega-Cow – a cow who is so large and whose beef is so tasty that the pleasure of those who eat it outweighs its suffering. If the raising – by whatever methods will make the meat taste best – and killing of Mega-Cow is what maximizes utility, well, so much the worse for her.

What is missing from the utilitarian account of moral obligations to animals is any notion of rights – the idea that certain ways of treating them are unequivocally wrong. Tom Regan makes this point in a lengthy critique of Singer, saying that while Singer is correct that we do have certain duties to

³⁶ Suzanne Collins, *The Hunger Games* (New York, Scholastic Press, 2009).

³⁷ Nozick, *Anarchy, State, and Utopia*, 39.

animals (specifically, to be vegetarians³⁸), he is wrong to think that there is no need for the concept of animal rights to play a part in the grounding of these duties.³⁹ According to Regan, Singer cannot justify the idea of moral obligations to animals without some kind of appeal to rights.

Singer states that “our practice of rearing and killing other animals in order to eat them is a clear instance of the sacrifice of the most important interests of other beings in order to satisfy trivial interests of our own.”⁴⁰ But is it true that consuming the flesh of animals is a “trivial interest”? Many people have a serious interest in food – either cooking for themselves or patronizing gourmet restaurants. Singer might respond that people who believe that the taste of food is that important have a “warped sense of values.”⁴¹ Perhaps this is true, but it is not something that can simply be asserted without argument. Of course, it should be obvious that an interest in good-tasting food is not as significant an interest as avoiding pain or death. But Singer’s categorization of it as “trivial” is not as self-evident as he seems to believe.

However, even if we grant him this assertion, it turns out to be worthless. As a utilitarian, Singer cannot argue that we have a moral obligation to stop any practice *p* simply on the basis of the purpose of *p*. Even though it may be correct to describe the purpose of *p* as catering to our (possibly trivial) tastes, this is irrelevant. What we should be looking at is not *p*’s purpose, but its

³⁸ While Regan claims that this is Singer’s, along with his, view of our obligations, Singer is not committed to a strict vegetarianism. Any animal that would be considered replaceable on his view would be appropriate for food, as long it was treated and killed in a morally acceptable way.

³⁹ Tom Regan, “Utilitarianism, Vegetarianism, and Animal Rights.” *Philosophy and Public Affairs* 9, no. 4 (Summer 1980).

⁴⁰ Regan, “Utilitarianism, Vegetarianism, and Animal Rights,” 309.

⁴¹ Regan, “Utilitarianism, Vegetarianism, and Animal Rights,” 309.

consequences and how they compare to the consequences of alternatives to p . And furthermore, the characterization of p as “trivial” omits a number of factors that must be taken into account in the utilitarian calculus.

As Regan puts it, “The animal industry is big business.”⁴² Huge numbers of people are employed by it – people who have family members who are dependent on these individuals. The interests that these persons have in the raising and killing of animals for food is not at all trivial, and their interests are relevant to a utility-based argument for vegetarianism.

But what about Singer’s belief that utilitarianism entails an equal consideration principle? This might seem like the basis for a clear path from utilitarianism to vegetarianism. After all, everyone agrees that it would be immoral to kill and eat humans – even those with severely limited cognitive abilities. As such, shouldn’t the principle of equality mandate that we not kill and eat animals?

This assumes, however, that “equality” means “equal treatment” – if it is morally unacceptable to do something to Being A, it is morally unacceptable to do it to Being B. This is, however, very different from the way Singer himself explains his principle.

One of Singer’s explanations of it is the following: “The interests of every being affected by an action are to be taken into account and given the same weight as the like interests of any other being.”⁴³ We may call this the equality of interests principle. Equal interests are equal in value, regardless of whose

⁴² Regan, “Utilitarianism, Vegetarianism, and Animal Rights,” 310. Regan also addresses this argument in *The Case for Animal Rights* beginning on p. 221.

⁴³ Regan, “Utilitarianism, Vegetarianism, and Animal Rights,” 312.

interests they are, and as such must all be taken into account. This includes the interest in avoiding pain, which is shared by both humans and animals.

Does combining this principle with the principle of utility create a utilitarian obligation to be vegetarian? Regan says no – there is no indication of what we should do after we have examined the interests of all individuals affected and counted the equal interests equally. Again, there must be some sort of calculation involved – one that shows that the consequences of widely-adopted vegetarianism are better than the consequences of this not occurring. Insisting that equal interests are equal does not demonstrate this.

At this point, Singer might object that we have entirely overlooked his discussion of speciesism – that we routinely allow procedures that result in pain and death for intelligent, self-conscious animals that we would not allow in the case of the most cognitively disabled humans. The fact that we make such judgments purely on the basis of species indicates prejudice and moral inconsistency on our part.

Again, Singer's point about speciesism carries a great deal of moral weight, but it does nothing to strengthen a utilitarian argument for the notion of moral obligations to animals. He must show that there are utilitarian grounds for the wrongness of treating humans in such ways (rather than merely relying on intuition), and that there are also utilitarian grounds for not treating animals in the same ways. He provides no utility-based argument for moral consistency.

Furthermore, Singer cannot be defended simply by assuming that the differing treatment of animals and cognitively deficient humans violates the

equality of interests principle. It seems possible that we could count the interests of animals and such humans equally, yet treating animals this way produces more utility. Once more, there is a failure to base an obligation to be vegetarians in utilitarianism.

As previously mentioned, Singer sometimes writes as though the concept of equality applies to treatment, at least with regard to human beings – that the principle of equality “is a prescription of how we should treat humans.”⁴⁴ We may call this the equality of treatment principle and formulate it as: beings with equal interests ought to be treated equally.

One advantage that this principle has over the equality of interests principle is that it gives us guidance on how to act. We should treat beings with equal interests equally. The problem is that it does not tell us how to do this. It cannot mean that because both pigs and little girls enjoy dancing, that both should be able to take dancing lessons. But what does it mean? Regan states that while this is far from clear, we can say that Singer would presumably agree to the following: “if we think it wrong to inflict unnecessary pain on humans who have an interest in avoiding it, then we must also think it just as wrong to inflict unnecessary pain on non-human animals who have an equal interest in avoiding it.”⁴⁵ To consider it less wrong in the case of animals is a violation of the equality of treatment principle.

Does this principle even have a utilitarian basis? Regan thinks not and considers three possibilities.

⁴⁴ Peter Singer, “All Animals are Equal” in *Animal Rights and Human Obligations*, ed. Tom Regan and Peter Singer (New Jersey: Prentice Hall, 1989), 152.

⁴⁵ Regan, “Utilitarianism, Vegetarianism, and Animal Rights,” 314.

First, the equality of treatment principle is identical with the principle of utility. This is implausible for the simple reason that the maximization of utility may require violating the equality of treatment principle. Since this is an open question, we cannot take the two principles to be identical.

Second, the equality of treatment principle follows from the principle of utility. It clearly is not logically entailed by the principle of utility because again, following it might not maximize utility. But could the equality principle in combination with particular factual premises be justified by an appeal to utility – that following this principle does in fact maximize utility?

If this is the course that a utilitarian wants to take, there is nothing obviously incorrect about doing so. But if so, this is a conclusion that must be argued for, rather than merely assumed, and nowhere does Singer provide such an argument. There must be some sort of utilitarian calculation involved somewhere, and this is what Singer fails to address.

Third, the equality of treatment principle is presupposed by the principle of utility. It is through this presupposition that the principle of equality of treatment enters into utilitarian theory. Because its entrance method is logically respectable, Singer's use of this principle has a utilitarian basis.

This explanation fails as well. To think that utility presupposes the equality of treatment principle is to ignore the difference between the two principles. According to the equality of treatment principle, there is no way to justify treating different beings differently on the grounds that even though two beings have a like interest in a certain good, one of those beings' interest is more important

than the other. So, we may ask, where does the equality of treatment principle fit in?

Unfortunately for Singer, it doesn't. It does not follow that we ought to treat beings with equal interests equally solely on the basis that they have equal interests. Nor is this principle presupposed by utilitarianism – if this was the case, it would be more fundamental than the principle of utility and then utilitarianism would not be utilitarianism at all.

What Singer must do, then, is to furnish a utilitarian grounding for the equality of treatment principle before he – a utilitarian – can be justified in using it. So far, he has not demonstrated that acceptance of this principle and the application of it to animals would bring about greater utility than what is now gained by our current treatment of animals. This would require an evidence-based argument containing an enormous amount of data, which, of course, Singer has not provided. All of this to say that Singer fails to present a utilitarian argument for vegetarianism.

Of course, Singer may always choose to insist that the current treatment of animals violates their rights and must cease regardless of the consequences. But then he has abandoned any claim to a utilitarian argument. As Regan says, "One can hardly argue as a utilitarian and say, in effect, the devil take the consequences."⁴⁶ Singer is left with the dilemma of either constructing a thoroughly different argument for vegetarianism, or conceding that his case for vegetarianism is not a utilitarian one. All of this severely undermines the case for regarding utilitarianism as the right moral theory, even just "for animals."

⁴⁶ Regan, "Utilitarianism, Vegetarianism, and Animal Rights," 318.

V. Scanlon's Critique of Utilitarianism

T.M. Scanlon provides a more general critique of utilitarianism that shows both what is plausible about utilitarianism and how that plausible core can be better accommodated in an alternate moral framework. He claims that contractualism can avoid the counterintuitive consequences that we have looked at in the previous two sections. He starts by acknowledging that utilitarianism is superior to many other moral theories in that the kind of thing with which it is concerned is clearly morally relevant:

“It seems evident to people that there is such a thing as individuals being made better or worse off. Such facts have an obvious motivational force; it is quite understandable that people should be moved by them in much the way that they are supposed to be moved by moral considerations. Further, these facts are clearly relevant to morality as we now understand it. Claims about individual well-being are one class of valid starting points for moral argument. But many people find it much harder to see how there could be any other, independent starting points. Substantive moral requirements independent of individual well-being strike people as intuitionist in an objectionable sense. They would represent ‘moral facts’ of a kind it would be difficult to explain.”⁴⁷

The problem lies in the way that Singer's scales “favor the side where the interests combine to outweigh a smaller number of similar interests.” As Scanlon says, the facts about “individual well-being” being weighed on these scales have “obvious motivational force.” We're motivated by our “sympathetic identification with the good of others.”⁴⁸ We are not moved in the same way when “several interests combine” in the way that Singer describes. Scanlon states:

If classical utilitarianism is the correct normative doctrine then the natural source of moral motivation will be a tendency to be moved

⁴⁷ T.M. Scanlon, “Contractualism and Utilitarianism,” *Utilitarianism and Beyond* (Cambridge University Press, 1982), 275.

⁴⁸ Scanlon, “Contractualism and Utilitarianism,” 778.

by changes in aggregate well-being, however these may be composed. We must be moved in the same way by an aggregate gain of the same magnitude whether it is obtained by relieving the acute suffering of a few people or by bringing tiny benefits to a vast number, perhaps at the expense of moderate discomfort for a few. This is very different from sympathy of the usual kind toward particular individuals.⁴⁹

This is precisely what is brought out by the examples of Omelas and *The Hunger Games*. We object to the utilitarians' conclusions precisely because of our "sympathetic identification" with the particular individuals suffering for the good of others. Something about the trade-off seems unjust regardless of the cumulative amounts of happiness and unhappiness in question, even if such calculations are possible. As Scanlon puts it,

"[W]hen I feel convinced by Peter Singer's argument on famine, and find myself crushed by the recognition of what seems a clear moral requirement, there is something else at work. In addition to the thought of how much good I could do for people in drought-stricken lands, I am overwhelmed by the further, seemingly distinct thought that it would be wrong for me to fail to aid them when I could do so at so little cost to myself."⁵⁰

To fully draw out this point, imagine a world where the number of people suffering from famine was tiny, and that they could all be saved with a foreign aid program financed by taxing a large number of middle class people the cost of one good meal out per year. Perhaps the starving people are on a human colony on Mars, so an enormous number of people have to pay the tax to finance the spaceship bringing them aid. Given a sufficiently large number of tax-payers being deprived of the small pleasure of an extra meal at a nice restaurant and a sufficiently tiny number of famine stricken people, utilitarian calculations might

⁴⁹ Scanlon, "Contractualism and Utilitarianism," 778.

⁵⁰ Scanlon, "Contractualism and Utilitarianism," 778.

well favor abolition of the foreign aid program. Allowing the would-be beneficiaries to starve would be letting the combined interests of the tax-payers “outweigh a smaller number of similar interests.” Scanlon’s own moral theory, contractualism, explains why it would be right to levy the tax in these circumstances. The gap between what the middle class tax-payers are giving up and what the famine victims are receiving is so stark that it would not be reasonable for the tax-payers to reject the requirement that they pay. This idea of reasonable rejection is at the heart of Scanlonian contractualism. We will look at some of the details of this theory, as well as situate it in the larger tradition of social contract ethics, in the next chapter. As we will see, there are difficulties with integrating duties to animals in this moral framework, but these problems can be solved. The resulting modified version of contractualism can be shown to be the best way of making sense of our moral obligations to both humans and animals. As such, it is a superior moral theory.

VI. Conclusion

In this chapter, I have explored the utilitarian justification for duties to animals, particularly as expressed by Peter Singer, and demonstrated its shortcomings. T.M. Scanlon makes the claim that the theory’s focus on interests can be maintained while avoiding the objections that weaken it as a whole. Moving forward, I will present a contractualist theory that does just this and explain how it can be modified to take animals into account.

Chapter 3 – Contractualism, Animals, and Rationality

Contract theories of morality have historically failed when accounting for moral duties to animals. This chapter will look at various types of contract theories and why they cannot provide moral protections for animals. I will focus on Scanlonian contractualism and Scanlon's assertion that it is not intended to cover the whole of morality. It is my claim that this situating of animals outside the contractualist scope is a weakness of the theory. I will demonstrate that despite his claim to the contrary, the grounding of contractualism in rationality is speciesist. I will question the notion that the theory must be built on rational capacities and propose a modification.

I. Social Contracts – Contractarianism and Contractualism

The idea of morality as a social contract can be traced back to the 17th century philosophers Hugo Grotius and Thomas Hobbes. In the early 1600s, Grotius advocated a voluntarist theory, one that treats God as the foundation of the moral law. But in 1625, he writes with regard to his new moral theory, one based in human nature, that it "would have a degree of validity even if we should concede that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to him."⁵¹

Morality, Grotius says, "arises from the nature of the action itself."⁵² Actions must be compatible with human nature, which is both rational and social. As rational beings, we should pursue the fulfillment of our own interests. As

⁵¹ Hugo Grotius, *The Law of War and Peace* (Indianapolis, The Bobbs-Merrill Company, 1925), 13.

⁵² Hugo Grotius, *Opera omnia theologica* (London, Moses Pitt, 1679), 187.

social ones, we are limited in how we can do so. Moral laws are in alignment with human nature. Grotius says, “The law of nature is a dictate of right reason, which points out that an act, according as it is or is not in conformity with rational nature, has in it a quality of moral baseness or moral necessity; and that, in consequence, such an act is either forbidden or enjoined.”⁵³ Right actions are compatible with our natures as rational and social beings; wrong actions are not.

The authority of these laws is grounded in their source – in our own nature. Because it is human to be rational and social beings, failing to follow laws that have these qualities as their foundation is to be less than human.

Morality as a social contract is most commonly associated with the work of Thomas Hobbes, specifically his 1651 book *Leviathan*. In this book, Hobbes imagines what it would be like in a “state of nature” – where there are no rules and no authority. He argues that, among other things, there would be no industry, no building, no knowledge of the earth, no letters, no society, continual fear, danger of violent death, and that the life of man would be “solitary, poor, nasty, brutish, and short.”⁵⁴

Hobbes’ version of social contract theory derives moral norms from a rational assessment of how to best maximize one’s own self-interest. Such an assessment will lead people to act morally for two reasons. First, we are all vulnerable to the actions of others. Second, it is to everyone’s benefit to cooperate with those around us. For example, the best way for any one individual to ensure that he does not fall victim to theft is to come to an

⁵³ Grotius, *The Law of War and Peace*, 38.

⁵⁴ Thomas Hobbes, *Leviathan* (Cambridge: Cambridge University Press, 1991), 89.

agreement with his neighbors that no one will steal from anyone else. Stealing is thus considered wrong, meaning that sanctions will follow acts of theft. In this way, moral norms are formed. While stealing is not *inherently* wrong, it is *treated* as wrong because having an enforceable rule against it contributes to the best interests of all. Morality is thus a human construction, based on the view that always pursuing our own self-interest is the rational thing to do.

As contract theory evolved, the role of rationality changed. Kant's theory discards any reference to self-interest in favor of giving reason a different type of normative role. For Hobbes, the normative force behind the rules of the contract is a function of goals that we already have. We want to continue to live, we want to be safe and happy, and so on. The reason we should obey the rules is because they are the most effective means of pursuing our own ends.

According to Kant, however, reason commands that we set particular ends – regardless of whether those ends are in accord with our own self-interest. While morality remains a human construction, it is imposed on us by our very nature as rational beings, rather than our desire to pursue our own ends. For Kant, then, a rule against stealing is not the result of our seeking our own best interests. He says, "Whoever steals makes the property of everyone else insecure and therefore deprives himself (by the principle of retribution) of security in any possible property."⁵⁵ A person who steals undermines the very system of property from which he is attempting to benefit. It is this contradiction, rather than personal interest, that necessitates a rule against stealing.

⁵⁵ Immanuel Kant, *Metaphysics of Morals* (Cambridge: Cambridge University Press, 1996), 106.

The specific contractualist view that we will be discussing is the one developed by Thomas Scanlon, particularly in his book *What We Owe to Each Other*. Scanlon, like Kant, does not root the idea of a contract in self-interest. In any case, the use of the word “contractualism” from this point forward should (unless otherwise noted) be taken to refer to Scanlon’s theory.

II. Scanlonian Contractualism

Thomas Scanlon’s version of contractualism can be summed up in the following statement:

An act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced, general agreement.⁵⁶

In other words, contractualist morality consists of rules to which no one could reasonably object. Scanlon admits that his use of the word “reasonable” (as opposed to “rational”) may seem questionable because this formulation seems more obscure.⁵⁷ He states that he rejects the use of “rational” because the most rational thing to do is often equated with the course of action that is most likely to fulfill an individual’s aims. This is not what he has in mind. Rejection is unreasonable if, for example, what you are being asked to sacrifice is far less than what another individual will gain, as in the famine case discussed at the end of chapter one.

⁵⁶ T.M. Scanlon, *What We Owe to Each Other* (Cambridge, MA, Belknap Press, 1998), 153.

⁵⁷ While Scanlon doesn’t provide a reason for believing the use of “reasonable” rather than “rational” makes his principle seem more obscure, I believe that the mathematical connotation of “rational” plus the common sentiment that “reasonable people can see things differently” are candidates.

The contractualist process for deciding whether it would be wrong to perform a certain action under a given set of circumstances is to consider possible principles governing how a person might act. For a particular action X, we must consider what burdens it would impose on others if some people were allowed to do X. Scanlon calls these “objections to permission.” Then we must examine how others would be burdened by a principle forbidding X. These are “objections to prohibition.”

Scanlon now says the following:

Suppose that, compared to the objections to permission, the objections to prohibition are not significant, and that is it therefore reasonable to reject any principle that would permit one to do X in the circumstances in question. This means that the action is wrong, according to the contractualist formula.⁵⁸

The principle allowing X is one that can be rejected because the burdens that it would place on people make it reasonable to do so.

The contractualist rules are the foundation for general agreement among individuals who share the goal of coming to such an agreement. As we saw with Hobbes and with Kant, the members of society are attempting to create a set of rules by which to live. For Scanlon, acceptable rules are those that no one could reasonably reject. To return to our stealing example, we might want to argue that it is impossible for someone to reasonably reject a rule that prohibits theft. Thus, theft is wrong and a rule against it is instituted.

Someone might object that, intuitively, theft is not *always* wrong. What about an extreme case, like a desperately poor parent stealing to save the life of a child in a situation of unequal wealth distribution? The answer is that, for

⁵⁸ Scanlon, *What We Owe to Each Other*, 195.

Scanlon, the rules of the contract are not absolute and indefeasible. There may be exceptions. He says:

Consider, for example, moral principles concerning the taking of human life. It might seem that this is a simple rule, forbidding a certain class of actions: Thou shalt not kill. But what about self-defense, suicide, and certain acts of killing by police officers and by soldiers in wartime? And is euthanasia always strictly forbidden? The parts of the principle that are the clearest are better put in terms of reasons: the fact that a course of action can be foreseen to lead to someone's death is normally a conclusive reason against it; the fact that someone's death would be to my personal advantage is no justification for aiming at it; but one may use deadly force when this seems the only defense against a person who threatens one's life; and so on.⁵⁹

Thus, we can still make the claim that it is impossible for someone to reasonably reject a rule that prohibits theft, as long as we realize that "even the most familiar moral principles are not rules which can be easily applied without appeals to judgment."⁶⁰

According to Scanlon, the distinctive value of human life is located in our capacity to weigh reasons and justifications. This means that according people the respect that they deserve involves acknowledging this capacity. We do this by treating them in a way that conforms to principles that they could not reasonably reject. Moral requirements, then, determine the appropriate ways to respond to people in their role as rational agents.

For Scanlon, this is a matter of being able to make the appropriate judgments of value. To fully understand the value of something, we must know *how to value it* – in other words, we must know what kinds of actions and attitudes are required. Justly valuing a person entails that our interactions with

⁵⁹ Scanlon, *What We Owe to Each Other*, 199.

⁶⁰ Scanlon, *What We Owe to Each Other*, 199.

them respect their distinctively human capacities. To behave wrongly, then, is to fail to treat people in accordance with their proper value. In Scanlon's view, the wrongness of an action consists in that action's being unjustifiable to others. Any action that does not fail this test can thus be considered permissible; right actions are defined simply as those that are not wrong.

III. Contractualism and Animals

In contract theories of morality, the standard view is that all obligations are between parties to the contract. Such theories, then, do not consider animals to have direct moral standing because, lacking rationality, they cannot participate in drawing up the contract. Because it is highly counterintuitive to claim that the treatment of animals is subject to no moral standards, many attempts have been made to avoid this conclusion.

One such attempt is to say that even though animals do not have the type of moral status that we do, they have a sort of derivative status. For example, it is wrong for someone to kick Bob's dog because Bob is fully possessed of moral status. He therefore possesses the right to have his property safe from harm, and as kicking his dog constitutes harming his property, to do so is morally wrong.

While this account does have some value in that it provides protection from harm to Bob's dog and all other animals that are owned by those with moral status, it fails to protect animals that do not have owners, such as stray animals or those that live in the wild. Without being able to ride the coattails, so to speak,

of an individual with moral standing, those animals do not have the benefit of a moral rule protecting them from harm.

Furthermore, this account does not accord with our intuition that when someone kicks Bob's dog, it is not Bob, but the dog himself who has been harmed. While it certainly is the case that this individual owes Bob an apology, it is not against him that the primary crime has been committed. This intuition cannot be reconciled with the claim that animals possess only indirect moral status.

