

SHOULD WE MAKE A SOCIAL CONTRACT WITH ANIMALS?

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Abstract

This thesis considers whether we should make a social contract with animals as a means of informing us of the demands of morality when it comes to our treatment of animals. More precisely, it considers whether applying social contract theory to animal ethics results in a better moral argument for animal liberation than taking a minimalist approach to animal ethics.

The thesis is divided into two parts. In the first part, Mark Rowlands' Neo-Rawlsianism is outlined and discussed as an application of social contract theory to animal ethics. It is shown that we can make a social contract with animals, and that there is nothing ridiculous about the idea. It is even shown that animals should (in principle) participate in negotiating a social contract (if we make one). Rowlands' argument for vegetarianism is outlined as an example of how his Neo-Rawlsianism is applied. This argument relies to some extent on the claim that animals are harmed by a painless death, and an attempt is made to support this claim. But it is ultimately argued that Rowlands' Neo-Rawlsianism falls foul of a *reductio ad absurdum* that puts it out of contention, thus implying that we should not make a social contract with animals.

In the second part of the thesis, Tzachi Zamir's approach to animal ethics is outlined and discussed as a minimalist approach. Zamir proposes a Speciesist-Liberationism. This is explained, and it is shown how it avoids the *reductio ad absurdum* Neo-Rawlsianism falls foul of. Zamir's argument for vegetarianism is outlined as an example of how his Minimalism is applied. Various weaknesses are observed in Zamir's argument, and a more minimal Minimalism is suggested as providing the best argument for vegetarianism and animal liberation, at least until a better substantive moral argument is found.

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Introduction

This thesis will consider whether we should make a social contract with animals. ‘We’ refers to all human beings who are moral agents, i.e. beings capable of self-regulating their actions according to the abstract principles of morality set out, for example, in a social contract. And ‘animals’ refers to the sentient nonhuman animals that we share our world with, and who are incapable of moral agency.¹ As for what a ‘social contract’ is, for the purposes of this thesis, it is a hypothetical agreement among the members of the moral community as to how they will regulate their interaction, and which serves to inform us of the demands of morality.

On the face of it, the idea of making a social contract with animals sounds ridiculous, since animals *cannot* enter into any such agreement in any literal sense or even self-regulate their actions according to the principles set out in any such agreement. This thesis will demonstrate that there is nothing ridiculous about the idea of making a social contract with animals when the idea is properly understood. The more difficult question this thesis aims to answer though, is whether we *should* make a social contract with animals, or whether we should abandon social contract theory (and all such broad moral theories), and opt for a minimalist approach, in order to make the best moral argument for animal liberation.²

¹ Throughout this thesis, all references to ‘animals’ will refer to sentient nonhuman animals, unless it is stated explicitly that the term should be understood otherwise.

² The notion of a ‘broad moral theory’ will be substantially defined below. At this stage, it may simply be stated that the approach of applying a broad moral theory to make a moral argument is to be contrasted with a minimalist approach to moral argument. The notion of a ‘minimalist approach’ will also be substantially defined below. Though the use of these terms in this thesis is original, they are employed to distinguish two different approaches to moral argument discussed by Zamir (2007). The essence of a broad moral theory is that it is grounded in broad abstract moral principles that can be readily agreed with, and the practical applications of these principles (i.e. the concrete moral claims derived from these principles) are to be accepted as morally binding because they are logically derived from the broad abstract principles. A minimalist approach may still make reference to moral principles in making concrete moral claims, but they will not be broad abstract moral principles, i.e. they will not be principles capable of providing the foundations for a universal morality that can be usefully thought of independently of how they are applied.

‘Animal liberation’ will be used as an umbrella term in this thesis to cover the many distinct views in the field of animal ethics that challenge the exclusion of animals from substantial moral consideration, and advocate reforming animal-related practices (e.g. eliminating factory farming) and transforming our own personal conduct in relation to animal-related practices (e.g. adopting a vegetarian diet). While this thesis will outline and discuss some moral arguments that have been made for animal liberation, it does not claim to substantially test the overarching moral argument for animal liberation. This thesis is primarily concerned with a question related to *how* the moral argument for animal liberation should be made. However, it should become apparent in the course of this thesis how persuasive the overarching moral argument for animal liberation is.

Social contract theory (as a moral theory) is the theory that the demands of morality are fixed with reference to what would be agreed under a social contract. A social contract is a *hypothetical* agreement in the sense that it is constructed to set out ‘the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality’.³ An ‘initial position of equality’ is not to be found in the real world and real persons are not reliably ‘free and rational persons concerned to further their own interests’,⁴ and so a social contract must be a *hypothetical* agreement. It can be thought of as a fictional, or heuristic, device that we can use to determine the demands of morality. The purpose of this thesis is to answer whether we *should* use this device to determine the demands of morality in respect of our treatment of animals. The great attraction of using a social contract device, in general, is that it promises to avoid the unsatisfying task of fixing the demands of morality with direct reference to our moral intuitions. Fixing the demands of morality thus typically provides little in the way of justification for the resulting principles that can be used to convincingly fend off conflicting intuitions and principles.

The principles of morality set out in a social contract are the result of hypothetical negotiations aimed at arriving at an agreement on such principles. The principles are

³ Rawls (1999), p. 10.

⁴ Ibid.

negotiated by persons reasoning in a manner that is self-interested, rational, and conspicuously amoral. The moral nature of the principles coming out of the negotiations is all down to the fairness of the procedure adopted for the negotiations. And fairness in this context is secured by withholding information from the negotiators about themselves, so that they are forced to negotiate impartially. Of course, we must refer to our moral intuitions in designing this procedure, but social contract theory has perhaps had the success it has because our intuitions about procedural fairness are more aligned than our intuitions about substantive morality.

The fact that a social contract is a *hypothetical* agreement rules out any thought that making a social contract with animals would involve the ridiculous prospect of negotiating, and then signing, an *actual* contract with the multitude of animals we share our world with to regulate our interaction with them. The idea of there being a social contract *between human beings* that regulates our interaction with each other is not even thought to involve an *actual* contract. Until relatively recently, however, it does seem that it was assumed that the only parties that *could* participate in negotiating a social contract, and thereby have their interests furthered by the resulting principles,⁵ were those parties *capable* of negotiating and then signing an *actual* contract, i.e. moral agents.⁶ In other words, it was assumed that animals *cannot* participate in negotiating a social contract—and so we *cannot* make a social contract with them—since they *cannot* negotiate and then sign an *actual* contract.

Being *capable* of negotiating a social contract, and being among those that *should* be parties to the negotiations, are (in the context of social contract theory) pre-conditions for membership in the moral community. The negotiators of a social contract are instructed to further their own interests, so, obviously, those barred from participating in the negotiations will not have their interests directly furthered by the resulting principles.

⁵ That is, furthered directly, rather than indirectly. It is not unusual for human interests to coincide with animal interests, and so sometimes directly furthering human interests will indirectly further animal interests. However, this will only occur sometimes.

⁶ This is something of an oversimplification, since incompetent humans and human children have effectively been allowed to participate in framing a social contract. These groups, however, have, rightly or wrongly, received something of a special pass that does not disturb the assumption outlined.

And so the assumption that animals *cannot* participate in negotiating a social contract has had a lot to do with the claim that animals lack moral status. Much has been written contesting this claim and in support of animal liberation, and the literature is now quite sizable.

This thesis will not set out yet more new moral arguments or theories that conclude that animals have moral status. The field of animal ethics is, in fact, so saturated with theories that there has been a backlash in the field against so much theory. The only broad moral theory that this thesis will discuss is Mark Rowlands' Neo-Rawlsianism. The central thrust of Rowlands' Neo-Rawlsianism is that we *can* and *should* make a social contract with animals. Chapters One and Two of this thesis will outline Rowlands' argument for this claim, with Chapter One outlining Rowlands' approach to moral argument and the principles he claims are fundamental to all contemporary moral theories, and Chapter Two showing how Rowlands uses these principles to argue for his Neo-Rawlsianism.

Chapter Three of this thesis will outline Rowlands' argument that an implication of making a social contract with animals is the moral requirement that almost all of us adopt vegetarianism. This implication is, of course, demanding and uncomfortable for most people, but the call for vegetarianism is not seen as grossly unreasonable among reasonable people (or, at least, among animal ethicists). Almost none of us need to eat meat, and there is no *overwhelming* flaw with the better arguments for vegetarianism animal ethicists have produced. However, reasonable people (including animal ethicists) will likely contend that a moral theory would be grossly unreasonable if it carried the implication that we cannot kill pest animals or that we must actively protect wild animals from the hardships of life in the wild. Chapter Four of this thesis will address what trouble is caused Neo-Rawlsianism by the fact that making a social contract with animals entails making a social contract with pest animals and wild animals.

Though Rowlands argues that we should make a social contract with animals, he does not make a *comprehensive* case for this claim. His case for the narrower claim that animals should (in principle) participate in negotiating a social contract (if we make one) is

persuasive, but this does not entail that we should *in fact* make a social contract with animals—it does not entail that the social contract device should *in fact* determine how we treat animals.⁷ In particular, Rowlands does not give the mentioned issues concerning pest animals and wild animals adequate attention. He also fails to consider whether there is another, better way to argue for animal liberation than applying broad moral theory.

Making a social contract with animals would present a real challenge to our moral reasoning and have real world implications that most of us would find intuitively unacceptable. Both these points impel us to consider whether, just because we *can* make a social contract with animals, and should (in principle) allow them to participate in negotiating a social contract (if we make one), we in fact *should* reform our treatment of animals by making a social contract with them. The question then becomes: do we *need* to make a social contract with animals—more generally, do we *need* to follow a broad moral theory in our relations with animals—in order to make a moral argument for animal liberation, or is there an alternative approach to making that argument, and would it be better to follow that alternative approach?

Some might claim that Rowlands' Neo-Rawlsianism is not, properly-speaking, a social contract theory, and many would claim that it is not superior to other broad moral theories, but this thesis will not consider either claim. Rather, this thesis will simply assume that Rowlands' Neo-Rawlsianism is superior to other broad moral theories in order to treat it as a representative of the approach of applying a broad moral theory to make a moral argument for animal liberation. The approach of applying a broad moral theory, such as social contract theory or utilitarianism, to make a moral argument for animal liberation is sometimes called 'moral extensionism', which essentially involves extending a traditional human-centred moral theory to cover animals. There has recently

⁷ Of course, insofar as Rowlands' claim that animals should participate in negotiating a social contract is persuasive, we cannot legitimately refuse to make a social contract with animals without refusing to make a social contract altogether. However, this thesis cannot hope to assess social contract theory as a whole, and so it is limited in that sense. But if it merely turns out to be the case that the social contract device is a poor heuristic device for animal ethics in the sense that it fails to deliver clear and persuasive conclusions (and so we should not make a social contract with animals on that ground), then that would not necessarily have implications for social contract theory as a whole.

been a backlash against moral extensionism,⁸ however this has focused on the suitability of *human-centred* moral theory for determining how we should relate to animals (given that it is *human-centred*), while this thesis focuses on the backlash against deference to *broad* moral theories to make a moral argument for animal liberation when it is claimed that a *minimalist* approach can make a better moral argument for this.

Among the broad moral theories that have been applied to make a moral argument for animal liberation, utilitarianism, natural rights, virtue ethics and the capabilities approach are all marked by difficulties that have been noted in the literature.⁹ But the only difficulty with applying social contract theory that has been noted is the difficulty with making a social contract with animals. With Rowlands resolving that difficulty,¹⁰ applying social contract theory would seem rather less marked by difficulties than applying any other broad moral theory, thereby pushing social contract theory to the top of the pile. This thesis, however, in accepting that we *can* make a social contract with animals will provide an opportunity to plumb the implications of applying social contract theory for other difficulties that have not received attention to date.

Broad moral theories, by their nature, are systematic, but our moral intuitions are not systematic, and so we often find broad moral theories challenging and radical. For example, we may be inclined to agree that we should treat others equally, unless there is some non-arbitrary reason for treating them unequally. But when this entirely reasonable principle is used to entail that we cannot be speciesist, i.e. discriminate on the grounds of species membership, we find our speciesist intuitions challenged in ways we may not be ready to overcome. Broad moral theories that are built up from broad abstract principles (such as the principle of maximising utility) have a reach in their implications that has

⁸ See, e.g., Fellenz (2007).

⁹ Although virtue ethics has been included among the broad moral theories (and consequently sidelined in this thesis), it is rather different from other broad moral theories, and has a certain amount in common with a minimalist approach. Ideally, virtue ethics would be given some attention in this thesis, but the space has instead been given over to other positions and issues. Certainly it is interesting to compare Part B of this thesis with Rosalind Hursthouse's chapter on the virtue ethics defence of animals in her book, *Ethics, Humans and Other Animals* (2000).

¹⁰ Rowlands was not actually the first to resolve the difficulty, but this thesis takes no interest in the history of the ideas discussed.

little respect for intuitions that stand in their way. These intuitions (e.g. our speciesist intuitions) may be difficult to justify, but they may, nonetheless, have a hold on us that will not let go. Chapter Five of this thesis will outline the case put forward by Tzachi Zamir that animal liberation need not involve abandoning widely shared speciesist intuitions.

Zamir's project is the 'theoretical minimization' of the moral argument for animal liberation.¹¹ An important part of his project is ridding liberationism of the need to establish moral status for animals. Zamir's Minimalism is founded on the simple demand that it be specified what it is that animals lack that validates treating them in ways it would be objectionable to treat humans. Significantly, Zamir avoids nesting his claims on behalf of animals within a broad moral theory that would inevitably have wide and intuitively unacceptable implications. Zamir's project will be used in this thesis to question whether we *need* to make a social contract with animals (and, more generally, whether we *need* to apply a broad moral theory), in order to make a compelling moral argument for animal liberation, or whether Zamir's minimalist approach presents a viable and better alternative.

The greatest strength of applying a broad moral theory to make the moral argument for animal liberation (e.g. making a social contract with animals) is the systematic reach of such a theory. A broad moral theory provides the tools to answer any question we may have about the morality of animal-related practices in a way that satisfies our desire for justification and consistency. The greatest weakness of applying a broad moral theory to make the moral argument for animal liberation is also the systematic reach of such a theory. We cannot, in good conscience, pick and choose when to listen to what a broad moral theory tells us about the demands of morality—even though it will sometimes have implications that conflict with our intuitions. Abandoning the approach of applying a broad moral theory would make animal liberation more intuitively acceptable, but it would also make it difficult to convincingly answer questions about the morality of animal-related practices. Thus determining whether we *should* make a social contract

¹¹ Zamir (2007), p. xi.

with animals requires a careful weighing of the strengths and weaknesses of the approach of applying a broad moral theory (specifically, social contract theory) against the strengths and weakness of a minimalist approach.

Chapter Six of this thesis will outline how Zamir employs his minimalist approach to argue for vegetarianism. By comparing Zamir's argument for vegetarianism with Rowlands' argument for vegetarianism (as set out in Chapter Three), it is possible to see how Zamir's minimalist approach differs from Rowlands' broad moral theory approach when put into action. Ideally, several applications of Zamir's approach would have been discussed to better assess the approach, and demonstrate its eclectic nature, but lack of space dictates that this thesis restricts itself to contrasting Rowlands' and Zamir's arguments for vegetarianism.

By the end of Chapter Four, it will have been argued that Rowlands' Neo-Rawlsianism succumbs to a *reductio ad absurdum*, which puts it out of contention, meaning that Zamir's Minimalism need only be shown to be a viable alternative in order to be declared the better moral argument for animal liberation. Nonetheless, Chapter Seven of this thesis undertakes to weigh the strengths and weaknesses of Rowlands' approach against those of Zamir's approach, and answer finally the question of whether we should make a social contract with animals.

With Neo-Rawlsianism getting knocked out in Chapter Four, the conclusion reached in Chapter Seven will have to be that we should *not* make a social contract with animals, but various weaknesses in Zamir's Minimalism will also be noted. Not being a broad moral theory, Zamir's Minimalism cannot offer a unified, systematic and substantive approach to a variety of moral issues. This jeopardizes the consistency and justification of its claims. But it also means that Zamir's Minimalism is not committed to the wide and intolerable implications that undermine Neo-Rawlsianism. However, it is suggested that Zamir's Minimalism is in need of recalibrating, and that the best moral argument for animal liberation would be a more minimal Minimalism that will be described in Chapter Seven.

PART A

NEO-RAWLSIANISM

Rowlands' Neo-Rawlsianism, the central thrust of which is that we *can* and *should* make a social contract with animals, appears to present a persuasive case for animal liberation. While his project of using a social contract device to make a case for animal liberation is not as original as he suggests,¹² Rowlands should, nonetheless, be credited with developing the idea into a stand-alone moral theory. Part A of this thesis will outline Rowlands' approach to moral argument; the principles he claims are fundamental to all contemporary moral theories; how he uses these principles to argue for his Neo-Rawlsianism; and the central part his Neo-Rawlsianism plays in his argument for vegetarianism. An attempt will also be made to support Rowlands' claim that a painless death harms an animal. And, finally, two hard cases for Neo-Rawlsianism will be discussed that arise out of the fact that making a social contract with animals entails making a social contract with pest animals and with wild animals. It will be argued that these hard cases prove too hard for Neo-Rawlsianism and undermine the whole theory.

¹² Rowlands (2009), pp. 118–122.

Chapter 1

Rowlands' Principles

1.1 ROWLANDS' APPROACH TO MORAL ARGUMENT

The 'key to moral argument', says Rowlands, is working out what we already accept.¹³ You do not try to push general moral principles on others; instead, 'you find out what general moral principles they already believe, and you work with those'.¹⁴ So, if you want someone to accept some claim, you first find out what they believe, and, if all goes well, you will then be able to show that if they believe what they say, they must also, logically, accept the claim you would have them accept. 'Chances are', Rowlands admits, 'it won't go this smoothly',¹⁵ but he suggests that perhaps you might still find a logical line of argument to the same result, even though it may be more complex. Once you have reached this juncture, your interlocutor must either accept what you would have them accept, or abandon the belief that you have shown to logically entail the claim you would have them accept. If they refuse both options, then they are being inconsistent. This approach will clearly work best if the belief your interlocutor proclaims, and that you have shown logically entails the claim you would have them accept, is a belief they 'really want to hold onto'.¹⁶ This approach works, says Rowlands, because we do not always 'realize or appreciate the implications of what we believe'.¹⁷ Our beliefs are often complex, and we do not always appreciate their implications.

Rowlands claims that his Neo-Rawlsianism does not involve pushing any unwanted moral rules or principles on anyone. Rather, he claims to work with principles we already accept. These broad moral principles, he says, are 'etched deeply' into our moral milieu,

¹³ Rowlands (2002), p. 28.

¹⁴ Ibid, p. 30.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

and thus into the ‘moral consciousness of each one of us’.¹⁸ But we fail, he claims, to properly understand the logical implications of these principles. These principles logically entail, Rowlands argues, that ‘our *moral* duties to animals are far more substantial than we commonly think’.¹⁹ That is, he says, the ‘fundamental moral principles’ that shape our moral milieu are ‘incompatible with our present attitudes towards and treatment of animals’, and so consistency requires that we change our present attitudes towards and treatment of animals in line with the demands of animal liberation.²⁰

The fundamental moral principles that Rowlands believes entail that our moral duties to animals are far more substantial than we commonly think are the Principle of Equal Consideration and the Principle of Desert.

1.2 THE PRINCIPLE OF EQUAL CONSIDERATION

Rowlands states the Principle of Equal Consideration as: ‘all people are created equal’.²¹ He notes that this is not—obviously—meant to mean that everyone is born with the same natural talents, abilities, intelligence, or socio-economic circumstances. All people are not created equal in those senses. The claim that all people are created equal is not the claim that all people are physically or intellectually equal. Rather, the claim is that all people are morally equal.²² Moral equality is the idea that all people deserve equal consideration. Thus, Rowlands restates the Principle of Equal Consideration as: ‘every person is entitled to be treated with consideration equal to that accorded anyone else’.²³

In this chapter, equal consideration will be talked about only in the abstract, but it will be seen in subsequent chapters that what it means in practice (within social contract theory)

¹⁸ Rowlands (2002), p. 31.

¹⁹ *Ibid.*, p. 31.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*, p. 32.

²³ Rowlands (1998), pp. 32–33. In his book, *Animals Like Us* (2002), Rowlands actually labels this principle ‘the principle of equality’. However, in the first edition of his book, *Animal Rights* (1998), he labels it ‘the principle of equal consideration’.

is an equal place among the negotiators of a social contract. The level of consideration one receives within social contract theory is determined straightforwardly by the equality of one's place among the negotiators of a social contract. Making a social contract with animals entails giving animals an equal place among the negotiators. The implications of giving animals an equal place among the negotiators—an equal seat at the bargaining table—will not be discussed until Chapters Three and Four. Chapters One and Two focus simply on how Rowlands gets animals an equal seat at the bargaining table where they negotiate for their interests.

