Beastly Contractarianism? A Contractarian Analysis of the Possibility of Animal Rights

C. Tucker
Saint Mary's University

C. MacDonald
Saint Mary's University

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Social Contract theorists and animal advocates seem to have agreed to go their separate ways. Contractarians have avoided attempting to address an issue that seems destined to prove embarrassing for the theory given the current political climate. It is largely thought that contractarianism affirms the meager moral standing commonly attributed to most animals. In the face of this consensus, animal advocates who feel the need to philosophically ground the moral status of animals have turned to other potential sources. This is not a hard choice for animal advocates to make: utilitarianism is a respectable moral theory that affords animals moral consideration with relative ease. Nevertheless, we argue that this separation is a mistake. Contractarians can offer an account of the moral status of animals that is at least as compelling as that offered by utilitarianism. Grounding the moral worth of animals in contract theory also produces an importantly different account, one that can ground animal rights, as opposed to mere considerability, which some animal advocates will find more appealing than the utilitarian alternative.

I. The Big Three

One of the well-established strengths of Utilitarianism is that it gives us good reason to conclude that animals are worthy of moral consideration. The conclusion that animals, as beings that are capable of experiencing pleasure and pain, are thus included in any justified utilitarian calculus squares well with our intuition that animal cruelty is unjustified. But if the greater good is served by sacrificing some animals for the purposes of research, then utilitarianism will recommend that sacrifice (or the rule that allows sacrifice in those situations). Peter Singer, in his book *Animal Liberation* - a touchstone for the animal liberation movement - simply argues for consistency of treatment of sensible creatures. We can experiment on animals if we would also perform that same experiment on young children, or brain damaged adults. To avoid speciesism we ought to be equally comfortable performing medical experiments on animals and comparable members of the human population.

This sits uneasily with people who think that animals ought not to be sacrificed for the greater good. These people might best be characterized as thinking that animals have rights. Rights, as the familiar story goes, are largely inviolable, and generally impervious to considerations of the greater good. Whatever the deficiencies of this account, however, it is clear that utilitarianism is the front-runner among traditional efforts to afford animals moral consideration. Singer notes that “Popular magazine writers have given it [*Animal Liberation*] the tag line ‘the bible of the animal liberation movement.’”

The answer to the question of how best to ground these inviolable rights of animals confounds those
who search for it. An appeal to intuitionism amounts to ending the debate before it starts, and justification demands much more than this. Kantian alternatives seem unlikely to succeed. Kant’s ultimate emphasis on the autonomy of moral agents seems to inevitably exclude the rest of the animal kingdom, given our current views about autonomy and the cognitive limits of non-human animals.

Although not much has been said in favor of the possibility of a contractarian grounding of the moral status of animals, it is our contention that this is a mistake. Notwithstanding that classic and contemporary contractarians largely suppose that their theory cannot grant moral agency to animals, this paper will argue that it can. Contractarianism is capable of affording animals direct moral status. Contractarianism is at least as promising an avenue as utilitarianism, and is far more promising than Kantianism. The traditional pessimism regarding contract theory’s prospects in this regard stems from an inadequate attention to the fact that the idea of a moral ‘contract’ is a metaphor. Taking the contract metaphor too literally leads one to require that a moral agent must possess the ability to make a contract. This would leave much of the animal kingdom out. But this inference is based on a mistake: contractarians ought to care (roughly) about the ability of an animal to change its behavior in the face of activity by other purposeful agents. This allows that animals may be moral agents. In what follows we will first make clear the failings of Kantian analyses before proceeding to explain how the moral status of animals can be grounded on a contractarian analysis.

II. Kantianism

Kant’s own words on the issue seem to indicate the limit of Kantian analysis of this problem: a duty to not treat animals cruelly is at best an indirect duty, deriving from the tendency of animal cruelty to lead to cruel treatment of rational beings. To say that this is an unsatisfying justification is perhaps being too kind. As it has been pointed out, if it turns out that treating animals cruelly is cathartic, leading to people treating others better, then Kant would be committed to the claim that animal cruelty was mandatory. The justification of animal rights seems to require something more than an indirect duty to treat animals well. Animals must be shown to be due moral consideration in and of themselves.

