

## 140: Life and Death – 19 – Contractualism on animals (1) – humans in, animals out?

### 1 The basic case – all and only rational agents have moral standing

Morality is pictured as the result of a hypothetical contract *between rational agents* (**Rawls**) made initially on self-interested grounds, to govern and constrain their future interactions with one another. It therefore *looks* obvious that only rational agents will be accorded moral standing (basic rights, direct moral significance) within Contractualism.

Equally, if real agents are trying to agree on rules that no one could reasonably reject who shared the aim of reaching free agreement (**Scanlon**) without relying on prior moral beliefs about the standing of animals, then rules giving basic rights to animals won't be agreed. Some care about animals; some don't.

Two problems for reflective equilibrium – animals & non-rational humans.

### 2 Two failed attempts to get animals in

(1) Some rational agents should be assigned to **represent the interests of animals** when the contract is being constructed from behind the veil of ignorance? (C.f. a lawyer representing the interests of a child in a court of law.)

**But** (i) this would lead to animals having *equal* rights with humans. What grounds would there be for animal representatives to settle for anything less? This would lead to a position much stronger than common-sense allows.

**But** (ii) there is then no good theoretical reason why buildings, trees, and mountains should not be assigned representatives too. **But** buildings etc. don't *have* interests? So no one can be assigned to represent them! True, none have interests in the sense of *desires*. But trees, at least, have *a good*. Why isn't this enough to warrant representation behind the veil of ignorance? And a contract that accorded basic rights to trees would be absurd?

**But** (iii) the proposal destroys the theoretical coherence of Contractualism. Morality would be the set of rules agreed on by those with a prior belief in the moral standing of animals!

**But** (iv) the proposal finds no analogue in Scanlon's contractualism. Real agents trying to agree rules that no one can reasonably reject etc. aren't going to assign some to represent animals – *unless* they already believe that animals have moral standing. But the contract process is to *construct* moral rules. Moral beliefs can't be presupposed.

(2) Perhaps those behind the veil should choose in **ignorance of their species**, just as they are in ignorance of their life-plans, strength, or sex? A fair point that the veil is designed to rule out reliance on morally-irrelevant factors; so *if* we had the intuition that species is morally irrelevant, this could be written in at the start. **But** we don't (or we don't all)!

**But** (i) this, too, destroys theoretical coherence. Contractualism pictures morality as *constructed by* rational agents, *for* rational agents (in the first instance, at least – see #19).

**But** (ii) the source of moral motivation is supposed to lie in our desire for peaceful community of rational agents (Rawls), or in a desire to justify ourselves to other rational agents (Scanlon) which might be innate (Carruthers).

**But** (iii) recall that Scanlon's proposal can *explain* why gender, e.g., is morally irrelevant. This is because some would have reason to reject rules that prioritize others by gender. But rational agents trying to agree rules would have no reason to reject rules that exclude animals from protection. So the intuition that species *isn't* morally irrelevant gets vindicated.

⇒ So animals must lack moral standing under Contractualism. (For attempts to explain how we may still have duties towards animals, preserving a substantial element of common-sense belief, see #19.)

### 3 Two failed attempts to get non-rational humans in

(1) Rawls has contractors behind the veil choosing on behalf of **family lines**. (This is to give *future generations* claims of justice against those in the present.) Then since all human beings are, at some point, descended from rational agents, all will be assigned rights under the contract.

**But** (i) this raises the problem of *gambling* from behind the veil – not everyone has children, or cares about their

parents. (There are big theoretical problems here for Rawls' version of the contract scenario – e.g. why can't people behind the veil *gamble* on being a slave-owner, if the slaves are few?)

**But** (ii) in Scanlon's version of the contract, such people *might* reasonably reject rules according rights to the young or the very old.

(2) It might be argued that contracting agents should seriously consider, and provide for, **the prospect of future senility**; and then on grounds of consistency accord the same standing to other humans with similar cognitive powers?

**But** (i) as a matter of fact many people *don't* wish for the same protections for themselves in senility.

**But** (ii) if personal identity isn't preserved into senility, as some think (see Carruthers *The nature of the mind*, ch. 6), then I cannot now *self-interestedly* choose on that person's behalf.

#### 4 Two successful (?) arguments for according moral standing to all humans

##### (1) social stability

Most humans care as deeply about their infants or aged relatives as they care about anything. So rules that withheld moral standing from such groups would be unstable, because psychologically insupportable. (C.f. rules requiring me to sacrifice everything for others).

**But** my relatives would still receive *indirect* protection because of my right that my concerns should be taken seriously (c.f. property rights)?

Yet I would be unable to accept that others may damage my aged relative provided they pay me compensation, in the way that property may be damaged for good reason provided there is compensation.

The example of the Mercedes blocking someone in the mine-shaft for a 5-day wait.

**A reply from anthropology** to (1) above: There are many communities where infanticide and the killing of the old have been sanctioned, without the dire consequences mentioned.

**But** (i) stability in these communities is sustained by systems of traditional belief. This isn't any longer an option for us.

**But** (ii) these communities teeter close on the edge of survival. It isn't obvious that their behaviors are inconsistent with recognizing the equal moral standing of all humans, in two ways –

(a) Where the choice is between some being killed and all dying, it is surely permissible to kill.

E.g. the Siamese twins.

E.g. Doris and Diana the deep sea divers.

(b) In the communities in question, death is by failure to support, rather than by killing. At worst against Charity. And not even that, since the costs of Charity would be dire.

##### (2) preserving natural sympathy

Humans are naturally disposed to feel sympathy for the sufferings of those who share human form, and it may be disastrous if these feelings were undermined.

E.g. we feel sympathy with babies and the old in a way that means we cannot simply set them aside when they prove inconvenient. To withhold moral standing from babies and the old would mean that it would be ok to reduce or ignore our feelings of sympathy for them. But someone who could do so may become a 'moral monster' capable of setting aside sympathy for anyone.

In contrast, there *are* psychologically supportable distinctions that can be drawn between sympathy for humans and for animals. A butcher can be a good father etc. (On this, see #20.)