Another attempt that has been made to satisfy our intuition that the treatment of animals is a moral issue is to claim that Jim should not kick Bob's dog because of the effect that doing so will have on Jim. By kicking dogs, Jim is reinforcing within himself the trait of cruelty, and thus increasing the likelihood that he will behave cruelly to other human beings. As we saw in our discussion of Kantianism in Chapter Two, this move fails to accommodate some basic intuitions about our moral obligations even to unowned animals, and about the moral duties even of people who are constituted in psychologically unusual ways.

A third way in which we might account for the wrongness of harming animals without affording them direct moral status is to claim that the treatment of animals is a matter of legitimate public interest. There are many people who find the mistreatment of animals to be very upsetting, and as these people are bearers of moral status, they are entitled to have this taken into consideration.

Again, this faces the objection that it cannot account for the intuition that it is the animals themselves who are being harmed, not simply those who happen

to observe it and are upset by it. Furthermore, it cannot explain why it would be wrong for Bob to kick his own dog inside his house where no one will ever know, or why it would be a problem for others who enjoy kicking dogs and watching others kick dogs to form secret groups to engage in such an activity. Even were Bob to live in a hypothetical society in which no one is bothered by the mistreatment of animals, our intuition still tells us that for him to kick his dog would be wrong.

It might be objected that intuition is playing a large part in the arguments I am putting forth here. Might someone be able to claim that our intuitions regarding animals are simply incorrect? After all, depending on intuition to determine what is and is not moral is not an infallible method. To this I would respond that first, it's far from clear that ethics can do without appeals to moral intuition, and second, that the intuition being appealed to is very basic. Any credible moral system must claim that the infliction of unnecessary pain is wrong. There is no foundation for qualifying this according to gender, age, race, etc. Similarly, there is no foundation for qualifying it according to species or rational capacities. Doing so would be unjustifiably arbitrary.

Another point we may argue, following Tom Regan in "The Case for Animal Rights," is that what is important for issues of moral consideration is not the ways animals differ from us but the ways in which they are similar. Humans and animals both have desires, preferences, beliefs, feelings, etc. Referring to those similarities Regan says:

And all these dimensions of our life, including our pleasure and pain, our enjoyment and suffering, our satisfaction and frustration,

our continued existence or our untimely death – all make a difference to the quality of our life as lived, as experienced, by us as individuals. As the same is true of . . . animals . . . they too must be viewed as the experiencing subjects of a life, with inherent value of their own.⁶¹

Again, focusing on differences while ignoring similarities is simply discrimination. Furthermore, we are not relegated to appealing solely to intuition to explain why we have moral duties to animals that are not dependent on our duties to other humans.

Thus, any theory that must resort to a discussion of indirect moral status with regard to animals faces a significant disadvantage. So how does Scanlon approach this issue in his presentation of contractualism?

IV. Scanlon and Animals

Scanlon makes the claim that contractualism is not intended to cover the entirety of morality. He uses the terms “moral” and “morality” to refer to a diverse set of values. Contractualism does not include everything that falls under the heading of morality, but it “characterizes a central part of the territory.”⁶² Contractualist morality, as we have seen, deals with what we owe to each other – obligations or duties that we have to other human beings. However, there can be moral issues that do not involve such obligations.

Scanlon uses the example of a father who does not have special concern for the interests of his children. It seems that he is an appropriate subject for moral criticism. While Scanlon admits that perhaps these obligations can be accounted for within the contractualist framework by considering the special

⁶¹ Tom Regan, “The Case for Animal Rights” in *In Defence of Animals*, ed. Peter Singer (Oxford: Basil Blackwell Publisher, 1985), 22.

⁶² Scanlon, *What We Owe to Each Other*, 173.

relationship in which children stand to parents, he points out that fulfilling such obligations does not seem to cover all that morality expects of a parent. Furthermore, even if it did, a father moved only by obligation still seems deficient, and there is no reason not to describe this as a moral deficiency.

Another example is that of people who do not strive to meet high professional standards or develop their talents – even when they have no duty to others to do so. Such individuals can still be subject to moral criticism, although there is no contractualist basis on which to judge.⁶³ These examples support Scanlon's view that his contractualist theory does not cover everything that morality as a whole covers. The values that are present in these examples do not involve what we owe to each other. The father motivated only by obligation fails to see the value in being a parent, and people who do not develop their talents fail to see the value in doing so.

Thus, he concludes that contractualism is not a theory of everything that can be considered moral, but “only that part of the moral sphere that is marked out by certain specific ideas of right and wrong or ‘what we owe to others.’ The boundary of this part of morality marks an important moral distinction, but it does not mark the difference between those beings who ‘count morally’ and the rest who are of merely instrumental value.”⁶⁴ As we have seen, Scanlon's view is that contractualist morality covers those who have the capacity to weigh reasons and justifications. What about morality in the broad sense?

⁶³ This is a difference between Scanlon and Kant, since Kant uses failure to develop one's talents as one of his main examples of Categorical Imperative violations in the *Groundwork*. Similarly, the example about the parent could be accommodated by a virtue ethicist in her “main” moral theory.

⁶⁴ Scanlon, *What We Owe to Each Other*, 178.

Let us consider two groups of beings that, according to Scanlon, do not qualify for contractualist morality. First, we can talk about beings that have a good, which means that things can go better and worse for them. These include not only sentient beings, but also “oak trees and tomato plants, and perhaps even forests and wetland ecosystems, since all these things ‘have a good’ in the most abstract sense: that is to say, there is such a thing as events and conditions being good or bad for them.”⁶⁵

Do such things count morally, broadly speaking? Scanlon thinks they do. He says that their good generates moral limits on our conduct regarding them. Wantonly harming or destroying them is thus something that can be morally criticized. He mentions the destruction of an old forest to put a parking lot in its place and says that such an action, in the broadest sense, is wrong. We are obviously not obligated to justify ourselves to the forest or the individual trees because this notion simply does not make sense. As Scanlon says, “In order for the idea of justification *to* a being to make sense it must at least be the kind of thing that can be conscious.”⁶⁶

Second, what about beings who have a good, are conscious, and are capable of feeling pain, such as animals? Scanlon says that when we see an animal that we believe to be in pain, we have an immediate sympathetic response. He adds that there is no reason to believe that this is not the correct way to feel. He says, “Pain – whether that of rational creatures or nonrational

⁶⁵ Scanlon, *What We Owe to Each Other*, 179.

⁶⁶ Scanlon, *What We Owe to Each Other*, 179.

ones – is something we have prima facie reason to prevent, and stronger reason not to cause.”⁶⁷

This takes us back to our discussion of morality as a whole containing a diverse set of values. Appreciating the reasons to prevent pain and to refrain from causing it is necessary in order to understand the value of sentient beings, such as animals. Because we can plausibly assume that an appropriate response to such beings is a part of morality, it is a serious moral failing to view animal suffering with indifference, and it is morally wrong to cause them pain without sufficient reason.

But is this adequate? Scanlon admits that torturing an animal may seem wrong – not simply because pain is a bad thing and something we should not cause, but because it is “something for which we should feel guilty to the animal itself, just as we can feel guilt to a human being.”⁶⁸ This leads to the question of whether the requirement to treat humans according to principles that they could not reasonably reject should be extended to include animals as well.

The immediate problem that this raises is how it is possible to justify oneself to a nonrational creature. After all, we cannot explain to the dog that the momentary discomfort he feels when getting a shot is worth it because it will help to keep him healthy. Of course, we can say these words to him, but there is no way to make him understand.

Scanlon suggests that it may be possible to accommodate the notion that animals are due justification with a trustee system. This would enable trustees

⁶⁷ Scanlon, *What We Owe to Each Other*, 181.

⁶⁸ Scanlon, *What We Owe to Each Other*, 182.

for animals to raise objections on their behalf to certain principles – ones that allow people to act in ways contrary to the animals' good. The problem with this proposal, according to Scanlon, is that neither of the ways that we could define "the good" of animals succeeds in establishing the necessity of trustees.

The first way Scanlon says we could define "the good" of animals would be in what he calls the "organic" sense – consisting in "functioning well and carrying out the life cycle typical of the kind of organism that they are."⁶⁹ But as he points out, it is not the case that everything that interferes with this would raise moral objections. The example he uses is that of administering birth control to wild animals so that their population does not become a problem for their human neighbors (with the caveat that no distress is caused to individual animals). This does not seem objectionable in a contractualist sense. Therefore this is not a foundation upon which animal trustees could base objections.

The second way in which we could define an animal's good is to simply focus on the experiential quality of life. But how do we quantify this? For humans, one of the central elements of quality of life includes the ability to succeed in one's rational aims. Animals, however, do not have these types of aims. While it is true that they engage in goal-directed activity, interfering in such activity only seems morally objectionable when doing so causes distress. The interference itself does not qualify as a basis upon which to object.

On the other hand, making objections from the standpoint of an animal's pain or distress does seem to have a force that is independent of other ways of

⁶⁹ Scanlon, *What We Owe to Each Other*, 183.

thinking of the animal's good. Were a trustee to make an objection based on pain or distress, this would seem reasonable not because of either of the ways we might define an animal's good, but simply because of how the animal itself would feel.

Scanlon thus determines that trustees for animals may be limited to making objections based solely on experiential harms such as pain and distress. In the practical sense, then, the trustee system is not much different than his proposal that we simply take pain into account when making moral decisions. The difference lies in the question of whether we have the reason to justify ourselves to animals that we do to justify ourselves to each other. Scanlon does not believe that we do and therefore thinks that trustees do not serve any purpose.

He does, however, admit that a contractualist need not agree with him. Perhaps we could then simply agree to disagree with Scanlon and admit the trustee system into our version of contractualism. After all, his objection to this system assumes that animals have no goods other than attaining pleasure and avoiding pain. In the years since the publication of *What We Owe to Each Other*, philosophers have questioned this assumption. Martha Nussbaum, in *Frontiers of Justice*, refers to animals as "agents seeking a flourishing existence."⁷⁰ She goes on to say that there may be some goods that animals pursue "that are not felt as pain and frustration when they are absent: for example, free movement and physical achievement, and also altruistic sacrifice for kin and group."⁷¹ She

⁷⁰ Martha Nussbaum, *Frontiers of Justice* (Cambridge, MA, Belknap, 2006), 337.

⁷¹ Nussbaum, *Frontiers of Justice*, 345.

also points out that it is possible that there could be value in some animal pains – for example, the grief of an animal for a deceased child or parent. We do not want to be too quick to accept Scanlon’s reasons for dismissing a trustee system.

However, even if Scanlon is mistaken about the goods of animals, there are other reasons to reject such a system. Peter Carruthers, in his discussion of Rawlsian contractualism, objects to the use of trustees. He is addressing the suggestion that animals have representatives behind the veil of ignorance who are tasked to speak for them in the formulation of the basic contract, but his words can easily be applied to trustees in the Scanlonian system as well. The main objection, he says, to allowing representation for animal interests, is that it is arbitrary. It would be “done without any independent theoretical rationale, simply to secure the desired result – that animals should have moral standing.”⁷²

We may object that Carruthers’ charge of arbitrariness is misguided. The idea that animals have moral standing is a deeply seated moral intuition, meaning that any moral theory that cannot accommodate it has a black mark against it. Thus, the inclusion of trustees is simply a way of tinkering with the theory so that it falls in line with our intuitions.

However, this does not negate Carruthers’ point that implementing the trustee system has no other justification than to conform to intuition. While it is true that a theory’s correspondence to our considered moral judgments is a vital component of its acceptability, this actually supports Carruthers’ claim. After all, what we are seeking is a moral theory that accommodates those intuitions, not a combination of a moral theory and ad hoc additions like the trustee system.

⁷² Peter Carruthers, *The Animals Issue* (Cambridge, Cambridge University Press, 1992), 100.

Such additions merely obscure the failures of the theory itself. The instinct to revise the theory to allow for the inclusion of a deep-seated intuition is a good one, but the proposed change is too superficial to get to the heart of the problem.

This is not only true of the trustee solution. It is my view that all of the attempts to deal with moral obligations to animals under a contractualist system are ad hoc, unconvincing, and incomplete. Because most of us are unwilling to relinquish our intuitions regarding the moral status of animals, the failure of these attempts demonstrates an important weakness of the theory. Furthermore, it is preferable to not depend solely on our intuitions for justification of such moral status.

However, I believe that, if contractualism can be made to accord with our intuitions concerning animals, and if these intuitions can be independently supported, it would actually provide more protections for animals than utilitarianism does. One of the most serious moral issues with respect to animals is the morality of factory farming. The traditional utilitarian view regarding this practice is that the pleasure experienced by burger-eaters is outweighed by the suffering experienced by the cow. Factory farming is thus morally impermissible. But as we saw in Chapter Two, this could be overridden in the case of the Mega-Cow.

The revised version of contractualism that I intend to propose will, unlike utilitarianism, cover both the cow and the Mega-Cow. By widening the scope of contractualism, we can accommodate more of our basic moral intuitions and strengthen the theory itself.

V. Mark Rowlands and the Role of Rationality

Social contract theories have always assumed that it is only the contractors who are entitled to the protections of the contract. It is, of course, true that only rational beings can participate in the drawing up of the contract, but does this necessarily mean that the scope of the protections it offers can extend no further?

Mark Rowlands discusses this in his book *Animal Rights: Moral Theory and Practice* and concludes that it is illegitimate to assume that contract protections only cover rational beings. The fact that those who draw up the contract must by necessity be rational agents does not entail that those who are protected by the contract must also meet the rationality requirement.

Rowlands begins his argument by distinguishing two versions of contract theory. He says, “On the one hand, there is the form of contractarianism which derives, in a fairly direct way, from Hobbes. This form emphasizes the benefits, in terms of protection of life, limb, and property, which a contract affords. We might refer to this as *Hobbesian contractarianism*.”⁷³ He goes on later to say, “There is, however, another, very different way of developing the contract, a way that has its roots in the work of Kant, and receives its most influential recent formulation in the work of John Rawls. We can [. . .] refer to this interpretation of the contract idea as *Kantian contractarianism*.”⁷⁴ Since the Kantian contractarian I am most interested in, Scanlon, calls himself a contractualist, in

⁷³ Mark Rowlands, *Animal Rights: Moral Theory and Practice* (London, Palgrave MacMillan, 2009), 4.

⁷⁴ Rowlands, *Animal Rights: Moral Theory and Practice*, 5. This distinction originally comes from Will Kymlicka, “Contractarianism,” in *A Companion to Ethics*, ed. Peter Singer (Oxford: Basil Blackwell, 1989).

what follows I will use the terminology *Hobbesian contractarians* and *Kantian contractualists*.

Rowlands makes the point that, for Hobbesian contractarians, the overarching aim is to maximize one's self-interest, there is no inherent rightness or wrongness in particular goals or actions, and morality consists of humanly constructed rules that facilitate cooperation. These are the same features previously mentioned as constituting contractarianism. He then goes on to make the point that "the ultimate source of the contract's authority derives from the fact that we have implicitly agreed to it."⁷⁵ Because these are the rules that we would set in a contract situation, they are binding upon us.

Because the contract is intended to further the ultimate goal of our own self-interest, the principal benefits that it brings are "protection from those who might harm us and assistance from those who might help us."⁷⁶ For this reason, there are two groups of people we would not include in the contract. First, because they can neither help nor hinder us, there is nothing to be gained by contracting with people who are significantly weaker than we are. Second, there is no reason to contract with individuals who cannot understand the terms of the contract. The inclusion of these two groups would simply result in restrictions on our freedom without a comparable return, which is obviously not in our best interest. As Rowlands expresses it, then, parties to the contract must meet the *equality of power condition* and the *rationality condition*.

⁷⁵ Rowlands, *Animal Rights: Moral Theory and Practice*, 124.

⁷⁶ Rowlands, *Animal Rights: Moral Theory and Practice*, 124.

In Kantian contractarianism, the idea of a contract is utilized very differently. Rowlands makes the point that rather than grounding any particular moral code, the contract is a heuristic device that allows us to identify and express the principles embodied in the moral code that we have adopted. For example, if our moral code includes the idea of the equal moral status of persons, we will form a contract that includes rules that protect this status. In contrast to Hobbesian contractarianism, the contract does not *constitute* right and wrong, but rather *reveals* what is right and wrong according to our moral code and independent of the contract itself.

To be clear, the suggestion here is not that all Kantian contractarians are robust metaethical realists. As we have seen earlier, there does seem to be a significant sense in which, for Kant, moral obligations are created by our rational wills. Rawls also sometimes talks about “Kantian constructivism.”⁷⁷ The distinction Rowlands is making here, however, is orthogonal to the distinction between constructivism and robust realism. His point is rather that for Kantian contractarianism, the contract is merely a device for identifying the principles that we in fact, for whatever reason, hold.

Another difference between the two lies in the origin of the authority of the contract. Rather than emanating from our acceptance of the rules, the authority of the Kantian contract derives from the authority of the moral principles that lie behind it (what Rowlands calls the “Moral Law”). And the authority of these principles is simply this: obeying morally correct principles is the right thing to do.

⁷⁷ See for example John Rawls, “Kantian Constructivism in Moral Theory: The Dewey Lectures 1980,” *Journal of Philosophy* 77 (1980): 515-572.

This leads Rowlands to the conclusion that the equality of power and the rationality conditions are not a part of Kantian contractarianism. Excluding the weak and the nonrational is beyond the scope of the Kantian contract. The inclusion of such individuals within the scope of morality depends not upon the contract itself, but upon the principles that the contract helps us uncover. Whether the weak and/or the nonrational are included is solely dependent upon what those principles tell us.

It might be thought that the weak and/or the nonrational are trivially excluded because they cannot understand and agree to the contract, but there is a distinction between being a *party* to a contract and being *protected* by a contract. Two people can agree to protect a third person, an animal, or even an inanimate object. The exclusion of any particular group, then, is not something that can simply be assumed. It is something that must be argued for. As Rowlands puts it, “The Moral Law is the dog, and the contract is the dog’s tail.”⁷⁸ The contract itself does not have the authority to determine who counts morally and who does not.

VI. Modifying Scanlonian Contractualism

Scanlon is firmly on the Kantian side of the distinction between Hobbesian and Kantian contractarians. He states:

In the article in which I first presented this view, I referred to it as “contractualism.” I will continue to use this name, despite the fact that it has certain disadvantages. There are a number of other views, differing in various ways from the one I present, which are commonly called contractualist. In addition, ‘contract’ and its cognates seem to many people to suggest a process of self-

⁷⁸ Rowlands, *Animal Rights: Moral Theory and Practice*, 127-8.

interested bargaining that is foreign to my account. What distinguishes my view from other accounts involving ideas of agreement is its conception of the motivational basis of this agreement. The parties whose agreement is in question are assumed not merely to be seeking some kind of advantage but also to be moved by the aim of finding principles that others, similarly motivated, could not reasonably reject.⁷⁹

Because we are entering into the formation of the contract with the guiding principle that wrongness simply *is* the property of being unjustifiable already in place, the contract must be revelatory rather than constitutive. Our agreeing to the contract's rules is not what makes them right – their rightness comes (assuming that the principle itself is morally right) from their embodiment of the principle. Since the principle itself does not exclude anyone, we cannot at this point say that any exclusions are warranted.

It might be objected that the principle does, in fact, exclude nonrational beings because it is based in the idea of justification and we cannot justify our behavior to them. Thus, only those who can understand our justifications may possess moral status, necessarily eliminating animals.

The objection can be answered with a simple thought experiment. Imagine that we live in a land where all communication of complex ideas is sound-based⁸⁰ and that people from time to time lose their hearing in industrial accidents. Such people, no longer being able to communicate with the rest of us, would not be able to understand our attempts at justification – but they could if they possessed the relevant capacities. Nonetheless, what they could reasonably object to would be clear. Similarly, nonrational beings cannot

⁷⁹ Scanlon, *What We Owe to Each Other*, 5.

⁸⁰ By “communication of complex ideas,” I mean any kind of communication that goes beyond what animals can do.

understand our attempts at justification because they lack the relevant capacities, but what they can reasonably object to is also clear. Because there are a number of similarities between humans and animals, many of the rules we would find objectionable would be the same for them – rules permitting enslavement, abuse, exploitation, and murder, for instance.

So where do we go from here? Recall that Scanlon bases his wrongness = unjustifiability principle in what he sees as the distinctive value of human life – our ability to assess reasons and justifications. Value leads to obligations. Treating people in accord with principles they could not reasonably reject is the way in which we acknowledge their value. But perhaps this is the wrong foundation. Could it be that Scanlon has stated the correct moral principle but is basing it on the wrong value? In other words, perhaps Scanlon is incorrect in grounding the principle in this sort of rational capacity – or any rational capacity. To see if this is the case, we can take a closer look at Scanlon’s argument that his principle flows from the distinctive value of human life.

VII. Scanlon on the Value of Human Life

Scanlon begins his discussion by considering the possibility that the value of human life is “that a world is made better by containing it.”⁸¹ But even if this is true, he says, it can’t be the real source of value. We don’t have reasons to create new human life that are as strong as our reasons not to destroy already existing human life. If both types of reasons were rooted in the same consequentialist idea that the world is better the more human life it contains, our reasons to produce more children would be just as strong as our reasons not to

⁸¹ Scanlon, *What We Owe to Each Other*, 103.

kill people. Because this is not plausible, this cannot be the root of the value of human life.

Our strongest reasons to refrain from ending human lives are “matters of respect and concern for the person whose life it is.”⁸² They are not reasons that apply to human life in the abstract. This can be illustrated by looking at euthanasia and suicide.

Honoring the request of a person who meets the generally accepted criteria for justifiable euthanasia (death is certain and soon, there is great pain, etc.) does not seem to be objectionable on the grounds of the value of human life.⁸³ So perhaps our reasons for not destroying a human life are only applicable “as long as the person whose life it is has reason to go on living or wants to live.”⁸⁴

Suicide can show insufficient respect for human life if it is committed “out of a cynical conviction that nothing is worth doing, or out of disappointment at being rejected by a lover.”⁸⁵ Such a person fails to understand the value of life and chooses to waste it. The same could also be said of someone who “spent his life in utter idleness or mired in cynical nihilism.”⁸⁶ Both cases demonstrate a failure to understand the reasons to go on living – possible future accomplishments, good that they could do for others, or pleasures they might experience. Thus we might conclude, at least from the viewpoint of the person

⁸² Scanlon, *What We Owe to Each Other*, 104.

⁸³ Scanlon acknowledges that this is a controversial position, but proceeds upon the assumption that he is correct.

⁸⁴ Scanlon, *What We Owe to Each Other*, 104.

⁸⁵ Scanlon, *What We Owe to Each Other*, 105.

⁸⁶ Scanlon, *What We Owe to Each Other*, 105.

living it, that the value of life might be identical to the reason that person has for living it.