Contemporary modifications of the Kantian program have also been unsuccessful. Allen Wood, for example, has suggested that we might vindicate a moral duty towards animals by respecting rationality *per se*, instead of individual embodiments. He suggests that such a reinterpretation allows for our acknowledgement of duties to animals insofar as they possess the necessary conditions, or potential, for autonomy. Christine Korsgaard argues that rational agents must necessarily value their own animal nature, and so must, on pain of inconsistency, view animals as worthy of moral respect. James Skidmore has persuasively argued that such tactics are inadequate. Both Wood and Korsgaard go on to argue that, given the unconditional worth of autonomy, that which is constitutive of autonomy ought thus be afforded unconditional worth. However, Skidmore argues that “[g]iven that we must value our autonomy as an end, it does not follow that we must value in ourselves the conditions that make it possible.” One need not claim intrinsic value for animal natures any more than one need claim intrinsic value for matter, which is itself a constitutive element of our animal natures.
J. Baird Callicott offers a different kind of Kantian argument, one that suggests that properly understanding what intrinsic value amounts to will allow animals (and nature more broadly) moral consideration. Shifting from the mysterious ‘intrinsic value as an objective property’ usually attributed to Kant, Callicott suggests that, as there is no value without an evaluator, we ought to understand intrinsic value as relative to an individual subject, and as contrasted with instrumental value. An individual values things either as ends in themselves (intrinsically), or because they are efficient means to other (instrumental or instrumental) ends. Those things that are intrinsically valued are treated differently than those things that are instrumentally valued when we evaluate resource use. “Broad recognition of … intrinsic value … places the burden of proof on those who would over-ride that value for the sake of realizing instrumental values.” In contrast “[i]f something has only instrumental value, its disposition goes to the highest bidder.” Animals that are valued intrinsically, therefore, are afforded special (but not absolute) consideration.

This approach is faced with three significant problems. In the first place, animals are still only afforded moral status indirectly on this account. Secondly, treating all intrinsically valued objects in this way has a significantly counter-intuitive result: anything that is “broadly” intrinsically valued will be afforded this special consideration. There are those among us for whom the beauty of an urban skyline holds intrinsic value. And some animals have intrinsic disutility for some people: a phobia regarding spiders, to take a common example, easily translates into intrinsically valuing the state of affairs in which spiders cease to be. Given high urban populations, and an innate fear of wilderness, animals may not benefit from human adoption of such a framework. But more to the point, if someone values destruction intrinsically, then this value too would be afforded the same special consideration as an animal that is intrinsically valued. As would all of the above mentioned values. We suppose that for many this result will be a reductio ad absurdum of Callicott’s proposal.

Finally, there is no explanation from Callicott as to why something that is intrinsically valued is, therefore, to be treated differently. Worse, no reasonable answer seems forthcoming. One can only appeal to one of two things in order to explain why that which is intrinsically valued ought to be afforded special consideration: that it is valued, or that this value is intrinsic. That it is valued will not explain the difference, as the intrinsically valued shares this with the instrumentally valued. That it is valuable not as a means to another end, but simply in and of itself, will not explain the difference unless intrinsically valued objects are supposed non-fungible. This echoes Kant’s assertion that what is valuable in itself must not be treated merely as a means, that the intrinsically valuable must not be treated as if it has a price. But this explanation is not available to anyone who, together with Callicott, suggests that value is subjective. One can trade away an intrinsically valued good for an instrumentally desired good with perfect consistency. Whenever we stop staring at the horizon, which is valued for its own sake, and return to work which is only instrumentally valuable, we make exactly this kind of decision. Intrinsic value, subjectively understood, has no necessary lexical priority over instrumental value. The degrees of intrinsic and instrumental value an object might possess are of a type, both relative to an individual’s valuation. There is no reason to suppose that the former ought to be treated differently from the latter.

