

Can morality be explained as a social contract?

Lena Dominici

Abstract

In this paper, I argue that the social contract cannot explain the whole of morality since it has problematic implications. I will consider John Rawls' Theory of Justice, one of the latest and most influential versions of social contract theory. The argument I defend will unfold as such : if all of morality is only seen as an agreement made by hypothetical rational and self-interested contractors, then non-rational beings cannot enter such agreements and have no moral standing of their own right.

Consequently, according to contractualism, we have no moral obligation regarding non-rational animals and it is not wrong to torture them. Yet, it is wrong to torture animals, therefore the social contract theory adopts a too narrow view of morality. Finally, I consider three major attempts to include

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animals in the social contract theory, and show that they fail.

In this essay, I will argue that the social contract cannot explain the whole of morality. I will consider one of the latest and most influential versions of social contract theory by looking at Rawls' Theory of Justice. Even if contractualism seems like a plausible theory, it has problematic practical implications. Social contract theory does not take into account beings that are not rational, for example non-human animals (whenever I refer to animals, humans are excluded). If all of morality is only seen as an agreement made by hypothetical rational and self-interested contractors, it seems that non-rational beings are excluded from such agreements and have no moral standing of their own right. Consequently, according to contractualism, we have no moral obligation regarding non-rational animals and it is not wrong to torture them. Yet, it is wrong to torture animals, therefore the social contract theory adopts a too narrow view of morality. I shall first explain what the social contract theory is, then present my argument and discuss the premises. Finally I shall consider three attempts to give moral standing to animals in the social contract theory, and show that they fail.

Contractualism claims that morality is based on a social contract where rational agents ask what solution would be agreed upon by the contracting parties for their own advantage, starting from an

idealised position. According to Rawls¹, a defender of Kantian contractualism, morality is based on principles rational agents could agree on because they stand to gain by doing so. The rules that guide society must be ones that they themselves could rationally accept. In the original position, the idealised position designed by Rawls, individuals have not yet entered society and have to design a just social order. These individuals, called ‘contractors’, are perfectly rational, purely self-interested and behind a ‘veil of ignorance’, where people have knowledge of all general truth of economics, psychology, and so on, but do not know anything about their future life in the resulting society, such as information about their demographic group, gender, natural talents, character, as well as their own particular qualities, such as intelligence, desires, or their own conception of the good. Persons are assumed to be rational and disinterested in one another’s personal well-being. Every individual adopts the same method for choosing principles for society and occupy the standpoint of the rational, universal, disembodied human. The contractor is taken to represent a generalized model of humanity².

This theory has problematic practical implications for sentient non-rational beings. What reasons could contractors have to be moral regarding non-rational beings? Non-rational beings include newborn babies, the dead, people in coma, non-human animals, even the en-

¹ Rawls, J. (2009). *A theory of justice*. Harvard university press.

² Friend, C., Internet Encyclopedia of Philosophy, Social Contract Theory

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vironment³. In this essay, we will consider the case of the animals. The argument I defend will unfold as such:

- 1) According to social contract theory, the laws that contractors enact describe all of morality
- 2) Contractors have no reason to enact laws protecting animals
- 3) Yet, cruelty to animals is morally wrong
- 4) Therefore, Rawls' contractualism cannot explain the whole of morality

Let us discuss the premises.

- 1) One aim of the social contract theory is to provide a moral theory (stating that a person's moral obligations are dependent upon an agreement among individuals in a society).
- 2) If contractors are purely self-interested and do not know anything about themselves, then they will enforce laws to protect only people they may end up becoming and not to protect non-human animals, since they have no reason to do so. Presumably, behind the veil of ignorance, the contractor could end up being any rational person in society, but not being a non-rational animal.
- 3) This premise is firstly based on common knowledge and a widely held view, since an important majority agrees that animals should

³ Benn, Dr Piers, and Benn, Piers. *Ethics*. Routledge, 1997. ProQuest ebrary. Web. 6 March 2016. pp129-131

be treated well and cannot stand to see them badly treated. It is based on intuition that we are ought to not hurt animals. The majority of individuals intuitively feel that torturing animals is morally wrong. There exist moral theories that do give weight to animals: this further supports the claim that at least some people care about this, and that there are philosophical alternatives that do not share the same problem I point out here. For example, Rousseau⁴ claims that individuals have a some duties towards animals due to their sentience. Schopenhauer also states that one should be moral towards animals due to human compassion.⁵

Secondly, according to the argument of the Marginal Cases, there is no reason to grant moral status only to humans:⁶

- (i) All and only humans deserve a full and equal moral status if there is a property X that all and only humans have that can justify the claim.
- (ii) For any property X that only human beings have, there exists at least one human being who lacks it.
- (iii) Any property that all humans beings have is a property most animals also have.

⁴ Rousseau, J-J. *Discourse on the Origin of Inequality*, 1754

⁵ Schopenhauer, *On the Derived Forms of the Supreme Principle of the Kantian Ethics, On the Basis of Morality*

⁶ Regan, T. and P. Singer, 1989 eds. *Animal Rights and Human Obligations 2/e* (Englewood Cliffs, NJ: Prentice Hall).

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- (iv) Hence, it is not the case that all and only human beings deserve a full and equal moral status.