We might say, then, that recognizing the value of human life is a matter of respecting each human being as a locus of reasons, that is to say, recognizing the force of their reasons for wanting to live and wanting their lives to go better.⁸⁷

However, Scanlon points out two reasons why this view is unsatisfactory. First, the notion that respecting the value of human life in general means respecting the multitude of reasons that billions of individual humans have for wanting to live and wanting their lives to go well is “impossibly unwieldy.”⁸⁸ It is impossible to respond to or even comprehend all these reasons at one time.

The second objection, Scanlon says, points us toward a solution.

While the view just described recognizes what is distinctive about human life [. . .] by characterizing us as creatures who have reasons, it does not exploit the full depth of this characterization. What it mentions is that we are creatures who have reason to want certain things to happen. This presupposes, but does not mention, that we are creatures who have the capacity to assess reasons and justifications. It also does not mention that we have the capacity to select among the various ways there is reason to want a life to go, and therefore to govern and live that life in an active sense.⁸⁹

The problem with this objection is that Scanlon is blatantly begging the question in favor of his preferred view. In combination, he says (although the first one does not seem to be doing any work), the objections suggest the very position that he asserts. He gives this principle as follows:

Respecting the value of human life requires us to treat rational creatures only in ways that would be allowed by principles that they could not reasonably reject insofar as they, too, were seeking

⁸⁷ Scanlon, *What We Owe to Each Other*, 105.

⁸⁸ Scanlon, *What We Owe to Each Other*, 105.

⁸⁹ Scanlon, *What We Owe to Each Other*, 105.

principles of mutual governance which other rational creatures could not reasonably reject.⁹⁰

Scanlon then goes on to say:

I do not claim that this is the only possible response to the problem of understanding the requirements of respecting the value of human life, much less that I have offered a strict argument for it.

This is, indeed, far from being a strict argument. What Scanlon does in his “second objection” is simply to assert that the view under consideration is flawed because it doesn’t resemble his preferred view. The weakness of this argument opens the door to two possibilities: first, that it is something other than rationality that grounds the value of human life, and second, that whatever this value is grounded upon may also include other types of creatures.

VIII. Conclusion

In this chapter, I have explored how contract theories of morality – including Scanlon’s – have attempted to include animals within the moral framework by according them an indirect status. I have also demonstrated how all these attempts fail. I have drawn on Mark Rowlands’ distinction between Hobbesian contractarianism and Kantian contractarianism to show that it is not the case that only parties to the contract are entitled to its protections – that nonrational beings may also be included under the contract’s scope.

Scanlon’s guiding moral principle is a highly intuitive one, being grounded as it is in the notion that human life is valuable, as well as the claim that this value places obligations on us. However, his idea that this value arises from the ability to assess reasons and justifications (for which he admits that he has not

⁹⁰ Scanlon, *What We Owe to Each Other*, 106.

provided an airtight argument) leads to the same difficulty that has always faced contract theorists when it comes to animals. In the coming chapters, I will consider the possibility that value arises from moral capacities rather than rational ones, beginning with a look at moral emotions and what it means for an action to be virtuous.

Chapter 4 – Empathy and Virtue

Looking at the roles played by empathy and sympathy in moral behavior allows us to reach particular conclusions about the moral abilities of animals. I will address Mark Rowlands' claim that animals count not as moral agents or moral patients, but as *moral subjects* – beings who are capable of being motivated to act by moral reasons. My position is that such actions count as virtuous, and I will demonstrate that virtue plays an important role in contractualism.

I. What Is Empathy?

Jesse Prinz defines empathy as follows:

[E]mpathy is a kind of vicarious emotion: it's feeling what one takes another person to be feeling. And the 'taking' here can be a matter of automatic contagion or the result of a complicated exercise of the imagination.⁹¹

It is important not to confuse empathy with sympathy, as they are two distinct types of emotions. Sympathy is a feeling of concern for a person who has experienced a misfortune. It originates within ourselves and is directed toward the other person. "I'm sorry that you're in pain" is an expression of sympathy. Empathy, in contrast, is experiencing an emotion that originates within someone else – it is to take another person's feelings inside ourselves. "I feel your pain" is an expression of empathy.

The two also differ in that sympathy is an emotion in itself, whereas empathy is not. Sympathy *just is* that feeling of concern, and it is an emotion that

⁹¹ Jesse Prinz, "Is Empathy Necessary for Morality?" in *Empathy: Philosophical and Psychological Perspectives*, ed. Amy Coplan and Peter Goldie (Oxford: Oxford University Press, 2011), 212.

only arises in response to negative situations. Empathy refers to the experience of any emotion that is “caught” from somebody else. A person who is empathizing with another could be feeling any of a variety of emotions – sorrow, joy, shame, etc. – in either positive or negative circumstances.

In accordance with Prinz’s definition, we can distinguish two types of empathy, which we may call voluntary and involuntary empathy. Voluntary empathy requires sufficient cognitive development for the empathizer to deliberately consider another’s pain. This allows for the development of empathy in situations where it is not automatically aroused. Involuntary empathy, on the other hand, simply overcomes us without the involvement of conscious thought. We may say, when we see a person in pain, that his pain “invades us.”⁹² Involuntary empathy may precede voluntary empathy, such as when the empathizer is immediately overcome with emotion and a more cognitive component is later added.

A second distinction we can make is between projective and receptive empathy. These are both types of voluntary empathy. Projective empathy is what we often refer to as “putting ourselves into someone else’s shoes.” In other words, we imagine what it would be like for us if we found ourselves in the circumstances of another. It is self-focused rather than other-focused. For example, imagine how a person might react upon finding out that a friend’s mother has passed away. If that person is very close to her own mother, she will

⁹² Michael Slote, *The Ethics of Care and Empathy* (New York, Routledge, 2007), 13. Various components of my discussion of voluntary and involuntary empathy are shaped (consciously and I’m sure in some cases unconsciously) by the way I have heard him present these issues over the years.

likely think about how terrible it would be to find herself in that situation. Her recognition of how upsetting that would be *for her* drives her emotional reaction.⁹³

Receptive empathy, on the other hand, is focused on the other person. It involves taking the emotions of the other person into ourselves and feeling, insofar as this is possible, what she is feeling from her perspective. Looking again at the example of the person whose friend's mother has died, she might consider the particular relationship that existed between her friend and her friend's mother. She might think about particular ways in which her friend was helped and supported by her mother, or the role that they played in each other's lives. Rather than simply imagining what that situation would be like for her, or thinking in general terms about losing a parent, she could focus on what it means *to her friend* that her mother has passed away – what it means for her friend *in particular* to suffer this loss. For receptive empathy, she must feel the emotions that her friend is feeling rather than the emotions she would feel had it been her own mother who died.

Receptive empathy requires a closer connection with the other person than does projective empathy. Projective empathy can occur between any two people who occupy similar situations, even if they do not know each other. If a person is close to her mother or has lost her mother, she can empathize with a friend of a friend who is experiencing the same thing simply by imagining or remembering. But receptive empathy in such a situation is not possible because she does not have the right kind of connection to the grieving person.

⁹³ Of course, there must be other similarities between the two cases. If the friend hated her mother, for example, we would not want to characterize the sadness the person might feel regarding the situation as empathy.

Like voluntary and involuntary empathy, there is a difference in cognitive requirements. While projective empathy requires a level of cognitive development necessary for imagining ourselves to be in a particular situation, receptive empathy is more about emotion than cognition. It is harder to make statements about the necessary cognitive abilities for receptive empathy, but certainly a lesser degree of development is involved.

Mirror neurons – neurons that are activated when one performs a particular action as well as when one observes someone else performing the same action – were first discovered in monkeys in 1996.⁹⁴ When a monkey forms an intention to perform a particular type of goal-directed action with its hands, such as tearing, holding, or grasping, the neural cells located in the premotor cortex associated with that action are activated. Furthermore, simply watching another monkey, or even another human being, performing the same action results in the activation of the same cells. What is happening in the brain of the actor is reflected in what is happening in the brain of the observer: a sort of mirroring is taking place. To put it in scientific terms, there is “robust, selective activation of the same cells in both execution and observation modes.”⁹⁵

Something similar happens with regard to the sensation of touch. In 2004, it was discovered that when a person’s legs are touched, his primary and secondary somatosensory cortex is activated. A person who is observing the subject being touched will experience the activation of large parts of his

⁹⁴ G. Rizzolatti et al., “Premotor Cortex and the Recognition of Motor Actions.” *Experiment Brain Opinion* 111 (1996): 246-252.

⁹⁵ Alvin Goldman, “Two Routes to Empathy: Insights from Cognitive Neuroscience.” In *Empathy: Philosophical and Psychological Perspectives*, ed. Amy Coplan and Peter Goldie (Oxford: Oxford University Press, 2011), 33.

secondary somatosensory cortex as well. What's more, actual touch is not even required – merely watching someone's legs being approached as if they were to be touched is sufficient to produce smaller activations.⁹⁶

The study of pain has produced some interesting results, as there is both an emotional as well as a sensory reaction to pain. These reactions are mapped in different parts of what is called the "pain matrix." The sensory aspects of pain, such as location, duration, and intensity, are found in sensorimotor cortices, while affective and motivational components are located in the anterior cingulate cortex and anterior insula. It has been determined that mirroring occurs for both the sensory and affective elements of pain.⁹⁷ This suggests that both physical and emotional empathy take place when we observe someone else in pain. When we think about how we react when we see a movie scene in which someone is injured (particularly in sensitive parts of the body), these findings are in line with our own experiences.

What about mirroring with regard to emotions? A 2003 study dealing with disgust in humans demonstrated that the brain activity occurring in individuals who inhale disgusting or pleasant odors mirrors the activity found in those who simply watch others making the appropriate facial expressions associated with particular smells. Again, the observer's brain mimics the activity of the actor's

⁹⁶ C. Keysers et al., "A Touching Sight: SII/PV Activation During the Observation of Touch." *Neuron* 42 (2004): 335-346.

⁹⁷ See T. Singer et al., "Empathy for Pain Involves the Affective but Not Sensory Components of Pain," *Science* 303 (2004): 1157-1162, P.L. Jackson et al., "How Do We Perceive the Pain of Others? A Window Into the Neural Processes Involved in Empathy," *NeuroImage* 2 (2004): 771-779, I. Morrison et al., "Vicarious Responses to Pain in Anterior Cingulate Cortex: Is Empathy a Multisensory Issue?" *Cognitive, Affective, Behavioral Neuroscience* 4 (2004): 270-278, and A. Avenanti et al., "Transcranial Magnetic Stimulation Highlights the Sensorimotor Side of Empathy for Pain," *Nature Neuroscience* 8 (2005): 955-960. As Goldman notes, the first three of these deal with the affective aspect of pain, and the last deals with the sensory aspect.

brain.⁹⁸ As we saw with regard to pain, this also aligns with our own experiences. If we witness someone smelling spoiled milk and reacting, we have a similar reaction ourselves. And this applies not only to disgust, of course. Just the sight of a happy person can be enough to lift the mood of another.

II. A Philosophical Definition of Empathy

Thus far, we have been talking about empathy in a loose and intuitive way, which might give rise to the worry that the analysis will not hold up under a more rigorous understanding of the term. Let's pause, then, to take a closer and more exacting look at what empathy really is.

Marco Iacoboni states that empathy is a "very complex ability" to "understand and share the feelings of another."⁹⁹ Jean Decety and Andrew N. Meltzoff define empathy as "an affective response stemming from the understanding of another's emotional state or condition similar to what the other person is feeling or would be expected to feel in a given situation, without confusion between self and other."¹⁰⁰ Martin L. Hoffman defines empathy in almost the same terms, as "an emotional state triggered by another's emotional state or situation, in which one feels what the other feels or may normally be expected to feel in his or her situation."¹⁰¹

⁹⁸ B. Wicker, et al. "Both of Us Disgusted in My Insula: The Common Neural Basis of Seeing and Feeling Disgust," *Neuron* 40 (2003): 655-664.

⁹⁹ Marco Iacoboni, "Within Each Other: Neural Mechanisms for Empathy in the Primate Brain." In *Empathy: Philosophical and Psychological Perspectives*, ed. Amy Coplan and Peter Goldie (Oxford: Oxford University Press, 2011), 45.

¹⁰⁰ Jean Decety and Andrew N. Meltzoff, "Empathy, Imitation, and the Social Brain." In *Empathy: Philosophical and Psychological Perspectives*, ed. Amy Coplan and Peter Goldie (Oxford: Oxford University Press, 2011), 66.

¹⁰¹ Martin L. Hoffman, "Empathy, Justice, and the Law." In *Empathy: Philosophical and Psychological Perspectives*, ed. Amy Coplan and Peter Goldie (Oxford: Oxford University Press,

Some theorists seem to regard the involuntary contagion form of empathy as the most important kind of empathy, but Peter Goldie and Murray Smith provide definitions that only seem to apply to projective empathy:

Empathy is a process or procedure by which a person centrally imagines the narrative (the thoughts, feelings, and emotions) of another person. There are three necessary conditions for empathy First, it is necessary for empathy that I be aware of the other as a centre of consciousness distinct from myself. Secondly, it is necessary for empathy that the other should be someone of whom I have a *substantial characterization*. Thirdly, it is necessary that I have a grasp of the narrative which I can imaginatively enact, with the other as narrator.¹⁰²

Empathy is a kind of imagining; in particular it is a type of *personal* or *central* imagining. Such imagining takes the form of imagining perceiving or more generally experiencing events, in contrast to *impersonal* or *acentral* imagining, where we imagine that certain events have taken or are taking place, but without imagining that we perceive or experience them. In centrally imagining a situation, we mentally *simulate* experiencing it.¹⁰³

At this point, it is easy to sympathize with Alvin Goldman, who complains that “readers can sometimes be mystified as to how, exactly, a given writer uses the term.”¹⁰⁴ Amy Coplan makes the same point:

Depending on whom you ask, empathy can be understood as one or more of several loosely related processes or mental states. Some of the most popular include the following:

- (A) Feeling what someone else feels
- (B) Caring about someone else
- (C) Being emotionally affected by someone else’s emotions and experiences, though not necessarily experiencing the same emotions
- (D) Imagining oneself in another’s situation

2011), 231. This is Hoffman’s definition of “affective empathy,” which he differentiates from “cognitive empathy.” However, in most of his paper he uses these terms interchangeably.

¹⁰² Peter Goldie, *The Emotions: A Philosophical Exploration* (Oxford: Clarendon, 2000), 195.

¹⁰³ Murray Smith, “Empathy, Expansionism, and the Extended Mind.” In *Empathy: Philosophical and Psychological Perspectives*, ed. Amy Coplan and Peter Goldie (Oxford: Oxford University Press, 2011), 100.

¹⁰⁴ Goldman, “Two Routes to Empathy: Insights from Cognitive Neuroscience,” 32.

- (E) Imagining being another in that other's situation
- (F) Making inferences about another's mental states
- (G) Some combination of the processes described in (A) – (F)

The number of competing conceptualizations circulating the literature has created a serious problem with the study of empathy by making it difficult to keep track of which process or mental state the term is being used to refer to in any given discussion.¹⁰⁵

Coplan points out that many writers have reacted to this conceptual confusion by putting forward a broad and inclusive concept of empathy. She mentions Frans de Waal in particular, saying that in his view, philosophers “neglect important low-level phenomena and focus too narrowly on highly sophisticated cognitive operations involving processes like perspective taking.”¹⁰⁶ She goes on to say that, in contrast to this:

De Waal presents a broad conceptualization of empathy that encompasses an array of psychological phenomena, including mirroring processes, bodily synchronization, imitation of various forms, and emotional contagion. He maintains that all of these processes should count as empathy because all are fundamental features of human nature and of the social behavior of both human and nonhuman animals.¹⁰⁷

This, Coplan says, has “become the norm in the recent literature.”¹⁰⁸ And while de Waal is correct that all of these processes are important in their own right, Coplan thinks he is wrong in his view that grouping low and high level processes together is the best way to get the former the attention that they deserve. Rather, to do justice to all these processes, “we must treat them as

¹⁰⁵ Amy Coplan, “Understanding Empathy: Its Features and Effects.” In *Empathy: Philosophical and Psychological Perspectives*, ed. Amy Coplan and Peter Goldie (Oxford: Oxford University Press, 2011), 4.

¹⁰⁶ Amy Coplan, “Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization,” *The Southern Journal of Philosophy* 49 Spindel Supplement (2011): 42.

¹⁰⁷ Coplan, “Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization,” 42.

¹⁰⁸ Coplan, “Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization,” 42.

separate and as being worthy of distinctive conceptualizations.”¹⁰⁹ While they are related to one another in multiple ways, labeling them all as “empathy” does not succeed in highlighting either the nature of the relationships or the processes themselves. Rather, it simply succeeds in creating difficulties for our attempts to understand them.

Coplan states:

What we need is a narrower conceptualization of empathy, not a broader one. We need greater precision in our conceptualizations of the myriad processes that get called empathy, and we need to specify as clearly and systematically as possible what the different processes are, how each one works, and why each one matters.¹¹⁰

Coplan divides what is commonly referred to as empathy into three separate groups. The first of these is emotional contagion, which she says most empathy researchers consider to be “a primitive form of empathy or empathy at its most basic level.”¹¹¹ One characteristic that differentiates it from other processes leading to shared emotions is how it comes to be. She says:

Emotional contagion gets triggered by direct sensory engagement with another person expressing an emotion. It is a bottom-up or outside-in process. To catch the emotion of another, we must be able to directly perceive the other and the other’s emotion either through visual or aural observation. Emotional contagion neither relies on nor involves the imagination or any other higher-level processing. It is an immediate response that arises through direct sensory observation.¹¹²

¹⁰⁹ Coplan, “Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization,” 42.

¹¹⁰ Coplan, “Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization,” 43.

¹¹¹ Coplan, “Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization,” 45.

¹¹² Coplan, “Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization,” 46.

Another feature of emotional contagion is that it is an automatic process that happens when we observe another person expressing emotion. It is involuntary – we need not exert any deliberate effort or thought. The emotion is generally transmitted quickly and without the subject realizing it. This automatic and involuntary nature has often led researchers to characterize it as a kind of reflex.

A third element of emotional contagion is that it can generate emotional states that 1) differ from those that the subject was experiencing immediately prior to the contagion and 2) do not correspond to the subject's cognitive evaluation of how things are with and around him. Coplan provides the example of a person who is "melancholic and views the world and everything in it as hopeless" and then encounters an individual who "laughs easily and often."¹¹³ Emotional contagion will alter this person's state with no cognitive reevaluation required. All that occurs is "an automatic and involuntary response to another person's emotion."¹¹⁴

During an experience of emotional contagion, the subject typically fails to realize that this new emotional state has resulted from this sort of "catching." He experiences the emotion as his own. This is evolutionarily advantageous, allowing a person to benefit from another's monitoring of a shared environment. Fear that is "caught" from another induces that person to act just as if the fear had originated within himself.

¹¹³ Coplan, "Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization," 47.

¹¹⁴ Coplan, "Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization," 47.

Coplan goes on to discuss evidence from work in cognitive and social neuroscience. She says:

Directly related to my proposal are recent studies that identify some of the neuroanatomical substrates of emotional contagion and empathy proper and indicate that the two processes are based on distinctive neuroanatomical systems that develop independently and at different rates and that can operate independently of one another. By showing which brain regions subserve these processes, this research reveals differences between emotional contagion and empathy that occur at the subpersonal level.¹¹⁵

Coplan then moves on to discuss the second of three processes that are commonly referred to as empathy. She refers to this as “pseudo-empathy.” She states:

I use this term to refer to an attempt to adopt a target individual’s perspective by imagining how we ourselves would think, feel, and desire if we were in the target individual’s position. It is, essentially, a type of self-oriented perspective taking. We use our own selves and our responses to various simulated or imagined scenarios as a way to gain access to or understand another person’s situated psychological states.¹¹⁶

The problem is that most situations contain a sufficient degree of complexity such that one individual’s response to them is rarely a reliable indicator of what another person’s response will be. Coplan points out that:

Adopting another’s perspective will generally require one to bring a characterization of the target individual to bear on her imaginative process, a characterization encompassing facts about the target’s character, emotions, moods, dispositional tendencies, and life experiences.¹¹⁷

¹¹⁵ Coplan, “Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization,” 49.

¹¹⁶ Coplan, “Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization,” 54.

¹¹⁷ Coplan, “Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization,” 54.

This is a different kind of process than self-oriented perspective taking, requiring greater mental flexibility and emotional regulation. As Coplan says:

Self-oriented perspective taking is associated with a number of psychological phenomena that are precisely the kinds of phenomena that should be distinguished from genuine empathy, including errors in prediction, misattributions, and personal distress.¹¹⁸

Our natural inclination toward egocentric bias leads us to assume a greater similarity between ourselves and others than is usually there. We tend to conclude that others will feel what we feel, think the same way we think, and want the same things we want. Psychologists call these false consensus effects and explain that “they commonly lead to prediction errors regarding others’ mental states and behavior.”¹¹⁹ It is difficult for us to exclude our own beliefs, values, and other mental states when attempting to understand others.

Another way in which self-oriented perspective taking is distinguished from real empathy is in its relationship to personal distress. Personal distress occurs when we see someone else in distress and react by becoming distressed ourselves. In empathetic distress, “the observer’s experience of negatively valenced affective arousal is vicarious; that is, it is represented as a *simulation*.”¹²⁰ This allows the observer’s focus to remain on the other person. In contrast, personal distress keeps the observer’s focus on his own distress and the desire to relieve it.

¹¹⁸ Coplan, “Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization,” 55.

¹¹⁹ Coplan, “Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization,” 55.

¹²⁰ Coplan, “Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization,” 57.

Self-oriented perspective taking is more likely to lead to personal distress because imagining what it would be like for oneself to be in the relevant situation makes it harder to modulate the emotions. But as long as the focus remains on the other person, those effects are decreased, allowing the distressing emotions to be represented as belonging to someone else.

Coplan at last arrives at genuine empathy, which she calls a complex imaginative process “through which an observer simulates another’s situated psychological states, while maintaining clear self-other differentiation.”¹²¹ This is the sole process by which we can have experiential understanding of another person. She says that genuine empathy is not easy to achieve:

To stay focused on the target individual and move us beyond our own experiences, perspective taking requires mental flexibility and relies on regulatory mechanisms to modulate our level of affective arousal and suppress our own perspectives.¹²²

She goes on to say:

The effort and regulation involved in other-oriented perspective taking suggests that empathy is a motivated and controlled process, which is neither automatic nor involuntary and demands that the observer attend to relevant differences between self and other. This makes it a top-down process: it must be initiated by the agent and generated from within.¹²³

Coplan points out that development in cognitive neuroscience and philosophy of mind have reinforced this notion of the existence and significance of the differences. Several experiments have shown that the neurological

¹²¹ Coplan, “Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization,” 58.

¹²² Coplan, “Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization,” 58.

¹²³ Coplan, “Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization,” 58-59.

underpinnings of other-oriented and self-oriented perspective taking are different.