The core elements of a Kantian grounding of moral worth are the identification of that which has no price as a rational (autonomous) will, together with the claim that that which has no price cannot be treated as if it did have a price. Identifying value relative to a subject’s valuing implies that it does have a price, and so cannot explain why that valued thing ought to be treated any differently than
any other commodity. Allowing that a thing has no price if it is an end in itself makes it plausible that at most autonomous wills will be afforded such status. It does not follow from this that things constitutive of autonomy will also be afforded such status. Given this, there is no good reason to expect success when Kantians attempt to justify animals’ moral worth.

III. Orthodox Contractarianism

Hobbsean style contractarians have, for the most part, been silent on the issue of animal rights. Based on the common interpretation of contract theory, this is entirely understandable. Contractarians typically appeal to the metaphor of a contract, agreed to by each individual moral agent, in which it is outlined what must, may, or must not be done to each other agent, and to that which they hold dear. Only if a moral code could be agreed to by each relevant agent, in spite of the available alternative codes, is that code deemed justified. It seems clear, if this metaphor is adequate, that to be a moral agent one must be able to contract with another. But, it might plausibly be thought, animals cannot contract, and so cannot be moral agents. Thus animals cannot be afforded moral importance in and of themselves. This certainly has been the orthodox view since Hobbes: “to make covenant with bruit 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 mutuall acceptation, there is no Covenant.” As it has been put by Jan Narveson in one of the few contemporary efforts to explore a contractarian justification of animal rights, “animals cannot generally make agreements with us anyway, even if we wanted to have them do so. … when animals refrain from killing other animals or people just for the fun of it, there is no good reason to think that they do so out of moral principle. … On the whole, therefore, it seems clear that contractarianism leaves animals out of it, so far as rights are concerned.” Animals, on the whole, lack the cognitive capacities taken to be necessary to enter into contract. Narveson adds to the classical contractarian program a concern that moral agents need to be able to act in certain ways because they respect a moral principle. This Kantian intuition does not sit well with the contractarian project, as we shall see.

The widespread acceptance that contractarianism cannot account for the moral status of animals has led animal rights theorists to pursue alternative justifications for morality. This seems premature. It does seem that Utilitarianism and Kantianism both have significant hurdles to jump before they can be said to adequately ground the notion of animal rights. The dismissal of Contractarianism, however, rests on a mistaken interpretation of the theory. Inadequate attention is paid to the fact that contractarianism makes use of a metaphor. The language of contract is simply used as a heuristic to highlight the belief that subjective value is the ultimate underpinning of morality: a justified moral system must be one that affords each adherent more of what they value than if each did not so adhere, if we suppose that morality is to be internally motivating. Suggesting that animals cannot contract, and so cannot be moral agents on a contractarian account, takes the metaphor much too seriously, as shall be explained below.

IV. Indirect Moral Status

The failure to afford moral consideration to animals is not typically taken to be the most serious deficiency of contractarianism. Contractarians have been more embarrassed by their failure to afford moral consideration to the non-productive members of human society. Contractarianism has tied
morality to mutual advantage in an effort to bind the demands of morality with motivation to act. In doing so, it has been assumed that a rough equality of ability must hold between contractors for the mutual advantage of cooperation to be assured. Insofar as equality of capabilities does not hold, it is maintained, the superior may find it more efficient to dominate the inferior to get what they want. David Gauthier puts the case well when he suggests that “Among beings with unequal power, it may be that one party may benefit most by coercing the other, and on our theory would have no reason to restrain.” Any being might be excluded from moral consideration due to its having less power at its disposal than a given person. Putting aside the equality condition for the moment, there remains the issue of productive capacities. To put the issue bluntly, there are people who have few or no productive capacities. The congenitally handicapped and children are the most obvious, and oft-cited, examples. Tying morality to mutual advantage seems to exclude those lacking productive capacities. Any moral theory which fails to afford consideration to children and the congenitally handicapped is hardly worthy of its name. Children evidence both lesser capacities than adults and are, in a sense, non-productive members of society. We might excuse contractarians their lack of exploration of the issue of animal rights, in the face of this much more general and pressing consideration. It is worth taking some time exploring what has been most plausibly said on the issue of the moral status of non-productive members of human society in this wider context, and the implications for the issue of the moral status of other animals.