According to Rowlands, the Principle of Equal Consideration can be understood as comprising two sub-principles, each of which is partly constitutive of its content.²⁴ The first specifies an abstract principle of morality: as a matter of strict morality, each person is to be given their due, i.e. their due consideration, whatever that may be, and however that may be measured. This first sub-principle is axiomatic in any plausible moral theory. The second sub-principle functions essentially to place an important restriction on the first sub-principle: all persons are due, as a matter of strict morality, equal consideration, irrespective of their level of excellence.²⁵ According to the second sub-principle, level of excellence (however excellence is defined) is not a morally relevant difference that can justify treating any person with more, or less, respect than any other person. And Rowlands suggests that within contemporary conceptions of morality, shaped as they are by the democratic ideal, it is 'difficult to imagine finding any satisfactory justification for claiming that level of excellence, however defined, can constitute a morally relevant difference between one person and another'.²⁶

Rowlands also notes that the Principle of Equal Consideration does not, straightforwardly, entail equal (in the sense of identical) treatment—it is not only compatible with differential treatment of persons, it may, in certain cases, require differential treatment.²⁷ The Principle of Equal Consideration, it might be said, requires

²⁴ Rowlands (1998), p. 32.

²⁵ Ibid.

²⁶ Ibid, pp. 32–33.

²⁷ Ibid, p. 33.

not equal treatment, but, rather, equitable treatment, of all persons. All persons should, as a matter of strict morality, ‘receive their due’, as Rowlands puts it.²⁸ And it is not always, and perhaps not even typically, true, he says, that what they are due is identical treatment.

Rowlands suggests that the idea of equal consideration, is intimately connected with the equal consideration of interests. More precisely, he suggests that it is bound up with the equal consideration of ‘relevantly similar interests’.²⁹ Peter Singer illustrates the notion of a relevantly similar interest with the following example:³⁰

If I give a horse a slap across its rump with my hand, it presumably feels little pain, whereas if I slap a baby in the same way, it will presumably feel significantly more pain. However, there must be some kind of blow, perhaps a blow with a heavy stick, that would cause the horse as much pain as the baby feels when slapped by my hand. The horse, then, has a relevantly similar interest in avoiding being hit with the stick as the baby has in avoiding being hit with my hand.

Both human beings and animals, Singer argues, have a relevantly similar interest in avoiding similar amounts of pain. This is not to say that humans share all relevantly similar interests with animals; humans have interests that animals lack, and vice versa. Rowlands claims that all animal ethicists regard the interest in staying alive as a relevantly *different* interest for human beings and animals, i.e. all animal ethicists think that a normal human loses more in dying than does an animal.³¹ In other words, a normal human’s interest in life is not relevantly similar to that of an animal. This being the case, treating humans and animals with equal consideration is entirely compatible with according greater significance to the life of a normal human than to the life of an animal.³²

Rowlands contends that there is ‘fairly unanimous agreement’ that the Principle of Equal Consideration is a valid moral principle.³³ The reason for this, he says, derives from the connection between the Principle of Equal Consideration and an even more basic

²⁸ Rowlands (1998), p. 33.

²⁹ Ibid.

³⁰ Singer (1975), p. 16 (quote from Rowlands (1998), pp. 33-34).

³¹ Rowlands (1998), p. 34.

³² The relative harm of death to humans and animals is discussed further in Chapter Three below.

³³ Rowlands (2002), p. 34.

principle, which is constitutive of our moral thinking—it is ‘so central to the way we think about morality that it would be difficult, or impossible, to imagine what morality would be like without this principle’.³⁴ Rowlands states this more basic principle thus: no moral difference without some relevant other difference. A ‘difference in moral evaluation’, Rowlands explains, ‘only makes sense if it is based on a [relevant] difference in other qualities’.³⁵ If two people do exactly the same thing, in exactly the same circumstances, for exactly the same reasons, with exactly the same results, it would make little sense to say that one action is good and the other bad. If the one action is good, then the other one must be good also.

The implication of this, Rowlands observes, is that if we are to justify a difference in the consideration we accord two people, then we have to be able to identify a morally relevant difference between them.³⁶ As Rowlands notes, Aristotle and Nietzsche believed that level of excellence is a morally relevant difference, and it was once commonplace for race and gender to be regarded as morally relevant differences, but, since contemporary moral thinking is shaped by the democratic ideal, we no longer hold these views.³⁷ Today we believe that people do not come into this world with morally relevant differences inherent to them. This belief together with the claim that there can be no moral difference without some other relevant difference, leads to the Principle of Equal Consideration. There is no morally relevant difference between people *as they are created* that will justify a difference in moral evaluation, and so all people deserve equal consideration.

1.2.1 Applying the Principle of Equal Consideration to Animals

Rowlands launches his case for animal liberation with the Principle of Equal Consideration stated thus:

Premise 1: human beings are entitled to be treated with equal consideration.³⁸

³⁴ Rowlands (2002), p. 35.

³⁵ Ibid.

³⁶ Ibid, p. 36.

³⁷ Ibid.

³⁸ Ibid, p. 37.

He then adds the idea that there can be no moral difference without some relevant other difference, which he gives this specific form:

Premise 2: there can be no difference in the entitlements of members of two groups unless there is a relevant difference between members of those two groups.³⁹

That is, he says, ‘if members of one group are entitled to be treated with consideration, and if there are no morally relevant differences between them and members of another group, then members of that other group are entitled to be treated with the same consideration’.⁴⁰

Then, Rowlands says, we add the controversial premise:

Premise 3: there are no morally relevant differences between humans and animals.⁴¹

No one can contest, he says, the first and second premises, since the first—the Principle of Equal Consideration—is a ‘deeply rooted component of our communal moral thinking’,⁴² and the second provides the logical basis of the Principle of Equal Consideration. Therefore, if we also accept the third premise, we get the conclusion:

Conclusion: animals are entitled to be treated with consideration equal to that accorded to humans.⁴³

The problem is that many people think that premise 3 is wrong. Rowlands, however, sets out to show that premise 3 is true. While there are many differences between humans and animals, these differences are not, he claims, relevant ones—not ones that are relevant to the level of consideration animals deserve.⁴⁴

³⁹ Rowlands (2002), p. 37.

⁴⁰ Ibid, p. 38.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

1.2.2 The Differences between Humans and Animals

Rowlands proceeds to run through the principal differences between humans and animals, arguing that these differences are not morally relevant ones.⁴⁵ The most obvious difference between humans and animals is that they belong to different species. Rowlands easily dismisses any suggestion that this difference is a morally relevant one in itself, observing that you might one day find out that, in spite of being phenotypically identical to a human, you are in fact a genetic anomaly, and so not human at all. Rowlands asks: Would you, upon learning this fact, accept that you do not, in fact, have any moral status? The answer he invites is of course 'no'. It is not the most convincing way of making the argument. A better way would be with reference to the Principle of Desert, which will be discussed later in this chapter.

Rowlands also considers whether the fact that humans and animals look different is a morally relevant difference in itself. He dismisses this suggestion by observing that deformed humans, such as the elephant man, are not thought to be due less than equal consideration merely because they look different from typical humans. Of course this is easily acceptable; our intuition is that the differences between humans and animals that are morally relevant differences are mental, rather than physical. Thus Rowlands next considers whether level of intelligence is a morally relevant difference between humans and animals.⁴⁶ The main argument Rowlands deploys against this suggestion is the Argument from Marginal Cases.

⁴⁵ Rowlands (2002), pp. 39–48.

⁴⁶ Ibid. Rowlands' decision to focus on level of intelligence, rather than rationality, appears to be due to the conclusion he comes to that amphibians, reptiles, birds and mammals can believe, desire and engage in at least rudimentary forms of practical reasoning (he thinks this is probably also true of some forms of fish). In other words, Rowlands appears to conclude that many animals are rational, and simply less intelligent than humans. But, for those not of this view, it is possible to read the following arguments (perhaps with some minor revision) as though they applied to possession of rationality, and not just to level of intelligence.

1.2.3 The Argument from Marginal Cases

Although humans generally possess a higher intelligence than animals, there are some humans who are ostensibly less intelligent than many animals, e.g. brain-damaged, brain-diseased, intellectually handicapped, and very young humans (sometimes referred to collectively as ‘marginal humans’). If someone claims that animals lack various moral entitlements because of their inferior intelligence, then they are also (in the absence of further argument) claiming that marginal humans lack those moral entitlements. ‘If this is so’, Rowlands asks, ‘why not treat [marginal humans] the same way we now treat animals? ‘Why not hunt them, wear them, experiment on them, even use them for food?’⁴⁷ If level of intelligence is a morally relevant difference, and if it is morally legitimate to hunt, skin, experiment on and eat animals because they are less intelligent than normal humans, then it should be equally morally legitimate to hunt, skin, experiment on and eat marginal humans. Of course, we find the idea of doing those things to any human, marginal or otherwise, highly repugnant. The Argument from Marginal Cases points out that, as a matter of consistency, if intelligence is what matters morally, then we should find doing those things to animals equally repugnant, since there is no difference in intelligence between some animals and some marginal humans.

The Argument from Marginal Cases can most probably be deployed against any suggested difference between humans and animals (other than species membership) to show that the difference should not be considered a morally relevant one, since most probably there is no property that all humans have and no animals have (other than the property of being human).⁴⁸ Language, for example, has been proposed as a morally relevant difference between humans and animals, but certain human beings are unable to use language, and we would not want to treat those humans as we do animals. Rowlands claims that no one has ever even come close to identifying a property that all humans have and no animals have (other than the property of being human) that could be a

⁴⁷ Rowlands (2002), p. 43.

⁴⁸ Ibid, p. 45.

morally relevant difference capable of avoiding the Argument from Marginal Cases.⁴⁹ The reason for this is, he suggests, that there is no such difference. And, if this is correct, he says, there is no justification for the differential treatment we accord humans and animals.

Rowlands does acknowledge that one can, consistently with the argument from marginal cases, avoid this conclusion by making the following move:

It seems the only option available to someone who wants to insist that there is some morally relevant difference between humans and animals is to bite the bullet, move to Psychoville, and claim that certain human beings—the brain damaged, infants, the senile etc—who do not live up to the required level of intelligence (language use, or whatever is your favourite example of a supposedly relevant difference), do not, in fact possess moral rights, and do not deserve to be treated with equal consideration.⁵⁰

Rowlands notes the obvious objection to this move that it entails that marginal humans may be legitimately treated literally like animals, and this result will be unacceptable, as Rowlands put it, to ‘most people of a non-sociopathic persuasion’.⁵¹ Of course, those that make this move, such as Peter Carruthers in his book, *The Animals Issue* (1992), do not believe that marginal humans may be legitimately treated like animals.

Carruthers claims that animals may be treated like animals, while marginal humans may not, for two reasons.⁵² Carruthers in fact claims that these two reasons are what give marginal humans moral status. The first reason Carruthers gives for why marginal humans may not be treated like animals, is that there is a slippery slope between the mentally defective and not-so-intelligent that would make any intent to attribute moral status only to rational agents ‘inherently dangerous and open to abuse’.⁵³ The second reason Carruthers gives is that ‘[a] rule withholding moral standing from those who are very young, very old, or mentally defective is...likely to produce social instability, that

⁴⁹ Rowlands (2002), p. 47.

⁵⁰ Ibid, p. 46.

⁵¹ Ibid.

⁵² Carruthers (1992), pp. 114–118.

⁵³ Ibid, p. 114.

many people would find themselves psychologically incapable of living in compliance with it'.⁵⁴

Neither of the reasons Carruthers gives, however, are principled reasons for marginal humans having moral status. Indeed, it is unclear in what sense marginal humans have moral status in Carruthers' view. If having moral status is, as Carruthers believes, an upshot of having intelligence of the level of a rational agent, then marginal humans do not actually have moral status. The claim seems to be, rather, that there is reason to pretend that marginal humans have moral status. This pretending is not going to be good enough for many people's intuitions. And, if pretending is going to be good enough, then one might point out that it could reasonably be suggested that 'many people would find themselves psychologically incapable of living in compliance with'⁵⁵ a rule withholding moral standing from cats and dogs. We are accustomed to treating our cats and dogs much like our children in many respects. Does that mean cats and dogs suddenly acquire moral status? The more important point though is that, even if Carruthers' two reasons are accepted, they do not demonstrate why having intelligence of the level of a rational agent should be determinative of having of moral status. Carruthers relies on the assumption that only rational agents can make a social contract to demonstrate this, but it will be seen that we can in fact make a social contract with parties that are not rational agents. Furthermore, The Principle of Desert can be employed to demonstrate that intelligence is not a morally relevant difference between humans and animals.

1.3 THE PRINCIPLE OF DESERT

In addition to the Principle of Equal Consideration, Rowlands claims that the Principle of Desert also plays an 'enormous role in shaping our moral thinking'.⁵⁶ The two principles should be understood as functioning in tandem with each other. The Principle of Equal Consideration is based on the idea that there can be 'no moral difference without some other relevant difference'. The Principle of Desert tells us which differences are not

⁵⁴ Carruthers (1992), p. 117.

⁵⁵ Ibid.

⁵⁶ Rowlands (2002), p. 48.

moral ones. It tells us that differences that we have not in any way earned or merited—those that are beyond our control—are not moral ones.⁵⁷ People should get what they deserve, and people do not deserve lesser or greater consideration because of things beyond their control.

The ‘fundamental moral entitlement’, Rowlands says, is the ‘entitlement to be treated with equal consideration’.⁵⁸ This, of course, is the Principle of Equal Consideration. Any other entitlements that we have almost certainly, Rowlands claims, derive from this one. Against this background, the Principle of Desert amounts to this: ‘your entitlement to be treated with equal consideration cannot be diminished or increased by things or circumstances over which you have no control’.⁵⁹ And it has already been hinted that equal consideration will be seen to entail an equal place among the negotiators of a social contract, and an equal place among the negotiators determines one’s membership in the moral community, so the Principle of Desert says that one’s membership in the moral community cannot be denied because of circumstances over which you have no control.

A person’s intelligence is not something that a person generally has much control over. Within certain limits, the intelligence of a person is a matter of the way they are born, or of early childhood influences; and neither of these are things over which the person has much control.⁶⁰ So, a person lacking in intelligence does not deserve less than equal consideration because of this, and nor does an animal. All this amounts to is that an animal’s relevantly similar interests should not be given less consideration than a normal adult human’s merely because animals are less intelligent than normal adult humans, since this difference is not one either is responsible for.

Rowlands fails to point out that only moral agents can be truly responsible for differences between themselves and others, so the Principle of Desert is only ever going to justify giving the relevantly similar interests of moral agents less, or more, consideration than

⁵⁷ Rowlands (2002), p. 48.

⁵⁸ *Ibid*, p. 51.

⁵⁹ *Ibid*.

⁶⁰ *Ibid*, p. 49.

that due to other members of the moral community. And, even then, with the Principle of Desert only being applied in this thesis to determine placement among the negotiators of a social contract, it is not clear that there is any controllable property moral agents might possess that should comprise their equal place among the negotiators.⁶¹ So the Principle of Desert might be taken to imply simply that there are no moral differences, because there are no other relevant differences. That would mean that nothing and no one is to be denied membership in the moral community. It will be seen in the next chapter that this is, in fact, what Rowlands proposes.

Of course the most obvious difference between humans and animals is species membership, but here again we have no control over this feature of ourselves, and the Principle of Desert ‘tells us’, as Rowlands puts it, ‘that any feature that we have for which we are not responsible, hence have not in any way earned or merited, is not a morally relevant feature’.⁶² Together with the Principle of Equal Consideration, this entails, he says, that ‘animals deserve less consideration than us only if there is some difference between us and them which we have earned or merited’.⁶³ But, as Rowlands notes, there is no such difference. The species to which one belongs is not something over which one has any control. Therefore, species is morally irrelevant.

All this means that animals deserve to be treated with consideration equal to that accorded human beings. Of course, as previously noted, equal consideration does not require identical treatment, but, rather, the equal consideration of relevantly similar interests. Thus, we are not required, for example, to educate pigs, for they have no interest in being educated. However, Rowlands steers away from confronting the point

⁶¹ For one thing, it is not clear how responsible moral agents really are for many of their actions, since the circumstances one finds oneself born into have such a strong influence on our actions. And, even if moral agents should be held responsible for their actions, there are probably more appropriate ways of holding them responsible than increasing or decreasing their place among the negotiators of a social contract. Rawls himself did not allow considerations of desert to influence the distribution of wealth and income, since desert derives from features of ourselves that are ultimately beyond our control. It just happens that the most productive members of a Rawlsian society will typically get more wealth and income because such inequality of wealth and income tends to make the least advantaged better off. So, while it appears that desert gets some consideration in Rawls’ system, this appearance is only a side effect of the maximin rule (Rawls (1999), p. 133).

⁶² Rowlands (2002), p. 53.

⁶³ Ibid.

that the obligation to give the relevantly similar interests of animals equal consideration will assert itself whenever we seek to further human interests, and we constantly seek to further human interests through our systems of law and social security. It is this point that is substantially considered in Chapter Four of this thesis.

The Principle of Equal Consideration and the Principle of Desert each, Rowlands claims, provide a ‘powerful argument’ for animal liberation on their own, and, put together, ‘the strength of the case is increased even more’.⁶⁴ To summarize, the Principle of Equal Consideration says that, ‘whether or not you are human, you are morally entitled to as much consideration as anyone else, as long as there are no morally relevant differences between you and others’.⁶⁵ The Principle of Desert says, in effect, that ‘if you have no control over the differences between you and others—human or not—then those differences are not morally relevant ones’.⁶⁶ And equal consideration involves the equal consideration of relevantly similar interests.

However, as Rowlands acknowledges, the claim that the concept of equal consideration can be interpreted as the claim that all relevantly similar interests should be accorded equal moral consideration or ‘equal moral weight’ is incomplete.⁶⁷ Rowlands is still operating, at this point in his argument, at the level of broad abstract principle. He still needs to work out what is involved in giving equal moral consideration (or weight) to relevantly similar interests. This debate is, he says, one of the central concerns of moral theory.⁶⁸ And, in Rowlands’ view, what the broad moral theories do is offer different understandings of what is involved in giving equal moral consideration/weight to relevantly similar interests. What counts, he says, as equal consideration ‘varies from one moral theory to another’.⁶⁹ And it follows from this that there can be no ‘theory-neutral conception of the Principle of Equal Consideration’.⁷⁰ Thus a broad moral theory must be chosen at this point to elaborate what is involved in giving equal moral weight to relevant

⁶⁴ Rowlands (2002), p. 58.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Rowlands (1998), p. 34.

⁶⁸ Ibid, p. 35.

⁶⁹ Ibid.

⁷⁰ Ibid.

similar interests. As explained in the introduction, this thesis will treat Rowlands' Neo-Rawlsianism as the representative of the approach of applying a broad moral theory to make a moral argument for animal liberation. The broad moral theory Rowlands' Neo-Rawlsianism applies to this end is social contract theory, and so it is that theory that is chosen here to elaborate what is involved in applying the Principle of Equal Consideration and the Principle of Desert to our treatment of animals.

Chapter 2

Rowlands' Vision of a Social Contract with Animals

2.1 SOCIAL CONTRACT THEORY AS A MORAL THEORY

Social contract theory has a long and rich history, and, rather than being a single theory, would be better described as a group of theories. Thus there is sometimes reference to the 'social contract tradition' or 'social contract approach'.⁷¹ Following Rowlands, this thesis will focus on two varieties of social contract theory. However, before those two varieties are distinguished, it is important to note that a social contract theory may be offered as a moral theory (that provides us with principles of morality), a theory of justice (that provides us with principles of distributive justice), a theory of moral obligation (that explains why we are obliged to be moral), or a theory of political obligation (that explains why we are obliged to be lawful).

John Rawls in his book, *A Theory of Justice*⁷² uses a social contract device to provide us with principles of distributive justice only. His principles of justice only purport to make prescriptions in respect of 'the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation'.⁷³ Although Thomas Scanlon in his book, *What We Owe to Each Other*⁷⁴ does use a social contract device to provide us with principles of morality more generally, he suggests that his theory may not be a theory of the whole of morality, and may only be a theory of what we owe to other persons, entailing that our obligations to animals may need to be derived from another part of morality.⁷⁵ This thesis, however, will follow Rowlands in his use of a social contract device to provide us with principles of morality that do cover our obligations to animals. Rowlands' Neo-Rawlsianism is a modification

⁷¹ Kymlicka (1989), p. 186.

⁷² Rawls (1999).

⁷³ Ibid, p. 6.

⁷⁴ Scanlon (1998).

⁷⁵ Ibid, p. 179.

of Rawls' social contract device, and it is in reference to the fact that Rawls' device provides us with principles of distributive justice only that Rowlands in his book, *Animal Rights*, writes that:

I propose to use the contractarian [i.e. social contract] idea in a somewhat broader sense as providing a general theory of morality; that is, as providing a framework for the assignation of moral rights and duties in general, and not just political rights of the sort discussed by Rawls. That is, the contractarian idea, as I propose to use it..., will be conceived of as, in principle, being capable of providing us with general principles of morality, and not simply principles relating individuals to basic societal structures. While this differs in scope from Rawls's view, this application of the contract idea is, of course, by no means idiosyncratic.⁷⁶

It is uncertain whether Rowlands would describe his Neo-Rawlsianism as an account of the whole of morality,⁷⁷ but it will become clear that he, unlike Scanlon, regards our obligations to animals as falling within the part of morality his Neo-Rawlsianism provides an account of.