For example:

In one such study, [Jean] Decety and Jessica Sommerville found specific activation of the frontopolar cortex, which is chiefly involved with inhibitory and regulating processes, when subjects were attempting to adopt the subjective perspective of another individual when contrasted with taking a self-perspective in the same tasks. Related experiments have revealed that when subjects were asked to adopt another person's perspective to evaluate the other's beliefs or imagine the other's feelings as compared to their own perspective, the right inferior parietal cortex was involved.¹²⁴

Thus, Coplan's position that empathy should be distinguished from pseudo-empathy and emotional contagion is grounded on both scientific data and subjective experience demonstrating that these processes are different in a variety of ways. However, it is possible to concede her point while still believing that it is worthwhile to pursue the one underlying concept that all of these diverse processes exemplify.

One such attempt comes from Mark Fagiano, who argues for a pluralistic conception of empathy. To motivate this, he demonstrates the way that different "empathies" can work together:

If I am observing a performance of Mozart's *Don Giovanni*, I might experience an array of different types of empathy directed at persons, objects, and their relations. For instance, if I involuntarily "catch" the emotions of a soprano who was unable to hit a high note, at the same time I could be experiencing empathy as perspective taking by imagining the conductor's frame of mind when he chose to interpret the score in one way rather than another.¹²⁵

¹²⁴ Coplan, "Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization," 60.

¹²⁵ Mark Fagiano, "Pluralistic Conceptions of Empathy," *The Journal of Speculative Philosophy* 30 no. 1 (2016): 38.

But this is a relatively weak motivation. After all, Coplan could easily grant that different processes work together in interesting ways without accepting that they are all examples of a single underlying phenomenon.

With that in mind, I would like to propose an analogy between empathy and knowledge. Of course, this is not to claim that epistemology is controversy-free, but it should be safe to assume that knowledge is something akin to justified true belief or reliably caused true belief (plus perhaps some Gettier-defeating fourth condition).¹²⁶

Consider two processes of knowledge acquisition that concern one particular piece of knowledge. In the first case, a man who lives in a bad neighborhood, a man who lives in fear of the pervasive gang violence there, witnesses a brutal murder. He knows who did it and how it was done. We can call him George.

Police detective Joe is a crime scene investigator. He goes through a long, complicated, cognitively sophisticated process of examining various pieces of physical evidence, interviewing witnesses and suspects, looking for logical holes in the alibis of various people, etc. In short, he uses what Hercule Poirot refers to as the “little grey cells” and eventually he figures out who is guilty of the murder.

George and Joe have very different experiences. George’s is very frightening and confusing, while Joe’s is both routine and intellectually satisfying. Presumably very different neural pathways were employed in processing the emotionally taxing experience and in safely cogitating about it after the fact.

¹²⁶ Edmund L. Gettier, “Is Justified True Belief Knowledge?” *Analysis* 23, no. 6 (June 1963): 121-123.

We may even plausibly stipulate that the outcomes are radically different. George, not trusting the police and fearing for his own life because the gangsters know he is a witness, tells no one what he saw and departs to live with his cousin in another state. Joe, on the other hand, is motivated by his new knowledge to ask for an arrest warrant for the killer.

Despite all these differences in the neural architecture, phenomenology, and decision-making effects of the two processes, they both seem to be instances of acquiring knowledge. They both seem to be relevant to such matters as Plato's point regarding why knowledge is more valuable than mere true opinion and they both seem to be things that should be counted as definite cases of knowledge in discussions of competing epistemological conceptions.¹²⁷

Similarly, as I will argue below in my discussion of how empathy enables sympathy, the processes of involuntary contagion, self-oriented wondering what it would be like if that happened to me (which in at least some cases may have the same effect of making the subject feel what the other person is feeling), and the process that Coplan calls empathy play the same role in enabling other motivating moral emotions. The question is whether we can usefully and precisely define empathy in a way that captures what they all have in common.

One interesting proposal along those lines comes from Sloane and Wilson, who define empathy in the following way: S empathizes with O's experience of

¹²⁷ Plato, *Meno*. (Newburyport, MA: Focus Publishing, 2004).

emotion E if and only if O feels E, S believes that O feels E, and this causes S to feel E for O.¹²⁸ At first glance, this definition looks promising.

However, Nancy Snow provides several reasons for believing this definition is problematic. First, there is no reason why S's experience of E must always be caused by S's belief that O feels E. Perhaps S has seen some physical fact about O, such as O laughing gleefully or O wincing in pain. These perceptual cues might simultaneously create empathic effect and a belief about what O is feeling in S. The belief need not precede the empathy.

Second, the definition omits any discussion of how S came to believe that O feels E. It is possible that S's belief could have been caused by facts about P that hold only by chance or coincidence. As Snow says:

S could form the belief that O feels E on the basis of some fact about the weather, and because of this belief, S could feel E for O. If O happens to feel E, the definition is satisfied. But then it seems odd to call S's emotion empathy.¹²⁹

In short, S's feeling of E need not be connected to any facts about O in order to satisfy the definition.

Finally, Sober and Wilson are defining empathy as feeling E *for* someone.

They provide the following example:

If S feels sad for O, then S forms some belief about O's situation and feels sad that this proposition is true. When Barbara empathizes with Bob, he is the focus of her emotion; she doesn't just feel the same emotion that Bob experiences. Rather, Barbara feels sad that Bob's father has just died; she feels sad about what has made Bob sad.¹³⁰

¹²⁸ Elliott Sober and David Sloan Wilson, *Unto Others: The Evolution and Psychology of Unselfish Behavior* (Cambridge, MA, Harvard University Press, 1998), 234.

¹²⁹ Nancy E. Snow, "Empathy," *American Philosophical Quarterly* 37, no. 1 (Jan. 2000): 65.

¹³⁰ Sober and Wilson, *Unto Others: The Evolution and Psychology of Unselfish Behavior*, 234.

As Snow points out, Sober and Wilson are both right and wrong.¹³¹ They are correct in saying that when empathizing with Bob, Barbara feels what he does – sadness about Bob’s father’s death. However, they make a misstep with their assertion that she also feels sadness *for Bob* and that he is the focus of her emotion.

The problem is that if Barbara’s emotional focus is Bob, this is sympathy – it is not empathy. This means that Sober and Wilson are incorrect when they claim that, when Barbara empathizes with Bob, the focus of her emotion is Bob himself. Empathy is not a particular emotion like sympathy or sadness we feel *for* someone – it is feeling some such particular emotion *with* someone.

Another definition, which is fairly common in both philosophy and psychology, is “feeling an emotion that another feels.”¹³² Schopenhauer believes that empathic emotions can exist because we are all components of one ontological whole.¹³³ To borrow Sober and Wilson’s terms, S’s experience of E is not separable and distinct from O’s experience of E because S and O are not separable and distinct entities. This is because both S and O are parts of a greater ontological whole. The belief that S and O are separate and distinct from one another (as well as everyone else) is “to regard phenomenal appearance as metaphysical reality. At a deeper metaphysical level, that of things-in-themselves, our natures are not really separate and distinct.”¹³⁴

¹³¹ Snow, “Empathy,” 66.

¹³² Snow, “Empathy,” 66.

¹³³ Arthur Schopenhauer, *On the Basis of Morality* (Providence, Berghahn Books, 1995), 203-214.

¹³⁴ Snow, “Empathy,” 66.

However, according to Snow, Schopenhauer's ontology of persons and the view of empathy that follows are faulty. She claims that individual persons really are the way they appear to be – ontologically separate and distinct. Because the experience of empathy is to feel with another, such separation of persons is a necessity. As she says:

Empathy involves a similarity or matching of numerically distinct emotions held individually by separate persons who are ontologically distinct from each other. [. . .] Consequently, empathy need not involve a blurring of the metaphysical boundaries between persons.¹³⁵

Snow proposes two modifications to the definition of empathy as “feeling an emotion that another feels.” First, it must be made explicit that it is something about O that elicits E in S. There must be some sort of stimulus that originates within O in order to preclude the possibility of empathy arising from chance or coincidence. Such stimuli are necessary but not sufficient – in order for an empathic response to occur, other background conditions must obtain. These conditions could be met by S and O having similar memories, the relationship between S and O, etc.

Snow's second modification is intended to address the degree to which cognition plays a role in empathy. Of course it may play a fairly sophisticated role in some cases, with S understanding that O is feeling a particular emotion and also understanding that O's experience of the emotion is why S is also experiencing it. But this cannot be a requirement – otherwise, people who are less cognitively developed, such as some with cognitive disabilities and older children, would be excluded. We do not wish to rule them out as possible S's.

¹³⁵ Snow, “Empathy,” 67.

All that is necessary is that S a) understands that O is feeling an emotion, b) feels a similar emotion, and c) does so because the other feels it.

Snow's revised definition of empathy now looks like this:

S empathizes with O's experience of emotion E if and only if:

- 1) O feels E.
- 2) S feels E because O feels E: some fact about or perceptual cue from O is received by S and S's empathy is thus triggered.
- 3) S knows or understands that O feels E.¹³⁶

This is very close to a plausible set of necessary and sufficient conditions, although at least one refinement is in order. We can see this by imagining the following scenario: O gets angry, S sees that, and S gets angry now too – at O, whose anger is so predictable that it makes others angry at him when it appears. S fulfills all of Snow's conditions, but S's anger is not empathic anger. In light of that, we need an extra condition:

- 2.5) The right kind of causal connection must hold between S feeling E and O feeling E.

This is of course quite vague, but no way of disambiguating "the right way" is likely to impinge on the question of whether animals can feel empathy. The difference between feeling empathically angry on someone's behalf and feeling angry at them for getting angry, for example, is not one that seems to be related to the cognitive differences between humans and animals.

Similarly, none of Snow's original three conditions rule out animal empathy, unless "knowing or understanding" is read in a way that requires a type of internal justification that animals do not possess. But there is no independent

¹³⁶ Snow, "Empathy," 68.

reason why it should be interpreted in this way rather than as the sort of “knowledge or understanding” that ordinary people attribute to animals every day – “Fido knows where his food is kept,” etc. There does not seem to be any obvious non-question-begging reason to load the higher standard into the definition of empathy, especially since it is not generally believed that complex propositional justification is necessary for anyone to experience a particular feeling.¹³⁷

III. Empathy and Mindreading

However, there is a deeper reason to worry about whether animals can satisfy Snow’s third condition. Even a weak sort of “understanding” requires that animals can attribute mental states to others, a capacity that philosophers of mind sometimes call “mindreading.”¹³⁸ Those engaged in the debate over whether animals are capable of mindreading have not reached any sort of accord. Cecilia Heyes has declared that “after some 35 years of research on mindreading in animals, there is still nothing resembling consensus about whether *any* animal can ascribe *any* mental state.”¹³⁹

The claim that animals possess empathy is independent of their capability for mindreading. Susana Monso has argued that mindreading is not necessary

¹³⁷ It is true that Snow goes on to mention a fourth feature of empathy: S understands that S feels E because O feels E. It may now seem that her definition excludes the possibility of animals experiencing empathy, but she goes on to state that this feature is neither a necessary nor sufficient condition for empathy per se. It merely indicates a “cognitively sophisticated form of empathy.”

¹³⁸ Here we are using the term “mental states” to refer to unobservable entities that hold causal power over the behavior of those who have them and include sensations, perceptions, emotions, intentions, beliefs, and desires.

¹³⁹ Cecilia Heyes, “Animal Mindreading: What’s the Problem?” *Psychonomic Bulletin & Review* 22, no. 2 (2015): 313.

for empathy. She proposes the following minimal definition of empathy that qualifies as a moral motivation:

Creature C possesses *minimal moral empathy* (MME) if: it has (1) an ability to detect distress behavior that, (2) due to the action of a reliable mechanism, results in an emotion that is directed towards the distress behavior, and built into which is (3) an urge to change the situation that, together with the emotional reaction, (4) tracks a relevant moral proposition.¹⁴⁰

When these four conditions are met (none of which requires mindreading), Creature C counts as possessing MME. The first condition requires that C must be able to distinguish distress behavior from non-distress behavior. This detection can come from visual, auditory, or olfactory evidence. There is no need for C to recognize any unobservable mental states that would affect the behavior of the distressed individual.

The second condition preserves what is generally considered to be a core characteristic of empathy – “an isomorphism between the emotional state of the subject and that of the target that is caused by the attended perception of the target’s emotional state.”¹⁴¹ MME is based on emotional contagion, but it is not the simpler form of contagion in which the subject simply feels distressed. As Monso says, “It is an intentional form of emotional contagion, which means that the emotion it results in is not a mere mood, but an emotion that possesses a specific content: one related to the other’s welfare.”¹⁴² C’s emotional contagion results in the experience of the witnessed behavior as unpleasant. Just as (for

¹⁴⁰ Monso, “Empathy and Morality in Behavior Readers,” *Biology and Philosophy* 30 (2015): 681.

¹⁴¹ Monso, “Empathy and Morality in Behavior Readers,” 681.

¹⁴² Monso, “Empathy and Morality in Behavior Readers,” 681.

example) Adam would be indignant *that* Bob was rude to him, C is distressed *that* the observed individual is displaying distress behavior.

The third condition refers to the need for the emotional contagion to motivate a behavioral response. The reaction and the response must track a moral proposition, which brings us to the fourth condition. This is what ensures that MME is not a regular emotion, but a moral emotion, by allowing it to involve morally evaluative content. This content will be the proposition: “This creature’s distress is bad.”¹⁴³ C need not be able to entertain this proposition – it is merely necessary that his emotional reaction and subsequent behavior track it.

Monso provides the following example to illustrate MME:

Jane is sitting on a couch and crying. Her dog, Higgins, as dogs often do in these situations, nervously comes up to her and engages in various affiliative behaviors such as resting his head on her lap, or licking her arm. If we assume that Higgins is a behavior reader, then he cannot have understood that Jane is sad, because sadness is a mental state. But he has understood that she is displaying certain behavioral cues (tears falling from her eyes, a certain bodily posture, a characteristic odor, etc.) that pertain to the more abstract category of distress behavior. If Higgins, due to a certain reliable mechanism in him, has indeed become distressed at the sight (or smell) of Jane’s crying, and is experiencing her behavior as unpleasant, and if this, in turn, is what moves him to come up to her and engage in affiliative behavior, then we can conclude that he is being a subject of MME, for his emotional reaction and subsequent behavior track the moral proposition “Jane’s distress is bad.”¹⁴⁴

Because Higgins experiences Jane’s distress behavior as unpleasant, he shows sensitivity to her underlying distress. As he is inclined to reliably

¹⁴³ Monso, “Empathy and Morality in Behavior Readers,” 682.

¹⁴⁴ Monso, “Empathy and Morality in Behavior Readers,” 682.

demonstrate this emotional reaction to what is morally relevant in these types of situations, he shows that he is capable of acting morally.

Monso goes on to discuss the cognitive requirements that C must meet in order to be a subject of MME. First, C must be capable of experiencing emotions – in particular, at least some of those falling under the label “distress.” These include anxiety, fear, aversion, sadness, suffering, and anguish, among others. There is a great deal of empirical evidence that animals do experience these types of emotions.¹⁴⁵

Second, C must also be capable of possessing intentional states, or emotions with content. Without this, the claim that C’s actions arise from mere personal distress cannot be countered.

The urge to change the situation must be oriented towards the other’s welfare, and not only towards an alleviation of C’s personal distress. [. . .] The content towards which C’s emotion is directed, i.e. the distress behavior she is witnessing, is what transforms C’s emotion from a mere cause, to a reason for her behavior.¹⁴⁶

Third, there must be some kind of reliable mechanism grounding C’s emotional reaction and subsequent behavior. Rowlands refers to this as a “moral module,” using this term to indicate “whatever mechanism plays the role of linking perceptions of situations with appropriate emotional responses.”¹⁴⁷ If we cannot reliably link the perception of distress behavior to an emotional reaction and an urge to change the situation tracking a moral principle, we are susceptible to the claim that C is acting in the morally correct way merely by accident.

¹⁴⁵ For a review, see J. Panksepp, *Affective Neuroscience: The Foundations of Human and Animal Emotions* (Oxford: Oxford University Press, 2004).

¹⁴⁶ Monso, “Empathy and Morality in Behavior Readers,” 684.

¹⁴⁷ Mark Rowlands, *Can Animals Be Moral?* (Oxford: Oxford University Press, 2012), 148.

One possible candidate for a moral module is the perception-action mechanism (PAM) postulated by Preston and deWaal.¹⁴⁸ This mechanism would be responsible for motor and emotional resonance in particular species, among them humans.

A PAM, according to them, ensures that when one perceives certain actions and emotions in others, there will be a largely unconscious activation of representations of those same actions and emotions in oneself, and that this eventually leads to the same physiological or psychological reactions one would have if one were actually experiencing such action or emotion.¹⁴⁹

Mirror neurons, which, as previously discussed, fire both when we perform an action and observe it being performed by another, were the basis of their belief that a PAM exists in humans and other species.

What is *not* required is that C have the ability to access this moral module, that C be able to reflect upon anything about the situation, or that C be able to control the resulting emotions or actions. This is why MME counts as minimal. Even those who maintain that animals are incapable of meeting Snow's three conditions should grant that they can meet Monso's standard. From this point forward, nothing that is said about empathy requires anything beyond that minimum.

IV. Empathy and Morality

The connection between empathy and morality goes back to the work of David Hume and Adam Smith. (Although they use the term "sympathy," it is

¹⁴⁸ S.D. Preston and FBM de Waal, "Empathy: Its Ultimate and Proximate Bases," *Behavioral Brain Science* 25, no. 1 (2002): 1-20.

¹⁴⁹ Monso, "Empathy and Morality in Behavior Readers," 685.

widely accepted that they are speaking of what we today call empathy.) Smith defines sympathy (empathy) in the following way:

Whatever is the passion which arises from any object in the person principally concerned, an analogous emotion springs up, at the thought of his situation, in the breast of every attentive spectator.¹⁵⁰

As we can see, this is a description of what we refer to as empathy. The emotion that is felt by the subject is reflected in the observer.

Hume believed that empathy is necessary for making moral judgments.

He expresses this as follows:

We partake of [victims of injustice's] uneasiness by sympathy; and as every thing, which gives uneasiness in human actions, upon the general survey, is called Vice, and whatever produces satisfaction, in the same manner, is denominated Virtue. . . [S]ympathy with public interest is the source of the moral approbation, which attends that virtue.¹⁵¹

Prinz puts forward the following interpretation of Hume:

As I read him, Hume's theory of moral judgment can be broken down into the following claims: a virtuous action is one that intentionally brings about pleasure and a vicious action is one that intentionally brings about pain; when we contemplate the pleasure or pain of another person, we feel empathy (what Hume calls 'sympathy'); our empathetic response to the recipients of virtuous and vicious actions arouses in us feelings of approbation and disapprobation, respectively; these feelings of approbation and disapprobation constitute our judgments that something is morally good or bad. On this interpretation, empathy is an essential precursor to moral judgment. If we had no empathy, the pain brought about by a vicious action would leave us cold, and no disapprobation would follow. Thus empathy, while not a component of moral judgment, is a precondition.¹⁵²

¹⁵⁰ Adam Smith, *The Theory of Moral Sentiments*. (Cambridge: Cambridge University Press, 2002), 13.

¹⁵¹ The quotation comes from *A Treatise of Human Nature* in Prinz, "Is Empathy Necessary for Morality?" 213-214.

¹⁵² Prinz, "Is Empathy Necessary for Morality?" 214.

While Hume's position is not today a mainstream view, empathy still maintains a place in our view of morality. For example, the empathy-altruism hypothesis developed by C. Daniel Batson and supported by empirical study states that, "in many cases, empathy evokes altruistic behavior, that is, behavior motivated by the ultimate good of increasing another person's welfare."¹⁵³

One objection to Batson's findings is that since he loads the generation of altruistic behavior into his use of the word "empathy," that makes it difficult to know what exactly he has demonstrated. While it is possible that he has shown that empathy leads to altruism, it is also possible that it is a combination of empathy and sympathy that is doing the work.¹⁵⁴ As I will shortly show, this is not a problem for my position.

Prinz puts forward the objection that research has demonstrated that the connection between empathy and action is actually quite weak. He describes one 1989 study in which subjects watched a film about a woman whose children had been in a car wreck and later read a letter from her asking for help with yard work.¹⁵⁵ Those who looked sad while watching the film were slightly more likely to help with her request. He says:

But this study does not establish that empathy, in general, relates to altruism, because it is restricted to sadness. And curiously, there is no correlation between expressions of sadness while reading the letter, and the decision to help, which is made just afterwards. So, empathetic sadness is not the immediate cause of helpfulness. Moreover, many people who showed no shared emotions were

¹⁵³ Amy Coplan and Peter Goldie, "Introduction." In *Empathy: Philosophical and Psychological Perspectives*, ed. Amy Coplan and Peter Goldie (Oxford: Oxford University Press, 2011), xxiv.

¹⁵⁴ Coplan and Goldie, "Introduction," xxv.

¹⁵⁵ N. Eisenberg et al., "Relation of Sympathy and Personal Distress to Prosocial Behavior: A Multimethod Study," *Journal of Personality and Social Psychology* 57 (1989): 55-66.

helpful as well, so the study provides no evidence for the conclusion that empathy is necessary for moral conduct.¹⁵⁶

Prinz's discussion of this study is problematic in several ways. The film the participants watched was intended to provoke sadness, meaning that empathic sadness was the focus of the study. When he states that we cannot draw conclusions about empathy "in general," it is hard to understand what he means. After all, there is no such thing as an experience of empathy "in general." To feel empathy for someone simply *is* to feel some particular emotion like sadness, and to have your feeling of sadness (for example) be related in the right way to that other person's feeling of sadness (for example).

Recall Prinz's statement that the fact that some people who did not have sad facial expressions during the movie did agree to help the woman with her yard work shows that empathy is not necessary for morality. This seems to presuppose that only those subjects who were visibly demonstrating signs of sadness were feeling sadness. There is a wide range of facial expressiveness among human beings, and research subjects cannot be depended upon to act completely naturally in artificial situations. Prinz's assumption that the group of people who expressed sadness and the group of people who felt sadness were coextensive is unwarranted.

Furthermore, the position that empathy is necessary for morality does not entail the claim that no one is capable of acting morally in any situation without feeling empathy for the other person in that moment. It simply means that a general capacity for empathy is necessary. Thus, when Prinz points out that the

¹⁵⁶ Prinz, "Is Empathy Necessary for Morality?" 219-220.

study does not indicate the truth of this claim, he is not responding to a position that anyone actually holds. This study, then, and his claims regarding it, do not seem to undermine the position that empathy motivates action.

Prinz then goes on to discuss a 1997 meta-analysis, about which he states the following:¹⁵⁷

A meta-analysis shows that empathy is only weakly correlated with pro-social behavior. More strikingly, the correlation appears only when there is little cost. If someone has to do something as easy as crossing a street to help someone in need, they are not especially likely to, and those who are empathetic show no greater tendency to help in such circumstances than those who are not. Now it must be noted that most of the research summarized in this meta-analysis does not carefully distinguish between empathy, sympathy, and concern. One can't be sure that the studies in question are ones in which the participants actually experienced emotions akin to those of the people they were in a position to help. But I think the failure to find strong motivation associated with the various forms of fellow-feeling, provides evidence for thinking that empathy is not a great motivator.¹⁵⁸

There are clear issues both with this meta-analysis and with Prinz's reasoning. First is the fact that empathy is not distinguished from other emotions. This is an obvious problem with the methodology – an analysis that purports to draw conclusions about empathy should at the very least isolate it from other feelings.