Christopher Morris points to a way in which children, the handicapped, and animals may be said to have moral standing on a contractarian account. “To have moral standing is to be owed moral consideration,” according to Morris. Non-productive members of a population cannot have primary moral standing on a contractarian account, because to have primary moral standing one must at least have powers roughly equal to others and be attractive to others as a party to the contract (as a cooperator). Children, the severely handicapped, and animals thus fail to be attractive potential cooperators as they have nothing to offer us that cannot be more efficiently taken by coercive means. This does not exhaust the possible ways in which one may come to have moral standing, however. A child, for example, may come to have secondary moral standing if a parent, who has primary moral standing, cares sufficiently about that child to not cooperate without that child also being afforded moral standing. Should this be the case, then that child will be included as someone to whom justice is due; otherwise society would not benefit from the parent’s cooperative efforts. Non-productive members of society can thus come to have some kind of moral standing on a rational choice contractarian model.

The terms primary moral standing and secondary moral standing are unfortunately chosen, as they lead to an understandable misunderstanding of Morris’ position. This is not an account which implies a two-tiered moral system. It is not the case that this understanding of contractarianism affords animals, the handicapped, and children less protection than other members of society. Each agent which has moral standing, in either sense, is understood to be afforded the same privileges and rights as other agents. Still troubling, however, is that a being with secondary moral standing has that standing contingently. It is only because some agent with direct moral standing cares about this other agent that moral standing is offered. This also leaves open the possibility that some agents will still be left outside of the scope of a contractarian morality. Any agent who fails to be sufficiently valued by at least one agent with direct moral standing will still not be due moral consideration. While it may seem implausible in the case of children that they will not be of
sufficient value to *someone* to have secondary moral standing, it becomes more plausible to suggest this of some animals, given the species bias evident in the world today. It seems even more likely that some animals will not get even this secondary moral standing when we make clear what the test is to determine if such standing is due: someone with primary moral standing must care sufficiently much about this agent to *forego the benefits of cooperative society* if this agent is not afforded moral standing. Simply caring about the agent in question is not enough. It may be reasonably expected that this leaves many animals beyond the pale of morality, even if it is unlikely to leave out many children. Some may also be troubled by the contingency of this moral standing. It is only because of the fact that some other agent cares about each animal in question (or perhaps class of animals?) that they are afforded moral standing. Given this contingency and the likelihood that some agents will nevertheless not be afforded moral standing, more must be done before a satisfactory contractarian account of animal rights can be presented.

Before proceeding to develop an account of animal rights that makes clear that they have primary, or direct, moral standing, a few words regarding an overlooked implication of suggesting that animals have secondary, or indirect, moral standing are in order. One of the implications of viewing animals as having indirect moral standing is that they cannot forfeit that moral standing. On the standard contractarian account, any moral agent who breaks the moral rules has as much as said that they are not willing to abide by the terms of the contract anymore, and are acting however they wish. This in turn releases everyone else from acting morally towards that renegade. The renegade has forfeited his claim against others that he not be treated in certain ways. However animals, when thought of as being afforded only indirect moral standing, cannot instigate such a loss of status by withdrawing their support of the contract. They are due moral consideration because of someone else’s support of the contract. This provides us a method through which to suggest, for example, that a deer should not be shot for eating cultivated carrots. Noting that many agents will have both primary and secondary moral status, this might also help us to explain why we have rules detailing what may not be done even to renegades such as convicted or suspected criminals. They have forfeited their primary moral standing, but cannot forfeit their secondary moral standing. These agents are still owed moral consideration.

V. Direct Moral Status

We next argue that a good contractarian case can be made for direct, or primary, moral status for animals. This should be pleasing both to supporters of animal rights, who otherwise are at a loss for an adequate theoretical grounding for their view, and to contract theorists, who otherwise have to concede that the implications of their theory fail, in a serious way, to square with the moral intuitions that most of us have about at least some animals.