The limited scope of Rawls' and Scanlon's respective theories should warn against arriving at the conclusion that neither would endorse us having significant duties to animals merely because we do not have such duties to animals within their accounts. Their accounts are not accounts of the whole of morality—specifically, they are not accounts of our obligations to animals⁷⁸—and so no such conclusion can be arrived at. Whether, and how, Neo-Rawlsianism can be applied at the same time Rawls' theory or Scanlon's theory is applied is a matter of some interest, but it is a matter beyond the scope of this thesis.

⁷⁶ Rowlands (2009), pp. 131–132.

⁷⁷ He might, for example, wish to argue that our obligations to non-sentient parts of the environment fall outside the part of morality Neo-Rawlsianism provides an account of.

⁷⁸ Rawls (1999, p. 448) does make reference to us having natural duties of compassion and humanity towards animals, but it is not clear that he would be committed to the claim that these are our only duties towards animals, given that he does not present an account of the whole of morality.

2.2 THE VARIETIES OF SOCIAL CONTRACT THEORY

There are broadly two importantly different varieties of social contract theory.⁷⁹ Both varieties recognise that people are, by nature, equal, but offer different conceptions of our natural equality. The first form of social contract theory derives straightforwardly from the work of Thomas Hobbes, and, like him, emphasizes a natural rough equality of power possessed by most human beings, which makes it mutually advantageous for people to make conventions that recognise and protect each other's interests and possessions. This variety of social contract theory has been labelled 'Hobbesian contractarianism'.⁸⁰ The other variety of social contract theory has its roots in the work of Immanuel Kant, and is of a very different character to the Hobbesian variety; it emphasises the moral equality of individuals—the idea that fundamentally every person matters equally and is, therefore, entitled to equal consideration and respect. This second variety of social contract theory has been labelled 'Kantian contractarianism'.⁸¹

2.2.1 Hobbesian Contractarianism

In his *Leviathan*, Hobbes contends that principles of law and morality emerge only from the artificial political agreements humans reach as the means of escaping the dangerous uncertainty of their 'natural' condition—a state he describes as a 'war of every man against every man',⁸² otherwise known as the 'state of nature'. In the 'state of nature', individual humans are equal in the sense that all humans are roughly equal, so the theory goes, in strength and skill, and so any human is capable of killing any other: 'The weakest has strength enough to kill the strongest, either by secret machination or by

⁷⁹ This division derives from Kymlicka (1989), who Rowlands (1998; 2009) follows in his analysis of social contract theory.

⁸⁰ Though the two varieties of contractarianism discussed here are named after particular philosophers, this discussion is not an attempt at an accurate description of the views of these philosophers. It merely follows the analyses offered by Kymlicka (1989) and Rowlands (1998; 2009) of the varieties of contractarianism that now exist, which have their roots in the ideas of the philosophers they are named after.

⁸¹ 'Hobbesian contractarianism' and 'Kantian contractarianism' are the labels Kymlicka (1989) and Rowlands (2009) use. The more recent trend, as exemplified in the *Stanford Encyclopedia of Philosophy* (Ashford and Mulgan (2007); Cudd (2007)), is to label these two varieties of social contract theory 'contractarianism' and 'contractualism' respectively, but it seems more sensible on this occasion to use the older labels, since Rowlands uses them, and they are more easily visually distinguishable from each other.

⁸² Hobbes (1651), ch 13.

confederacy with others'.⁸³ Humans in the 'state of nature' must compete for resources in an environment of scarcity. Living thus 'without a common power to keep them all in awe', human beings have no natural principles of morality, according to Hobbes, by which to regulate the competition for resources:

To this war of every man against every man, this also is consequent; that nothing can be unjust. The notions of right and wrong, justice and injustice, have there no place. Where there is no common power, there is no law; where no law, no injustice. Force and fraud are in war the two cardinal virtues. Justice and injustice are none of the faculties neither of the body nor mind. If they were, they might be in a man that were alone in the world, as well as his senses and passions. They are qualities that relate to men in society, not in solitude. It is consequent also to the same condition that there be no propriety, no dominion, no mine and thine distinct; but only that to be every man's that he can get, and for so long as he can keep it.⁸⁴

Hobbesian contractarians, likewise, contend that there is 'nothing objectively right or wrong either about the goals one chooses or the means by which one pursues these goals'.⁸⁵ They do not subscribe to any notion that it is inherently wrong to harm others in pursuing one's own goals. Though, while they do not consider it to be inherently wrong to harm others, they observe that it is often imprudent to harm others. I am going to be better off refraining from harming you if you, and everyone else, refrain from harming me in return. A social contract, therefore, that forbids harming others is going to be mutually advantageous; it will mean that we do not have to waste resources, time and effort defending ourselves and our property, and it will enable us to engage in stable and mutually-beneficial cooperation. While Hobbesian contractarians do not consider it to be inherently or objectively wrong to harm others, they do consider it prudent to deal with acts of harming others as if they were wrong.⁸⁶

The basis of morality, according to Hobbesian contractarians, is to be understood as a social contract consisting of whatever rules of conduct are the most mutually advantageous. The content of the social contract is the result of a negotiating process in which each person will want to bargain for the maximal furtherance of their own interests

⁸³ Hobbes (1651), ch 13.

⁸⁴ Ibid.

⁸⁵ Rowlands (1998), p. 54.

⁸⁶ Ibid, p. 55.

and the minimal hindrance of their freedom. Whether or not Hobbes believed this negotiating process to be a historical reality, it is better understood as a hypothetical bargaining of the form: ‘What conventions would we agree to as mutually advantageous if we were to find ourselves in a position of the rough equality that characterizes the state of nature?’ The principles of morality established by this hypothetical negotiating process are to be obeyed not because it is inherently immoral to disobey them, but, ultimately, because it is imprudent to disobey them. It is only in this sense that the Hobbesian social contract can be thought of as yielding principles of morality.⁸⁷

There is perhaps a sense in which mutually advantageous agreements supply principles of morality, but principles of morality thus derived are of a different character compared to more a traditional conception of what qualify as principles of morality.⁸⁸ They are of a different character because, according to Hobbesian contractarians, whether it is advantageous to adopt a particular principle depends on one’s bargaining power. Strong and talented persons have greater power than weak and talentless persons; weak and talentless persons produce little of value, and whatever value is produced by them can be easily appropriated by the strong without fear of retaliation. Strong and talented persons have little or nothing to gain from cooperating with weak and talentless persons, and nothing to fear, by way of retaliation from them. Therefore, strong and talented persons have little or no prudential reason to accept principles of morality which help weak and talentless persons.⁸⁹

Hobbesian contractarianism seems to entail that it is legitimate to allow weak and talentless people to be killed, enslaved or exploited. It seems that, for the Hobbesian contractarian, infants and marginal humans must fall outside the moral community. The constraints of morality, for the Hobbesian contractarian, only exist between individuals who are roughly equal in physical power. Indeed, it would seem that even rough equality of *physical* power is not enough to gain membership in the moral community under Hobbesian contractarianism.

⁸⁷ Rowlands (1998), p. 55.

⁸⁸ Ibid.

⁸⁹ Ibid.

Within those times and places that slavery has existed, slaves have typically been roughly equal in *physical* power to their masters. The masters, therefore, would have found it advantageous to make a social contract with their slaves *in the state of nature* prohibiting slavery, since the socio-political power structures upholding slavery and disempowering the slaves would not exist *in the state of nature* making the slaves a potential threat. However, Hobbesian contractarians do not believe that there is any moral standard that precedes a social contract and that could be used to stipulate that a social contract should be negotiated *in a state of nature* without contemporary socio-political power structures in place. Provided that the socio-political power structures that uphold slavery are stable in a society, the slaves in that society will not pose a potential threat to the masters sufficient enough for it to be prudent for the masters to allow the slaves a seat at the social contract bargaining table, i.e. membership in the moral community. And so there would be nothing immoral, according to Hobbesian contractarians, about slavery continuing in that society, since its continuance would presumably be more advantageous to the masters than its discontinuance would. But, intuitively, slavery is immoral in any society.

Common criticisms of Hobbesian contractarianism focus on its conflict with our intuitive understanding of morality.⁹⁰ Rowlands offers such a criticism when he contends that our intuitive understanding of morality:

tells us that any mutually beneficial activity must, in order to be legitimate, first respect the rights of others, including, crucially, the rights of those too weak to defend their interests. And, therefore, according to our ordinary intuitive conception of morality, mutual advantage cannot be the *foundation* of morality, for there are considerations of morality that are prior to the pursuit of mutual advantage.⁹¹

This, he acknowledges, can hardly be regarded as a refutation of Hobbesian contractarianism: one obviously cannot refute Hobbesian contractarianism by appealing to our intuitive understanding of morality, when the crux of the theory is that our intuitive understanding of morality is seriously mistaken. According to Hobbesian contractarians,

⁹⁰ Rowlands (1998), pp. 55–56.

⁹¹ *Ibid.*

there is no objective morality, and hence there are no objective rights or duties. Claiming, therefore, that Hobbesian contractarianism ignores the right of the weak and talentless to our protection does not amount to an argument against the theory, since the existence of such rights, as Rowlands admits, is precisely what is at issue.⁹²

However, while the objection to Hobbesian contractarianism that it conflicts with our intuitive understanding of morality begs the question, it is enough to demonstrate that Hobbesian contractarianism is patently incompatible with the idea that all human beings have equal moral status, i.e. the Principle of Equal Consideration.⁹³ In fact, Hobbesian contractarians would explicitly deny this.⁹⁴ The moral status of an individual, on the Hobbesian view, is a function of their power. There is no room in Hobbesian contractarianism, then, for the Principle of Equal Consideration or the Principle of Desert (since the two principles function in tandem). But Rowlands claims that these principles are etched deeply into our moral community, and consequently into the moral consciousness of each one of us, and so we should reject any moral theory that is inconsistent with them.⁹⁵ If there is to be a social contract theory that embodies the Principle of Equal Consideration and the Principle of Desert, it will have to be other than Hobbesian in character. Thus Rowlands turns to Kantian contractarianism, as the variety of contractarianism that has the moral equality of individuals at its heart, and he embarks on a project of ridding it of all Hobbesian remnants to eventually arrive at his Neo-Rawlsianism.

2.2.2 Kantian Contractarianism

While they are both varieties of contractarianism, the Hobbesian and Kantian varieties are quite different from each other. Hobbesian contractarianism is at one and the same time, a moral theory and a theory of moral obligation. It uses the idea of a social contract, not only to provide us with principles of morality, but also to explain why we are obliged

⁹² Rowlands (1998), pp. 55–56.

⁹³ *Ibid.*, p. 32.

⁹⁴ *Ibid.*, p. 56.

⁹⁵ Rowlands (2002), p. 31.

to be moral. The principles of morality provided by a Hobbesian social contract are those that persons in a state of nature would regard as mutually advantageous. We are obliged to respect those principles because we would agree to them in a state of nature, and so are disposed to agree to them, and we are so disposed out of prudence and self-interest.

Kantian contractarianism uses the idea of a social contract in a fundamentally different way to Hobbesian contractarianism.⁹⁶ While a Hobbesian social contract grounds morality by tying the principles of morality it provides back to prudence and self-interest, a Kantian social contract does not seek to ground morality in something non-moral. A Kantian social contract is a ‘heuristic device in terms of which’, Rowlands says, ‘we can identify and express the principles embodied, often in a partially concealed or implicit manner, in the moral code that we have, for whatever reason, in fact adopted.’⁹⁷ For example, Rowlands continues, a Kantian social contract ‘can be used in this way to express and reflect the idea of the equal moral status of persons’.⁹⁸ A Kantian social contract can be used in this way to eradicate, rather than reflect, differences in the bargaining powers of the negotiators of a social contract.

The Hobbesian contractarian sees a social contract as *constitutive* of moral right and wrong: these being constituted or defined by the hypothetical agreement reached by persons in a ‘state of nature’. The Kantian contractarian, conversely, has at least a ‘minimal conception of moral *truth* or *objectivity*’ that is independent of a social contract.⁹⁹ We are obliged to be moral, according to the Kantian contractarian, just because being moral is the right way to be. And so a Kantian social contract will have authority to the extent that it embodies, or at least approximates, moral truth. The function of a Kantian social contract is, says Rowlands, to help us *reveal* or *identify* what is morally right and wrong, and that has this status independently of the contract itself.¹⁰⁰ Stated metaphorically: a Kantian social contract reflects moral truth, shining its light on moral practice, but is not itself the source of the light; a Hobbesian social contract is

⁹⁶ Rowlands (2009), p. 125.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid, p. 126.

¹⁰⁰ Ibid.

intended to be the source of the light of moral truth, but the moral truth is reducible here to truths about prudence and self-interest.

Given, Rowlands says, that the function of a Kantian social contract is revelatory, rather than constitutive, whether or not an individual who is deficient in point of bargaining power gets included in the Kantian moral community is dependent only on what the moral truth requires.¹⁰¹ Of course, since a Hobbesian social contract is constitutive of morality, i.e. what is mutually advantageous, whether or not an individual gets included in the negotiations, i.e. the Hobbesian moral community, is dependent on their bargaining power in the situation in which the contract is negotiated. It is also dependent on them being able to understand the terms of the contract and reciprocate in the ways required by it. The basis of morality for the Hobbesian contractarian is mutual advantage, so the principles of morality have to be advantageous to one in some real sense, and there is no advantage to be gained in pretending that those who cannot reciprocate, e.g. animals, can reciprocate, or that the powerless pose a potential threat.

The moral truth may, of course, specify that an individual who is deficient in power or rationality, e.g. an animal, does not count morally. Rowlands notes that something like this may have been Kant's view.¹⁰² In Kant's view, a non-rational agent falls outside the scope of direct moral concern. The point though is that the discounting of a non-rational individual is something that requires, as Rowlands puts it, additional argument.¹⁰³ In other words, it is not something that can be derived from the nature of a Kantian social contract. Those who assume that social contract theory must exclude animals from the moral community, generally base their assumption on the fact that animals are not capable of entering into a contract and reciprocating in the ways required by it. This is a good reason for believing that animals must be excluded from the Hobbesian moral community, but not for believing that they must be excluded from the Kantian moral community. A Kantian social contract should only ever *reflect* the moral truth; it should not, because of its nature, *create* the moral truth.

¹⁰¹ Rowlands (2009), p. 127.

¹⁰² Ibid.

¹⁰³ Ibid.

The moral truth that Rowlands seeks to reflect or elucidate through his version of Kantian contractarianism, i.e. Neo-Rawlsianism, is the Principle of Equal Consideration, which, he says, provides the cornerstone of contemporary moral thinking.¹⁰⁴ And it was seen in Chapter One that the Principle of Equal Consideration, in tandem with the Principle of Desert, cannot justify the exclusion of animals from the moral community. Rowlands claims that most recent influential forms of contractarianism are unstable, and arguably untenable, mixtures of Hobbesian and Kantian forms of contractarianism.¹⁰⁵ This, Rowlands says, is as true of Rawls' account as it is of others. In Rawlsian contractarianism we find, he says, a Kantian core surrounded by 'unexpurgated unfortunate, and unnecessary elements of Hobbesianism'.¹⁰⁶ Much of the plausibility of Rawls' account, he continues, stems from this Kantian core. And much of what is questionable about his account stems from the unnecessary Hobbesian residue. Rowlands' goal, therefore, is 'to exorcise Rawls of his Hobbesian demons, and so end up with a version of contractarianism that is truer to his underlying Kantian motivation and methodology than the one developed by Rawls himself'.¹⁰⁷

2.3 ROWLANDS' NEO-RAWLSIANISM

It is 'almost universally assumed', Rowlands writes, that social contract theory is incapable of underwriting the granting of *direct* moral status to animals.¹⁰⁸ The reason for this almost universal assumption is, he says, that animals are not rational agents, and it is supposed that social contract theories subsume, under the umbrella of moral consideration, only rational agents.¹⁰⁹ Rowlands quotes Carruthers as an example of this sort of thinking:

Morality is here [i.e. according to social contract theory] pictured as a system of rules to govern the interaction of rational agents within society. It, therefore, seems inevitable, on

¹⁰⁴ Rowlands (2009), p. 128.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid, p. 119.

¹⁰⁹ Ibid, p.121.

the face of it, that only rational agents will be assigned direct moral rights on this approach. Since it is rational agents who are to choose the system of rules, and choose self-interestedly, it is only rational agents who will have their position protected under the rules. There seems no reason why rights should be assigned to non-rational agents. Animals will, therefore, have no moral standing under Rawlsian contractarianism, in so far as they do not count as rational agents.¹¹⁰

However, Rowlands argues that (Kantian) contractarianism does not necessitate that the protection afforded by a social contract only be afforded to rational agents. Though the negotiators of a social contract must of course be imagined as rational agents, he says, this does not necessitate that the recipients of the protection afforded by the contract are restricted to rational agents.¹¹¹ The reason, Rowlands says, that so many people assume that social contract theory is unable to support the assigning of *direct* moral status to animals is that they do not distinguish between the Hobbesian and Kantian varieties of contractarianism. The Hobbesian variety does restrict the protection offered by a social contract to rational agents, but the Kantian variety, which Rowlands claims to be far more plausible and influential, can be used to underwrite the *direct* moral status of animals and other non-rational agents.¹¹²

2.3.1 The Argument for Incompatibility

Rowlands argues that animals possess moral *rights*, and that social contract theory is compatible with animals possessing moral rights. Moral rights, he says, are:

(i) valid claims to a specific commodity, freedom, or treatment; (ii) made against assignable individuals who are capable of granting or withholding the commodity, freedom or treatment; where (iii) a claim is valid if it is backed or entailed by a correct moral theory.¹¹³

Rowlands claims that his argument does not require this account of rights, but it is useful, he says, to have a fairly precise concept of rights at hand. That may be, but it seems that the main thing to keep in mind is that the key to animals attaining *direct* moral status and

¹¹⁰ Carruthers (1992), pp. 98–99, cited in Rowlands (2009), p. 121.

¹¹¹ Rowlands (2009), p. 122.

¹¹² Ibid.

¹¹³ Ibid, p. 118.

membership in the moral community (within the context of social contract theory) is their participation in negotiating a social contract. Once it is acknowledged that animals should participate in those negotiations, they will have their interests furthered *directly* by the resulting principles, whether it be by the assignment of moral rights or otherwise.

Rowlands suggests that the underlying argument for the assumed incompatibility of social contract theory and animal rights is of the following form:

- P1. According to social contract theory, moral rights and duties are dependent on the existence of an actual or hypothetical contract.
- P2. The negotiators of the contract and the moral rights and duties embodied therein have to be conceived of as rational agents.
- P3. Therefore, the contract and its embodied moral rights and duties apply only to rational agents (i.e. only rational agents are included in the moral community).
- P4. Animals are not rational agents.
- P5. Therefore, the contract and its embodied rights and duties do not apply to animals.
- P6. Direct moral rights are possessed only by those individuals subsumed by the contract and its embodied rights and duties.
- C. Therefore, animals do not possess direct moral rights.¹¹⁴

Rowlands concedes that the argument for incompatibility, as he has presented it, is not deductively valid, and that it would be unfair to criticize it in this respect, given that he has presented it thus. Nonetheless, he says, there is still a large jump from P2 to P3. Though the negotiators of a social contract must necessarily be imagined as rational agents, this does not necessitate that the beneficiaries of the protection offered by a social contract must also be rational agents.¹¹⁵

The argument for incompatibility can only be rendered plausible if some justification for the move from P2 to P3 can be provided. But all justifications found in the literature, according to Rowlands, seem to presuppose a Hobbesian form of social contract.¹¹⁶ Clearly rationality is a prerequisite for participating in negotiating a social contract (i.e.

¹¹⁴ Rowlands (2009), p. 129.

¹¹⁵ Ibid.

¹¹⁶ Ibid, pp. 129–130.

P2 is true), and animals are not rational agents (i.e. P4 is true), but it will be seen that animals can, nonetheless, participate, in effect, in negotiating a (Kantian) social contract. And it has already been seen that only a Hobbesian social contract excludes non-rational agents from the moral community by its contractual nature. A Kantian social contract merely elucidates the moral truth, which Rowlands takes to be the Principle of Equal Consideration as the cornerstone of contemporary moral thinking, and, as already stated, it was seen in Chapter One that this principle does not exclude non-rational agents from the moral community (i.e. it does not endorse P3).