The argument is valid. Is it sound? Certain properties, such as the ability to stand on both feet, or having human DNA, do not seem to be the kind of properties that would ground moral status since these features are morally irrelevant. Nevertheless, there are some properties X that only humans have, such as autonomy, rationality, or the ability to act morally. Yet, such suggestions are problematic since not all humans have these properties. For example, a newborn human or a person in a coma are not fully rational. One might say that a newborn human has the potential to become a rational agent, but then what about conscious human beings whose cognitive impairment is both permanent and severe? If a property X is what gives human beings a full and equal moral standing, then it follows that all human beings do not have an equal moral standing after all, since we cannot find a property X that every human being possesses.⁷ If we want to grant equal moral status to all and every human, it seems that we have to ground that moral status to something wider, such as being sentient or the ability to experience pain and pleasure. Marginal cases would then be included, but full moral status would also be granted to animals since they are sentient too. Thus, not only human beings deserve a moral status: by extending morality to animals, it is wrong to torture animals.

⁷ Wilson, S. D., *Animals and Ethics*, Internet Encyclopedia of Philosophy, <http://www.iep.utm.edu/anim-eth/>

4) It follows logically that contractualism cannot account for our moral obligations to non-rational beings and gives too narrow a view of morality. This argument is logically valid since the premises entail the conclusion.

How have contractualists responded to the argument presented? Scanlon⁸ attacks the first premise. He tries to accommodate animals within contractualism by explaining that their interests are represented by ‘custodians’. These are rational humans who would take into account the animals’ interests and involve them in the original position by formulating the moral contract by insisting that animals should have a moral standing.

However, the notion of ‘custodians’ provides no other explanatory work, so introducing it is an ad-hoc maneuver, which is fallacious and not convincing. Furthermore, this goes against the definition of the individuals in the original position, who are supposed to be purely self-interested, as explained in the first premise. Social contract theory only explains why one should be moral to rational people. In the original position, rational beings discuss which moral laws they should agree on, and have no reason to make a rule to forbid people to be cruel to animals. Being cruel to non-rational beings might even be good for them, since they do not know what their character will be like, and it is probable that they will enjoy hunting. They have no self-interested reason to oppose that, so Scanlon’s account

⁸ Scanlon, T. (1982). Contractualism and Utilitarianism. In A. Sen and B. Williams (eds.), *Utilitarianism and Beyond*, Cambridge University Press.

of ‘custodians’ to accommodate animal suffering does not hold.

The second premise is also criticised by affirming that even if animals have no direct moral standing, one should not be cruel to animals since it is the expression of a cruel nature, and therefore one should refrain treating animals as it pleases him/her. According to Carruthers⁹, one’s duty towards an animal is only indirect, a cruel action towards an animal is wrong since it evinces a cruel personality. A cruel character is feared by other humans and could represent a danger for them and violate their rights. Torturing animals would be morally wrong because of what it shows about the human’s character. For this reason, according to contractualists¹⁰ one should not accept cruelty against animals. Nevertheless, if treating animals with cruelty is seen as having a bad character, irrespective of its connection to the probability to mistreat human-beings, it is not clear in the social contract theory why it would reveal a bad character. The theory fails to respect animals and does not capture moral ideals such as love and direct moral duty towards animals.

Scanlon then suggests limiting the scope of the social theory, by leaving outside animals and the environment. This is possible, but it comes to admitting that the social contract theory cannot explain the whole of morality, but only parts of it.

⁹ Carruthers, P. *The animals issue* (Cambridge: Cambridge University Press, 1992). p12

¹⁰ Benn, Dr Piers, and Benn, Piers. *Ethics*. Routledge, 1997. ProQuest ebrary. Web. 6 March 2016. pp131

One could also imagine a veil of ignorance such that the rational individuals are ignorant if they are going to become a human being or an animal¹¹. If I am allowed an ideal rational counterpart, why would my cat not be allowed to have one? We could imagine a social contract where every sentient being has a contracting, rational counterpart. I wrote this essay on the premise that rational contractors under the veil of ignorance are humans that stay humans in society. This is how Rawls imagined it. Is it possible to transform the veil of ignorance so that contractors become animals? This way, one could imagine a society where animals' interests are protected. Martha Nussbaum claims that the idea of a contract between humans and animals is so complicated to imagine that it is not worth pursuing.¹² For the sake of the argument, let us try.

Let us imagine the consequences of taking animals into account in the social contract theory by using the example of animal experimentation. There are two scenarios:

1) In the original position, the contractor cares less about its life if it becomes a rabbit. Hence, the contractor will favor a contract that makes its life as a human enjoyable. It would follow that torture for fun can be acceptable: the contractor will care more about its life as a human than about its life as a rabbit, hence it will have more interests in protecting humans than animals. Yet, I showed earlier that this conclusion is not satisfactory as torturing animals is morally wrong.

¹¹ Regan, T. (1984). *The Case for Animal Rights*. Routledge.

¹² Regan, T. (1984). *The Case for Animal Rights*. Routledge.

2) In the original position, the contractor weighs its future interests as a human or as an animal equally. It follows that as an animal, the contractor will not want to be in a cage. It will not want to be part of animal experimentation. It will not want to end up as a steak. This would radically change the way our society looks like: it would mean no animal experimentation, no animal products being eaten, no horse racing, no zoos. It seems that most people are not ready to accept such radical conclusions.

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Involving animals in the original position leads to peculiar conclusions, and the theory is still vague: it is not clear what perfectly rational contractors would choose under the veil of ignorance.

As a conclusion, I reject the claim that morality can be wholly explained as a social contract since it does not grant a direct moral standing to beings who cannot enter into agreements, such as animals. Morality is not only about respect for other rational beings and the social contract only describes a circumscribed region of morality. It contradicts a widely held intuition to think that ani-

mals should have no moral standing at all, and the argument of the Marginal Cases grants animals direct moral standing. Contractualists do not succeed in giving animals a direct moral standing in the social contract theory. It is not convincing to suppose that custodians represent the interest of the animals or that contractors do not know which species they will belong to.

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