We should be frank, from the beginning, and note that we do not pretend to provide, in this paper, a contractarian argument that guarantees that most, or even many, animals would receive significant moral consideration, much less a contractarian argument that would support anything like a robust regime of rights for all animals. What we do claim to provide, however, is a prima facie contractarian argument for the basic moral considerability of (at least some) animals. That is, we claim to show that animals – unlike plants and unlike rocks – *are* the kinds of things that make suitable candidates for moral consideration. This opens the door to a range of arguments that might seek to establish more concrete general or specific moral claims, whether arguments for the moral considerability of specific animals, or arguments for a particular degree of moral considerability
(e.g., having rights, constituting side-constraints on utility maximization, or as possessors of morally significant utility functions) for some or all animals. However, we will suggest below that the argument put forth here may well more readily sustain a regime of rights than does, for example, utilitarianism.

**V1. The Necessary and Sufficient Conditions**

This argument is based upon a functionalist understanding of moral agency. For contractarians, moral agency is isomorphic with capacity for being party to a contract. But as we noted above, many take the metaphor of a contract too literally. That there is a contract, in the sense required by contractarian arguments, only requires (roughly) that each party to the contract modify its behaviour in a way that enhances the utility of at least some other parties to the contract, and that each party to the contract benefit by being a party. We suggest that in order to be parties to a “contract” in this sense, entities must have roughly the following characteristics.

The first characteristic is potency. Entities must be capable of a range of actions that affect the utility of other agents differentially. The second characteristic is vulnerability. They must be capable of having their utility differentially affected by the actions of other (potential) parties to the contract. The final necessary characteristic is responsiveness. Agents must be responsive to the behaviour of others. That is, they must be capable of modifying their behaviour in response to stimuli or adapting it to new environments.

These three characteristics are necessary in order for an agent to be eligible as a “contractor,” in the contractarian sense. And more importantly, (on the contractarian account) these three characteristics are jointly sufficient, assuming there exists a plurality of such agents, to make it reasonable (rational, in the sense of maximizing long-term utility) for those agents to modify their behaviour in response to each other’s needs. That is, they make it reasonable to engage in a “contract.”

Contractarians have been wrong to suppose that what is required is a specific range of cognitive capacities, or some minimum threshold level of cognitive ability. Other agents should not care – it is not rational for them to care – what goes on inside another agent’s head, so long as they have reason to believe that the other agent’s behaviour can be reliably predicted or, if need be, modified.

Why are those three characteristics necessary for contractarian moral agency? We look at each in turn. Potency is a requirement because an agent must be able – must have the power – to do at least some things that affect others in material ways. If an entity is not potent in this sense, then others have nothing to fear or gain from them, and thus have no need to engage in “contracts” with them. If others are indifferent to its actions, or indeed its existence, then an entity cannot be part of a contract. As Hume has commented, if there were creatures that could not “make us feel the effects of their resentment,” we would not “lie under any restraint of justice with regard to them, nor could they possess any right or property.”

Vulnerability is a requirement because agents must be capable of being affected in material ways by the behaviour of others. If an entity is invulnerable, this means that it will have little motive to modify its own behaviour in ways necessary to make a “contract” attractive to others. It can afford to be indifferent to the behaviour of others, and has no need to seek (and pay for) concessions from others. This point is familiar to those familiar with Plato’s telling of the story of the Ring of Gyges. Finally, agents must be responsive. If an entity is not responsive to the behaviour of others, then by definition it will not be able to modify its
behaviour in response to the (suitably modified) behaviour of other parties to the contract.

Why are those three characteristics sufficient? In particular, why not include other – indeed any – cognitive capacities? The reason is simple. Inclusion in the contract has to do with the profitability of the relationship between contractors. Variable benefit (cashed out as a combination of mutual vulnerability and potency) is what makes it rational to ‘ask’ another to constrain its behaviour – where that ‘asking’ might be signaled by something as simple as ‘offering’ (or demonstrating one’s willingness) to do so oneself. ‘Asking’ and ‘offering’ need not be linguistic, or even intentional, and so require no particular cognitive capacity.

Any entity that is responsive, potent, and vulnerable has all the characteristics one could reasonably hope for (short of the sort of fellow-feeling ruled out by standard contractarian arguments) in a potential partner to a contract. So long as an entity is capable of mutually beneficial patterns of behaviour modification, others ought not to care what, if any, cognitive capacities permit that capability.