Prinz attempts to mitigate this concern by stating, "It's overwhelmingly likely that empathy is experienced by participants in many of the studies

¹⁵⁷ S.L. Neuberg et al., "Does Empathy Lead to Anything More Than Superficial Helping? Comment on Batson et al." *Journal of Personality and Social Psychology* 73 (1997): 510-516.

¹⁵⁸ Prinz, "Is Empathy Necessary for Morality?" 220.

reviewed.”¹⁵⁹ But he provides no argument or evidence for this belief – it is merely an unsupported claim.

He goes on to say that there are independent reasons for the belief that empathy has limited motivational force:

First, an emotion caught from another person is likely to be far weaker than an emotion that originates in oneself. Second, when we consider others in need, the emotions we are likely to catch are things such as sadness, misery, and distress. These emotions may not be great motivators. Misery might even promote social withdrawal.¹⁶⁰

Again, there are many factors here that make Prinz’s claims about empathy problematic. It is unclear why he thinks that the difference in intensity between emotions caught from others and emotions originating in oneself entails that empathy has little motivational force. It may be true that empathic emotions are not as motivating as self-originating emotions, but this does not support his conclusion.

Furthermore, Prinz seems to contradict himself when he states that emotions such as misery “may not be great motivators” and also “might even promote social withdrawal.” The charitable reading is that these emotions do not motivate us to perform particular types of actions. But withdrawal is also an action – one that he admits is empathically motivated. And while it does not fit our standard paradigm of demonstrations of empathy, Prinz is mistaken in thinking that withdrawal and empathy are necessarily at odds.

Imagine, for example, that Jacob is mourning the recent death of his father. A friend of Jacob’s sees him sitting beside the grave, overcome with grief.

¹⁵⁹ Prinz, “Is Empathy Necessary for Morality?” 220.

¹⁶⁰ Prinz, “Is Empathy Necessary for Morality?” 220.

While one way for his friend to express empathy is to seek to comfort Jacob, he may also express empathy by recognizing Jacob's need to be alone with his father at that moment and leaving. Prinz's analysis seems to reject the notion that this might actually be the morally best action.

Prinz goes on to argue for the limited motivational effectiveness of empathy by pointing out the motivational force of various other emotions – namely, happiness, anger, and guilt. A study found that making people happy by giving them an easy test to solve resulted in them being twice as likely as a control group to volunteer for a charity that collected door to door.¹⁶¹ A 1998 study found that subjects who had been shown an anger-inducing film clip recommended harsher punishments in an unrelated scenario than those who had not seen the film.¹⁶² And finally, a 1969 study found that subjects who had given “shocks” to an innocent person were more than three times as likely to make charitable fund-raising calls than those in the control condition.¹⁶³

The notion that these three emotions are all powerful motivators is intuitively plausible. However, just as in the case of the difference in strength between empathic and self-originating emotions, it is far from clear why this enables us to draw conclusions about the motivating force of empathy. Even if we grant that these emotions possess greater motivational efficacy, this is consistent with the possibility that empathy possesses real motivational power.

¹⁶¹ J.M. Weyant, “Effects of Mood States, Costs, and Benefits on Helping,” *Journal of Personality and Social Psychology* 36 (1978): 1169-1176.

¹⁶² J. Lerner, et al., “Sober Second Thought: The Effects of Accountability, Anger, and Authoritarianism on Attributions of Responsibility,” *Personality and Social Psychology Bulletin* 24 (1998): 563-574.

¹⁶³ J.M. Carlsmith and A.E. Gross, “Some Effects of Guilt on Compliance,” *Journal of Personality and Social Psychology* 11 (1969): 232-239.

In any event, it is not my intention to claim that it is possible to base moral action on empathy alone. What I do wish to claim is that it is our ability to feel empathy that enables us to feel sympathy. It is impossible to be sympathetic in the absence of empathy. This should not be taken to mean that every instance of sympathy is accompanied by empathy. For example, someone who has never had children can sympathize with a person whose child has died, but there may be limits to the sense in which such an individual can feel empathy in this situation. What it does mean, however, is that it is the fact that we recognize that person as someone with whom empathy is possible that enables us to feel sympathetic towards them.

To see this, consider a time in the past in which animals were viewed as something akin to machines – beings that were devoid of sentience and functioned according to purely mechanistic processes. Someone who truly internalized such a belief would not have been able to sympathize with an animal who was, for example, the subject of scientific experimentation without anesthesia. Nor would such a person have considered it possible to empathize with the animal.¹⁶⁴ Similarly, we do not feel sympathy for trees when they are cut down. This is because we know that there is nothing it is like to be a tree – empathy with a tree simply does not make sense. But once someone recognizes

¹⁶⁴ A possible objection someone could make here is that, although someone who had internalized that animals did not have experiences would be incapable of feeling empathy for them, someone who *did* take them to be the subjects of experience could have sympathy for them without empathy. I am not claiming that there is no reasonable argument for such a position. If one takes a capacity for empathy to be necessary for other moral capacities, then (as I have demonstrated) animals meet this requirement. If, on the other hand, it is possible to act on the basis of emotions like compassion (as one might believe is occurring in the examples below) without a capacity for empathy, then that makes my task of showing that animals have these other moral capacities that much easier.

that animals are individuals with whom it is possible to empathize, sympathy may follow. (Note that this requires no more than a very minimal conception of what it is to recognize something.)

Sympathy brings about emotions that are different from those of the person toward whom we are sympathetic. Rather than merely feeling sad because my friend is sad, I may also feel anger or compassion regarding his suffering, distress on his behalf, or even guilt if I am the cause of his sadness. These sorts of emotions are best alleviated by action, not by separating ourselves from the situation. Also, to reiterate a previous point of Prinz's, these emotions originate in ourselves, which means that they are stronger than the sadness aroused through empathy.

Therefore, it is my position that the combination of empathy and sympathy motivates us to act. It is the fact that we recognize the other individual as an appropriate object of empathy that enables us to feel sympathy and to be motivated to act. This is not, of course, to imply that all sympathetic reactions will lead to action. There may be other competing factors involved that outweigh our motivation to act. But when action occurs, it is because we experience the various emotions that are aroused by our sympathy. And these emotions – compassion, guilt, etc. – are what Mark Rowlands and others call motivating moral emotions.¹⁶⁵ The existence of these emotions may allow for the revision of the standard view regarding those who have moral standing within a contractualist system.

¹⁶⁵ Mark Rowlands, *Can Animals Be Moral?* (New York: Oxford University Press, 2012), 14.

V. Moral Agents and Moral Patients

The moral sphere is generally divided into two parts – moral patients and moral agents. We can define these terms as follows:

X is a moral *patient* if and only if X is a legitimate object of moral concern: that is, roughly, X is an entity that has interests that should be taken into consideration when decisions are made concerning it or which otherwise impact on it.¹⁶⁶

X is a moral *agent* if and only if X is (a) morally responsible for, and so can be (b) morally evaluated (praised or blamed, broadly understood) for, its motives and actions.¹⁶⁷

For a traditional Hobbesian contractarianism, the two categories are necessarily coextensive – all and only contractors are objects of moral concern, and all and only contractors are subject to moral evaluations of their behavior. Scanlon's view is that, similar to Hobbes, all contractors are both agents and patients, but additional moral patients are located within the realm of morality that contractualism is not intended to address.

Generally speaking, moral theory designates most adult human beings as both moral agents and moral patients, while infants and animals are typical examples of moral patients. However, there have been a few attempts to categorize animals as moral agents. While these authors have many interesting and important things to say, there is a general problem with all of them.

Marc Bekoff and Jessica Pierce, in *Wild Justice: The Moral Lives of Animals*, begin by stating that the general idea of moral agency must be reconsidered.

¹⁶⁶ Rowlands, *Can Animals Be Moral?* 72.

¹⁶⁷ Rowlands, *Can Animals Be Moral?* 75.

Moral agency is species-specific and context-specific. Furthermore, animals are moral agents *within the limited context of their own communities*. They have the capacity to shape their behavioral responses to each other based on an emotionally and cognitively rich interpretation of a particular social interaction. Wolf morality [for example] reflects a code of conduct that guides the behavior of wolves within a given community of wolves. Wolves are agents only within this context.¹⁶⁸

They point out that animals make active choices in their social interactions, and some of these choices have to do with whether or not to help others. They say, “Where there’s flexibility and plasticity in behavior, there’s choice, there’s agency.”¹⁶⁹ This is why insects, for example, are not counted as moral animals – they exhibit rigid behavioral patterns and do not seem to make choices in the same sense that social animals do. Thus, while Bekoff and Pierce believe that “the language of agent and patient is likely to promote philosophical confusion and should ultimately be avoided,” they “are willing to call animals moral agents.”¹⁷⁰

Other philosophers have made similar claims. Among these are Steven Sapontzis,¹⁷¹ Evelyn Pluhar,¹⁷² and David DeGrazia, who states:

It is enough to note that there are different kinds and degrees of moral agency, and that the crude statement that no nonhuman animals are moral agents cannot be sustained.¹⁷³

¹⁶⁸ Marc Bekoff and Jessica Pierce, *Wild Justice: The Moral Lives of Animals*. (Novato, CA: New World Library, 2007), 144-145.

¹⁶⁹ Bekoff and Pierce, *Wild Justice: The Moral Lives of Animals*, 145.

¹⁷⁰ Bekoff and Pierce, *Wild Justice: The Moral Lives of Animals*, 145.

¹⁷¹ S.F. Sapontzis, “Are Animals Moral Beings?” *American Philosophical Quarterly* 17, no. 1 (Jan. 1980): 45-52.

¹⁷² Evelyn Pluhar, “Moral Agents and Moral Patients,” *Between the Species* 5, no. 1 (1988).

¹⁷³ David DeGrazia, *Taking Animals Seriously: Mental Life and Moral Status*. (Cambridge: Cambridge University Press, 1996), 204.

It is clear that he is not attributing the kind of moral agency to animals that is typically attributed to humans. If they are indeed moral agents, it is not in the way that we are.

The problem that all of these attributions of agency to animals share is that they rely upon the notion that animals can be agents *in their own way* – perhaps down to the level of each individual species having its own type of agency. It is unclear, then, what they are intended to demonstrate. If what it means to be a moral agent can be redefined for each species, and in terms of what each species is capable of, the designation of animals as moral agents is not as significant a result as it might at first appear. Animals in these accounts are still not agents in the sense that moral theorists who reserve agency for humans care about. Wolves may exhibit “plasticity” in their decision-making, but they certainly do not exercise the kind of deliberative rational control over that decision-making that more cognitively advanced beings might possess.

It may seem, then, that this leaves us with no other choice but to resign ourselves to the fact that animals can be no more than moral patients – certainly beings that count morally, but having no moral capacities of their own. The previous chapter raised the possibility that value may arise from moral capacities rather than rational ones. Does this concept of value continue to leave animals (while still having moral standing in the broad sense) on the outside of the contractualist system?

VI. Moral Subjects

According to Mark Rowlands, it is illegitimate to categorize animals as moral agents, but they are more than just moral patients. Rowlands defines a moral subject in the following way: “X is a moral *subject* if and only if X is, at least sometimes, motivated to act by moral reasons.”¹⁷⁴

It is important not to conflate the notion of a moral subject with that of a moral agent. Motivation and evaluation are conceptually distinct. We can see this by considering the case of kleptomania. The kleptomaniac is motivated by an irresistible urge to steal, but his thefts are not proper objects of moral evaluations. They are caused by a motivational state that is beyond his control. To go further, if hard determinism were true, all moral evaluation would be illegitimate, but motivational states would still exist.

Human beings are obviously motivated to act by moral considerations. Rowlands argues that animals can be as well. To illustrate this, he tells a story of two dogs originally found in the previously mentioned book by Bekoff and Pierce.

One is a well-fed and happy canine, the other a sad dog who is always tied to a rope. The happy dog’s daily walk takes him by his unfortunate neighbor. One night, the happy dog eats his usual dinner, but saves his meaty bone. The next morning, he carries the meaty bone on his walk, and delivers it to his tethered friend.¹⁷⁵

There are many other such examples we can draw on. Bekoff, in *The Emotional Lives of Animals*, tells two stories about his dog Jethro. In one, Jethro brings him an orphaned bunny, which Bekoff cares for until she is able to survive on her own. Jethro watches over the bunny, even sleeping next to her, until she

¹⁷⁴ Rowlands, *Can Animals Be Moral?* 89.

¹⁷⁵ Bekoff and Pierce, *Wild Justice: The Moral Lives of Animals*, 95.

is released back into the wild. Nine years later, Jethro brings him a young bird, stunned from flying into a window. He watches as Bekoff holds the bird, allowing him to regain his bearings, and when Bekoff places the bird on the porch railing, Jethro takes a sniff, steps back, and allows it to fly away.¹⁷⁶ Jethro could have easily eaten both the bunny and the bird. But he helped them instead.

Frans de Waal, in *Primates and Philosophers: How Morality Evolved*, relates the story of a chimpanzee who helps another achieve a specific goal:

During one winter at the Arnhem Zoo, after cleaning out the hall and before releasing the chimps, the keepers hosed out all rubber tires in the enclosure and hung them one by one on a horizontal log extending from the climbing frame. One day, Krom was interested in a tire in which water had stayed behind. Unfortunately, this particular tire was at the end of the row, with six or more heavy tires hanging in front of it. Krom pulled and pulled at the one she wanted but couldn't remove it from the log. She pushed the tire backward, but there it hit the climbing frame and couldn't be removed either. Krom worked in vain on this problem for over ten minutes, ignored by everyone, except Jakie, a seven-year-old Krom had taken care of as a juvenile.

Immediately after Krom gave up and walked away, Jakie approached the scene. Without hesitation he pushed the tires one by one off the log, beginning with the front one, followed by the second in the row, and so on, as any sensible chimp would. When he reached the last tire, he carefully removed it so that no water was lost, carrying it straight to his aunt, placing it upright in front of her.¹⁷⁷

Jakie saw what Krom wanted, and when she could not get it for herself, he got it for her.

Jane Goodall tells a more serious story about chimpanzees in her book *Through a Window: My Thirty Years with the Chimpanzees of Gombe*.

¹⁷⁶ Bekoff and Pierce, *Wild Justice: The Moral Lives of Animals*, 18.

¹⁷⁷ De Waal, Frans, *Primates and Philosophers: How Morality Evolved*. (Princeton: Princeton University Press, 2006), 31-32.

Chimpanzees cannot swim and, unless they are rescued, will drown if they fall into deep water. Despite this, individuals have sometimes made heroic efforts to save companions from drowning – and were sometimes successful. One adult male lost his life as he tried to rescue a small infant whose incompetent mother had allowed it to fall into the water.¹⁷⁸

More well-known examples are those of the gorilla Binti Jua who saved the child who fell into the gorilla enclosure at a Chicago zoo, as well as Charles Darwin's example of the baboon who rescued a younger baboon from a pack of dogs. But we can also find examples closer to home. Once when my dog Mason and I were visiting my family, my grandfather got out of bed in the middle of the night and fell down. From another room, Mason heard the sound and went to investigate. Realizing that my grandfather could not get up, Mason went to my parents' room, barked to wake them up, then led my mother to my grandfather's room.¹⁷⁹

A few years later, Mason and I were visiting a friend with a pool in the backyard. I was playing ball with Mason while my friend's dog Banjo was swimming. An errant throw led to the ball going into the pool. Being afraid of water, Mason would not go into the pool to get it, but stood at the edge and barked. Banjo swam to the ball, took it in his mouth, and brought it to Mason.

Skeptics might argue that these are not true examples of moral motivation. Darwin says, "Besides love and sympathy, animals exhibit other qualities which *in us* would be called moral" (emphasis added).¹⁸⁰ He also states his belief that

¹⁷⁸ Jane Goodall, *Through a Window: My Thirty Years with the Chimpanzees of Gombe*. (Soko Publications Limited, 1990), 213.

¹⁷⁹ Charles Darwin, *The Descent of Man*. (Seattle: Pacific Publishing Studio, 2011), 65-66.

¹⁸⁰ Darwin, *The Descent of Man*, 67.

“dogs possess something very like a conscience.”¹⁸¹ But why assume that only humans are capable of moral action? If I perform an action that is motivated by, for example, compassion, and that qualifies as moral, why is Happy Dog’s action not moral? Compassionate actions are generally considered to be virtuous actions and thus morally good. (This is not always true, something we will return to later.) If animals can be motivated by compassion, why can’t we claim that the resulting actions are, generally speaking, virtuous?

There are two possible objections that might be made. One is the Aristotelian notion that in order to be virtuous, it is necessary to understand that the action is virtuous and to perform it out of a desire to be virtuous.¹⁸² This will be dealt with at length in the next chapter.

Another objection stems from Kant’s view that ought implies can – that if one is morally required to perform a particular action, then one must be able to do so. As he states it: “For if the moral law commands that we ought to be better human beings now, it inescapably follows that we must be capable of being better human beings.”¹⁸³ Moral behavior can only occur when the actor has a degree of control over his actions. The concern, then, is that if the animal cannot control its compassionate behavior, then the behavior cannot qualify as moral. We will return to this question in Chapter Six.

Even aside from these larger issues, a more basic question might be asked: Why all this talk about virtues? Aren’t we supposed to be concerned with

¹⁸¹ Darwin, *The Descent of Man*, 67.

¹⁸² Aristotle, *The Nicomachean Ethics* (Cambridge, Cambridge University Press, 2009), 27-28.

¹⁸³ Immanuel Kant, *Religion Within the Boundaries of Mere Reason and Other Writings* (Cambridge, Cambridge University Press, 1998), 70.

contractualism? While it is true that virtue theory and contract theory are very different, we need not exclude talk of virtue from contractualism. On the contrary, we should invite it.

VII. Contractualism and Virtue

Peter Carruthers argues that contractualists should not merely be interested in the determination of principles that dictate correct behavior, but in the cultivation of thoughts and feelings that will increase the likelihood that these principles will be followed. Most of our actions are not the result of careful deliberation. Some of our actions are routine, while others are prompted by circumstances that do not allow time for reasoning. The general makeup of our character, in such situations, may play a large part in what we do. As he puts it:

In so far, then, as contracting rational agents are interested in the principles that are to govern their behavior, they should also be interested in the general dispositions of thought and feeling that may make appropriate action more likely.¹⁸⁴

Some virtues, such as honesty, should be important to contractualists because they deal with the larger issue of justice. Certainly rules requiring open and honest dealing and speaking would be part of a contractualist system. Thus, taking a realistic view of the origins of human action, contractors should make it a requirement to “develop a general love of, and disposition towards, honest action, rather than mere calculated compliance with the rule.”¹⁸⁵

What about virtues of beneficence, such as generosity and loyalty? Carruthers states that a society needs more than rules of non-interference for its

¹⁸⁴ Peter Carruthers, *The Animals Issue: Moral Theory in Practice* (Cambridge, Cambridge University Press, 1992), 150.

¹⁸⁵ Carruthers, *The Animals Issue: Moral Theory in Practice*, 150.

members to flourish. Rational agents should agree to develop such virtues because of their awareness that a community in which those virtues exist is preferable to one in which they do not.

Now, it may be objected that a rule such as, “It is wrong not to develop the trait/virtue of generosity” implies that individuals can and do deliberately decide to become more generous and that this decision can be put into effect successfully. This seems to put more weight on the notion of moral education than it can bear.¹⁸⁶ This objection can be avoided by fashioning less demanding rules. The appropriate rules would then look something like this: “It is wrong to refuse to develop, to the best of one’s ability, a disposition toward generosity.”

It may also be objected that by bringing in a discussion of virtue, we have eliminated the need for a contractualist framework altogether and may simply rely on pure virtue theory. However, virtue theory is quite different from a version of contractualism that contains contractual obligations to be virtuous. According to pure virtue theory, actions are right because they arise from virtues. But according to my contractualist account of virtue, it is right to develop virtues because virtuous people are more likely to do the contractually-revealed right thing. Virtues are dispositions to do good, as expressed by the contract. Thus, talk of virtues does not lessen the importance of the contract.

VIII. Conclusion

This chapter has been dedicated to exploring exactly what empathy is and what role it plays in morality. I have argued that the combination of empathy and sympathy leads us to act in ways that are morally motivated and that animals

¹⁸⁶ Thanks to Michael Slote for making this point in private correspondence.

possess this capability. The last part of the chapter makes the point that contractualists should welcome talk of virtue. This sets up my discussion in the following chapter of Julia Driver's account of virtue and my assertion that animals can perform virtuous actions.

Chapter 5 – Virtues, Contracts, and Consequences

I will begin my discussion of virtuous behavior by examining Julia Driver's objective consequentialist account of virtue and defending it from several objections. I will then go on to claim that animals are capable of performing virtuous actions and may even be considered to have virtues.

I. Driver on Virtue

I wish to begin my examination of Driver by addressing her discussion of the moral virtue of modesty. She starts out by quoting Sherlock Holmes:

My dear Watson. . . I cannot agree with those who rank modesty among the virtues. To the logician all things should be seen exactly as they are, and to underestimate one's self is as much a departure from truth as to exaggerate one's own powers.¹⁸⁷

She states that she mostly agrees with what Holmes has to say about modesty. It is, she says, "dependent on the epistemic defect of not knowing one's own worth."¹⁸⁸ Since to possess modesty is to undervalue oneself, a modest person cannot know that he is modest. Others cannot recognize his modesty without first recognizing his worth. But once he sees his own worth for himself, he is no longer modest. Driver invites us to consider the intuitive oddity of the statement "I am modest" and claims that it is self-defeating. She says that, were she to make this statement, "charitable persons would think that I was joking. Others would think that I was being nonsensical."¹⁸⁹

¹⁸⁷ This quotation comes from Sir Arthur Conan Doyle's story "The Greek Interpreter" in Julia Driver, *Uneasy Virtue* (New York, Cambridge University Press, 2001), 16.

¹⁸⁸ Driver, *Uneasy Virtue*, 17.

¹⁸⁹ Driver, *Uneasy Virtue*, 17.

She disagrees, however, with Holmes's view that modesty is not a virtue, and this accords with our intuitions. We generally consider modesty to be a positive characteristic. It is seen as a valuable attribute in a person who possesses it and as an element of an overall good character. It would be counterintuitive to exclude modesty from the list of virtues.

Holmes seems to be implicitly relying on something like Aristotle's knowledge condition. In the *Nicomachean Ethics* it states that "it is not possible to be good in the strict sense without practical wisdom."¹⁹⁰ This places a knowledge condition on the possession of virtue.