Rowlands argues that if we are consistent in taking the Kantian approach to the social contract, then there is no way of bridging the gap between P2 and P3. The leap from P2 to P3 is, accordingly, he says, an unjustified one.¹¹⁷

2.3.2 Rawlsian Contractarianism

The starting point for Rowlands' Neo-Rawlsianism is Rawls' version of Kantian contractarianism as set out in his books, *A Theory of Justice*¹¹⁸ and *Political Liberalism*.¹¹⁹ It is to be kept in mind though that, while Rawls sets out a theory of justice in those books, Rowlands, as already noted, uses the social contract idea more broadly to provide a moral theory outlining a 'framework for the assignation of moral rights and duties in general, and not just political rights of the sort discussed by Rawls'.¹²⁰

According to Rowlands, Rawls takes as his starting point the notion of the moral equality of individuals, i.e. the Principle of Equal Consideration, and uses a social contract device as a means of identifying and expressing exactly what is involved in this basic idea.¹²¹ Society is composed of individuals with unequal bargaining power, and so, without some evening of the playing field, a social contract would give greater consideration to those with greater bargaining power. This does not derive from the nature of the social contract

¹¹⁷ Rowlands (2009), p. 131.

¹¹⁸ Rawls (1999).

¹¹⁹ Rawls (1996).

¹²⁰ Rowlands (2009), p. 131.

¹²¹ Rowlands (1998), p. 57.

device; it derives from the conditions under which the social contract is negotiated. A social contract can, however, give equal consideration to all of the negotiators of the contract regardless of their differing inherent power or abilities, though only if the negotiations take place in a position of equality.¹²² Rawls calls this position of equality the ‘original position’. The negotiators in the original position are in a position of equality because they find themselves behind a ‘veil of ignorance’. Being behind a veil of ignorance means that the negotiators have no knowledge of their natural talents and characteristics, their socio-economic position in society, or even their conception of the good, in the real world.

The negotiators within the original position are imagined as rational. And each negotiator is still assumed to be trying to do the best they can for themselves—to formulate and advocate rules of conduct that will secure them maximum advantage as they exist in the society they are formulating the rules for. However, because of the epistemological restriction of the veil of ignorance, the effect of each negotiator trying to do the best they can for themselves under that restriction is that the negotiators are rationally compelled to try to do the best they can for all members of the society they are formulating rules for. From behind the veil of ignorance, trying to do the best one can for oneself requires trying to do the best one can for all. In the original position, deciding which principles will promote your good in the society you are formulating rules for, requires that you put yourself in the place of every other person in that society and consider what promotes that person’s good, since you may be any given person in that society. Agreements made in the original position thus give equal consideration to every member of society.¹²³

The way to conceive what would be a just organization of society in Rawls’s view is to conceive what principles of justice would be agreed on by negotiators in the original position and behind the veil of ignorance; and Rawls claims that the negotiators would agree on the two principles of justice set out in his book, *A Theory of Justice*.¹²⁴ Rowlands, however, points out that the concept of the original position cannot, by itself,

¹²² Rowlands (1998), p. 57.

¹²³ Ibid, pp. 57–58.

¹²⁴ Rawls (1999).

motivate Rawls' principles of justice. Rawls, he says, has, in fact, two key arguments for his principles of justice; not just the one.¹²⁵ The first of these arguments Rowlands calls the 'Intuitive Equality Argument'; the second he calls the 'Social Contract Argument'. The Social Contract Argument is the argument that Rawls' principles of justice are the principles of justice that would be agreed on by rational agents in the original position. Rowlands contends that understanding the relation between the Intuitive Equality Argument and the Social Contract Argument is essential to understanding the way in which social contract theory can support the attribution of direct rights to animals.¹²⁶

2.3.2.1 *The Intuitive Equality Argument*

Rowlands sets out the basis of the Intuitive Equality Argument as follows:

- P1. If an individual I is not responsible for their possession of property P, then I is not morally entitled to P.
- P2. If I is not morally entitled to P, then I is not morally entitled to whatever benefits accrue from their possession of P.
- P3. For any individual I, there will be a certain set of properties $S = \{P_1, P_2 \dots P_n\}$ such that I possesses S without being responsible for possessing S.
- C. Therefore, for any individual I, there is a set S of properties such that I is not morally entitled to the benefits which accrue from possession of S.¹²⁷

In other words, 'if a property is undeserved in the sense that its possessor is not responsible for, or has done nothing to merit, its possession, then its possessor is not morally entitled to whatever benefits accrue from that possession'.¹²⁸ This appears to be simply the Principle of Desert restated into an argument, and Rawls, according to Rowlands, believes that this argument underlies the ideal of equality of opportunity which he identifies with the prevailing liberal orthodoxy.¹²⁹ Thus, it seems that the Principle of Desert is, in essence, the Principle of Equal Opportunity, and perhaps would

¹²⁵ Rowlands (2009), p. 133.

¹²⁶ Ibid.

¹²⁷ Ibid, pp. 133–134.

¹²⁸ Ibid, p. 134.

¹²⁹ Ibid.

be better labelled as such, given the associations of the concept of ‘desert’, but Rowlands’ labels will be persisted with for sake of simplicity.

2.3.2.2 *The Social Contract Argument*

Rawls’ Social Contract Argument has already been described. It consists in the derivation of his principles of justice from his concepts of the original position and the veil of ignorance.

2.3.2.3 *The Mutual Dependence of the Arguments*

The Social Contract Argument receives a lot more emphasis and attention from Rawls, than does the Intuitive Equality Argument, leading to the latter argument being overlooked.¹³⁰ But Rowlands contends that neither argument can be understood independently of the other; they are, he says, co-dependent and mutually reinforcing.

Rawls has been criticized for rigging the description of the veil of ignorance, and thus the original position, in order to yield his principles of justice. ‘This sort of objection is, however, misconceived’, says Rowlands, ‘since Rawls is perfectly willing to admit this’.¹³¹ Rawls recognizes that ‘for each traditional conception of justice there is an interpretation of the initial situation [i.e. the original position] in which its principles are the preferred solution’.¹³²

The original position can be set up in number of different ways without upsetting its claim to satisfy the requirements of procedural fairness, and Rawls’ principles of justice would not be chosen in all those versions of the original position. To ascertain which principles of justice and morality would be agreed in the original position, we, therefore, need to first ascertain which version of the original position to adopt; the key to which, according to Rawls, is that the version of the original position elected should result in

¹³⁰ Rowlands (2009), p. 139.

¹³¹ Ibid.

¹³² Rawls (1999), p. 105.

principles of justice and morality being agreed that we find intuitively acceptable. In other words, we can justify opting for one version of the original position over another on the grounds that one produces the principles which emerge from the Intuitive Equality Argument. This, says Rowlands, is so because ‘it is precisely this argument which is based on the principles embodied in our contemporary liberal ideology’.¹³³

2.3.3 Neo-Rawlsian Contractarianism

As noted, and as Rawls himself would point out, there are various possible ways in which the original position could be set up. Rowlands’ Neo-Rawlsianism is based on a version of the original position shaped by the Principle of Equal Consideration and the Principle of Desert that he labels the ‘impartial position’.¹³⁴ Any version of the original position is going to be shaped by the Principle of Equal Consideration. If you do not know who you are in the original position, then you have no way, as Rowlands puts it, of being biased toward yourself; any grounds for bias have been removed by the veil of ignorance.¹³⁵

It has been seen that Rawls’ Social Contract Argument is, at least in Rowlands’ analysis, co-dependent on the Intuitive Equality Argument, which is essentially the Principle of Desert. And, while Rawls does implement the Principle of Desert in describing the original position as he does, Rowlands’ contention is that Rawls does not go far enough in implementing this principle. The basis of Rowlands’ Neo-Rawlsianism is that a more consistent and thorough implementation of the Principle of Desert would transform the original position into the impartial position.¹³⁶

¹³³ Rowlands (2009), p. 139.

¹³⁴ Rowlands (2002), p. 60.

¹³⁵ Ibid.

¹³⁶ Remembering that Rawls designed his original position to deliver principles of justice, while the impartial position is designed to deliver principles of morality. For this reason, one should be cautious of jumping to the conclusion that Rowlands would have Rawls’ original position transformed into his impartial position for the purposes of deriving principles of justice. Rawls’ principles of justice specify how basic social goods should be distributed. But it is not clear that these goods have equal value for rational and non-rational agents. The point being made here though is that this thesis does not discuss these matters, since it is concerned with social contract theory as a moral theory.

The Principle of Desert provides justification for denying the negotiators in the impartial position knowledge about those features, which they possess in the society they are formulating rules for, and which they have no control over. Knowledge of features of ourselves like sex, ethnicity, and natural intellectual and physical aptitudes, is denied behind the veil of ignorance because these are features which we have no control over. They are, as Rowlands puts it, ‘features that we have in no way earned or merited’¹³⁷—in the language of the Intuitive Equality Argument, they are properties we are not responsible for possessing. Within the impartial position, knowledge of which of these properties the negotiators possess in the society they are formulating rules for is excluded by the veil of ignorance because they are morally irrelevant features—and they are morally irrelevant because we have no control over whether or not we have them.¹³⁸

2.3.3.1 *The Exclusion of Knowledge of Species*

Rowlands urges us to consider the property of belong to a particular species: ‘Is this something over which you have any control? ‘Is it something you in any way earned or merited? ‘Clearly not’.¹³⁹ We are simply born a member of a particular species, and thus the property of belonging to the species we do is an undeserved property. Applying the Principle of Desert, we have to admit that our belonging to the species we do is just as morally arbitrary as our sex, ethnicity and eye colour. In the impartial position, knowledge of one’s species in the real world is, thus, just another thing that should be denied behind the veil of ignorance. And, since knowledge of one’s species should be excluded behind the veil of ignorance, so too should knowledge of those features that are tied to being a member of a particular species. This means that knowledge of one’s innate intellectual endowments and capacities for complex rational inference should be excluded behind the veil of ignorance for we have no control over whether or not we have them.¹⁴⁰

¹³⁷ Rowlands (2002), p. 60.

¹³⁸ Ibid, p. 61.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

2.3.3.2 *Moral Agents, Moral Patients and Mere Things*

Rowlands claims that one of the advantages of the impartial position over Rawls' original position, is that the impartial position allows us to be properly sensitive to the distinction between moral agents and moral patients.¹⁴¹ According to Rawls, his account of justice applies only to individuals who have what he calls a 'sense of justice'. And you have a sense of justice only if you are capable of thinking and acting morally. In other words, the original position is restricted to moral and rational agents. One of the things the negotiators know in Rawls' original position is that they are moral agents. And this means that moral patients, i.e. animals and marginal humans, fall outside the scope of Rawlsian contractarianism.

However, whether you are a moral agent or a moral patient is something beyond your control, and so knowledge of this fact is something that should be denied the negotiators in the impartial position. This being so, it would be irrational in the impartial position for the negotiators of a social contract to agree upon principles of morality that favour moral agents, since the negotiators do not know whether they will be a moral agent in the society they are negotiating principles of morality for; they could well end up being an animal or a marginal human. And an irrational choice in the impartial position is an immoral choice in the real world.¹⁴²

Of course, whether or not you are something that is neither a moral agent nor a moral patient, i.e. a non-sentient mere thing, is also something beyond your control, and so the negotiators in the impartial position should be denied knowledge of whether or not they are even sentient in the society they are negotiating principles for. And this would appear to result in the absurdity of mere things, e.g. plants and rocks and toothbrushes, being accorded moral rights. However, this absurdity does not result because it is rational to discriminate against mere things in the impartial position. The reason is that, if you are neither a moral agent nor a moral patient (i.e. if you are not even sentient) in the society

¹⁴¹ Rowlands (2002), p. 65.

¹⁴² Ibid, p. 64.

you are negotiating principles for, then you (from your perspective within impartial position) simply will not be concerned what happens to you (in the real world)—and rationally so.

Within Neo-Rawlsianism, the limits of morality are determined by what the negotiators in the impartial position should rationally be concerned about. That is, membership of the moral community is limited to beings or things that a negotiator could rationally worry about being.¹⁴³ A negotiator can worry about being a sentient animal, since there is something it is like to be one. Sentient animals can suffer, and so when a negotiator considers that they might be a sentient animal in the society they are negotiating principles for, they will want to negotiate principles that protect sentient animals from suffering. But when a negotiator considers that they might be something non-sentient in the society they are negotiating principles for, they will not be concerned to negotiate principles that protect non-sentient mere things.

When a negotiator imagines themselves as something non-sentient, they find there is nothing to imagine, since there is nothing it is like to be a mere thing, and so no principle they negotiate will make things go better or worse for them if they turn out to be a mere thing. It makes perfect sense, therefore, for a negotiator to make sentience the cut-off point for inclusion in the moral community. For the same reason it is this feature that demarcates moral agents and patients from mere things, since the mark of a moral patient is inclusion within the moral community, and moral agents are those beings that further have the capacity for moral reasoning.

2.3.3.3 *The Impartial Position*

Martha Nussbaum, in her book *Frontiers of Justice*, writes that:

¹⁴³ It was stated in the last chapter that Rowlands proposes that nothing and no one is to be denied membership in the moral community. Membership in the moral community equates to an equal place among the negotiators of a social contract. Non-sentient beings and things must be given an equal place, but they do not bother to negotiate because nothing will increase or decrease their suffering, since they do not suffer. Whether you want to say this places them inside or outside the moral community is not a matter of any consequence.

In a very basic way, the whole idea of a contract involving both humans and nonhuman animals is fantastic, suggesting no clear scenario that would assist our thinking. Although the state of nature is not supposed to be an actual historical condition, it is supposed to be a coherent fiction that can help us think well. This means that it has to have realism, at least, concerning the powers and needs of the parties and their basic circumstances. There is no comparable fiction about our decision to make a deal with other animals that would be similarly coherent and helpful....[T]he asymmetry of power between humans and nonhuman animals is too great to imagine any contract we might make with them as a real contract. Certainly we cannot imagine that the contract would actually be for mutual advantage: for if we want to protect ourselves from the incursions of threatening animals we can just kill them, as we do....Thus the Rawlsian condition that no one party to the contract is strong enough to dominate or kill all the others is not met. Furthermore, because animals do not make contracts, we are blocked, here again, from imagining plausibly what a social compact would look like. The type of intelligence that animals possess is not the sort that we need to postulate to imagine a contractual process.¹⁴⁴

The first thing to note is that a Kantian social contract is not for mutual advantage; the fact that a social contract with animals would not be mutually advantageous only succeeds in ruling out making a Hobbesian social contract with animals. The ‘Rawlsian condition’, Nussbaum mentions, that ‘no one party to the contract is strong enough to dominate or kill all the others’¹⁴⁵ is a Hobbesian condition that has found its way into Rawls’ thinking, and relates back to the fact that those strong enough to dominate or kill the weak gain no advantage in contracting with them. As has been seen, the purpose of a Kantian social contract is not mutual advantage, but rather to elucidate the Principle of Equal Consideration and the Principle of Desert. And since Neo-Rawlsianism is supposed to present a purely Kantian form of social contract, it is no criticism of it to point out that a Neo-Rawlsian social contract is not for mutual advantage.

However, Nussbaum’s allegation that the idea of a social contract involving humans and animals does not assist our thinking is an allegation that requires greater attention, since Rowlands describes the impartial position as a ‘heuristic device: an aid to thinking’.¹⁴⁶ Nussbaum contends that a social contract ‘has to have realism, at least, concerning the powers and needs of the parties and their basic circumstances’¹⁴⁷ in order to be a coherent

¹⁴⁴ Nussbaum (2006), pp. 333–334.

¹⁴⁵ Ibid.

¹⁴⁶ Rowlands (2002), p. 66.

¹⁴⁷ Nussbaum (2006), pp. 333–334.

and helpful aid to thinking. Of course Nussbaum is entirely correct that the idea of a contract involving humans and animals is ‘fantastic’,¹⁴⁸ but one wonders why she failed to consider that the negotiators of a social contract could be entirely rational (and so capable of complex negotiations) behind the veil of ignorance, and yet be denied knowledge by the veil of whether they are rational agents in the society they are negotiating principles for. It is an elegantly simple means of enabling social contract theory to include animals in the moral community. And it suggests a similarly simple method for assessing the morality of animal-related practices: imagine you are a rational self-interested negotiator in the impartial position that might, when the veil of ignorance is lifted, be an animal affected by the practice or a human benefited by it, and assess whether you would agree to the practice in those circumstances. Then simply apply what Rowlands calls the ‘golden rule’: if a choice is irrational in the impartial position, then it is immoral in the real world.¹⁴⁹

It may still be objected though that we simply cannot imagine ourselves in the impartial position stripped so thoroughly of our self-knowledge that we do not even know whether we are human. Rowlands, however, clarifies that when we talk of the impartial position, we are not talking about a situation you might literally find yourself in. In fact, he says, the impartial position is not even a possible or imaginable situation, let alone an actual one.¹⁵⁰ No one can lack knowledge of all their unearned properties, or even imagine themselves lacking all this knowledge. To be ‘in’ the impartial position, Rowlands says, is to be reasoning in accordance with certain restrictions. You are in the impartial position when you reason in the following sort of way: ‘As a matter of fact, I have property P (e.g. being male), but, if I did not know whether I have P, what principles of morality would I like to see people adopt?’ You are ‘in’ the impartial position, in the only meaningful sense in which you can ever be in it, when you engage in a process of reasoning of this type.¹⁵¹

¹⁴⁸ Nussbaum (2006), pp. 333–334.

¹⁴⁹ Rowlands (2002), p. 69.

¹⁵⁰ *Ibid.*, p. 66.

¹⁵¹ *Ibid.*

In the impartial position, property P could be any unearned property, e.g. gender, race, species, intelligence, moral agency. To be in the impartial position, Rowlands says, you have to repeat this reasoning process for all unearned properties; all of them have to be put behind the veil of ignorance. However, there is no need to put all your unearned properties simultaneously behind the veil. All that you need to do, according to Rowlands, to be in the impartial position, is to ask yourself about each of your unearned properties in turn.¹⁵²

Also, which property you bracket will depend, Rowlands says, on which question you are trying to answer. Rowlands explains:

If you are trying to work out how to construct a society free of racial discrimination, then ask yourself: “I have the property of being white (or black, or whatever). But suppose I didn’t have this property. How would I like the world to be then?” For the question of how we should treat animals, however, the central question is: “I have the property of being human. But suppose I didn’t have this property. How would I like the world to be then?” Indeed, we can be a lot more specific than this. Suppose, for example, we were trying to work out the moral status of veal farming. Then, the impartial position simply requires that we pretend we don’t know if we are a human or a veal calf. Then, we ask ourselves, “How would I like the world to be?” That is, would we prefer it if the world contained the practice of veal farming or would we prefer it if it didn’t?¹⁵³

Rowlands compares this process to repairing the ship of Theseus while still at sea.¹⁵⁴ In order to avoid being partial to a particular distribution of moral principles on the basis of one’s possessing a given property, he says, one simply has to imagine not having that property and asking oneself what moral principles one would like to see adopted in that situation. Identification of the most adequate set of moral principles, then, is simply, he says, a matter of collating the results from these sort of piecemeal inquiries.

There is something less than satisfactory about these sort of piecemeal inquiries. It would seem though that much of this dissatisfaction derives from our familiarity with Rawls’ theory of justice. Rawls manages to use a social contract device to arrive at two clear and simple principles of justice that (along with a couple of priority rules) can provide a

¹⁵² Rowlands (2002), p. 67.

¹⁵³ Ibid.

¹⁵⁴ Rowlands (1998), p. 137.

scheme for the just ordering the basic structure of society; whereas Rowlands never gets as far as collating the results of his piecemeal inquiries into a set of moral principles. He only gets as far as presenting various animal-related practices and using the impartial position to determine whether or not each of these would be consented to by the negotiators in the impartial position, i.e. whether or not each is morally permissible.

Rawls does, however, have the advantage over Rowlands in this respect, in that Rawls is presenting a theory of justice, and so has set himself the comparatively simple task of selecting which principles should govern the distribution of basic social goods. There are only a handful of reasonable schemes for the distribution of basic social goods, so the task of the negotiators in Rawls' original position is relatively straightforward: pick a scheme. Rowlands does make the task of the negotiators in his impartial position similarly straightforward: pick which animal-related practices you would and would not consent to. This strategy appears to work quite well, since Rowlands discusses animal-related practices that we can easily accept or reject when we place ourselves in the impartial position. However, it will be seen in Chapter Four that Neo-Rawlsianism presents a real challenge to our moral reasoning. Rowlands encourages us to ask ourselves when we place ourselves in the impartial position how we would like the world to be. Designing worlds though is rather more challenging than picking a scheme for the distribution of basic social goods. Such a challenging task invites disagreement, and the strength of social contract theory lies in its ability to reach consensus among the negotiators (with the help of some manipulation of the situation in which the negotiations take place).

The more obvious objection to the idea of imagining, within the impartial position, that one might be an animal in the society one is negotiating principles for, is that it is more than challenging to imagine what it is like to be an animal; it seems downright impossible to imagine this. But Rowlands responds that the idea of imagining is an ambiguous one.¹⁵⁵ Suppose, he says, you are to imagine yourself not being male. This could mean either that you *imagine that* you are female, or that you *imagine what it is like* to be

¹⁵⁵ Rowlands (2002), p. 67.

female. If you are male, then in order to be in the impartial position with respect to questions about gender equality, you only have to *imagine that* you are not male (or rather that you do not know whether you are male). You do not have to *imagine what it is like* to not be male. Similarly, you do not need in the impartial position to *imagine what it is like* to be an animal, in order to *imagine that* you are not human (or rather that you do not know whether you are).