We argue that many animals – including the animals humans typically care most about – may plausibly be said to meet all three criteria for contractarian agency. So, animals in general are the type of beings that count, from a contractarian point of view.

V.2 That Animals Have These Capacities

How do animals meet the criteria? In this section, we seek to demonstrate that animals (at least core cases) have the three characteristics required for the sort of agency required for moral considerability within a contractarian framework. (As noted above, we seek only to establish a prima facie case, and leave it to others to offer detailed arguments for or against the inclusion of particular animals in the category of agents capable of engaging in ‘contracts’ in the relevant sense.)

Here is a trio of what we take to be core cases. The cases are progressively challenging ones, ones for which it is progressively harder to see the sense in which animals are capable of engaging in a ‘contract’ with us. So, we will look at both “easy” and “hard” cases. We think that looking at this range of cases is crucial. “Easy” cases are of practical importance because they include the category of animals – namely house-pets – with which most of us interact most frequently. And we need to look at what seem to be hard cases if we are to avoid begging crucial questions by focusing only on those animals for which our common sympathies, awareness of animal sociability, and our patterns of intimate interaction make it all too easy to make a claim for moral considerability.

First, consider house-pets. This first category of animals is one already accorded a significant degree of consideration. But do they have the characteristics of a contractarian moral agent? The fact that pets are potent, in the sense of being capable of differentially affecting our utility, is clear. They can affect us by biting, scratching, and by peeing on rugs; on the upside, they can bring us companionship, affection, and positive aesthetic experiences. (Note too that pets can also do harm to third parties; the fact that our pets are capable of harming others – whether by biting or by digging up rose gardens – means that our pets can affect us indirectly by bringing upon us the wrath of our neighbours and, in serious cases, the coercive power of the state.) The fact that house-pets are vulnerable in the relevant sense is equally clear. Indeed, house-pets that never go outdoors are almost totally dependent upon us for their survival and well-being. They rely on us to feed them
(given that they are essentially trapped in our homes), and to refrain from abusing them. The existence of humane societies is surely testimony to the vulnerability of animals kept as pets. Of all animals, house-pets are also the ones most easily seen as responsive. They can be trained; they respond to voice commands (though, alas, not unfailingly). Almost by definition, a house pet is an animal capable of modifying its behaviour to within a range that makes them suitable companions for thin-skinned beings such as humans. Of course, having a house-pet is not utterly risk-free (see our discussion of their potency, above), but a house-pet is sufficiently capable of constraining its behaviour so that the risks of having it in our home are well within the range of risks normally accepted readily in other domains.

Next, let us consider the case of a wild, social animal: the wolf. The potency criterion is all too easy to make for wild animals of any sort; our fear of their potency is nearly universal. Almost all wild animals have defensive or offensive weaponry of one sort or another, whether teeth, claws, or spines. Wolves, in particular, are fierce predators that often prey upon animals our size, making use of a combination of a fearsome set of teeth, significant speed, and the ability to engage in coordinated hunting. Wolves, however, are also clearly vulnerable. Wild animals, including wolves, can be (and often are) trapped, hunted, and deprived of habitat by humans. Indeed, wolves have been driven to the point of extinction in many areas. Finally, wolves are clearly responsive. They can expand or contract their territory to seek or avoid human contact. They are capable of being “trained,” through reward or punishment. Wolves, for example, may be “encouraged” to alter their territory by the human introduction of livestock. They can also be successfully discouraged, by means of a number of strategies, from pursing livestock. They are thus capable of (being convinced to) alter their behaviour in such a way as to render them acceptable neighbours.

Finally, let us examine the case of a wild, asocial animal, such as a venomous snake. Venomous snakes are clearly potent in the relevant sense: indeed, they are paradigmatically dangerous animals. It is estimated that between 50,000 and 100,000 people worldwide die of venomous snakebites each year. Yet snakes are also clearly vulnerable to humans. Despite the fierce reputation enjoyed by many snakes, they are nonetheless physically vulnerable to human weapons and to human vehicles. Like so many other wild animals, they can also be adversely affected by human encroachment upon their habitat. Finally, snakes are responsive. Snakes are capable of learning; in particular, there is evidence that they can be conditioned to respond differentially to different prey. This clearly suggests that they are not incorrigible.