The virtuous person, according to Aristotle, must act in the following way:

First of all, he must know what he is doing; secondly, he must choose to act the way he does, and he must choose it for its own sake; and in the third place, the act must spring from a firm and unchangeable character.¹⁹¹

Driver argues that the knowledge condition is untenable, objecting to the claim that "an agent who does something noble unknowingly [. . .] does not demonstrate any virtue through such action" (3). Her argument is based on the existence of what she calls "virtues of ignorance" – of which modesty is one. Others include blind charity ("a disposition not to see the defects and to focus on the virtues of persons"), impulsive courage and certain types of forgiveness and trust.¹⁹²

¹⁹⁰ Aristotle, *The Nicomachean Ethics*, 117.

¹⁹¹ Aristotle, *The Nicomachean Ethics*, 27-28. There are, of course, many senses in which someone can fail to know what he is doing, and it isn't entirely clear what sense Aristotle has in mind. However, the sense of knowing what one is doing that would most obviously exclude the possibility of animals acting virtuously is the one I take Driver to effectively undermine below.

¹⁹² Driver, *Uneasy Virtue*, 28. One might here raise the objection that one difference between virtues of ignorance and the case of animals is that someone who has a virtue of ignorance might be made less ignorant – the virtue can be explained to them. In the case of animals, this

Driver proposes an objective consequentialist account of virtue. Broadly speaking, consequentialism accords moral value to actions, character traits, etc. based on the consequences that they bring about. A consequentialist account of the virtues, then, defines moral virtues as “character traits that systematically produce more actual good than not.”¹⁹³ No intrinsic value is placed on states of mind or other factors internal to the agent. This makes objective consequentialism a form of what she calls “evaluational externalism.”¹⁹⁴ She defines this as the view that the moral quality of a person’s action or character is determined by factors external to agency, such as actual consequences.

Rather than examining whether a person has particular intellectual characteristics, such as a correct conception of the good, a full understanding of the circumstances at hand, etc., we simply look at the traits of his character. If those traits generally bring about the good, they are virtues. No knowledge or deliberation is necessary. This allows for the intuitive inclusion of modesty and other virtues of ignorance as virtues, as well as widening the scope of those who can be considered virtuous. Aristotle’s knowledge condition severely restricts the possession of virtue to the few who meet his stringent conditions. Driver considers her view an improvement. She says:

Virtue must be accessible – to those who are not wise but kind; to those who had the misfortune to grow up in repressive environments that warped their understanding, yet who are capable of showing the appropriate compassionate responses to human

possibility does not apply. Thus we might imagine someone revising Aristotle’s second condition to “must be able to choose it for its own sake (even if she in fact does not).” This would exclude animals. One possible response is that to explain a virtue of ignorance to its holder would cause that person to lose the virtue in question. If such virtues are dependent on “epistemic defects,” removing the defect would result in the extinguishing of the virtue.

¹⁹³ Driver, *Uneasy Virtue*, 68.

¹⁹⁴ Driver, *Uneasy Virtue*, 68.

suffering; to those who, like most of us, possess some intellectual or moral flaw.¹⁹⁵

As an example of someone who is certainly intellectually flawed but can be virtuous nonetheless, consider the case of the fictional Huck Finn.¹⁹⁶ Huck's behavior with relation to his friend Jim demonstrates that knowledge is not necessary for the exercise of virtue. Huck has a false conception of the good – he does not believe that slavery is immoral. But when Jim, who is a slave, runs away, he does not turn him in, despite numerous opportunities to do so. Huck believes that his failure to return Jim to his owner is a moral failing. He sees himself as essentially a party to theft and as behaving in a dishonest and ungrateful way. Chad Kleist calls Huck an “inverse akratic.” Just as an akratic fails to do what they know is right, an inverse akratic is “one who believes X, all things considered, is the correct act, and yet performs $\sim X$, where $\sim X$ is the correct act.”¹⁹⁷

Of course, we know that Huck actually behaved well in failing to turn Jim in. It is his desire to help Jim and to see his friend happy that drives Huck's behavior – even though these things are dependent on what Huck sees as immoral behavior. Although Huck does not have a correct conception of the good, he still acts in accordance with it. He does the right thing while thinking he is doing wrong. This is what makes Huck a good person (at least in this instance). Driver's point is that it is not necessary for him to know that helping Jim is good or right.

¹⁹⁵ Driver, *Uneasy Virtue*, 54.

¹⁹⁶ Mark Twain, *Adventures of Huckleberry Finn* (New York: Dover Publications, 1994).

¹⁹⁷ Chad Kleist, “Huck Finn the Inverse Akratic: Empathy and Justice,” *Ethical Theory and Moral Practice* 12, no. 3 (June 2009): 257.

To have a virtue is simply to have a disposition to do what is good or right. Huck's virtue is his sympathy for Jim – regardless of the fact that it conflicts with what he mistakenly believes to be right. His disposition leads him to do what is *actually* right. He is sensitive to the morally relevant features of the situation, such as Jim's need for help. It does not matter that this is not an intellectual type of sensitivity. There are many things that Huck is intellectually very wrong about. But because the relevant features of Huck's character systematically lead to morally desirable results – Jim's freedom and happiness – Huck can be credited with virtue in this case.

II. Objections to Driver

Lester H. Hunt, in a review of *Uneasy Virtue*, puts forward the following objection regarding Driver's account of the virtues of ignorance:

If I understand it rightly, her account requires her to regard these sorts of ignorance as virtues even if they are the result of brain damage – even, that is, if it results from a sheer, physical inability to grasp and integrate certain sorts of information. Driver might wish to rule out such cases on the ground that such traits would not be traits of character, and according to her definition, a virtue must be a trait of character. However, her book does not contain any discussion of what traits of character are or of why it is important to distinguish them from traits like this, so she is not set up to rule such cases out in this way.¹⁹⁸

His claim is that her account is counterintuitive in a way that she has not addressed.

However, I would like to point out that she does, in fact, address the issue of brain damage in her discussion of Phineas Gage.¹⁹⁹ Gage was a railroad

¹⁹⁸ Lester H. Hunt, "Book Review: *Uneasy Virtue* by Julia Driver." *Ethics* 114, no. 1 (October 2003), 169.

¹⁹⁹ Driver, *Uneasy Virtue*, 9-10.

construction foreman who in 1848 was involved in an accident resulting in a large iron rod being driven through his head. While he survived, much of the left frontal lobe of his brain was destroyed, leading to significant changes in his personality and behavior. Various vices attributed to Gage as a result of his accident are aggressiveness, violence, untrustworthiness, lying, brawling, bullying, and even psychopathy.

Driver says that if we reject the view (as Hunt seems to) that the distinction between natural abilities and virtues is arbitrary, we are forced to conclude that, post-accident, Gage had no moral vices, since his “deplorable” traits were not chosen by him. But it seems much more plausible to regard Gage as genuinely vicious, although becoming vicious is not something for which we blame him. She then says:

Imagine also a counterpart to Mr. Gage, someone who previous to his accident was nasty and insensitive, but after getting hit on the head becomes sweet and gentle. His traits are virtues, though not voluntarily acquired.²⁰⁰

If we accord voluntary virtues more value than nonvoluntary ones, the additional esteem is not for the virtue itself, but for the virtuous disposition towards moral self-improvement that is used to acquire it.

Hunt goes on to ask why a trait acquired by brain damage would be admirable, saying that we must ask why a trait that is due to ignorance would be any different.²⁰¹ But I believe it can be shown that this objection does not apply to Driver’s virtues of ignorance.

²⁰⁰ Driver, *Uneasy Virtue*, 10.

²⁰¹ Hunt, “Book Review: *Uneasy Virtue* by Julia Driver,” 170.

Suppose I say to a friend, “I admire John’s generosity,” and my friend responds by saying, “You shouldn’t – he’s only generous because he has a particular type of brain damage.” If we grant that such a type of brain damage exists, this seems like a reasonable reply. Perhaps admiration in those circumstances is not warranted.

Now suppose I say, “I admire Mike’s generosity,” and my friend says, “You shouldn’t – he’s only generous because he doesn’t understand the true value of money.” Again, this seems like a possible reply and it would not be unreasonable for me to rethink my admiration of Mike’s generosity.

But if I were to say, “I admire Tom’s modesty,” the response, “You shouldn’t – he’s only modest because he doesn’t recognize his true worth” would be foolish. Hunt talks about traits being “due to ignorance,” which implies that the trait and the ignorance are separate things. In my example of Mike’s generosity, the trait is due to ignorance. But with regard to Tom’s modesty, the trait *just is* the ignorance. To say that I shouldn’t admire his modesty because he’s ignorant of his true worth is essentially to say that I shouldn’t admire Tom’s modesty because he’s modest. This makes no sense. Thus, Hunt’s second objection fails as well.

In her book *On Virtue Ethics*, Rosalind Hursthouse puts forward a different objection. Her claim is that the knowledge condition is necessary to ensure that only virtuous actions count as such. Helping someone, for example, by accident, either unintentionally or when you mean to harm him, is not virtuous. Inadvertently telling the truth when we think we are lying is not virtuous. Thus,

we must add the condition that “the agent must know what he is doing – that she is helping, facing danger, telling the truth, etc.”²⁰²

This does not appear to apply to the particular case of Huck Finn, however. Huck helps Jim but it is neither unintentional nor an instance of an attempt to harm Jim gone wrong. Huck *is* aware that he is helping Jim.

But what about more generally? The agent who helps accidentally or when intending to harm does not have a virtuous disposition with regard to the case at hand. The character trait in question does not systematically produce good results.²⁰³ It just happens to do so in this case. It is at best neutral and at worst vicious. The same can be said of the person who unknowingly tells the truth while intending to lie. The modest person, in contrast, does have a virtuous disposition. This enables us to avoid calling accidental instances of an action virtuous by looking at the relevant dispositions, not at what the agent knows.

Yet another objection to Driver’s view is found in Michael Winter’s book *Rethinking Virtue Ethics*. Winter’s argument is that Huck holds competing moral principles, one of which arises from his wrong moral beliefs (that slavery is acceptable) but is overridden by another. So what we have with Huck is not a battle between sympathy and moral principle, but between two conflicting moral principles. Huck is only consciously aware of one of them, which is that it is wrong to enable a fugitive slave, but it is the unconscious principle regarding the rightness of helping a friend in danger that gives rise to the sympathy that

²⁰² Rosalind Hursthouse, *On Virtue Ethics* (Oxford, Oxford University Press, 1999), 124.

²⁰³ While Driver never precisely defines this term, it is clear in context that “systematically” means both that good results are produced more often than not and that they flow from the character trait itself rather than from a series of improbable accidents.

ultimately overrides the principle of which he is aware. Winter claims that Driver misses this point when she asserts that Huck's feeling regarding Jim is what controls his behavior but fails to recognize that this feeling is rooted in a moral principle.²⁰⁴

It might be thought that we may respond to this objection by arguing that it is simply irrelevant. Even if Huck is acting on a principle, it is not one that he is aware of, and therefore his actions are not based on knowledge. But this is to define knowledge too narrowly. It seems reasonable to assume that if we could ask Huck whether he thinks it is right to help a friend, he would say yes. Just because he is not consciously thinking of this principle at the moment of action does not mean that he does not know it.

A better line of response is to say that Huck, regardless of whether he has this type of knowledge, does not need it. Winter says that it is difficult to make sense of acting from a feeling alone unless we are talking about some sort of spontaneous action, such as automatically reacting in anger when someone hurts us. But our focus is on "deliberate action that leaves some room for consideration."²⁰⁵ This means that there must be some internalized moral principle in play – whether Huck is consciously aware of it or not – that direct his feelings towards particular actions. But is this really true? The problem with Winter's position is most clear in the case of vicious actions – for example, acting from spite or malice while at the same time knowing that we should not and that there is no justification for our behavior. In such situations, there is only one

²⁰⁴ Michael Winter, *Rethinking Virtue Ethics* (Springer, 2011), 29-32.

²⁰⁵ Winter, *Rethinking Virtue Ethics*, 25.

principle in play – the one that says it is wrong to behave in a spiteful or malicious manner. Disregarding it and performing the action anyway is to act on sheer emotion rather than principle. But does it make sense to say that this can happen in cases of positive actions?

Let us imagine someone who hunts for sport. He considers people who believe that this is wrong to be liberal crazies bent on imposing their unmanly principles on everyone. The only time the moral principle “It is wrong to harm animals for fun” crosses his mind is when he encounters people with this view. He has never given the idea serious thought and it is not hard to believe that, were he to do so, his mind would remain unchanged. But we can still conceive of him one day being struck by something about a particular deer and not wanting to kill it. If asked why he refrained from shooting, he would not be able to explain it. He acted on his feelings alone and did the right thing.

Winter might be inclined to continue to press the point and insist that there is nonetheless an implicit moral principle in play – even though the hunter would not assent to it were it made explicit. But considered as an objection to the view that the hunter is acting on the basis of sympathy rather than principle, this insistence would simply beg the question.

III. Can Animals Perform Virtuous Actions?

So far we have eliminated the knowledge condition and defined virtues as traits that systematically produce more good than not. I now wish to draw attention to a point that Driver mentions only parenthetically:

Huckleberry, though lacking a correct conception of the good, was still *acting in accordance with* the correct conception of the good.

This was what made him, in fact, a good person (though, later in the novel, it is clear that Huckleberry is basically immature and in many ways nasty; still, we can consider the present case on its own and, if the actual Huckleberry fails to conform to this characterization, we can imagine another character who does).²⁰⁶

But perhaps it is not necessary to focus on Huck's (or another character's) life as a whole. It still seems to be the case that Huck's behavior in this particular instance is virtuous. This is true whether or not he can generally be considered a virtuous person. He is motivated by a feeling that systematically produces more good than not. So while it is not my intention to make the claim that animals can be virtuous individuals, I do wish to claim that they can perform virtuous acts. If, as in the case of Happy Dog and others, animals can be motivated by feelings that systematically produce more good than not, there is no reason to say that their actions that are so motivated are not virtuous – even if their being moved by this feeling is an anomaly, as with the hunter who experiences a moment of compassion. Furthermore, if an animal is consistently motivated by such feelings, I am willing to go so far as to claim that such an animal possesses a particular virtue.

Driver asserts that Huck possesses a virtue – not merely that he performed a virtuous act – because she believes that Huck's action regarding Jim was not accidental. He would do the same thing again if necessary. Why can it not be the same for animals? Returning to the example of my dog Mason, I believe that if my grandfather had fallen out of bed again, Mason would have done the same thing – over and over if need be. While this may not be enough to say that Mason is virtuous in a general sense, it seems that we have all the

²⁰⁶ Driver, *Uneasy Virtue*, 52.

evidence we need to say that he possesses a virtue. The fact that this circumstance never arose again is irrelevant. According to Driver, it is possible to have a virtue yet never exercise it even once. For example, in a society of plenty, a person might have the disposition to help those in need even though the occasion to do so is never realized.²⁰⁷ Therefore, I have no qualms about claiming a virtue on Mason's behalf.

IV. Conclusion

In this chapter, I have addressed Julia Driver's consequentialist account of virtue and dealt with some objections to it. Driver's view grounds my claim that because animals can be motivated by moral emotions, ones that systematically produce more good than not, animals are thus capable of virtuous acts. Furthermore, an animal who would perform such acts repeatedly if the occasion presented itself may even be said to possess a virtue.

The evidence is mounting in favor of moral abilities in animals. My discussion of Driver and the conclusions I have drawn provide support for my claim that Scanlon's moral principle of wrongness = unjustifiability is correct, but that he is wrong to ground this principle in the value of rationality. By doing so, he excludes a significant group of moral beings who possess moral capacities from a moral theory, which is a dubious move indeed. It remains my contention that placing appropriate value on moral capacities will result in a more inclusive contractualist theory – one that is not faced with the serious objection that it cannot account for moral duties to animals.

²⁰⁷ Driver, *Uneasy Virtue*, 74.

Chapter 6 – Moral Responsibility in Humans and Animals

At this point, I must acknowledge that my assertion that animals are moral beings still faces one significant obstacle. A long tradition holds that morality and autonomy must go hand in hand because only autonomous agents can be morally responsible for their actions. If this is right, it could undermine the idea that it is possible to be a moral subject without being a moral agent. I will counter with Nomy Arpaly's arguments against the idea that autonomy is what grounds moral responsibility. I will then move away from Arpaly when she argues against the attribution of moral responsibility to animals and demonstrate that her arguments are unconvincing.

Overall, this chapter will demonstrate two advantages of my proposed modification of Scanlon's theory. As previously stated, autonomy is generally considered an integral component of moral behavior. The problem with this is that whether any sort of robust autonomy actually exists has not been demonstrated. By following Arpaly, I am able to sidestep this issue altogether.

Furthermore, rejecting the connection between morality and autonomy allows me to continue to shore up my claim that animals are capable of moral behavior. This in turn strengthens my position that Scanlon's assignation of value is incorrect.

I. Moral Responsibility and Autonomy

Autonomy is a complicated and controversial subject, and producing a definitive conception of autonomy is outside the scope of this work. For our

purposes, we may define it as what Nomy Arpaly refers to as “agent autonomy.”

She says the following:

Agent autonomy is a relationship between an agent and her motivational states that can be roughly characterized as the agent’s ability to decide which of them to follow: it is a type of self-control or self-government that persons usually have and that nonhuman animals do not have.²⁰⁸

It is not surprising that moral responsibility and autonomy are frequently viewed as being related. If we do not have control over our actions, it is difficult to see how moral responsibility could be applied. Accordingly, we do not gauge certain actions of those who are mentally ill or those who are in the throes of extreme addiction in terms of moral responsibility. To ascribe moral responsibility to an individual lacking in autonomy seems misguided. Similarly, it is hard to argue that an autonomous being can escape being held morally responsible for actions that he endorses and freely chooses to perform. Thus, the dependence of moral responsibility on the possession of autonomy is intuitively plausible.

As a consequence, we are pushed toward the conclusion that animals cannot be morally responsible. If this is true, the prior claim that animals can perform actions that have moral worth comes into question. This is not, however, a conclusion that should be immediately accepted.

There are many difficulties with the idea that humans possess what we would think of as robust human autonomy. First, there is empirical evidence suggesting that we do not – that the effects of situation and circumstance on our

²⁰⁸ Nomy Arpaly, *Unprincipled Virtue: An Inquiry Into Moral Agency* (Cambridge: Cambridge University Press, 2003), 118.

actions are stronger than we think. A 1972 experiment by Isen and Levin involved having a woman drop a folder full of papers in front of a person leaving a phone booth. For some individuals, a dime was placed in the coin return slot, while for others, the slot was empty. Of the 16 people who found the dime, 14 helped the woman pick up the papers, or 88%. Of the 25 people who did not find a dime, only one helped – a mere 4%.²⁰⁹

Isen and Levin's interpretation of the data is that even the small event of finding the dime is enough to elevate the mood, and people who feel good are more likely to help. Something similar emerges from a study dealing with aromas: individuals near a fragrant bakery or coffee shop are more likely to change a dollar bill for someone who asks than people standing next to a dry goods store.

John Doris points out what is most relevant about these findings:

The crucial observation is not that mood influences behavior – no surprise there – but just how unobtrusive the stimuli that induce the determinative moods can be. Finding a bit of change is something one would hardly bother to remark on in describing one's day, yet it makes the difference between helping and not.²¹⁰

If coming across an unexpected dime or being in the presence of freshly baked bread can have a demonstrable effect on our behavior, how much self-control can we really be said to have?²¹¹ While changing a dollar bill and helping someone pick up papers are not acts of great moral importance, it's not hard to

²⁰⁹ John Doris, *Lack of Character: Personality and Moral Behavior* (Cambridge: Cambridge University Press, 2002), 30.

²¹⁰ Doris, *Lack of Character: Personality and Moral Behavior*, 30.

²¹¹ The point must be made that a great deal of research of this type is now very controversial, having fallen prey to the crisis of replication afflicting social psychology. However, I would contend that if we examine our own behavior closely, these conclusions are more intuitive than otherwise.

imagine that similarly trivial factors could influence morally weighty decisions, especially when the agent is torn between two opposed but almost equally balanced urges. We can imagine a teenage gang member that is shocked by some particularly heinous murder and torn between his loyalty to his friends and his desire to see justice for the victim. If the conflicting impulses are relatively evenly balanced, some equivalent of “finding the dime” might make the difference without him even being aware of it. It is naïve to suppose that we are not surrounded by small elements pulling us in conflicting directions all the time and that these do not influence us in ways we would not anticipate.

Indeed, some philosophers and scientists have thought that the sum total of all of these small elements might completely explain all our actions. In his discussion of free will and determinism in the *Enquiry Concerning Human Understanding*, Hume uses the example of an intricate clock.²¹² A peasant only knows that clocks sometimes stop working. A clockmaker could find the speck of dust that has gotten into the gears and created the problem. Perhaps, Hume thought, all chains of events that sometimes go one way and sometimes go another could be explained on a sufficiently fine-grained level of analysis. Determinism is the claim that everything that happens, including human action, is the inevitable result of the combination of previous states of the universe and the laws of nature. Many philosophers have thought that if determinism is true, we are not actually in control of our actions – that whatever we do, we could not have done otherwise. Conversely, there is also the worry that indeterminism

²¹² David Hume, *Enquiry Concerning Human Understanding*. (Cambridge: Cambridge University Press, 2007), 78-79.

may undermine autonomy just as much as determinism. If our behavior is the result of random processes outside of our control, that is no more conducive to autonomy than it being the result of deterministic processes.

Some have concluded that regardless of the truth of determinism, we are not truly autonomous. Galen Strawson, for example, holds this position, claiming that the notion of free will leads to an infinite regress. Responsibility for what we do in any given situation requires that we be responsible for certain aspects of how we are, which proves to be impossible. Responsibility in a particular situation entails responsibility in the previous situation, which entails responsibility in the situation before that, and so on. Avoiding an infinite regress requires the origination of a new causal chain, but because we cannot create ourselves out of nothing, it cannot be circumvented. Free will is thus impossible in both a deterministic and an indeterministic universe.²¹³

Many philosophers whose work is concerned with free will would resist all of these arguments. Compatibilists such as Daniel Dennett²¹⁴ and Harry Frankfurt²¹⁵ claim that we are, in fact, autonomous, even if we live in a deterministic universe and many links in the chains of cause and effect that generate our actions are not within our conscious control.²¹⁶

At the very least, we may say that the claim that humans are robustly autonomous in a way that animals are not is a deeply controversial one. This

²¹³ Galen Strawson, "The Impossibility of Moral Responsibility." *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition* 75, no. 1/2 (Aug. 1994): 5-24.

²¹⁴ Daniel Dennett, *Elbow Room: The Varieties of Free Will Worth Wanting*. (Boston: MIT Press, 1984.)

²¹⁵ Harry Frankfurt, "Alternate Possibilities and Moral Responsibility." *Journal of Philosophy* 66, no.23 (1969): 829-839.

²¹⁶ Of course, libertarians like Robert Kane both deny determinism and the notion that indeterminism is an impediment to free will. See Kane, *The Significance of Free Will*, 1996.

leaves us with the worry that neither animals nor human beings are morally responsible. Fortunately, there is a way to avoid making any claims at all about autonomy while retaining moral responsibility. I will show that neither humans nor animals require autonomy in order to be morally responsible. This is an advantage that my position holds over more traditional contract theories of morality – the question of autonomy need not be resolved and we may remain neutral regarding it.