Chapter 3

Rowlands' Argument for Vegetarianism

3.1 VEGETARIANISM AS A TEST CASE

The idea of the impartial position gives us, Rowlands claims, a powerful imaginative device for thinking about the moral questions and issues surrounding our treatment of animals.¹⁵⁶ The moral question with which this chapter is concerned is whether vegetarianism is morally required because of the harm meat-eating does to the animals involved. Both Rowlands and Zamir argue that vegetarianism is morally required for this reason. An important test for Rowlands' Neo-Rawlsianism, and, more generally, the approach of applying broad moral theory, will be whether it offers an all-round better argument for vegetarianism than Zamir's Minimalism. This is a core issue in animal ethics, and so the relative performance of Rowlands' and Zamir's respective arguments for vegetarianism will go a long way to determining whether the former's Neo-Rawlsianism, or the latter's Minimalism, makes for a better moral argument for animal liberation, and so should guide reform in our treatment of animals.

However, Rowlands' argument for vegetarianism has two somewhat separate parts to it: (1) the argument that painlessly killing an animal harms the animal; and (2) the argument that eating animals is morally wrong because of the harm meat-eating does to the animals involved. Zamir's argument for vegetarianism has the same two parts to it, but they are less separable in his argument. The whole of Zamir's argument is guided by his minimalist framework, but Rowlands' Neo-Rawlsian framework cannot tell him whether painlessly killing an animal harms the animal, and so his argument for this claim is not Neo-Rawlsian. This should be unsurprising, since the question of whether painlessly killing an animal harms the animal is not a purely moral question about whether a

¹⁵⁶ Rowlands (2002), p. 70.

practice is morally wrong, and Neo-Rawlsianism, like other broad moral theories, can only answer purely moral questions about whether particular practices are morally wrong.

So Neo-Rawlsianism cannot be judged on the basis of the strength or weakness of Rowlands' argument that painlessly killing an animal harms the animal. But the question of whether painlessly killing an animal harms the animal is of central importance in the vegetarianism debate, and is important to consider in explaining Zamir's Minimalism. It is altogether a question that it would be unfortunate to avoid, and so it will not be avoided. But it is to be kept in mind that Rowlands' Neo-Rawlsianism is only half of his argument for vegetarianism, and so his Neo-Rawlsianism and his argument for vegetarianism should be judged separately.

Another preliminary point to be noted is that vegetarianism in this thesis refers to the view that it is morally wrong to eat meat derived from the killing of live healthy animals. Virtually all of the meat we eat is derived in this way. The meat of animals that have died natural deaths, or been killed for reasons other than eating, is not generally considered to be good for human consumption, so this is a minor point. But some moral arguments do seem to object to meat-eating as an act independent of the preceding acts of farming and killing the animals involved.¹⁵⁷ It is unlikely that either Rowlands' Neo-Rawlsianism or Zamir's Minimalism would object to a world in which only the meat of animals that have died natural deaths, or been killed for reasons other than eating, is consumed. But such a world is so different to the real one, that the matter is unworthy of attention here.

It is also to be noted that the sort of vegetarianism referred to in this thesis, is what is normally referred to as 'moral vegetarianism'. There are environmental, nutritional, social justice and spiritual reasons that are advanced for vegetarianism that may have a moral element to them. What is normally referred to as 'moral vegetarianism' is the claim that we are morally required to be vegetarian because of the harm meat-eating does to the animals involved. If you added the other reasons for being vegetarian, you might have a very compelling case for vegetarianism, but this thesis focuses on whether the harm

¹⁵⁷ See, e.g., Diamond (2004).

meat-eating does to the animals involved is reason enough in itself for vegetarianism to be morally required.

3.2 THE HARM OF DEATH TO ANIMALS

Although the harm meat-eating causes animals is by no means limited to the necessary act of killing them first, and although the manner in which they are killed is rarely totally painless, it would clearly be very helpful to Rowlands' argument for vegetarianism if he could show that even a painless death harms an animal. This is because it is frequently contended that animals killed for their meat are killed painlessly, and that a painless death does not harm an animal. If those contentions were true (and the manner of raising animals for their meat up to the point they are killed raised no moral grounds for objecting to meat-eating), then there would clearly be no basis to any claim that vegetarianism is required because of the harm meat-eating does to the animals involved.

If the claim that a painless death does not harm an animal is Scylla for liberationists, then the claim that human and animal lives are of equal value is Charybdis. It may seem surprising that the latter claim is problematic for liberationists, but the problem arises out of so-called 'lifeboat scenarios'. These are thought experiments in which one must choose between saving the life of an animal and saving the life of a human, such as if one were on a lifeboat and had to throw overboard (and so drown) either an animal or a human in order to prevent the lifeboat sinking and everyone onboard drowning. Critics of liberationism contend that: (1) we all know that it is the animal that ought (morally) to be thrown overboard; (2) a liberationist will have to say that it is equally legitimate to save the animal as it is to save the human; and, therefore, (3) liberationism is absurd or fundamentally misguided. Rowlands endeavours to show that (2) (and therefore (3) also) is not true, and yet an animal is still harmed by a painless death (albeit not as much as a human is), and so a human life can be acknowledged as more valuable than an animal life without giving up the belief that humans and animals are entitled to equal consideration.

There is, however, yet another claim that Rowlands wants to avoid, in addition to the claims that a painless death does not harm an animal, and that human and animal lives are of equal value. The third claim Rowlands want to avoid is one Tom Regan endorses that says that: ‘in any given lifeboat scenario, it is morally correct to save the life of one human over *any number* of animals’.¹⁵⁸ Acting in accord with this third claim would entail that if you had to choose between saving one human and saving, say, one million animals, you should choose to save the human. Rowlands claims that this goes much too far.¹⁵⁹

Rowlands, then, wants an argument that shows that a painless death is a harm to an animal; that a human life is more valuable than an animal life; and that preserving human life does not trump preserving animal life (i.e. the imperative to preserve animal life may outweigh the imperative to preserve human life in some circumstances). Rowlands does offer an argument he purports shows these three things in his book, *Animal Like Us*.¹⁶⁰ As has been noted, this argument is not part of his Neo-Rawlsianism; it is an important part of his argument for vegetarianism, but it is distinct from the Neo-Rawlsian part of that argument. In light of that, it seems there is no obligation to outline *Rowlands’* argument here. It would be enough to note that Rowlands needs such an argument to complete his argument for vegetarianism, since this thesis only set out to assess Rowlands’ Neo-Rawlsianism. However, the opportunity will be taken to venture some *original* (though brief, and thus incomplete) thoughts on how the argument might be made. Ideally, Rowlands’ argument would also be assessed, but there simply is not space.

It is important to appreciate that the problem of specifying what harm there is in dying is a problem whether we are talking about humans dying or animals dying. It is, moreover, a complicated philosophical problem that cannot be given full consideration in this thesis. What follows is merely a brief foray into the issue, since it would be unfortunate to avoid it completely. Consideration of this problem traces back at least to Epicurus’ argument

¹⁵⁸ Rowlands (2002), p. 71. See Regan (2004), p. 325.

¹⁵⁹ Ibid.

¹⁶⁰ Rowlands (2002).

that death cannot harm us because, while we are alive, death has not yet happened, and after we are dead, we are no longer around to be harmed.¹⁶¹

The most notable response to the Epicurean argument is that provided by Thomas Nagel.¹⁶² Nagel seeks to defend our strong intuition that death does indeed harm us. According to Nagel, the Epicurean argument fails because it overlooks the point that life is intrinsically good, and so death, in depriving us of our future life, harms us. This kind of harm is sometimes referred to as ‘deprivation harm’. Deprivation harm is an unusual kind of harm because it does not always *appear* to involve any negative experience.

Epicurus, it seems, was of the view that an event is only harmful to us if it causes us some negative experience. Stubbing my toe, for example, is harmful to me if it causes me pain or disability, but it is not harmful if I stub it so lightly it merely relieves me of an itch that happened to be present in my toe. Nagel, on the other hand, contends that we can be harmed by something that causes us no negative experience. Nagel alleges that we are harmed if we are ridiculed or betrayed by a friend behind our back, even if we never discover the ridicule or betrayal, and never suffer any ill effect resulting from the ridicule or betrayal. It is suggested, however, that, though we can be harmed without being aware of it, we cannot be harmed by something that does not cause us any negative experience.

It is suggested that Nagel is simply wrong in alleging that we can be harmed by something that never has any ill effect on us. Our intuition that our friend harms us in ridiculing or betraying us behind our back is based on our assumption that the ridicule or betrayal will naturally harm us by depriving us of some benefit, such as the respect of others. If the ridicule or betrayal does not deprive us of any benefit, and does not cause us hurt feelings by being discovered, then it may still be wrong, but it would be a contortion of language to call it a harm. If a friend ridicules me behind my back, and this does have some ill effect on me, such as depriving me of the respect of a colleague, I may not be *aware* that I have been harmed, since I might never discover the ridicule, and my

¹⁶¹ See Epicurus (1966). See also Rowlands (2002), p. 72.

¹⁶² See *ibid* and Nagel (1970).

colleague might not subject me to active disrespect, but I will *experience* the harm done me, because I will not enjoy my colleague's respect and the benefits flowing from that respect. My experience of the harm my friend has done me is my experience of my life as it is minus the respect of my colleague. This is a negative experience because it is less positive that it would have been if my friend had not ridiculed me behind my back.

In the case of the deprivation harm of death, we *appear* to have no experience whatsoever of being deprived of our future life, because we are dead, and so are incapable of experience. If we know we are dying before we die, we may have the negative experience of distress associated with knowing we are about to be deprived of our future life, but this distress is a harm distinct from the harm of being deprived of our future life. If, unknown to you, you are the sole beneficiary of your millionaire uncle's will, and I commit some fraud that makes me the sole beneficiary, it seems fairly clear that I have harmed you. It seems that I have harmed you in spite of the fact that you will never experience the distress that would come from knowing I have cheated you out of all that money. The negative experience that constitutes the harm I have done you consists in the difference in value between your future experiences after my fraud, and the future experiences you would have had if I had not committed the fraud.

Of course, in the example given, you keep on living after my fraud, so there is some sense to be made of the idea that I have caused you a negative experience by presumably making your future experiences less positive than they would have been if I had not committed the fraud. But if I had simply killed you, rather than committed the fraud against you, you would not be around to have the negative experience of having future experiences less positive than they would have been. You will have no future experiences, because you will be dead. But if it makes sense to say that an experience is negative because it is less (in a qualitative sense) positive than it would have been, it seems that should make sense to say that it is a negative experience to have less (in a quantitative sense) positive experiences than one would have had.

After my fraud, you may have a happy life; not as happy presumably as it would have been if I did not commit my fraud, but still happy. I have harmed you by making your life less happy than it presumably would have been if I had not committed my fraud. Of course, the presumption contained in that statement may be wrong, and you may have a happier life because of my fraud. It seems unavoidable that at the point in time I commit my fraud (or kill you), the deprivation harm I do you at that time is, by its nature, what we might call ‘possible harm’, i.e. harm that will possibly be experienced, and experienced as less valuable (or simply quantitatively less) future positive experiences, but will not certainly be experienced.

Rowlands contends that possible harm is not in fact a form of harm, because it is not *actual* harm—in the case of possible harm, no *real* harm has yet been experienced.¹⁶³ But it seems that this claim can be countered by pointing out that, if I possess a lottery ticket for a million-dollar prize, I do not, obviously, *actually* have a million dollars yet (and so would not be deprived of a million dollars if I were deprived of my ticket), but I do *actually* have a chance of having a million dollars (and I would be deprived of that chance if I were deprived of my ticket). Though intangible, chances, possibilities, potentialities and probabilities are things we seem to *actually* possess. My chances of dying in a car accident are higher if I do not wear a seat belt. If my lower chance of dying in a car accident when wearing a seat belt were not something I *actually* possess in some sense, why would I bother wearing a seat belt? I only wear a seat belt because it secures me a lower chance of dying in a car accident.

So if the idea of deprivation harm as *possible* harm is objected to, it may be better to think of deprivation harm as *actual* harm to our possibilities. If you have a one in two chance of being happier after inheriting a million dollars from your uncle, then I have deprived you of that one in two chance of being happier by defrauding you of your inheritance. Possibilities are *real* things that we possess. In some instances we will not be aware that our possibilities have been harmed, as when I defraud you of your inheritance, but the harm I have done to your possibilities enters your experience as the difference in

¹⁶³ Rowlands (2002), pp. 72–76.

value between the future experiences you *will* have, and those you *would* have had if I had not defrauded you.

But the problem still remains of how you can have the negative experience of having ‘simply less’ future experiences, if this has been the result of me killing you, meaning you are not around to have this negative experience. Several answers to this problem have been suggested in the literature. But there is not space to explore them here, and so all that will be offered here is a couple of suggestions.¹⁶⁴ The first being that you possess a great range of chances of various positive future experiences at the moment before I kill you, and, in the moment I set about killing you, you move from a state of experiential being in which you have many chances to a state in which you have none (this latter state being massively less valuable than it *would* have been if I had not set about killing you). It must be admitted that this proposal sounds less than convincing.

Another way of approaching the matter is to suggest that the negative experiential aspect of dying occurs not just immediately prior to death, but occurs *retrospectively* back across the whole of one’s preceding life. That is, having a shorter life is less positive experientially than a longer life, and so one’s life *as a whole* becomes a less positive experience by being cut short. The suggestion is that the value of our life is to be looked at holistically, so that the end of our lives, and the deprivation of future life that entails, is actually part of the whole of our life up to the point where it ends. This suggestion seems more convincing, but it would be too tangential to dedicate further space to arguing the point in this thesis. It is more relevant to move on to consider the differences between humans and animals in terms of the harm of death, that would see both harmed by death, but humans harmed more by death than animals, but not so much more that a human life is *always* more valuable than an animal life, or more valuable than *any number of* animal lives.

Both humans and animals are capable of positive experiences, and both are harmed by being deprived of positive future experiences, as when they are killed. It is sometimes

¹⁶⁴ For a good summary of the various answers that have been suggested see Luper (2009).

argued that the higher pleasures humans are capable of experiencing, e.g. the pleasure of having a philosophical debate, are more valuable than the more basic pleasures that animals are restricted to, e.g. the pleasure of satisfying hunger. It could be suggested that human lives are more valuable than animal lives because, in dying, humans are deprived of more (in a qualitative sense) valuable positive future experiences than animals are. If it is correct to talk about the harm of dying as being deprived of a range of chances of various positive experiences, then certainly it is true that humans have a greater range of such chances. And talking about the harm of dying in this way would make it clear that a person with a longer and more promising life ahead of them, loses more in dying than someone with a shorter and less promising life ahead of them.

The most obvious difference between the value of human and animal lives though relates to the fact that humans do a lot more than animals in the present for the sake of their future, or they, at least, have a much stronger sense that much of what they do in the present is for the sake of their future. Humans have a constant sense of investing in their future by electing to do things in the present that bring them less pleasure than if they were to act without regard for their future. Humans also invest in their future constantly simply by thinking about their future. There is a clear sense in which if these investments humans make in their future cannot mature because they die first, then what has been invested has been wasted, and this must be acknowledged as a harm. It is easy to locate when the harm occurred: it occurred at the time of investment. If we had been living for today, rather than investing for tomorrow, our experience at the time in question would have been more positive. If that sacrifice does not bring reward in our future, then we have harmed ourselves in making an unrewarding sacrifice. Death not only harms us in depriving us of our future life, it also harms us in undermining all that we have done for the purpose of bringing something about in our future life.

The claims that humans invest more than animals in their future; that humans possess a greater range of chances of various positive future experiences than animals; and that humans, in dying, are perhaps deprived of more (in a qualitative sense) valuable positive future experiences than animals are; indicate that human life is more valuable than animal

life. But animals do have positive experiences, and so have a range of chances of various positive future experiences that they are deprived of by death, and so they are harmed by death.

The remaining matter to address in this section is to show that in some circumstances an animal life, or many animal lives, will be more valuable than a human life. This is in order to avoid Regan's conclusion that we should sacrifice the lives of any number of animals—whether it be a million, or a billion—to save just one human life.¹⁶⁵ This conclusion of Regan's is avoided here because under the argument put forward in this section, the differences between the harm death does a human and harm death does an animal are merely differences in the degree of harm. So, while human life and animal life may be assigned different weights, they are weighed on the same set of scales, and so the preservation of human life does not *trump* the preservation of animal life. The life of a human who is very old, and so possesses few chances of future positive experiences, and whose past investments in their future have either already matured or are no longer able to mature, could quite easily be seen as less valuable, under the argument put forward in this section, than the life of an animal who is very young, and so possesses many chances of future positive experiences (even if they are less varied and valuable in themselves). Or, at any rate, the lives of several such very young animals may be more valuable than the life of the one very old human. This weighing may not be easy, but it does seem possible to do. But the important point to come away with is that animals are harmed by being killed, even if it is done painlessly.

3.3 ROWLANDS ON EATING ANIMALS

Moral vegetarians claim that meat-eating harms the animals involved, and so meat-eaters exploit the difficulty in proving that painlessly killing an animal harms the animal to contend that moral vegetarianism is mistaken. Meat-eaters contend that, as long as the animals are killed painlessly (and meat-eaters contend the animals are), meat-eating does

¹⁶⁵ See Regan (2004), p. 325.

not harm the animals involved. Rowlands has three lines of response to this contention.¹⁶⁶ The first is to argue that painlessly killing an animal does harm the animal, and to further argue that to painlessly killing animals for their meat is morally wrong. The second is to argue that, even if the animals were killed painlessly and a painless death did not harm an animal, the manner in which animals are raised for meat-eating harms the animals involved, and is morally wrong. Rowlands' third line of response is that, even if a painless death did not harm an animal, the manner in which animals are killed for meat-eating is painful (and thus harmful), and is morally wrong.

Rowlands' second and third lines of response involve him in retelling the horrors of factory farming. It is some of the most important work there is to be done in the field of animal ethics, simply being clear on the reality of what treatment of animals precedes the meat products we find on the supermarket shelves. These facts, in themselves, often provide as powerful a case for vegetarianism as any philosophical argument. But the purpose of this thesis is to consider philosophical argument, so the horror stories of factory farming will not be retold here.

3.3.1 Applying Neo-Rawlsianism to Meat-Eating

'Working out what is morally right and wrong', Rowlands says, 'amounts to choosing how you would like the world to be, but choosing this from the perspective of the impartial position. 'In doing this', he says, 'you follow the golden rule: *if it is irrational to choose a situation, institution, or course of action in the impartial position, then it is immoral to choose this situation, institution, or course of action in the real world*'.¹⁶⁷ Thus Rowlands assesses whether meat-eating is morally permissible by asking the question: 'would it be rational, from the perspective of the impartial position, to choose a world where humans use animals for food?' He also formulates the question thus: 'In the impartial position, not knowing if you are going to be human or an animal eaten by

¹⁶⁶ See Rowlands (2002), ch. 5.

¹⁶⁷ Rowlands (2002), p. 100.

humans, would you opt for a world like the present one?’¹⁶⁸ And his short answer to these questions is that, if you did opt for a world like the present one, then far from being rational, you would be a raving lunatic.¹⁶⁹

The strength of this claim is due to the horrors of factory farming and certain slaughter methods that still exist. Rowlands claims that factory farming is the norm; it is, he says, the rule rather than the exception.¹⁷⁰ He also claims that slaughtering an animal under humane slaughter protocols is still painful for the animal, that it is not infrequently performed incompetently so that it is even more painful, and that a significant proportion of meat comes, anyway, from animals killed under a ritual slaughter exemption to these protocols.

Factory farming is the norm because it is the most cost-effective and profitable method of producing meat. If factory farming methods were illegal and slaughtering methods had to be as painless as possible, meat would be more expensive. It may even be so expensive that the average person could not afford to eat meat. Applying Neo-Rawlsianism, in assessing whether factory farming methods and current slaughtering methods are morally right or wrong, you must ask yourself whether it would be rational for you, when in the impartial position, to permit these methods in the real world. In the impartial position you do not know whether you are, in the real world, a human who will enjoy the pleasures of eating the cheap meat produced by these methods, or an animal who will suffer the horror of being raised and killed under these methods. You must weigh the gravity and the likelihood of the harm that would result from not permitting these methods, i.e. losing (as a human) the pleasures of eating cheap meat, against the gravity and the likelihood of the harm that would result from permitting these practices, i.e. suffering (as an animal raised for its meat) the horrors these methods inflict on animals.

It is not a difficult equation. Since one human will typically eat many animals in the course of their lifetime, there is a high likelihood that you will turn out to be an animal

¹⁶⁸ Rowlands (2002), p. 100.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid, p. 110.

raised for your meat in the real world. And losing the pleasures of eating cheap meat would be substantially offset for humans in a world without factory farming and current slaughtering methods by the pleasures (even if lesser) of a vegetarian diet. The slightly greater pleasures afforded humans living in a world with cheap meat barely register on the scales when weighed against the high likelihood you will turn out to be an animal in that world that must endure the horrors of factory farming. In the impartial position, the rational choice is clear, Rowlands says.¹⁷¹ It would be irrational to choose a world that contained factory farming and current slaughtering methods. Therefore, in the real world, such methods are immoral.