If each of these three categories of animals – from those readily recognized as sociable, to those for whom we have the least natural sympathy and with which we are least likely to socialize – can be seen to have the three characteristics necessary for agency in the thin, contractarian sense, then we have reason to regard them as beings capable of engaging in ‘contracts,’ and thus worthy of being accorded intrinsic moral status.

It is important to note that, technically, our final requirement of “responsiveness” needs to be qualified; what is actually required on the part of agents is a certain degree of responsiveness, or rather responsiveness across a suitable range of behaviours. In order to be parties to a “contract,” entities must have, within their behavioural repertoire, a set of behaviours that are sufficiently benign as to render it plausible that, in order to bring about that behaviour, other agents would be willing to forgo the anticipated benefits of warfare. Entities that are responsive only in the sense of
being able to shift from one set of behaviours, the net impact of which upon our own utility levels is negative, to another set of behaviours, the net impact of which is similarly negative, are not “responsive” in the relevant sense.

This ‘suitable-responsiveness’ might alternatively be cast as a stipulation of what must be true about the world, or about the characteristics of two parties to a contract described relationally. For contract to be possible, two things must be true. First, agents must be capable of benefiting each other in ways that couldn’t be better had by coercion. (Indeed, there are presumably some valued ends that cannot be achieved coercively at all. Consider, for example, such commonly desired experiences as the love of a pet, or the wonder of seeing a wild animal in its natural habitat.) And secondly, things must be such that we’re better off contracting with them than removing them from our experience (much less killing them).

Thus vulnerability and potency might best be thought of as relational characteristics. So our claim is that, given the kind of beings we humans are, the characteristics of animals are such that they constitute suitable contracting partners for us.

VI. Benefits and Differences of our View

We are now able to compare and contrast a contractarian account of the moral status of animals with that of utilitarianism. Contractarianism potentially affords moral status to each animal that is vulnerable, potent, and responsive. This status depends on two states of affairs: that the animal has a range of possible behaviours that include some that give us more value than that animal’s removal from our experience, and that this benefit cannot be efficiently obtained through coercion. Utilitarianism, by contrast, grounds moral status in the capacity to feel pain or pleasure. Animals can demonstrably be said to feel pain or pleasure, and so are afforded moral consideration. When considering what one ought to do, an agent must consider the ways in which each possible action gives animals pleasure, or brings them pain. It is important to note that it is not, strictly speaking, the animal’s ability to feel pleasure and pain which is relevant to utilitarians, but that fact combined with our ability to differentially affect an animal in this regard. This forestalls the inevitable objection to contractarianism that it affords animals moral standing due to contingent facts about the world, or about other agents. Contractarianism is no guiltier of this than utilitarianism. We offer as a benefit of adopting a contractarian justification of the moral consideration of animals that if contractarians who claim that contractarianism results in a system of rights are correct, then turning to contract theory would give those animals who do meet the conditions outlined above moral rights. The same benefit is not thought to follow so straightforwardly from utilitarianism. Utilitarians can only offer moral considerability, not rights.

A further virtue of our view is that it does not depend upon speculative animal psychology. No controversial claims are made here for the ability of animals to experience emotions, to be self-aware, or to have a conception of themselves as continuing subjects of experience. Given the notorious difficulty of the problem of other minds, views that depend upon assessing cognitive capacity prior to assigning moral considerability either to categories of agents or to specific individuals render the moral considerability of animals controversial, to say the least. By focusing on functional capacities, rather than internal cognitive processes, our view renders such debates otiose.
VII. Issues Remaining

We conclude that we have now provided a substantial, if *prima facie*, defense of the idea that animals as a group are indeed the sorts of agents worthy of moral consideration under a contractarian framework. We believe this to be an innovative claim. Not surprisingly, our exploration of this claim leaves a number of questions for later investigation. We next sketch a handful of the more significant of these unanswered questions.