II. Arpaly on Autonomy and Moral Responsibility

Nomy Arpaly says that thinking about moral responsibility in terms of autonomy does not make the issue clearer – in fact, it merely leads to confusion.

To illustrate this, she uses the following example from Alfred Mele:

Ann is an autonomous agent and an exceptionally industrious philosopher. She puts in 12 solid hours a day, seven days a week, and she enjoys almost every minute of it. Beth, an equally talented colleague, values a great many things above philosophy, for reasons that she has refined and endorsed on the basis of careful critical reflection over many years. She identifies with and enjoys her own way of life – one which, she is confident, has a breadth, depth, and richness that long days in the office would destroy. Their dean, who shall remain nameless, wants Beth to be like Ann. Normal modes of persuasion having failed, he decides to circumvent Beth's agency. Without the knowledge of either philosopher, he hires a team of psychologists to determine what makes Ann tick and a team of new-wave brainwashers to make Beth like Ann. The psychologists decide that Ann's peculiar hierarchy of values accounts for her productivity and the brainwashers instill the same hierarchy in Beth while eradicating all competing values – via new-wave brainwashing, of course. Beth is now, in the relevant respect, a "psychological twin" of Ann. She is an industrious philosopher . . . When she carefully reflects on her preferences and values, Beth finds that they fully support a life dedicated to philosophical work, and she wholeheartedly embraces such a life and the collection of values that supports it.²¹⁷

²¹⁷ The quotation comes from Mele's *Autonomous Agents* in Arpaly, *Unprincipled Virtue: An Inquiry Into Moral Agency*, 126-27.

The immediate intuitive reaction to Beth's story is that she is not an autonomous agent – in fact, this intuition is so widespread that it is frequently used as a check against theories of autonomy that would allow Beth to be counted as such. Arpaly points out, however, that such changes can come about without the interference of new-wave brainwashers or the like. It is possible for people to experience thorough revisions of their values that they did not welcome and cannot explain. Such transformations are just as irrational as what happened to Beth. One illustration she uses is that of the person who converts from atheism to religion (or vice versa) as an irrational reaction to extreme pain.

The newly religious individual does not seem to be lacking in autonomy. As Arpaly points out, he is unlikely to be found alongside Beth as a paradigmatic example of a nonautonomous person. But are he and Beth really that different? The only thing distinguishing them is that Beth's irrational conversion came about "as the result of a deliberate and wrongful action by another human being."²¹⁸ The religious person's did not. How is this related to the question of their autonomy?

Arpaly says that Beth is lacking autonomy in two very specific ways. First, she is deficient in independence of mind. A significant part of her value system has been instilled in her by another person – her dean, via the new-wave brainwashers. Second, her autonomy has been violated in the moral sense because her dean acted without her permission. In these two senses, it is

²¹⁸ Arpaly, *Unprincipled Virtue: An Inquiry Into Moral Agency*, 127.

obvious that Beth's autonomy is impaired, but otherwise, it is not at all clear that she is any less autonomous than the religious convert. Similarly, if someone is feeling generous due to happening upon a coin in a pay phone, her autonomy has not been impaired in either of these senses – unlike the experimental subject for whom the coin was deliberately placed. This latter person has been interfered with by another individual who, unbeknownst to her, was using her as a research subject. Still, it would be counterintuitive to say that she was praiseworthy for acting generously in a way that the subject who found the dime was not. The two senses in which Beth is lacking autonomy do not seem to be related to whether she is morally responsible for her actions.

By focusing on the question of whether Beth is autonomous when discussing her moral responsibility, the issue becomes confused. Again, Beth's autonomy is clearly deficient in certain ways. So if we answer the question "Is Beth autonomous?" with a no, Arpaly says we may then be prejudiced toward the same answer when questioning whether Beth is morally responsible. This only results in trivializing what is a complex issue.

Arpaly then moves on to the question of whether an action must be autonomous in order for it to be praiseworthy or blameworthy. To answer this, we will look again at the case of Huckleberry Finn.

When Huck helps Jim to escape, is he acting autonomously? Arpaly says no – even stating that it would "probably be a problem for a theory of autonomy if it *did* define Huckleberry Finn's good deed as autonomous; he is simply not one's

idea of self-control.”²¹⁹ His ability to decide which of his motivational states upon which to act is clearly compromised – he cannot endorse helping Jim even after the fact. But even though Huck’s action is not autonomous, it is still praiseworthy. This suggests, then, that autonomy is not a requirement for a legitimate ascription of praiseworthiness.

What about blameworthiness? It is common to blame people for unautonomous actions. Arpaly uses the example of people who have extramarital affairs in spite of the fact that they do not endorse their own actions and do not see them as expressions of their higher-order desires. They know that the affair is a bad idea and that they should not be engaging in it, but they do it nonetheless. Their actions fail to meet the criteria of most accounts of autonomy but, as she points out, no autonomy theorist would claim that this exculpates them from blame.

But how is it possible to reconcile the claims that the unfaithful partner is not autonomous and that he is an appropriate object of blame? The argument is that many unautonomous actions occur because the person failed to exercise self-control, and it is for this that he is deemed blameworthy.

Gary Watson, for example, endorses this view.²²⁰ People who surrender to strong desires are to blame for not developing sufficient self-control to prevent this from happening. This explains why we do not fault individuals whose motivations arise from severe chemical addictions – the level of self-control that we are expected to develop is not sufficient to curb their actions. Similarly, we do

²¹⁹ Arpaly, *Unprincipled Virtue: An Inquiry Into Moral Agency*, 138.

²²⁰ Arpaly, *Unprincipled Virtue: An Inquiry Into Moral Agency*, 140.

not blame people with serious mental disorders because they cannot be held responsible for not having appropriate self-control.

According to Arpaly, however, this view lacks coherence. If we can only blame someone for autonomous actions, they cannot be blamed for character flaws, including that of being weak-willed. They can, though, be blamed for autonomous actions that served to create or develop such flaws. In the case of a particular adulterer, certainly he can be blamed for accepting an invitation to dinner from an old girlfriend while his wife is out of town, knowing that this is likely to result in irresistible temptation. But what about another individual who has never before experienced the desire to commit adultery and is taken by surprise? Generally, such a person is considered blameworthy as well.

Arpaly believes that the primary problem with this view is that it “necessitates a picture of human life in which we have an incredible amount of control over our characters.”²²¹ How often do we perform actions that we know are going to either build or ruin our characters? She points out that the reason we find a self-made good character so impressive is precisely because it is so rare. Our choices of school, career, romantic partner, etc. do not generally allow us to predict how or if they will affect our moral character. Thus, she concludes that “it is quite unlikely that what unautonomous blameworthy agents are to blame for is *always and only* some autonomous failure of character-building.”²²²

It is therefore implausible that only autonomous actions can be blameworthy. This means that moral responsibility cannot be grounded in

²²¹ Arpaly, *Unprincipled Virtue: An Inquiry Into Moral Agency*, 141.

²²² Arpaly, *Unprincipled Virtue: An Inquiry Into Moral Agency*, 141.

autonomy. By separating the two, we raise the question: What does this mean for animals?

III. Arpaly and Animals

Arpaly says:

It may appear that if we deny that some notion of agent-autonomy is needed to ground moral responsibility, we imply that nonhuman animals can be morally praiseworthy or blameworthy. This would be a counterintuitive conclusion, even if one is ready to grant that animals have moral rights.²²³

While it is true that, to most people, this claim is counterintuitive, I would like to argue that it is nevertheless correct. It is possible to be morally responsible without being an autonomous agent.

She points out that between the popularity of agency theory and Kantian ethics, the assumption is often made that there is only one possible reply to the question regarding the moral difference between humans and animals: the autonomy of practical reason. But for those who were not aware of that concept, it was necessary to find other answers. One is found in Hobbes' *Leviathan*.

To make covenants with brute beasts is impossible; because not understanding our speech, they understand not, nor accept of any translation of right, nor can translate any right to another: and without mutual acceptation, there is no covenant.²²⁴

Hobbes is only concerned with contracts here. But Arpaly thinks that we can apply this notion of animals not understanding our speech to explain why animals are exempt from moral responsibility. Perhaps we do not need anything as complicated as agent-autonomy. As she says:

²²³ Arpaly, *Unprincipled Virtue: An Inquiry Into Moral Agency*, 145.

²²⁴ Thomas Hobbes, *Leviathan* (Cambridge: Cambridge University Press, 1991), 97.

The exasperating fact that your cat cannot understand your request that she be careful in handling your computer keyboard from now on counts for a lot when you remind yourself that she is exempt from moral responsibility for knocking it off the table again.²²⁵

Not only do animals not understand our language, there are many other things that are beyond their comprehension. Arpaly uses the example of the family dog who destroys a little girl's favorite dinosaur toy. When the child screams, "But it's *my favorite dinosaur!*" the parent has to explain to her that the dog does not understand this. According to Arpaly:

The dog does not understand *mine*, *favorite*, or *dinosaur*, not even in the murky, visceral way a small child does. Similarly, the dog's mind presumably cannot grasp – nor can it track, the way even unsophisticated people can – such things as increasing utility, respecting persons, or even friendship.²²⁶

The immediate thought upon reading this is that surely dogs *do* have some idea of what "mine" means – watching their behavior with regard to food or toys will surely attest to this. But Arpaly puts this to rest by saying that "even if some protoversions of these notions exist in the animal's mind, these are not concepts that it can sophisticatedly apply to humans."²²⁷ The dog who knows better than to try to take the other dog's ball may be acting for reasons, but he is not acting for moral reasons. To do so is simply beyond him. Therefore, animals are not appropriate objects of moral praise and blame – a conclusion that we are able to draw without any appeal to autonomy.

Arpaly goes on to address the argument that the dog's lack of autonomy is partially to blame for his failure to understand concepts such as property and his

²²⁵ Arpaly, *Unprincipled Virtue: An Inquiry Into Moral Agency*, 145.

²²⁶ Arpaly, *Unprincipled Virtue: An Inquiry Into Moral Agency*, 146.

²²⁷ Arpaly, *Unprincipled Virtue: An Inquiry Into Moral Agency*, 146.

inability to respond to moral reasons. She dismisses this as unnecessary speculation, pointing out that dogs are also incapable of high aesthetic appreciation, but we are not tempted to involve ourselves in a discussion of autonomy when they fail to appreciate Beethoven. It is only necessary to appeal to the fact that they can neither think abstractly nor reflect.

IV. Response to Arpaly

Certainly I do not wish to disagree with the claim that understanding is related to moral responsibility. We do not hold someone responsible for an action if he does not understand (or could not reasonably be expected to understand) that his action was morally wrong or that it could lead to negative consequences. Indeed, it seems that the more understanding a person possesses regarding the details of a particular situation, the more responsible he is for his actions – regardless of whether those actions are right or wrong. The less he understands about the situation, the less he is responsible for his associated behavior. Thus, I believe that knowing the extent of a person's understanding is an essential component of accurately assessing his moral responsibility.

My disagreement with Arpaly lies in her claim that animals cannot respond to moral reasons because they lack the necessary understanding. In her examples, she focuses solely on blameworthiness and completely excludes praiseworthiness. While it is perhaps natural to attend more to the former in a discussion of moral responsibility, the latter is no less important.

Similarly, she discusses only what animals cannot understand without mentioning what they can (or may) understand. Arpaly needn't presume a particularly robust definition of understanding to make her points. We need not appeal to the possession of language or concepts. The intuitively plausible claim that the dog is not morally blameworthy for breaking the dinosaur toy requires the application of only a minimal notion of understanding.

If we apply a minimal notion of understanding to the discussion of moral responsibility, we can begin talking about things that animals do, in fact, understand, rather than what they do not. Let us revisit some of our previous examples. It does not seem to be excessively imaginative to claim that there is something about Sad Dog's situation (something that makes it appropriate to call him "Sad Dog") that Happy Dog understands.

In fact, the behavior of a stray dog in Brazil seems to clearly indicate that animals are capable of understanding that sort of situation.²²⁸ Lilica was abandoned at a junkyard in São Carlos, and when she had a litter of puppies, it was necessary to go on miles-long treks to find food. When Lucia Helena de Souza discovered Lilica, she began feeding the dog every day, leaving out food in plastic bags. But de Sousa realized that, rather than eating all the food, Lilica was carrying the plastic bags away. She was bringing the rest of it back to the junkyard to share with her puppies and other animals who lived there. De Sousa and Lilica followed the same routine for years – Lilica would show up at her

²²⁸ Dominique Mosbergen, "Junkyard Dog Walks Miles Every Day to Feed Her Friends, Teaches Us the Power of Sharing" (Huffington Post), July 23, 2014, https://www.huffingtonpost.com/2014/07/23/junkyard-dog-feeds-friends-lilica-brazil_n_5611055.html.

house, several miles away, eat part of the food, and then wait for de Sousa to tie up the bag so she could carry the rest back home.

Nor does it seem fanciful to claim that Jakie the chimp understood that Krom was trying to get a particular tire, nor that he understood why she wanted it (to get the water that was inside it). My dog Mason understood that my grandfather needed help and reacted by waking my parents. In all these situations, the animals acted as they did because they understood the circumstances.

If Happy Dog's reaction to the relevant features of Sad Dog's situation is to bring his bone to Sad Dog, why shouldn't this, on Arpaly's view, qualify as a morally praiseworthy action? If our concern is what the individual is able to understand and how he reacts to it, then there seems to be no reason why Happy Dog does not deserve praise for his behavior.

Arpaly defines the moral worth of an action as "the extent to which the agent deserves moral praise or blame for performing the action, the extent to which the action speaks well of the agent."²²⁹ She speaks interchangeably of "a morally praiseworthy action" and "an action with positive moral worth." Such a characterization seems reasonable. According to these criteria, if Happy Dog deserves praise for bringing his bone to Sad Dog, his action has positive moral worth.

V. A Possible Objection and My Response

It might be objected that if understanding is required for moral worth, then Huck Finn's helping Jim to escape has no moral worth, since Huck does not

²²⁹ Arpaly, *Unprincipled Virtue: An Inquiry Into Moral Agency*, 69.

understand the relevant factors of the situation. He does not understand that the races are equal, that slavery is an evil practice, that helping Jim escape is the right thing to do, etc. Because I have already claimed that Huck's action is a virtuous one, this leaves us with the contradictory claims that it is virtuous and, due to Huck's lack of understanding, that it has no moral worth. This is impossible and thus renders my position untenable.

Taking a closer look at this objection, we can see that it arises from the conjunction of the following three claims:

- 1) Huck's emotion motivates him to do the right thing, making his action a virtuous one.
- 2) The moral worth of an action is the extent to which the actor deserves praise for it.
- 3) Huck does not deserve praise because he lacks understanding.

I believe we may respond to this objection, and the third claim in particular, by taking another look at Arpaly's discussion of Huck. She says the following:

Talking to Jim about his hopes and fears and interacting with him extensively, Huckleberry constantly perceives data (never deliberated upon) that amount to the message that Jim is a person, just like him. Twain makes it very easy for Huckleberry to perceive the similarity between himself and Jim: the two are equally ignorant, share the same language and superstitions, and all in all it does not take the genius of John Stuart Mill to see that there is no particular reason to think of one of them as inferior to the other. While Huckleberry never reflects on these facts, they do prompt him to act toward Jim, more and more, in the same way he would have acted toward any other friend.²³⁰

While this certainly does not allow us to conclude that Huck has a significant level of understanding, it does permit us to attribute to him a similar degree of understanding as we would to Happy Dog. Huck does not deliberate or reflect on the data he perceives, but the same can be said of Happy Dog.

²³⁰ Arpaly, *Unprincipled Virtue: An Inquiry Into Moral Agency*, 77.

While Huck is, as Arpaly says, rather ignorant, he is neither a young child nor mentally disabled in any way. Therefore, to claim that he is utterly without understanding while at the same time ascribing understanding to Happy Dog is not a reasonable position. Though Huck does not deserve the same sort of praise as someone who helps slaves to escape because he understands the horrific nature of the institution of slavery, he is still deserving of praise for performing the virtuous act of letting Jim go. Thus, the objection is defeated.

VI. Conclusion

In this chapter, I have explored the traditional connection between moral responsibility and autonomy. I have followed Nomy Arpaly in arguing that grounding moral responsibility in autonomy is a mistake. Thus, it is an advantage of my view that moral abilities can be attributed to animals while sidestepping the issue of whether we are truly autonomous beings. Though I continue to follow Arpaly in using understanding as the foundation for moral responsibility, my view diverges from hers when she turns her attention to animals. Rather than denying them moral responsibility on the grounds of their limited understanding as she does, I focus on what they are, in fact, able to understand. When they react to the circumstances of a situation that they can grasp, it is my claim that they are morally responsible. Even if it is not the case that an animal can be held to be blameworthy, it is my assertion that they can be deserving of praise.

I believe that I have successfully demonstrated that animals possess moral abilities. This means that I have also shown that grounding value in moral

capacities rather than rational ones results in a better and more inclusive contractualist theory – one that does not exclude a clearly deserving group. By enabling us to include animals among those with direct moral status and a claim to contractualist protections, I have suggested a more complete contractualism, one that accords with our intuitions regarding the moral status of animals. In the next chapter, I will address some further conclusions that we are able to draw and indicate where there is still work to be done.

Chapter 7 – Further Conclusions and New Directions

I began this dissertation by demonstrating that utilitarianism is not the solution – although so far it has come closer than any other moral theory – to guaranteeing moral status for animals. T.M. Scanlon has taken its best elements and incorporated them into a version of contractualism grounded in the principle that wrongness equates to unjustifiability. But the serious flaw in his theory is its position on animals. This weakness is apparent even at first glance because it does not accord with our intuitions regarding animals being due moral protections.

My examination of empathy and its connection to morality, particularly to the possession of virtues, has shown that the problem goes much deeper. Scanlon bases his principle on the notion that to behave wrongly is to fail to treat individuals in accordance with their proper value. In other words, the wrongness-equals-unjustifiability principle affirms a particular value. For Scanlon, the value is rationality.

But why should this be the case? We are, after all, dealing with *moral* theory. I have proposed that, rather than respecting rational capacities, a moral theory should respect moral capacities. What I have shown regarding animals and their ability to act for moral reasons compels us to conclude that their exclusion is a significant blemish on any ethical theory.

In this chapter, I intend to establish that Scanlon's insistence on rationality as the criterion for full moral status under the terms of the contract must be considered speciesist. I will show that his argument to the contrary does not hold

up under examination. Furthermore, by switching the focus to moral capacities rather than rational ones, the theory not only brings animals under the contractualist umbrella, but also allows for the straightforward inclusion of many human beings that were previously excluded.

I. A Thought Experiment

Imagine that astronauts brought back the eggs of some beings that, similar to the extraterrestrials in the *Alien* franchise, nest inside mammalian bodies, and destroy the hosts when they emerge.²³¹ Suppose that these alien beings will cognitively develop to the same approximate level as the average dog. Furthermore, they have the same capacity for pleasure over the course of their lifetimes.

What if you could insert three alien eggs into one dog? A utilitarian would have a difficult time capturing the intuition that doing so would be morally wrong. After all, we come out ahead on the utility calculus as a result – we would be creating three times as much overall pleasure.

At first glance, Scanlon's contractualism can do better. Even though both the dog and the aliens are outside of the contractualist umbrella, we do have a responsibility to not cause them pain, and the unfortunate canine would certainly experience a painful death when the aliens were born. But what if we could painlessly insert the eggs, and the emergence of the aliens would instantly and painlessly kill the dog? The Scanlonian contractualist cannot explain why this is wrong, even though it defies all our intuitions.

²³¹ This example was developed with Ben Burgis in conversation.

My modified version of contractualism successfully avoids this problem. The dog cannot be justifiably treated this way because he has full contractual standing. So, too, do children and the mentally disabled.

II. Scanlon on Children and the Mentally Disabled

All moral theories that ground moral standing in rationality are faced with what is known as “the problem of marginal cases.” Such theories, including Scanlon contractualism, deny direct moral status to animals on the basis of their lack of rationality. This, in turn, leads to the exclusion of some humans – for example, very young children and the severely mentally disabled who also cannot meet the standard of rationality. This requires proponents of these theories to either bite the bullet and deny that these individuals have direct moral standing, or to devise some way around it, such as attributing moral status to individuals according to what is normal for their species. To take the former stance is to endorse a highly counterintuitive claim. Endorsing the latter (or some other method of separating humans and animals) is to admit that the rationality criterion is flawed.

Scanlon takes the second route. In response to the objection that his contractualist boundaries exclude infants, young children, and the mentally disabled, he appeals to the notion of species normality. Infancy and childhood are, in most cases, merely developmental stages in the life of a being that will at some point be capable of understanding and weighing justifications. Unfortunately, however, some humans are never able to develop this ability. Scanlon addresses this issue by saying, “The mere fact that a being is ‘of human

born' provides a strong reason for according it the same status as other humans."²³²

Has Scanlon succeeded in addressing the problem of marginal cases? I assert that, for two reasons, he has not. First, when he refers to the notion of developmental stages, he is appealing to the argument from potential, which is most commonly used in the abortion debate to defend the claim that fetuses have the right to life. Used in this way, the argument from potential states that, although a fetus does not possess rationality/sentience/a sense of self/etc., it will at some point gain whichever of these capabilities the particular philosopher is concerned with. The potential to develop the relevant capability is sufficient to provide the fetus with the right to life.

To apply this to Scanlon's point, he is essentially making the argument that the potential of the infant or child to understand and weigh justifications is all that the individual needs for direct moral status. However, the argument from potential suffers from a logical defect. The fact that an individual is a potential possessor of the necessary qualifications for a particular moral status does not entail that he is an actual possessor of that moral status. There are several analogies that have been used to demonstrate the absurdity of the argument from potential. One is that acorns are potential oak trees, but this does not mean that the destruction of an acorn should be responded to in the same way as the destruction of a big, beautiful oak tree.²³³ Another is that a potential United States president is not on that account the Commander-in-Chief of the armed

²³² Scanlon, *What We Owe to Each Other*, 185.

²³³ Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy and Public Affairs* 1, no. 1 (Autumn 1971): 47.

forces. Similarly, an infant is potentially an individual with the capability of understanding and weighing justifications, which carries with it a certain value, but this does not mean that he currently possesses this value.

Of course, someone might respond that the potentiality-does-not-entail-actuality objection, while logically a sound claim, is irrelevant because it misses the point of the argument from potential. It may be said that it is the *potential itself* that is the qualification – its actualization is not necessary.

There are three problems with this. One, I do not believe that this is Scanlon's view. He states, "This tie of birth gives us good reason to want to treat them 'as human' despite their limited capacities."²³⁴ This does not read like an endorsement of the position that potential is the relevant factor. Rather, I interpret this to mean that the very young should be treated as *if* they have direct moral status – not that they actually do.