Rowlands not only objects to factory farming and current slaughtering practices, he further claims that in the impartial position you would elect to make meat-eating impermissible in the real world, regardless of how the animals involved are raised and killed. This follows from the fact that, in considering meat-eating in the impartial position, you are weighing losing, as a human, some culinary pleasure against losing, as an animal raised for its meat, your life. Even though animal lives are less valuable than human lives, Rowlands still seems right to suggest it is obvious that losing your life as an animal is much more grave a loss, than losing some culinary pleasure as a human. That being so, it is wrong, according to Neo-Rawlsianism, to kill animals for their meat, regardless of the manner in which they are raised and killed.

Of course a different conclusion is reached if we are considering people who must eat meat for their survival. It is quite possible that many Inuit people live in climates that require them to eat meat for their survival, and it may be very impractical for them to relocate.¹⁷² Since human lives are more valuable than animal lives, it is, of course, morally permissible, according to Neo-Rawlsianism, for these people to eat meat. However, it is to be remembered that the relative value of human and animal lives is to be weighed on the same set of scales, so there is a limit to how many animals can be killed for their meat in order to allow a human to survive. It is not inconceivable that the lives

¹⁷¹ Rowlands (2002), p. 113.

¹⁷² See *ibid*, p. 160.

of 5000 animals might be more valuable than the life of one Inuit human, so if 5000 animals needed to be killed to feed one Inuit human over their lifetime, it would seem that it would be rational in the impartial position to determine that Inuit people living in climates that require them to eat meat for their survival must relocate, however difficult (or impossible) that may be to achieve. And if this is determined to be a rational requirement in the impartial position, then it becomes a moral requirement in the real world. Of course, this sort of assessment would be very difficult to make, and Rowlands is guilty of passing over such difficulties. It is difficult to conceive how we could ever determine the relative value of humans and animals. This is a not insignificant problem for Neo-Rawlsianism at the practical level.

There is another practical problem inherent to Neo-Rawlsianism: it may be wondered whether one, in the impartial position, would elect a world in which animals may not be killed for their meat, since this would mean that far fewer animals would be farmed, and one would presume the animals no longer farmed may be released to the wild where their deaths will be at least as painful as current slaughtering methods. There is a general difficulty with Neo-Rawlsianism in ascertaining the exact nature of the alternative worlds one is choosing between in the impartial position. However, Rowlands addresses this difficulty. If we did not kill animals for their meat, we might wonder what will happen to all the animals that we are currently raising for their meat. It will be uneconomic to continue to raise them, but, if they are left untended, they will die slow and/or unpleasant deaths. Rowlands' answer to this seems to be that we should care for the animals currently alive that were being raised for their meat until they die naturally, and we should ensure that they only reproduce in numbers we can care for in a world in which meat-eating is morally impermissible.¹⁷³ This would mean a massive reduction in the numbers of these animals, but animals are not harmed by a reduction in their numbers (so long as they can still socialise), and so there can be no objection to this reduction in numbers.

¹⁷³ See Rowlands (2002), p. 120.

Chapter 4

A Social Contract with Pests and Wild Animals

4.1 TWO HARD CASES FOR NEO-RAWLSIANISM

There are two issues that might be called hard cases for Neo-Rawlsianism. Rowlands' consideration of these two issues is brief, and a full consideration of them is beyond the scope of this thesis. But in the interests of moving towards a judgment of Neo-Rawlsianism, this section outlines an application of Neo-Rawlsianism to these two hard cases as a *reductio ad absurdum* of Neo-Rawlsianism.

The first hard case arises from the fact that some sentient animals are pests. Pests are creatures that we consider undesirable, and even intolerable, and thus we have no qualms about killing them. But sentient pests do not often pose a direct threat to our lives, and, when they pose an indirect threat to our lives, it may not be a significant threat.¹⁷⁴ Thus, even though we may intuitively believe that it is permissible to kill pests, Neo-Rawlsianism will have a hard time supporting depriving an animal of its life for the reasons we often kill pests. But pests can make our lives very difficult, so if Neo-Rawlsianism says that killing pest animals is, in most cases, morally impermissible, then it is going to be impossible to sell the position, since most, if not all, people will find this imposition grossly unreasonable.

The other hard case for Neo-Rawlsianism relates to the possibility that, under it, we might find ourselves with a positive obligation to protect wild animals from the hardships of life in the wild. We intuitively believe that wild animals should live their lives free

¹⁷⁴ This is based on the assumption that insects are not sentient, since insect pests pose a very significant indirect threat to our lives when they are not prevented from destroying crops. Before the development of effective insect pest control, famine was a regular occurrence, and agriculture generally was much less efficient, forcing most people to live at a subsistence level. Of course, sentient pests, such as mice and rabbits, can also pose a significant impediment to crop production. Whether this impediment is a significant threat to our lives is a question beyond the scope of this thesis.

from our interference. But the lives of wild animals are often unpleasant and cut short by predators, starvation, and other such hardships. And Neo-Rawlsianism will have a hard time supporting leaving wild animals to these hardships, when we could step in and alleviate them, even if it is at considerable cost. But if Neo-Rawlsianism were found to require that we interfere with the lives of wild animals, such that they cease to be truly wild, and require that we do this even if it is at considerable cost, then, again, it is going to be impossible to sell the position.

4.2 A SOCIAL CONTRACT WITH PESTS

If we should make a social contract with sentient animals, then *a fortiori* we should make a social contract with sentient pest animals. There is some debate over whether insects are sentient, but we will assume they are not. There are plenty of animals that more clearly are sentient that we regard as pests. Mice and rats invade our homes. They may pose some threat to our health, but they are unwelcome regardless. Our only practical way of dealing with them is to kill them; releasing them to the wild would either be equivalent to killing them, or see them simply reinvade housing. Rabbits plunder our fields, and so threaten the livelihoods of farmers and the prosperity of us all. The only practical way of dealing with them is to kill them. Possums, pigs and deer damage the native bush that we value so highly. The only practical way to deal with them is to kill them. And rats, stoats and ferrets raid the eggs of the native birds we go to great expense to conserve. And the only practical way to deal with them is to kill them.

However, if we place ourselves in the impartial position, we must consider that we might be one of these pest animals in the real world, and we must ask ourselves if we would permit the killing of these animals knowing that we might be one. Whether we are pests or humans in the real world, we have what Rowlands calls a ‘vital interest’ in our life.¹⁷⁵ But our interests in the appeal of a pest-free home, the productivity of pest-free fields, and the beauty of pest-free forests, are all non-vital interests. However, our interests in these things may turn into vital interests if the pests start to pose a significant threat to our

¹⁷⁵ Rowlands (2002), p. 165.

health. But, so long as it is a question of vital versus non-vital interests, there is, Rowlands says, ‘no contest’.¹⁷⁶

What Rowlands means is that, in the impartial position, you would not agree that pest animals may be killed for the sake for non-vital human interests. So it seems that Neo-Rawlsianism does not permit the killing of possums, deer and pigs for the sake of conserving native bush, and does not permit the killing of rats, stoats and ferrets if these animals merely steal the eggs of native birds. It further does not permit killing the mice and rats that invade our homes, unless perhaps they pose a significant threat to human health. And it does not permit killing the rabbits that plunder our fields, unless perhaps there is a significant threat of famine. In not permitting the killing of any of these pest animals, Neo-Rawlsianism would seem to lose all credibility. Moral vegetarianism is difficult to sell to people currently, but this might change. However, it is inconceivable that people will ever be sold on the idea of living in vermin-infested homes with fields plundered by rabbits and forests ravaged by possums, deer, pigs, rats, stoats and ferrets. This is a real problem for Neo-Rawlsianism. The advantage of a broad moral theory, like Neo-Rawlsianism, is that it is straightforward to apply to any relevant moral question. The disadvantage is that if any application produces a result that is intolerable, the whole theory is undermined.

4.3 A SOCIAL CONTRACT WITH WILD ANIMALS

If we should make a social contract with sentient animals, then *a fortiori* we should make a social contract with sentient wild animals. It will be clear from what has already been said that the social contract will not allow hunting wild animals for the thrill of it. That is unsurprising. A more concerning implication would be if the social contract imposed on us a positive obligation to protect wild animals from the hardships of life in the wild, e.g. predation.

¹⁷⁶ Rowlands (2002), p. 165.

The claim that we have a duty of assistance to prey animals is, Rowlands says, clearly intolerable.¹⁷⁷ Fortunately, he continues, Neo-Rawlsianism does not entail that we have such a duty. In the impartial position, one of the things one does not know is whether one is going to be a predatory animal or a prey animal in the real world. Given that this is so, Rowlands claims that to opt for any moral principle which entailed that we have duties of assistance to prey animals would be potentially disastrous. If you turn out to be a predatory animal, then your choice in the impartial position has condemned you to a slow death through starvation. But even if you turned out to be a prey animal, it would be equally irrational to make this choice. One of the things you would know in the impartial position is that, when prey animals are not preyed upon, the number of such animals explodes drastically, and disease and starvation are the result. So, Rowlands argues, even if you turned out to be a prey animal, in choosing a world where humans routinely interfere with the attempts of predators to catch you, you choose a world where you are far more likely to succumb to disease and starvation, instead of a relatively quick end at the hands of a predator.¹⁷⁸

Rowlands' conclusion is that it is better for you, whether you turn out to be a predatory animal or a prey animal, if a principle of non-interference is adopted in relation to wild animals. It seems a little too convenient how the facts purportedly come together to support this conclusion, and it is suggested that the picture is a rather more complex. It has been seen that Rowlands' answer to the problem of farm animals dying on mass of starvation and neglect following the imposition of vegetarianism is to drastically reduce the number of these animals by not allowing them to reproduce. His proposal is that farm animals that cease to be of value as farm animals following the imposition of vegetarianism be reduced in number to the point where it is economic to preserve them as zoo and companion animals. Of course, following that logic, it seems that we would be morally required to eliminate a species if, following the imposition of vegetarianism, people were unwilling to care for members of the species and, consequently, the species

¹⁷⁷ Rowlands (2009), p. 169.

¹⁷⁸ Rowlands (2002), pp. 163–164.

would slowly and painfully die out as a result of neglect.¹⁷⁹ What is the result when this sort of logic is applied to wild animals?

It is surely within the realm of possibility that we could reduce the number of predatory and prey animals by controlling their reproduction. We already play a fairly active role in controlling the reproduction of a number of predators, so it seems within our power to remove them from the wild without needing to let those currently alive starve to death. As for prey animals, we again probably have the ability to give many of these a better lot than they currently have. If we do not have the ability to manage their reproduction, we must at least have the ability to control their numbers with euthanasia, which would be rather less painful than death by predator. Most ambitiously, we might imagine dismantling the wild and replacing it with zoos, where formerly wild species live safe and pampered lives. Of course, we would have to satisfy ourselves that there would not be ecological consequences (or possible ecological consequences warranting a precautionary approach) that would make this prospect unattractive in the impartial position. If we were so satisfied, then it seems that we would opt in the impartial position to dismantle the wild in this way, and thus there would be a moral requirement in the real world to undertake this dismantling of the wild.

If it is objected that replacing the wild with zoos would be uneconomic, and that formerly wild species would be harmed by having their freedom limited by being placed in zoos, it might be considered whether in the impartial position we might opt to simply eliminate all wild species. Rowlands claims that animals are not harmed by a reduction in their number. Implicit in this claim is the claim that animals that have not yet come into existence are not harmed if they are prevented from coming into existence. In the impartial position, the thought that you might be a lion in the real world does not give you reason to be concerned about a proposal to eliminate all lions, since, if the proposal is

¹⁷⁹ Of course it may be possible to make an argument that there is some moral obligation to preserve such a species, and thus care for its members, but, since members of the species are not harmed by not coming into existence, that argument would have to derive from concerns other than the present concern with the welfare of the animals.

agreed upon, you will then simply be some other sentient animal or a human in the real world.

It is troubling that Neo-Rawlsianism has this apparent lack of concern for the preservation of wild species. Of course it can be argued that since humans value the preservation of wild species, we will have reason in the impartial position to preserve wild species, since we might be human in the real world. The problem with that argument is that it does not seem to give the negotiators in the impartial position reason to preserve humans and domesticated animals.

Maybe it would be rational in the impartial position to agree to the elimination of humans and domesticated animals. In considering such a proposal in the impartial position, we must consider that agreeing to it would mean we would know ourselves to be wild animals in the real world, and they certainly do not care if there are humans and domesticated animals in the world. In knowing in the impartial position, by this means, that we will be wild animals in the real world, it is suggested that we would agree to the elimination of humans and domesticated animals, given the threat humans pose to wild animals and their habitats. Moreover, humans and domesticated animals produce greenhouse gases at a rate that will do significant damage to the world in the years to come. Add to this the off-the-cuff suggestion that wild animals in their free and wild state have more pleasant lives than humans with their tendency to self-destruction and despair, and it is suggested that it would indeed be rational in the impartial position to agree to the elimination of humans and domesticated animals.

It is enormously complicated trying to work out how we would design the world in the impartial position. If Neo-Rawlsianism in fact leads, as suggested, to the conclusion that we are morally obliged to wipe out the human race and domesticated animals, then that would seem a clear *reductio ad absurdum* of the position. But even if that conclusion can be countered, it has been demonstrated that Neo-Rawlsianism involves a level of complication and wild speculation that is unattractive. The mere fact that Neo-Rawlsianism must seriously consider genocide as an option would seem to indicate that

there is something wrong with it as a moral theory. It is an upshot of the fact that the reasoning employed in the impartial position is amoral. This strategy of seeking to substantially substitute amoral for moral reasoning always carried the risk of producing something monstrous; it is questionable whether it is really possible for a moral theory to go in that direction whilst retaining its status as a *moral* theory.

PART B

MINIMALISM

Just because we *can* make a social contract with animals, and should (in principle) allow them to participate in negotiating a social contract (if we make one), does not mean that we *should* reform our treatment of animals by making a social contract with them. Indeed, given that it has been argued that Neo-Rawlsianism succumbs to a *reductio ad absurdum*, we clearly should *not* make a social contract with animals if we do not need to. One of the assumptions adopted for the purpose of limiting the scope of this thesis was that Neo-Rawlsianism is superior to other broad moral theories, so we cannot look to another broad moral theory for an alternative to making a social contract with animals as a means of morally regulating our interaction with them.¹⁸⁰

Part B will first outline an alternative to making a social contract with animals that is not another broad moral theory. This has been labelled Zamir’s Minimalism, owing to the fact that it is the approach described by Zamir in his book *Ethics and the Beast*,¹⁸¹ and it is described in that book as a ‘theoretical minimization’ of the moral argument for animal liberation.¹⁸² Zamir’s Minimalism is founded on the simple demand that it be specified what it is that animals lack that validates treating them in ways it would be objectionable to treat humans.

Important aspects of Zamir’s approach are the ‘deradicalization of the theoretical underpinnings of liberationism’¹⁸³ and ridding liberationism of the need to establish moral status for animals. The deradicalization is based on Zamir’s claim that his approach

¹⁸⁰ Of course, if we use a social contract device to inform us of the demands of morality in all matters not relating to our treatment of animals, it would seem inconsistent not to use a social contract device to reform our treatment of animals (presuming that the device—unlike those of Rawls and Scanlon—can be used so). But this thesis restricts itself to considering, in isolation from the rest of morality, the question of how the moral argument for animal liberation should be made.

¹⁸¹ Zamir (2007).

¹⁸² *Ibid.*, p. xi.

¹⁸³ *Ibid.*

to liberationism can accommodate speciesism. This promises to dissolve the conflicts that arise between broad moral theory approaches to animal liberation and some of our strongly held intuitions. But most important for the purposes of this thesis, is that Zamir avoids nesting his claims on behalf of animals within a broad moral theory, such as social contract theory, making his Minimalism a genuine alternative to the approach of applying broad moral theory to make the moral argument for animal liberation. Of course, since Part A concluded that Neo-Rawlsianism succumbs to a *reductio ad absurdum*, it must come as no surprise that Part B will conclude that Zamir's Minimalism offers a better moral argument for animal liberation. However, Part B will criticize Zamir's arguments in various respects and suggest a more minimal Minimalism as an even better moral argument for animal liberation.

Chapter 5

Zamir's Minimalism

5.1 SPECIESIST-LIBERATIONISM

Peter Singer, by way of definition, describes speciesism as ‘a prejudice or attitude of bias toward the interests of members of one’s own species and against those of members of other species’.¹⁸⁴ Liberationists use the term speciesism pejoratively with the intent that it will portray the belief that humans are more important than animals as a prejudice that is as contemptible as racism and sexism are thought to be. However, Zamir observes that speciesist intuitions are widely shared. He does not offer any support for this observation, but it is abundantly clear from our treatment of animals that he is right. Liberationists usually endeavour to get us to reject our speciesist attitudes. But because we intuitively believe that humans are ultimately more important than animals, convincing us to reject speciesism involves getting us to change what we intuitively believe. And we can take a lot of convincing to change what we intuitively believe.

Zamir saw that it would be easier to convince people of the correctness of animal liberation, if he did not need to convince them that humans and animals are fundamentally equal. Our intuitions point away from the claim that humans and animals are fundamentally equal, and so a broad moral theory is required to convince us of that claim. Zamir saw that he could minimize and simplify the argument for animal liberation if he could argue successfully for animal liberation without needing to reject speciesism. He also saw that the argument for animal liberation would be more convincing if it could be made without having to convince us that humans and animals are fundamentally equal. Thus Zamir does not reject speciesism, or ask us to, but offers instead an ‘elaboration’ of a position he labels ‘Speciesist-Liberationism’.¹⁸⁵ He does not offer a defence of this position, since he does not show why speciesism itself is justified. Rather, he aims to

¹⁸⁴ Singer (1975), p. 7.

¹⁸⁵ Zamir (2007), p. xi.

show that animal liberation need not involve abandoning our widely shared speciesist intuitions. This is what he refers to as the ‘deradicalization of the theoretical underpinnings of liberationism’, which will allow the argument to tap a broader consensus.¹⁸⁶

Zamir contends that ‘speciesism contradicts liberationism only under an overly strong and unintuitive rendering of the term’, and that ‘liberationism is continuous with virtually all our speciesist intuitions’.¹⁸⁷ This section will explore that contention, since Zamir claims that this deradicalization allows for the theoretical minimalization that avoids the need to apply a broad moral theory to make the moral argument for animal liberation.

It has been seen that Rowlands argues that animals are entitled to be treated with consideration equal to that accorded to humans. Convincing as his arguments for this conclusion are, such calls for equality between humans and animals are always going to be resisted. Of course, it was seen that Rowlands’ starting point was two principles etched deeply into our moral milieu, i.e. the Principle of Equal Consideration and Principle of Desert, and it was the mere consistent development of these which led rationally to the conclusion that animals should be accorded consideration equal to that accorded humans. But speciesism is also etched deeply into our moral milieu, and this explains in good part why broad moral theories that conclude that humans and animals are morally equal encounter such stubborn resistance. If Zamir can show that speciesists should be liberationists, his approach would appear to have a clear advantage over that of broad moral theorists, such as Rowlands, who try to overpower our speciesist intuitions with broad abstract moral principles.

5.1.1 Zamir on Speciesism

Animal liberation is merely about reforming our treatment of animals; it does not require that humans and animals be treated as moral equals, only that animals are treated rather

¹⁸⁶ Zamir (2007), p. xi.

¹⁸⁷ Ibid.

better than they are now. So Speciesist-Liberationism is by no means an oxymoron. Thus Zamir states that a ‘mere assertion of human superiority’, of the following form, ‘should not, on its own, bother liberationists’:

Speciesism (1): Humans are more important than animals because they are human.¹⁸⁸

This is of course a highly popular position. Zamir simply ignores how the position might be justified and focuses on what the position entails. Liberationists, Zamir says, can accept Speciesism (1), but also deny that it entails any discounting of animal interests. Though the claim that humans are more important than animals is occasionally taken to be the same as the claim that human interests trump (i.e. morally outrank or override) animal interests, this identification, Zamir says, is mistaken.¹⁸⁹ It is, he claims, sometimes allowable that the interests of a less important being override the interests of a more important being. Greater importance or value, Zamir says, ‘is only one of several considerations that jointly determine whose interests come first’.¹⁹⁰

Zamir illustrates this point with reference to the fact that one can agree, for example, that ‘the value of the lives of numerous strangers living in some distant country outweighs the value of the life of one’s child’, and yet ‘still allow the interests of the latter to take priority’.¹⁹¹ Zamir notes that a critic will object that ideally ‘parents ought to discount the interests of their children if they substantially compromise the well-being of numerous strangers’.¹⁹² However, Zamir rejects this criticism as resting on a ‘crude utilitarianism that would be dismissed not only by non-utilitarians, but also by contemporary, nuanced utilitarian positions’.¹⁹³ Both these latter groups accept that it is morally preferable that we save our loved ones and not act in accordance with impersonal, objective moral evaluations.