Among the three characteristics required for contractarian agency was the characteristic we called “responsiveness.” But as noted above, that single word masks a considerable degree of variation. What degree of responsiveness is required of agents, either theoretically or in the world as it is? How should that degree be expressed, and how should it be determined?

Does the sort of moral status that results from the point of view we’ve advocated imply epistemic advantages over the indirect moral status implied by Morris’s viewpoint? Morris’s account implies that an entity’s moral status depends upon the contingent fact that some third party, herself the subject of direct moral status, cares about the entity in question. This means, in practice, that we cannot know the moral status of a given entity, if that entity is of a type not normally capable of being party to a contract, unless we know whether this particular entity is in fact cared about by some agent with direct moral standing. It seems to us that our own view avoids this problem. However, our account may escape this worry only to become subject to another, namely the problem of ‘first contact.’ On an account such as ours, how ought humans to constrain their behaviour when dealing with animals whose ability to meet our criteria for moral consideration is not known?

The implications of affording animals direct moral standing has been left unexamined. It remains to be seen if the results of this inclusion are as desirable as might be expected at first blush. As noted above, Morris’ indirect moral status has the implication that an agent who is afforded it cannot relinquish it. If an agent is afforded indirect moral standing, it is due to the preferences of another agent, and contingent on that other agent’s behavior. Arguing for the direct moral standing of animals might have the implication that each animal can relinquish its moral standing. The animal might, to put it another way, be said to deserve differential treatment due to its actions. It will sit less well with some than with others that an animal may be said to be due punishment for an action that comes naturally to it. Whether this affording of direct moral standing to animals does have the implication that animals can relinquish their moral standing, and further whether this is a result to be applauded or decried, are both important questions that need to be examined.

A final unanswered question involves whether the net benefit to be had from ‘contracting’ with animals (or with particular animals, or animals of particular species) exceed the net benefit of not doing so. In order for a contractarian argument to get off the ground in a particular case, some sort of cooperative surplus needs to be available. It remains to be seen whether such cases can be made, either as a generalization about animals or as a specific claim about particular animals or particular populations of animals.

C. Tucker
C. MacDonald
Saint Mary's University
Notes

1. We will ignore, for the purposes of this paper, the differences between welfare utilitarians, preference utilitarians, and hedonistic utilitarians.


3. And so, the familiar story continues, in cases where rights and utility conflict, one can either be committed to utilitarianism, or one can follow the rule which states that rights must trump utility. Insofar as one chooses the latter, however, one cannot easily claim to be a utilitarian. The literature on this apparent conflict is too vast and varied to be summarized here. Suffice it to say that there is no widely accepted reconciliation of rights and utility.


7. Ibid.


14. Narveson, Jan “Animal Rights Revisited”, *Ethics and Animals*, eds. Miller, H. B., & Williams, W. H. (Humana Press; Clifton, New Jersey, 1983), pp. 57-58. Narveson’s view is more nuanced than the quote above indicates. He suggests that animals that can communicate with people to some degree might be party to a contract, but that this leaves out the vast majority of animals. Given that it will be contended that this understanding of contract theory is a mistake, perhaps unduly influenced by Kantianism, this nuance is not relevant to the main point of the paper.

16. Surfers have also been made use of as examples of non-productive agents. See Philippe van Parijs, “Why Surfers Should be Fed: The Liberal Case for an Unconditional Basic Income” *Philosophy and Public Affairs* vol. 20, no. 2 (Spring 1991), pp. 101–130. They are less ideal examples for contractarians because presumably they could be productive members, if they chose to do so. While this feature of surfers makes the case for welfare much harder to justify, and so appropriate for discussions of liberal justifications of welfare systems, it renders them irrelevant for our purposes.

17. They are not productive in that they do not create value (either objective or subjective) by action. This leaves open the possibility that they are productive in another sense, to wit, that they create (subjective) value through our enjoyment of their existence.


20. We make use of the term ‘agent’ in order to discuss the implications for both people and animals in a perspicuous manner.


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