Furthermore, because he believes that only those capable of contracting are directly entitled to the protections of the contract, this is a further reason to believe that it is not the possession of potential, but mere speciesism that drives his position with regard to nonrational humans. I will address the issue of speciesism in more detail shortly.

For the sake of argument, let us suppose that his position regarding infants and children could be reasonably assumed to be based on the idea that the potential for weighing reasons and justifications is sufficient in itself. But if this is in fact the case, this is a claim that must be supported in a way that Scanlon does not attempt to do. He provides an extensive argument for the

²³⁴ Scanlon, *What We Owe to Each Other*, 185.

possession of the ability as the basis of moral standing, but again, the only support he offers for the notion that the potential is relevant is simply grounded in speciesism. Unless we are willing to accept species membership as the line demarcating those who possess direct moral status from those who do not, I will assume that I have successfully defeated his appeal to developmental stages as relevant to contractualist protections.

My third reason for claiming that Scanlon has not successfully addressed the problem of marginal cases relates to his assertion that merely being “of human born” qualifies an individual for direct moral status under his contractualist system. While he uses this phrase in reference to those who are mentally disabled from birth, it can also be taken to apply to any category of human beings, including the very young and individuals who are not born with mental disabilities but develop them later in life as a result of illness or injury.

Scanlon himself anticipates my objection to his claim that being “of human born” is sufficient to confer direct moral status by saying, “This has sometimes been characterized as a prejudice, called ‘speciesism.’”²³⁵ While I believe that this is indeed a serious objection to his position, he goes on to defend himself in the following manner:

But it is not prejudice to hold that our relation to these beings gives us reason to accept the requirement that our actions should be justifiable to them. Nor is it prejudice to recognize that this particular reason does not apply to other beings with comparable capacities, whether or not there are other reasons to accept this requirement with regard to them.”²³⁶

²³⁵ Scanlon, *What We Owe to Each Other*, 185.

²³⁶ Scanlon, *What We Owe to Each Other*, 185.

It is my position that his explanation for why his claim is not speciesist does not adequately respond to the objection. The relation that he speaks of is a biological relation, not a personal one. It is certainly not speciesist to take the position that beings with a personal relationship to us have particular claims arising solely from that relationship. The problem with Scanlon's position is that he is speaking of a relationship rooted in biology and not anything akin to a personal one. If we simply have more duties to those with whom we have personal relationships, then we have more duties to beloved family dogs than to random human orphans we have never met – which is the exact opposite of the result Scanlon is trying to achieve.

If the underlying idea is that we are related to other humans by being members of the same biological group, then Singer's objections to speciesism all apply – Scanlon's position is no different than the statement that because a particular white person is more closely related to other white people, he has more duties to them than to people of other races. His statement that we are speaking of individuals who are “born to us or to others to whom we are bound by the requirements of justifiability” makes this clear. We need only justify ourselves to human beings, and all humans, regardless of their capacities, are included simply because they are human. Because it is an implausible claim that only humans with certain capabilities possess the value that confers moral status, Scanlon wishes to extend this value through the biological relationship of birth. If that relationship does not apply, capacities do not matter. This is speciesism.

The only way that Scanlon can avoid speciesism without including animals under the contractualist umbrella is to also exclude those human beings who are, for one reason or another, unable to weigh reasons and justifications. In order to avoid violating these widely held moral intuitions, he must depend upon assertions and arguments that do not fall within his contractualist scope. This can be improved upon.

III. My Position

Once we accept that full contractualist status merely involves not agency but subjecthood (the ability to act on motivating moral reasons), it is clear that animals who are capable of empathy come within the direct scope of contractualism. As previously mentioned, involuntary empathy does not require a high degree of cognitive development. It simply overcomes us in a way in which conscious thought is not required. A subtype of involuntary empathy is what is known as emotional contagion (or less commonly, emotional infection). Emotional contagion “involves an observer experiencing the same affective states as a target and is caused by the observer’s perception of the target.”²³⁷ These emotions are “not experienced imaginatively or in relation to another; we experience them as our own.”²³⁸

Psychologists Elaine Hatfield, John Cacioppo, and Richard Rapson define emotional contagion as “the tendency to automatically mimic and synchronize expressions, vocalizations, postures, and movements with those of another

²³⁷ Amy Coplan, “Understanding Empathy: Its Features and Effects,” 8.

²³⁸ Coplan, “Understanding Empathy: Its Features and Effects,” 9.

person, and, consequently, to converge emotionally.”²³⁹ They go on to say that this process is “relatively automatic, unintentional, uncontrollable, and largely inaccessible to conversant awareness.”²⁴⁰ According to Lauren Wispe, emotional contagion “involves an involuntary spread of feelings without any conscious awareness of where the feelings began in the first place.”²⁴¹

Imitation seems to be innate within human infants. Infants from 12 to 21 days old are able to imitate tongue protrusion, mouth opening, lip protrusion, and hand movements. They can differentiate between tongue protrusions at the middle versus the corner of the mouth, meaning that the imitative response is quite specific instead of just a general reaction. This imitation can even be delayed, which has been demonstrated by putting a pacifier in the infant’s mouth. This prevents the duplication of the facial movements of the adults as they are occurring. Once the pacifier is removed, the infant repeats the movements.²⁴²

It might be tempting to discount this as a result of conditioning during the first weeks of an infant’s life, or perhaps it is dependent upon previous interactions with the mother. But when 40 newborns were tested in a hospital, this proved not to be the case. The average age of the tested infants was 32 hours, with the youngest being only 42 minutes old. The results were in favor of imitation being an innate ability – the infants were able to differentially imitate the gestures of mouth opening and tongue protrusion.²⁴³

²³⁹ Coplan, “Understanding Empathy: Its Features and Effects,” 8.

²⁴⁰ Coplan, “Understanding Empathy: Its Features and Effects,” 8.

²⁴¹ Coplan, “Understanding Empathy: Its Features and Effects,” 8.

²⁴² Decety and Meltzoff, “Empathy, Imitation, and the Social Brain,” 59.

²⁴³ Decety and Meltzoff, “Empathy, Imitation, and the Social Brain,” 59.

At 18 months of age, children are affected by the emotional states of others. Their imitative responses are influenced by a third person's emotional reaction to the act being performed. As one person performed a series of novel acts with objects, a bystander either became angry or watched with pleasant interest before adopting a neutral expression. When the original actions had been watched with a pleasant expression, the children imitated them at high levels. But when the bystander had become angry at the original actions, the children were significantly less likely to do so.²⁴⁴

Recall Bentham's observation that the mental capacities of a full-grown horse or dog are "beyond comparison" more developed than those of human infants. As it turns out, they don't need to have advanced "beyond comparison" from the 18-month-olds we have been discussing in order to have the capacity for receptive empathy and for actions motivated by it. These are precisely the kind of moral capacities at the heart of my revision of Scanlonian contractualism.

IV. Possible New Directions for Contractualism

While I have succeeded in significantly expanding the scope of the contractualist umbrella, there will still be some animals that fall outside of it. Similarly, there are two categories of human beings that are left without protections. The extremely young and the extremely mentally disabled may fail to meet even the low cognitive bar for having the kind of moral capacities that I take to ground the justification requirement.

²⁴⁴ Decety and Meltzoff, "Empathy, Imitation, and the Social Brain," 65. This study also factored in whether the person was looking at the child when the child was given the opportunity to imitate the action. This does make a difference.

At this point, it may appear that we have to bite the bullet and concede that such individuals are simply not entitled to contractualist protections. However, this does not mean that they are entirely bereft of moral standing. The extremely young and severely mentally disabled still fall within the larger moral sphere.

I have already discussed the connection between contractualism and virtue. Contractualists have reason to form rules not only regulating conduct, but rules regarding virtue as well. Thus, a contractualist can justify taking such beings into moral consideration even while conceding that they do not have the robust moral standing that those under the contractualist umbrella possess. Because a contractualist should be cultivating, as far as he is able, such characteristics as caring and compassion, the treatment of these individuals should demonstrate those and other virtues. If this sounds too similar to Kant's position discussed in Chapter Two, we can at least take consolation in Scanlon's assertions regarding pain – that it is something we should do our best to prevent and certainly something we should not cause without sufficient reason.

It is my view that the issue of the very young and the extremely mentally disabled does not weaken my conception of contractualism because it is not apparent, as it is in the case of "higher" animals, children, and those with less severe disabilities, that we should assume the possession of full moral status.

There will, of course, be those for whom the difficulty just described is an unacceptable result. I have two responses. First, there is a strong assumption that pervades the entire contractarian/contractualist tradition, from Hobbes to

Scanlon, that moral agency and what Rowlands calls moral patienthood (at least full contractualist moral patienthood) are coextensive – that only those capable of contracting receive full moral consideration. (Of course, what this means varies from theory to theory, from the harsh dividing line of Hobbes to simply restricting non-agents to the portion of morality falling outside of the contractualist scope.) This can be questioned. Perhaps simply the ability to feel pain is enough for full protection. It might be argued that Scanlon's principle could be adequately rooted in the value that we accord not to rational capacities (or even, as I have argued, moral ones) but the value of being capable of either suffering or flourishing. It is not necessarily my intention to endorse this suggestion, but an attempt to develop it in a way that does not simply collapse back into something like utilitarianism could be an interesting direction for future research on contractualist morality.

Second, the fact that we do not have to go all the way to that position in order to improve upon Scanlon with regard to accommodating our moral intuitions about animals is an interesting and important result in itself. Even readers who believe that I have not taken contractualist protection for *all* animals seriously enough should admit that my account represents a considerable improvement on the original Scanlonian framework. As we have seen, my account accommodates our moral obligation to dogs and cats, to cows and pigs on factory farms, to monkeys in research labs, etc. in ways that Scanlon cannot. We can, in fact, make covenants with “brute beasts” and thus honor Gandhi's insight that a just society must treat them kindly.

Bibliography

- Aristotle. *The Nichomachean Ethics*. Cambridge: Cambridge University Press, 2001.
- Arpaly, Nomy. *Unprincipled Virtue: An Inquiry Into Moral Agency*. Oxford: Oxford University Press, 2003.
- Avenanti, A. et al. "Transcranial Magnetic Stimulation Highlights the Sensorimotor Side of Empathy for Pain." *Nature Neuroscience* 8 (2005): 955-960.
- Bekoff, Marc. *The Emotional Lives of Animals*. Novato, CA: New World Library, 2007.
- Bekoff, Marc and Jessica Pierce. *Wild Justice: The Moral Lives of Animals*. Chicago: The University of Chicago Press, 2009.
- Bentham, Jeremy. *A Fragment on Government*. London: T. Payne, 1776.
- Bentham, Jeremy. *An Introduction to the Principles of Morals and Legislation*. Oxford: Clarendon Press, 1789.
- Bentham, Jeremy. "To the Editor of the Morning Chronicle." *Morning Chronicle*. London.
- Carlsmith, J.M. and A.E. Gross. "Some Effects of Guilt on Compliance." *Journal of Personality and Social Psychology* 11 (1969): 232-239.
- Coplan, Amy. "Understanding Empathy: Its Features and Effects." In *Empathy: Philosophical and Psychological Perspectives*, edited by Amy Coplan and Peter Goldie, 3-18. Oxford: Oxford University Press, 2011.
- Coplan, Amy. "Will the Real Empathy Please Stand Up? A Case for a Narrow Conceptualization." *The Southern Journal of Philosophy* 49 Spindel Supplement (2011): 40-65.
- Coplan, Amy and Peter Goldie, "Introduction." In *Empathy: Philosophical and Psychological Perspectives*, edited by Amy Coplan and Peter Goldie, ix-xxvii. Oxford: Oxford University Press, 2011.
- Carruthers, Peter. *The Animals Issue: Moral Theory in Practice*. Cambridge: Cambridge University Press, 1992.

- Collins, Suzanne. *The Hunger Games*. New York: Scholastic, 2008.
- Darwin, Charles. *The Descent of Man*. Seattle: Pacific Publishing Studio, 2011.
- De Waal, Frans. *Primates and Philosophers: How Morality Evolved*. Princeton: Princeton University Press, 2006.
- Decety, Jean and Andrew N. Meltzoff. "Empathy, Imitation, and the Social Brain." In *Empathy: Philosophical and Psychological Perspectives*, edited by Amy Coplan and Peter Goldie, 58-81. Oxford: Oxford University Press, 2011.
- DeGrazia, David. *Taking Animals Seriously: Mental Life and Moral Status*. Cambridge: Cambridge University Press, 1996.
- Dennett, Daniel. *Elbow Room: The Varieties of Free Will Worth Wanting*. Boston: MIT Press, 1984.
- Doris, John. *Lack of Character: Personality and Moral Behavior*. Cambridge: Cambridge University Press, 2002.
- Doyle, Arthur Conan. "The Adventure of the Greek Interpreter." In *The Memoirs of Sherlock Holmes*. Oxford: Oxford University Press, 1993
- Driver, Julia. *Uneasy Virtue*. New York: Cambridge University Press, 2001.
- Eisenberg, N. et al. "Relation of Sympathy and Personal Distress to Prosocial Behavior: A Multimethod Study." *Journal of Personality and Social Psychology* 57 (1989): 55-66.
- Fagiano, Mark. "Pluralistic Conceptualizations of Empathy." *The Journal of Speculative Philosophy* 30, no. 1 (2016): 27-44.
- Frankfurt, Harry. "Alternate Possibilities and Moral Responsibility." *Journal of Philosophy* 66, no. 23 (1969): 829-839.
- Gettier, Edmund L. "Is Justified True Belief Knowledge?" *Analysis* 23, no 6 (June 1963): 121-123.
- Goldie, Peter. *The Emotions: A Philosophical Exploration*. Oxford: Clarendon, 2000.

- Goldman, Alvin. "Two Routes to Empathy: Insights from Cognitive Neuroscience." In *Empathy: Philosophical and Psychological Perspectives*, edited by Amy Coplan and Peter Goldie, 31-44. Oxford: Oxford University Press, 2011.
- Goodall, Jane. *Through a Window: My Thirty Years with the Chimpanzees of Gombe*. Soko Publications Limited, 1990.
- Grotius, Hugo. *The Law of War and Peace*. Indianapolis: The Bobbs-Merrill Company. 1925.
- Grotius, Hugo. *Opera omnia theological*. London: Moses Pitt, 1679.
- Heyes, Cecelia. "Animal Mindreading: What's the Problem?" *Psychonomic Bulletin & Review* 22, no. 2 (2015): 313-327.
- Hobbes, Thomas. *Leviathan*. Cambridge: Cambridge University Press, 1991.
- Hoffman, Martin L. "Empathy, Justice, and the Law." In *Empathy: Philosophical and Psychological Perspectives*, edited by Amy Coplan and Peter Goldie, 230-254. Oxford: Oxford University Press, 2011.
- Hume, David. *Enquiry Concerning Human Understanding*. Cambridge: Cambridge University Press, 2007.
- Hume, David. *A Treatise of Human Nature*. New York: HarperTorch, 2014.
- Hunt, Lester H. "Book Review: *Uneasy Virtue* by Julia Driver." *Ethics* 114, no. 1 (October 2003): 167-170.
- Hursthouse, Rosalind. *On Virtue Ethics*. Oxford: Oxford University Press, 1999.
- Iacoboni, Marco. "Within Each Other: Neural Mechanisms for Empathy in the Primate Brain." In *Empathy: Philosophical and Psychological Perspectives*, edited by Amy Coplan and Peter Goldie, 45-57. Oxford: Oxford University Press, 2011.
- Jackson, P.L. et al. "How Do We Perceive the Pain of Others? A Window Into the Neural Processes Involved in Empathy." *NeuroImage* 2 (2004): 771-779.
- Kagan, Shelly. *The Limits of Morality*. Oxford Ethics Series: Clarendon Press, 1991.
- Kane, Robert. *The Significance of Free Will*. New York: Oxford University, 1996.

- Kant, Immanuel. *Lectures on Ethics*. Cambridge: Cambridge University Press, 1997.
- Kant, Immanuel. *Metaphysics of Morals*. Cambridge: Cambridge University Press, 1996.
- Kant, Immanuel. *Religion Within the Boundaries of Mere Reason and Other Writings*. Cambridge: Cambridge University Press, 1998.
- Keyser, C. et al. "A Touching Sight: SII/PV Activation During the Observation of Touch." *Neuron* 42 (2004): 335-346.
- Kleist, Chad. "Huck Finn the Inverse Akritic: Empathy and Justice." *Ethical Theory and Moral Practice* 12, no. 3 (June 2009): 257-266.
- Kymlicka, Will. "Contractarianism." In *A Companion to Ethics*, edited by Peter Singer, PAGES. Oxford: Basil Blackwell, 1989.
- Le Guin, Ursula K. "The Ones Who Walk Away from Omelas." *New Dimensions* 3: 1973.
- Lerner, J. et al. "Sober Second Thought: The Effects of Accountability, Anger, and Authoritarianism on Attributions of Responsibility." *Personality and Social Psychology Bulletin* 24 (1998): 563-574.
- McClellan, J. "Animal cruelty and violent behavior: Is there a connection?" *Journal of Security Education* (2007).
- Mele, Alfred. *Autonomous Agents*. New York: Oxford University Press, 1995.
- Monso, Susana. "Empathy and Morality in Behavior Readers." *Biology and Philosophy* 30 (2015): 671-690.
- Morrison, I. et al. "Vicarious Responses to Pain in Anterior Cingulate Cortex: Is Empathy a Multisensory Issue?" *Cognitive, Affective, Behavioral Neuroscience* 4 (2004): 270-278.
- Mosbergen, Dominique. "Junkyard Dog Walks Miles Every Day to Feed Her Friends, Teaches Us the Power of Sharing." (Huffington Post). July 23, 2014. https://www.huffingtonpost.com/2014/07/23/junkyard-dog-feeds-friends-lilica-brazil_n_5611055.html.
- Neuberg, S.L. et al. "Does Empathy Lead to Anything More Than Superficial Helping? Comment on Batson et al." *Journal of Personality and Social Psychology* 73 (1997): 510-516.

- Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic Books, 1974.
- Nussbaum, Martha. *Frontiers of Justice*. Cambridge, MA: Belknap, 2006.
- Panksepp, J. *Affective Neuroscience: The Foundations of Human and Animal Emotions*. Oxford: Oxford University Press, 2004.
- Parfit, Derek. "Overpopulation and the Quality of Life." *Applied Ethics*. New York: Oxford University Press, 1986.
- Prinz, Jesse. "Is Empathy Necessary for Morality?" In *Empathy: Philosophical and Psychological Perspectives*, edited by Amy Coplan and Peter Goldie, 211-229. Oxford: Oxford University Press, 2011.
- Plato. *Meno*. Newburyport, MA: Focus Publishing, 2004.
- Pluhar, Evelyn. "Moral Agents and Moral Patients." *Between the Species* 5, no.1 (1988).
- Preston, S.D. and FBM de Waal. "Empathy: Its Ultimate and Proximate Bases." *Behavioral Brain Science* 25, no. 1 (2002): 1-20.
- Rawls, John. "Kantian Constructivism in Moral Theory: The Dewey Lectures 1980." *Journal of Philosophy* 77 (1980): 515-572.
- Rawls, John. *A Theory of Justice*. Cambridge, MA: Belknap Press, 1971.
- Regan, Tom. *The Case for Animal Rights*. Berkeley: University of California Press, 1983.
- Regan, Tom. "The Case for Animal Rights." In *In Defence of Animals*, edited by Peter Singer, 13-26. Oxford: Basil Blackwell Publisher, 1985.
- Regan, Tom. "Utilitarianism, Vegetarianism, and Animal Rights." *Philosophy and Public Affairs* 9, no. 4 (Summer 1980): 305-324.
- Rizzolatti, G. et al. "Premotor Cortex and the Recognition of Motor Actions." *Experiment Brain Opinion* 111 (1996): 246-252.
- Rowlands, Mark. *Can Animals Be Moral?* New York: Oxford University Press, 2012.
- Rowlands, Mark. *Animal Rights: Moral Theory and Practice*. New York: Palgrave MacMillan, 2009.

- Sapontzis, Steven. "Are Animals Moral Beings?" *American Philosophical Quarterly* 17, no. 1 (January 1980): 45-52.
- Scanlon, T.M. "Contractualism and Utilitarianism." *Utilitarianism and Beyond*. Cambridge: University Press, 1982.
- Scanlon, T.M. *What We Owe to Each Other*. Cambridge, MA: Belknap Press, 1998.
- Schopenhauer, Arthur. *On the Basis of Morality*. Providence: Berghahn Books, 1995.
- Sidgwick, Henry. *The Elements of Politics*. London: MacMillian and Company, 1919.
- Singer, Peter. "All Animals Are Equal." In *Animal Rights and Human Obligations*, edited by Tom Regan and Peter Singer, 148-162. New Jersey: Prentice-Hall, 1989.
- Singer, Peter. *Animal Liberation*. New York: Harper Collins, 1975.
- Singer, Peter and Katarzyna de Lazari-Radek. *The Point of View of the Universe: Sidgwick and Contemporary Ethics*. Oxford: Oxford University press, 2014.
- Singer, Peter. *Practical Ethics*. Cambridge: Cambridge University Press, 2001.
- Singer, T. et al. "Empathy for Pain Involves the Affective but Not Sensory Components of Pain." *Science* 303 (2004): 1157-1162.
- Slote, Michael. *The Ethics of Care and Empathy*. New York: Routledge, 2007.
- Smith, Adam. *The Theory of Moral Sentiments*. Cambridge: Cambridge University Press, 2002.
- Smith, Murray. "Empathy, Expansionism, and the Extended Mind." In *Empathy: Philosophical and Psychological Perspectives*, edited by Amy Coplan and Peter Goldie, 99-117. Oxford: Oxford University Press, 2011.
- Snow, Nancy E. "Empathy." *American Philosophical Quarterly* 37, no. 1 (Jan. 2000): 65-78.
- Sober, Elliott and David Sloan Wilson. *Unto Others: The Evolution and Psychology of Unselfish Behavior*. Cambridge, MA: Harvard University Press, 1998.

- Strawson, Galen. "The Impossibility of Moral Responsibility." *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition* 75, no. 1/2 (Aug. 1994): 5-24.
- Tallichet, S.E. and C. Hensley. "Exploring the Link Between Recurrent Acts of Childhood and Adolescent Cruelty and Subsequent Violent Crime." *Criminal Justice Review* 29, no. 2 (2004): 304-316.
- Thomson, Judith Jarvis. "A Defense of Abortion." *Philosophy and Public Affairs*, 1, no. 1 (Autumn, 1971): 47-66.
- Twain, Mark. *Adventures of Huckleberry Finn*. New York: Dover Publications, 1994.
- Weyant, J.M. "Effects of Mood States, Costs, and Benefits on Helping." *Journal of Personality and Social Psychology* 36 (1978): 1169-1176.
- Wicker, B. et al. "Both of Us Disgusted in My Insula: The Common Neural Basis of Seeing and Feeling Disgust." *Neuron* 40 (2003): 655-664.
- Winter, Michael. *Rethinking Virtue Ethics*. New York: Springer, 2011.