¹⁸⁸ Zamir (2007), p. 5.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid, p. 6.

¹⁹¹ Ibid, p. 5.

¹⁹² Ibid, p. 6.

¹⁹³ Ibid.

Zamir responds to his argument on behalf of his critic that this example only shows that the nexus between greater importance and trumping interests is ‘defeasible through the workings of special overpowering considerations’,¹⁹⁴ such as familial attachment, but the nexus otherwise remains intact. And in the case of animals there is no special overpowering consideration that would cause us to forsake our inclination to favour the interests of ourselves as the more important or valuable beings. This leads, according to Zamir, to the definition of speciesism being redefined thus:

Speciesism (2): Humans are more important than animals because they are humans, and therefore, all things being equal, their interests should be preferred.¹⁹⁵

But Zamir says that liberationists can accept Speciesism (2); they can accept the claim that humans are more important than animals, and accept the claim that human interests should be preferred to animal interests. Since Speciesism (2) ‘does not determine *which* animal interests should be disfavoured’,¹⁹⁶ accepting such claims still coheres with animal liberation; Speciesism (2) does not say that any human interest trumps any animal interest. The acceptance of Speciesism (2) does not, for example, as Zamir notes, entail that ‘particular human culinary interests justify killing animals in order to satisfy those interests’.¹⁹⁷

Zamir also notes the vagueness of the notions of human interests ‘trumping’, and being ‘preferred’, to animal interests. The claim that human interests ‘trump’ animal interests may be categorical: ‘any human interest, regardless of importance, trumps any animal interest’¹⁹⁸ (Zamir, following Brody,¹⁹⁹ calls this ‘lexical priority’). But the claim may also be weaker: ‘some human interests carry more weight than some animal interests’,²⁰⁰ so important animal interests should trump minor human interests (Zamir, again following Brody,²⁰¹ calls this ‘discounting of interests’).

¹⁹⁴ Zamir (2007), p. 7.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid, p. 8.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Brody (2001).

²⁰⁰ Zamir (2007), pp. 8–9.

²⁰¹ Brody (2001).

Zamir also wants to draw another distinction in understanding the notion of ‘trumping’. The claim that X’s interests trump Y’s can mean merely that I am ‘obligated to help’ X, or ‘promote’ X’s interests, before I assist Y (call this ‘helping trumping’).²⁰² This is quite distinct from supposing that I am entitled to hurt Y, or curtail, as Zamir puts it, any of Y’s interests, so as to benefit X (call this ‘hurting trumping’). My ‘commitment to assist my child does not extend to a vindication of me actively harming other children in order to advance my own’,²⁰³ i.e. helping trumping is acceptable in respect of my child, but not hurting trumping.

A speciesist that accepts only helping trumping in respect of humans and animals can, Zamir points out, nonetheless be a liberationist: they will merely see themselves as ‘obligated to assist humans, and to promote their interests, before [they] help animals’.²⁰⁴ They can, moreover, accept lexical priority, since they will not believe that they are permitted to ‘actively suppress an animal’s interest so as to advance a human one’.²⁰⁵ They will thus, Zamir concludes, be ‘a fully committed liberationist, demanding that all animal-related exploitative practices should immediately cease’.²⁰⁶

Zamir notes that, in light of his argument up to this point, it would appear that the definition of speciesism that in fact opposes liberationism is this:

Speciesism (3): It is justified to actively thwart the interests of an animal when they conflict with the interests of a human, and it is justified to do so because these are human interests.²⁰⁷

But Speciesism (3) still ‘fails to constitute anti-liberationism because it lacks restrictions specifying the relative importance of the conflicting interests’.²⁰⁸ Zamir points out that ‘even stout liberationists would not be troubled over minor discounting of animal

²⁰² Zamir (2007), p. 9.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Ibid, p. 10.

²⁰⁸ Ibid.

interests', such as when ships cross the ocean alarming fish as they pass.²⁰⁹ To 'generate anti-liberationism', he says, 'the overridden interests of the animal must be substantial while the human interests are marginal'.²¹⁰

The survival interests of a human, such as are at stake in lifeboat scenarios, are obviously not marginal. Lifeboat scenarios are hypothetical situations in which we must choose between saving human or animal lives; these imaginary scenarios are invented to challenge liberationists. For example, the fact that one would be prepared to save a human by throwing a dog overboard from a lifeboat when only one can be saved is supposed to imply a speciesist bias that even the liberationist is disposed to. Yet Zamir thinks that liberationists do not need to worry about such hypothetical cases, and can 'bite the bullet' and admit that 'in life/death situations they would promote human survival even if this meant actively killing an animal'.²¹¹ But, he says, 'they would add that allowing survival to be a trumping interest does not imply that other highly important human interests are also trumping'.²¹²

Liberationists could thus, Zamir says, accept speciesism of the following form:

Speciesism (4): It is justified to actively thwart the survival interests of an animal when they conflict with the survival interests of a human, and it is justified to do so because these are human interests.²¹³

But when accepting Speciesism (4), liberationists will note that the various practices that they oppose that involve the exploitation of animals simply do not resemble lifeboat situations.²¹⁴

Zamir arrives finally at a definition of speciesism that does in fact oppose liberationism with the following definition:

²⁰⁹ Zamir (2007), p. 10.

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Ibid.

²¹³ Ibid, pp. 10–11.

²¹⁴ Ibid.

Speciesism (5): Non-survival-related human interests, important as well as marginal ones, legitimately trump major interests of animals (in the sense that it is justified to actively disadvantage animals, even when such privileging significantly affects a large number of them). Such privileging is justified because these trumping interests belong to humans.²¹⁵

It is this form of speciesism that underwrites the exploitative practices involving animals that liberationists would like to see abolished, and it is only this form of speciesism, Zamir says, that liberationists need to oppose. ‘Speciesism in any of the previous senses’, he says, ‘should not trouble liberationists’.²¹⁶

It has already been noted that Zamir does not substantially trouble himself with the issue of why speciesism is justified. Indeed, it seems that he might even think that reasons for our speciesist biases cannot be given. He notes in connection with some of the reasons normally given, that these appear to be less reasons and more an effort to justify a strongly held intuition.²¹⁷ Zamir does not want to enter the debate over intuitions, so he appeals to a ‘conservative theoretical principle’: ‘choose your battles when advocating reform—avoid replacing existing...intuitions...that can be harmlessly maintained’.²¹⁸

Indeed, Zamir actually endorses a version of speciesism of the following form that, he says, ‘coheres with liberationism and can also digest the most compelling speciesist intuitions’:²¹⁹

Speciesism (6): Human interests are more important than animal interests, in the sense that promoting even trivial human interests ought to take precedence over advancing animal interests. Only survival interests justify actively thwarting an animal’s survival interests.²²⁰

While Speciesism (6) is intuitive, Zamir says, Speciesism (5) is not. Of course Rowlands would not endorse Speciesism (6), since it denies that human and animal interests should be given equal consideration. However, in terms of lifeboat scenarios, it makes little

²¹⁵ Zamir (2007), p. 12.

²¹⁶ Ibid.

²¹⁷ Ibid, p. 14.

²¹⁸ Ibid.

²¹⁹ Ibid, p. 15.

²²⁰ Ibid.

difference whether one follows Zamir's or Rowlands' approach, since Rowlands, like Zamir, would save the life of a human at the expense of the life of an animal, albeit for different reasons. Indeed, both Zamir and Rowlands have the same liberationist agenda, so following either of their approaches in reforming animal-related practices would have very similar results.

Zamir claims that his accommodation of speciesism results in a deradicalization of the theoretical underpinnings of liberationism that makes his Minimalism more persuasive than broad moral theory in tapping a broader consensus. But he openly neglects to justify his accommodation of speciesism, so his argument for his Minimalism as a Speciesist Liberationism cannot be that persuasive. His reason for neglecting to justify speciesism might be accepted, but for the fact that Rowlands seems to show that our apparent speciesism can be explained away with reference to the concept of 'relevantly similar interests'.

Rowlands contends that humans have a greater interest in their lives than animals do, so equal consideration of humans and animals may be consistent with killing 500 animals to save one human. Of course, it probably will not be consistent with killing 500 million animals to save one human, though speciesism might permit this, so Zamir's speciesism and Rowlands's application of the concept of 'relevantly similar interests' do not yield identical results, but for practical purposes they will yield very similar results in most cases. This would seem to deny that Rowlands' Neo-Rawlsianism is in any need of deradicalization. Just because some people may find the claim that humans and animals are entitled to equal consideration radical, does not mean that a theory underpinned by this claim is radical when it yields similar results to an approach that accommodates speciesism.

However, it has been seen that Neo-Rawlsianism does yield radical results—indeed, intolerable results—when it comes to pest animals and wild animals. Because Neo-Rawlsianism is systematic, it cannot pull back from the intolerable implications of making a social contract with pest animals and wild animals. Even though Zamir accepts

Speciesism (6), which includes the claim that ‘only survival interests justify actively thwarting an animal’s survival interests’, Zamir seems to have a way out of the radical implications Neo-Rawlsianism is committed to. Clearly Speciesism (6) does not imply the positive obligations to wild animals that trouble Neo-Rawlsianism, since it only prescribes the negative obligation not to kill an animal other than when it is necessary to ensure the survival of a human.

But the main reason Speciesism (6) does not prevent us killing pest animals, or oblige us to protect wild animals, is that it is not exclusive of other intuitions. Zamir does not set up Speciesism (6) as a foundational moral principle in the way Rowlands sets up the Principle of Equal Consideration and the Principle of Desert. Zamir does not even justify Speciesism (6), so it could easily be overridden in the case of pest animals and wild animals by other intuitions. Most plausibly, Speciesism (6) needs revising to accommodate our intuitions regarding our (lack of) obligations toward pest animals and wild animals, since Speciesism (6) is intended to be reflective of our intuitions.

The natural equilibrium of ecosystems suggests that it would be wise to adopt a principle of non-interference when it comes to wild animals. There is no apparent reason why this principle should not override Speciesism (6) in respect of wild animals,²²¹ and, indeed, it seems it should override Speciesism (6) in the case of wild animals, since there is a strong intuition that wild animals should not be interfered with. Equally, it might be possible to argue that there must be limits to societal membership and wild animals fall outside these limits, and thus we have no positive obligations towards them. And when it comes to pest animals, Speciesism (6) might be overridden, in the case of pests that attack native flora and fauna, by any number of arguments from environmental ethics, and in the case of pests that invade our homes and plunder our fields, by the argument that societal membership cannot be open to pests whose interests are so opposed to ours, and who are so incapable of reciprocity.²²² Whether these arguments work is not so important in this context (since to consider whether they do is beyond the scope of this

²²¹ If Speciesism (6) does indeed create positive obligations to wild animals, contrary to what has been argued.

²²² See Anderson (2004) for an elaboration of these arguments.

thesis); the point being made is that Speciesism (6) may be partially overridden by these arguments, and so it can avoid coming into conflict with important intuitions, whereas the principles agreed by the persons in the impartial position cannot, it seems, be displaced for anything.

5.2 THE MORAL STATUS OF ANIMALS

‘Virtually all work in animal ethics’, Zamir observes, ‘attempts to establish or reform the “moral status” of animals’.²²³ Rowlands’ work is no exception. But Zamir argues that ‘for all its importance, such work introduces confusion into animal ethics’,²²⁴ and this confusion has significant ramifications.

5.2.1 Two-Stage Theories

Animal ethicists who argue that animals possess ‘moral status’ (the possession of which underlies particular entitlements for them) offer what Zamir labels ‘two-stage theories’:

Stage 1: establish moral status;

Stage 2: generate moral prohibitions on animal-related conduct based on the status secured at stage 1.²²⁵

Zamir notes that ‘moral considerability’, ‘moral entitlement’, ‘exclusion from the moral community’, ‘inclusion in the moral community’, ‘moral status’, and ‘moral patienthood’ constitute ‘interchangeable terms through which two-stage theories are articulated’.²²⁶

What have been referred to in this thesis as ‘broad moral theories’, tend also to be (or perhaps, are always) two-stage theories. Utilitarianism, for example, establishes moral status for animals on the grounds that they have interests or preferences capable of being satisfied or frustrated, and it would be speciesist to discount their interests or preferences. After establishing moral status in this way, the theory imposes restrictions on action

²²³ Zamir (2007), p. 16.

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ Ibid.

related to animal interests or preferences. Neo-Rawlsianism, similarly, establishes moral status for animals on the basis of the principles and arguments outlined in Chapters One and Two. And after establishing moral status in this way imposes restrictions on action issuing from the impartial position as illustrated in Chapter Three.

‘Common to all two-stage theories’, Zamir says, ‘is the premise that some actions ought not to be done to animals *because* they possess moral status’.²²⁷ Yet when one scrutinizes moral status, it appears, Zamir says:

to mean nothing more than protection: entities possessing “some degree” of “moral status” are entities to which some actions should not be done....It is not the case that morally undesirable actions ought not to be done *because* the being “has” or “possesses” moral status. Rather, beings possessing moral status *are* beings to which some actions ought not to be done on moral grounds.²²⁸

Moral status has been introduced into the animal ethics for two reasons, according to Zamir.²²⁹ The first relates to the fact that anti-liberationists have rejected the extension of moral protection to animals by ‘*inverting* the two-stage move’: ‘they claimed that animals ought not to be morally protected *because* they lack moral status’.²³⁰ A two-stage liberationist response was a natural rejoinder to such a claim. The second reason stems from the fact that some established uses of ‘status’ are misleading. Zamir considers citizenship as an example: You are entitled to enter the country you are a citizen of without a visa because you are a citizen. Your status as a citizen designates properties you have. ‘Animals’, Zamir claims, ‘appear to resemble this example. ‘They possess properties that are deemed morally relevant, entailing moral restrictions on conduct in relation to them’.²³¹

‘The mistake here’, Zamir says, ‘relates to missing a distinction between two distinct relations between properties and the...entitlements with which they are linked. ‘Some relations involve an intermediary stage of establishing status that then generates rights or

²²⁷ Zamir (2007), p. 16.

²²⁸ Ibid, p. 17.

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ Ibid.

restrictions. ‘Other relations do not involve this mediating step’.²³² You become a citizen by possessing a relevant property (e.g. being the offspring of another citizen); you are then allowed entry to your country without a visa. On the other hand, Zamir says, a person who is, for example, kind, elicits a certain response from people, e.g. respect, not because possessing kindness establishes some status, which then, in turn, induces respect. ‘Kindness *calls* for respect, and explaining this need not appeal to some mediating “status” attained by exemplifying kindness.’²³³

‘The most obvious gain of replacing the vocabulary of moral status with that of moral restrictions is’, Zamir says, ‘that we begin from consensual premises: some animal-related conduct is immoral’.²³⁴ It is universally recognized that some acts ought not to be done to animals. Of course, most people would only endorse the criminalization of practices involving obvious cruelty to animals. Liberationists seek to extend the breadth of practices that are prohibited. Such an extension can be achieved, Zamir claims, without resorting to the notion of moral status, and two-stage thinking should, accordingly, be abandoned.²³⁵

5.2.2 One-Stage Negative Arguments

Abandoning two-stage thinking involves revising two-stage arguments into one-stage negative arguments. Two-stage *positive* arguments isolate properties that animals have and assert them as a basis for animals possessing moral status. Two-stage *negative* arguments undermine attempts to deny animals moral status by challenging opponents of pro-animal reform to specify the morally relevant properties that animals lack. One-stage *negative* arguments simply demand that it be specified what it is that animals lack that validates treating them in ways it would be objectionable to treat humans. ‘For example’, Zamir says, ‘avoiding causing unnecessary suffering cannot be limited to human

²³² Zamir (2007), p. 17.

²³³ Ibid.

²³⁴ Ibid, p. 18.

²³⁵ Ibid.

suffering’.²³⁶ What moral justification can prevent extending the prohibition on creating unnecessary pain to all sentient beings? ‘Many aspects of pro-animal reform’, Zamir claims, ‘can be integrated into similar questions without establishing a positive case for moral [status]’.²³⁷ Exploitation, killing and severe limitation of movement are either ruled out or require extraordinary vindication when applied to humans, so ‘why’, Zamir asks, ‘should such limitations disappear when considering animals?’²³⁸ These are one-stage negative arguments.

‘Liberationists’, Zamir admits, ‘might worry that in this deflation of the argument in favour of reform, we end up with overly lean moral operators. ‘Theoretical minimalization is usually a virtue’, he says, but, ‘in the animal context, the remaining framework must be substantial, capable of mobilizing controversial moral prescriptions and dislodging deeply engrained practices’.²³⁹ It has been seen that Neo-Rawlsianism provides sufficient machinery for this purpose: if animals are equal negotiators of a social contract then some weighty reform is called for. Liberationists would worry, Zamir concedes, that when compared to such broad moral theories, one-stage negative arguments ‘lack theoretic force’.²⁴⁰ ‘The problem is not merely’, he continues, ‘that such arguments are eclectically assembled in the sense of being unrelated to [a broad moral theory], but that they carry little probative force when clashing against opposing and diverse anti-reform human interests’.²⁴¹ In the absence of a broad moral theory, the problem becomes one of balancing moral restrictions against considerations that many regard as ‘more powerful and that tap interests that are closer to home’.²⁴²

Zamir invites us to consider confinement (or, as he puts it, ‘severe limitation of movement’).²⁴³ Confinement of a fellow human ‘calls for a justification’, to use Zamir’s phrase, but we have no grounds for thinking that animals do not also experience

²³⁶ Zamir (2007), p. 24.

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Ibid, pp. 29–30.

²⁴⁰ Ibid, p. 30.

²⁴¹ Ibid.

²⁴² Ibid.

²⁴³ Ibid.

confinement as a harm. And this, applying Zamir's Minimalism, raises the question: What is it that animals lack that legitimizes their routine confinement in our society? A defender of zoos might admit that zoos are morally dubious, but also claim that the pleasure they bring offsets the moral wrong done to animals. 'Parallel formulations', Zamir says, 'exist regarding other areas of animal welfare. 'Killing animals as part of scientific enquiry, diet, hunting, and the clothing industry can all appear undesirable as such, but as minor wrongs in comparison with the human interests that are being promoted'.²⁴⁴ Broad moral theories offer handy dismissals of such claims: if animals are equal negotiators of a social contract, their relevantly similar interests are accorded consideration equal to that accorded to those of humans.

How then, Zamir asks, does a minimalist approach respond to someone saying that 'product safety, the advancement of science, or mere human pleasure overrides even intense harm done to animals?... 'It is important to acknowledge from the start', Zamir says, 'that no response we can make can appease an opponent who insists on such claims. 'Like other areas within ethics, basic assumptions, preferences, and sensitivities cannot be conclusively proved'.²⁴⁵ It is impossible, for example, Zamir says, to *prove* that child molesting is wrong if the assumptions underlying this judgment are consistently 'called into question'; someone who genuinely refuses to see the molested child's potential suffering as offsetting the molester's intense pleasure cannot be refuted with logically compelling arguments aimed at impressing on them their mistake.²⁴⁶

Moral transformation in the past, Zamir suggests, such as the abolition of slavery and the subordination of women, has required 'curtailing one group's privileges and pleasures relative to another'.²⁴⁷ This process, he says, never involved the impossible task of *proving* that a world without slaves, or a world that promotes equality among men and

²⁴⁴ Zamir (2007), p. 30.

²⁴⁵ Ibid, p. 31.

²⁴⁶ Ibid.

²⁴⁷ Ibid.

women, is morally superior to a world with slaves, or a patriarchal world. ‘The moral dimensions of such processes’,²⁴⁸ by Zamir’s account:

involved an intensifying sense of moral disharmony within a growing number of people, sensing that some forms of suffering or unequal treatment can no longer be justified, and that these call for change. Moral reform in such domains is less a matter of offering argument and more of creating and accommodating perception of hitherto unobserved suffering, or of facilitating a vivid grasp of wrongs that have been superficially rationalized away. Such denaturalization of time-honoured customs and institutions in turn leads to their modification or replacement.²⁴⁹

Liberationists, Zamir says, try to create a fairer world, one in which avoidable suffering is reduced or eliminated. They cannot, he continues, modify the thinking of someone who is entirely unmoved by these sentiments and convictions. But in this regard, he says, broad moral theorists, e.g. Neo-Rawlsians, are not on firmer ground than Minimalists. Consistent anti-liberationists can always insist that human interests are so much weightier and varied than animal interests that the latter are never relevantly similar to the former.

Rowlands’ Neo-Rawlsianism and Zamir’s Minimalism offer a markedly similar blend of positive and negative arguments. Rowlands’ arguments set out in Chapter One consisted substantially in him undermining attempts to deny animals moral status (i.e. they were negative in character). They involved challenging opponents of pro-animal reform to specify the morally relevant properties that animals purportedly lack that might affect their moral status. Zamir, likewise, challenges opponents of pro-animal reform to specify what it is about animals that excludes them from receiving the consideration we give humans.

But both Rowlands and Zamir also offer positive arguments. These isolate morally relevant properties that animals have and assert them as a basis for animals possessing moral status (in Rowlands’ case), or simply for moral restrictions on what may be done to animals (in Zamir’s case). Both Rowlands and Zamir identify ‘the capacity to be subjected to negative experience’ (to use Zamir’s phrase) as the key morally relevant

²⁴⁸ Zamir (2007), p. 31.

²⁴⁹ Ibid.

property animals have that entitles them to moral concern. The recognition that animals exemplify this property is intuitive, widely shared, and manifested in the consensual desire to eliminate cruelty to animals. It has been seen that it is the possession of this property (which is essentially sentience) that Rowlands regards as the basis for being a moral patient, and so possessing moral status. And Zamir asserts this property as grounds for imposing the burden of proof on those that would challenge the claim that the imperative to avoid causing unnecessary suffering should be extended to all sentient beings.

Chapter 6

Zamir's Argument for Vegetarianism

6.1 A MINIMALIST APPROACH TO VEGETARIANISM

'It is usually assumed', Zamir says, 'that moral vegetarians are obliged to prove a number of difficult claims:'

These include the claim that animals are not automata; that animals suffer or experience pain; that killing animals harms them; that killing or causing them pain matters to animals in a way that should make an ethical difference to us; that animals have some kind of moral status; that we have positive or negative obligations to animals; or, more ambitiously, that animals possess rights that call for these positive or negative obligations.²⁵⁰

But Zamir contends that the assumption that moral vegetarians are obliged to prove these claims is mistaken, and the mistake is one of conflating 'justifying widely shared beliefs' and 'drawing the moral consequences that are plausibly implied by such beliefs *given* the fact that they are shared'.²⁵¹

The belief that torturing children is immoral, for example, implies a belief in the existence of other minds. The justification of the latter belief has often been challenged, however, 'since the belief in other minds is widely shared', Zamir says,²⁵² 'the implication for moral action does not require' that the existence of other minds be proved as a prerequisite. Whereas implications for moral action that are predicated on beliefs that are *not* widely shared have to await justification of the beliefs that underlie them.²⁵³

Refusing to conflate 'beliefs held' and 'beliefs proved' can, Zamir thinks, lead us to uncover what the *genuine* disagreements between moral vegetarians and their opponents

²⁵⁰ Zamir (2007), p. 35.

²⁵¹ Ibid.

²⁵² Ibid.

²⁵³ Ibid.

are. Moral vegetarians and meat-eaters will agree, he says, that there are *some* moral restrictions on our relations with animals.²⁵⁴ Anticruelty laws and animal welfare protocols are indicative of this shared consensus. It is widely assumed, Zamir notes, that animals ‘should not be tortured, or even painlessly killed for [no good reason]’.²⁵⁵ Five ‘nontrivial beliefs’ are implied by this shared condemnation, according to Zamir:

1. A belief in a morally relevant difference between animals and objects;
2. A belief in animal pain;
3. A belief in the moral relevance of animal pain;
4. A belief that there are cases in which such pain should trump even intense human pleasures (e.g. sadistic pleasures); [and]
5. A belief that killing animals, painlessly or not, is a harm done to the killed animal, and that some justification for doing so is required.²⁵⁶

Zamir admits that proving these five nontrivial beliefs is important, but claims that participants in the vegetarianism debate commit two errors:

1. They suppose that proving these is a burden that vegetarians need to carry alone; [and]
2. [They suppose] that vegetarians need to carry this burden at all.²⁵⁷

Zamir rejects the assumption by participants in the vegetarianism debate that beliefs that everyone shares need to be proven. ‘Challenging a defender of vegetarianism to prove why painlessly killing an animal harms the animal is as plausible’, he says, ‘as demanding a feminist to solve the other minds problem’.²⁵⁸ In a sense, it is reasonable to challenge vegetarians and feminists in these respective ways: vegetarianism implies the belief that painlessly killing an animal harms the animal, and feminism implies the belief that other minds exist. However, these challenges are not to the point, as Zamir puts it,

²⁵⁴ Zamir (2007), p. 35.

²⁵⁵ Ibid.

²⁵⁶ Ibid, p. 36.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

since the participants on both sides of the vegetarianism and feminism debates respectively share the beliefs in question anyway.²⁵⁹

Issue can be taken with Zamir's argument at this point, since it is not as clear that the beliefs in question are as widely shared as Zamir contends. Certainly, it is almost universally assumed that animals should not be tortured. Indeed, it seems plausible even that it is almost universally assumed that there is a morally relevant difference between animals and inanimate objects; that animals can experience pain; and that animal pain is morally relevant. But Zamir's claim that it is widely held that there are instances in which animal pain should 'trump' (i.e. morally outrank or override) even intense human pleasure is misleading. There is no question that it is widely held that animal pain should trump sadistic pleasures. But those of us who are not sadists do not give much weight to sadistic pleasures. Indeed, because we condemn sadism, we give *no* weight to sadistic pleasures. So it is misleading to hold up this instance of animal pain apparently trumping human pleasure as an example of this.

But, if we put sadism aside, it is difficult to think of an instance of animal pain that is widely believed to trump human pleasure, where the animal pain in question is necessary (in a weak sense) to create the human pleasure in question. Obviously causing cattle *severe and grossly unnecessary* pain in the process of converting them into beef would be met with widespread condemnation. But this is not clearly an instance of animal pain trumping human culinary pleasures or pecuniary desires, since these pleasures and desires can still be fulfilled (even if to a lesser degree) if the severe and grossly unnecessary character of the pain involved is reduced by changes in farming or slaughtering methods. The pain we routinely cause animals as part of accepted practices is almost always unnecessary (in a strict sense), so when Zamir says that it is widely held that there are instances in which such pain should trump (morally outrank or override) human pleasures, it is to be emphasised that this is only clearly true in respect of cases involving causing *severe and grossly unnecessary* pain. But the idea of 'trumping' implies some

²⁵⁹ Zamir (2007), p. 36.

sense of a restriction that is onerous, and a restriction on causing anything grossly unnecessary is in no sense onerous.

But even more contentious is Zamir's claim that it is widely held that painlessly killing an animal harms the animal. Certainly, most people live their lives exhibiting behaviour that suggests that they believe that needlessly killing an animal harms the animal. But if you ask people about the matter, many meat-eaters (and even some vegetarians) will state that painlessly killing an animal does not harm the animal. A response to this might be made along the lines that when it comes to the truth of the matter, people's actions speak louder than their words, and people's interactions with animals strongly suggest that they believe that needlessly killing an animal harms the animal.

Meat-eaters, it might be said, adopt the belief that painlessly killing an animal does not harm the animal, against their better judgment, in order to make sense of, and justify, the fact that they, and most people around them, eat meat.²⁶⁰ And it might be said, in respect of vegetarians who believe that painlessly killing an animal does not harm the animal, that they, again, have adopted this belief, against their better judgment (or, rather, their intuitive judgment), and on the basis of their impression that the side of the philosophical debate that says that painlessly killing an animal does not harm the animal is more convincing.²⁶¹ And it might be pointed out that there are plenty of other competent thinkers who are convinced by the side of the philosophical debate that says that painlessly killing an animal *does* harm the animal.

This line of response in defence of Zamir's contention that it is widely held that painlessly killing an animal harms the animal is less than compelling, and possibly loses what persuasive force it does have, when one considers that people's natural strong aversion to needlessly killing animals could be equally well be explained by the belief

²⁶⁰ These would be the meat-eaters that accept the rather compelling evidence that the vast majority of people do not need to eat meat. Those that insist most of us need to eat meat will simply deny that meat-eating involves needless killing.

²⁶¹ They would be vegetarian because they believe that the killing and raising of animals is currently done in a manner that causes the animals unacceptable amounts of pain that they wish to condemn, and not participate in, by being vegetarian.

that it is merely vicious to needlessly kill an animal, and so needlessly killing an animal is to be avoided because of the harm it does to one's character. Alternatively, their behaviour could be explained by the belief that the act of killing an animal will almost always cause the animal pain, or by the belief that they should not needlessly kill an animal when there is uncertainty as to whether a painless death harms an animal. And there are likely to be other explanations other than the belief that painlessly killing an animal harms the animal.

It seems that Zamir altogether overlooks the fact that some vegetarians believe that painlessly killing an animal does *not* harm the animal, since he says that those who reject one or all of the five nontrivial beliefs mentioned above that include the belief that painlessly killing an animal harms the animal, will also be rejecting vegetarianism.²⁶² One can be compelled to be vegetarian, in spite of believing that painlessly killing an animal does *not* harm the animal, if one is particularly averse to the consumption of food produced by means that cause unnecessary pain to animals, because meat generally is produced by such means.

Putting that little oversight aside, and coming back to how Zamir builds his argument, he suggests a typology of possible philosophical opponents of moral vegetarianism. Those who positively reject one or all of the five nontrivial beliefs mentioned above he labels 'anti-vegetarians'; those who accept the five nontrivial beliefs, but do not see why they imply vegetarianism, he labels 'non-vegetarians'; and those that neither reject any of the five nontrivial beliefs, nor accept them, he labels 'agnostic meat-eaters'.²⁶³ Agnostic meat-eaters await persuasion that the five nontrivial beliefs are justified, and will not modify their diet until such justification is produced. Zamir proceeds to evaluate these three types of opponent to moral vegetarianism.

²⁶² Zamir (2007), p. 37.

²⁶³ Ibid.

6.2 ANTI-VEGETARIANISM

Zamir contends that anti-vegetarianism militates against too much common moral sense.²⁶⁴ The problem with this contention is that it has been seen that people's natural strong aversion to needlessly killing an animal does not necessarily imply a widely shared belief that painlessly killing an animal harms the animal. It has also been seen that it is questionable whether there is really a widely shared belief that there are instances in which animal pain should 'trump' (in any meaningful sense of the word) human pleasures (or at least those to which we assign value).

Zamir is less than consistent in his discussion of the supposedly widely shared belief that painlessly killing an animal harms the animal. He treats this belief as interchangeable with the belief that there is an obligation to justify any killing of an animal—a belief that *is* widely shared. Of course the beliefs are not interchangeable, but Zamir has not indicated which belief he needs at this point in his argument for whatever conclusion he is coming to.

Also, Zamir actually embraces the fact there are many (sometimes conflicting) reasons for why we believe that killing animals for no good reason is wrong. He says that he can afford to be eclectic, since one of his goals is to show that vegetarianism need not be an outcropping from a broader theory.²⁶⁵ However, Zamir does not discuss the possibility that many of us are averse to needlessly killing an animal because of the harm it does to our own character (and the potential harm a person of such compromised character poses to society). All the reasons he mentions for why we may believe that it is wrong to kill an animal for no good reason come back, in one way or another, to the belief that an animal is harmed when it is killed. But, in Zamir's defence, it can be claimed that we only believe it harms our character to needlessly kill an animal, because we believe that needlessly killing an animal needlessly causes the animal harm.

²⁶⁴ Zamir (2007), p. 38.

²⁶⁵ Ibid, p. 39.

It has been suggested that many people will state that painlessly killing an animal does *not* harm the animal. In the case of meat-eaters, this is generally because, when pushed, they find this to be the most defensible ground to retreat to. And, indeed, it most probably is; the argument that it is necessary to eat meat is only perhaps true for a handful of indigenous peoples living in conditions that require them to eat meat for their survival. Of course, there are arguments that are offered by meat-eaters other than that it is necessary to eat meat or does not harm animals to eat them when they are killed painlessly. They sometimes argue, in essence, that the pleasure and convenience of meat-eating outweighs the harm done to the animals; that meat-eating is natural or intended by God; or that prohibiting meat-eating would do greater harm to the animals. But Zamir, nonetheless, seems to be right in suggesting that the burden of proof rests with those who claim that painlessly killing an animal does *not* harm the animal, since we do exhibit an aversion to needlessly killing animals in our interactions with them. And that is a difficult burden of proof to discharge.

6.3 AGNOSTIC MEAT-EATING

The agnostic meat-eater awaits persuasion that the five nontrivial beliefs mentioned above are justified. ‘Philosophers’, Zamir says, ‘are in the business of justification, and so a demand for argumentative support is never inappropriate’.²⁶⁶ But, Zamir continues, the agnostic meat-eater is ‘in effect unfairly forcing the moral vegetarian into an area that is an embarrassing one for all moral philosophy’.²⁶⁷ The move is dubious, he says, because it invokes general moral scepticism and dresses it up as a form of scepticism that is particular to animals, when in truth the move is fatal for any argument within applied ethics. ‘Under the guise of requiring argument in the limited context of the vegetarian debate, the agnostic meat-eater’, Zamir objects, ‘is demanding vegetarians to solve nothing less than the problem of basic beliefs in moral philosophy’.²⁶⁸ The agnostic meat-

²⁶⁶ Zamir (2007), p. 40.

²⁶⁷ Ibid.

²⁶⁸ Ibid.

eater is exploiting what Zamir refers to as ‘the argumentative weakness and fragility of moral reasoning in general’.²⁶⁹

By way of example, Zamir asks us to consider the belief that: ‘without some weighty justification, inflicting suffering is wrong’.²⁷⁰ This belief, he says, is ‘basic’ in the sense that it is ‘constitutive of the notion of wrong’—a failure to accept this belief would indicate a failure to grasp the concept of wrong (or otherwise must indicate some radical and unfamiliar understanding of the concept). What, Zamir asks, can one say if an argument in support of this belief is required?²⁷¹

Zamir suggests that the most plausible position with regard to basic beliefs is:

sociological rather than argumentative: we are not *argued* into accepting the association between, say, the unjustified infliction of suffering and wrong but are *socialized* into it. We wish to avoid suffering ourselves...[and] this affects our dealings with others, making us aware of what they wish to avoid or what they perceive as harm.²⁷²

Zamir suggests²⁷³ that the ‘argument’ for ‘why the infliction of suffering on others requires justification’ is ‘no more than our preference’ to live in a world in which the infliction of suffering on others requires justification. We have good reason for this preference and, thus, it is rationally preferable to live in such a world. However, Zamir points out that ‘an argument showing that A is rationally preferable to B should not be confused with an argument showing that B is wrong’, and it is the latter type of argument that the agnostic meat-eater is asking for.²⁷⁴

Zamir claims that each of his five nontrivial beliefs mentioned above is basic. They are basic in the same sense, he seems to be claiming, that there is ‘something basic and non-derived in [the] repulsion felt toward someone torturing an animal’.²⁷⁵ In rejection of the position of the agnostic meat-eater, Zamir is asserting that asking for argumentative

²⁶⁹ Zamir (2007), p. 40.

²⁷⁰ Ibid.

²⁷¹ Ibid, p. 41.

²⁷² Ibid.

²⁷³ Ibid.

²⁷⁴ Ibid.

²⁷⁵ Ibid, p. 42.

support for his five nontrivial beliefs is ‘as plausible as asking for arguments in support of the belief that pain is...bad’.²⁷⁶

6.4 NON-VEGETARIANISM

Non-vegetarians accept Zamir’s five nontrivial beliefs, but do not see why they imply that killing animals for the purpose of eating them is wrong. Thus in arguing against non-vegetarianism, and for vegetarianism, Zamir is arguing that his five non-trivial beliefs (which he claims are widely shared) imply that we should be vegetarian.

Zamir clarifies that his discussion relates to the morality of eating meat for culinary pleasure, rather than essential nutrition. ‘Broad agreement exists’, he says, ‘as to the ability to have a fully nutritious vegetarian diet’.²⁷⁷ As has been intimated previously, there will be some people who need to eat meat for nutrition. But the vast majority of us do not need to eat meat for nutrition, and only eat it for culinary pleasure (or as an easier way of getting certain nutrients, or simply because most of us were raised eating it and most people around us eat it). ‘The distinct, irreplaceable, and at times intense pleasure of eating animal flesh need not be denied’, Zamir says.²⁷⁸ And he also points out the function of meat as an effectively pivotal part of certain social and semi-religious events, such as outdoor barbecues and Christmas (with the traditional Christmas turkey).

Not all vegetarians experience their diet as a loss, but Zamir claims to have had very pleasurable experiences in eating and cooking meat, and thus experiences his vegetarianism as exacting a high price indeed.²⁷⁹ Other vegetarians experience the social awkwardness of vegetarianism as exacting a much higher price than the loss of culinary pleasure derived from meat-eating. Vegetarianism not only prevents a feeling of full inclusion in a social meal, it also confronts the meat-eaters present over the morality of

²⁷⁶ Zamir (2007), p. 42.

²⁷⁷ Ibid.

²⁷⁸ Ibid, p. 43.

²⁷⁹ Ibid.

their present actions, and creates awkwardness, especially when there is a lack of vegetarian food, which there often is.

It might even be suggested that vegetarianism causes, in some instances, and to varying degrees, the distress that the character, Elizabeth Costello, reports in J M Coetzee's novel, *Elizabeth Costello*.²⁸⁰ Ms Costello's vegetarianism seems to keep in the front of her mind the thought that she is living in a kind of Nazi Germany in which sentient beings are converted into household products. She cannot see the distinction between living in a society in which soap is made from the fat of animals, and a society in which soap is made from the fat of Jews, and so she is distressed at the thought that those around her, whom she loves, in fact deserve the condemnation we direct that at those Germans who embraced Nazism (and she sees herself as not much better). It may seem an overly emotional state to put oneself in, but if a meat-eating Westerner woke up tomorrow to find everyone in their society eating dog, cat, whale, dolphin, and chimpanzee, one imagines they would feel similar distress.

In light of such experiences, Zamir asks whether the harm involved in killing animals really trumps the loss involved in being vegetarian? The conclusion that Zamir comes to is that 'one cannot *prove* that killing animals for the pleasure involved in eating them is wrong'.²⁸¹ The existence of gladiator-fighting in ancient Rome indicates that people once took great pleasure in watching fights to the death. If a defender of watching gladiator-fighting were teleported here from ancient Rome, they would, no doubt, deny that watching non-deadly sports provides the same intensity of pleasure that watching deadly gladiatorial fights does. Zamir contends that we cannot simply demand that this ancient Roman give up watching gladiator-fighting.²⁸² If we try to, they will simply challenge us to explain why the harm involved in gladiator-fighting overrides the intense pleasure they get from watching it. We can, he says, 'appeal to notions like rights or the sanctity of

²⁸⁰ Coetzee (2003).

²⁸¹ Zamir (2007), p. 45.

²⁸² Ibid, p. 44.

life', but these notions make no sense in the non-egalitarian setting of ancient Rome and would strike the Roman as 'dubious and forced innovations'.²⁸³

'What', Zamir asks, 'can one *say* to a defender of fights to the death? 'What constitutes a good argument showing that the pleasure of watching such sports cannot outweigh the harm they involve?''²⁸⁴ In trying to answer this question, he says, we come to what he calls the 'foundational issues in ethics', namely:

the probative status of evaluations; their convention-related status versus a possible trans-convention implicit structure from which they emerge; whether persuading a radical dissenter is in fact a plausible test for a moral position; what constitutes proof in ethics; the possible justification for reforming present practices and sentiments.²⁸⁵

However, as Zamir observes, historical examples of the pleasures of one class or group being curtailed for the sake of stopping significant harm to other classes or groups have not proceeded from finding an answer to the foundational problems of ethics. Rather, egalitarianism has advanced historically by, as Zamir puts it:

tapping sentiments that sometimes need to be created, until the claims they make turn from idiosyncratic preaching into vivid and action-guiding prescriptions. Vegetarianism is in the same boat as pre-nineteenth-century feminism or early-eighteenth-century abolitionism: the sentiments that are capable of transforming the preferences within the privileged group so that the harm done will be perceived as overwhelming in relation to the benefits gained are non-existent or weak.²⁸⁶

So, again, one 'cannot *prove* that killing animals for the pleasure involved in eating them is wrong'.²⁸⁷ One can, however, Zamir says, show that 'killing versus pleasure is the actual equation'.²⁸⁸ And one can then, he says, point to the 'continuity between vegetarianism and other social causes that we typically regard as encapsulating and promoting moral progress, in which overwhelming harm requires limiting pleasures'.²⁸⁹

²⁸³ Zamir (2007), p. 44.

²⁸⁴ *Ibid.*, p. 45.

²⁸⁵ *Ibid.*

²⁸⁶ *Ibid.*

²⁸⁷ *Ibid.*

²⁸⁸ *Ibid.*

²⁸⁹ *Ibid.*

6.5 MORAL VEGETARIANISM

Moral vegetarianism is the position according to which animals should not be killed for food when alternative food sources are available. ‘To eat animals’, Zamir says, ‘is to participate in and to complete a morally wrong act’, i.e. the killing of animals for culinary pleasure.²⁹⁰ Participating in meat-eating will not necessarily (or likely) increase the number of animals that are killed for food, purely because of the scale of the industry, and so Zamir seeks to avoid relying on any claim that it would. He also seeks to avoid relying on any claim that practicing individual vegetarianism will bring about mass vegetarianism, or that it is a causally effective means of protesting against factory-farming.²⁹¹

Zamir quite simply promotes non-participation in meat-eating on the basis that participation is endorsing a wrong practice. Meat-eating itself is not wrong in his view. Zamir’s formulation of vegetarianism does not disallow eating animals that have not been killed to be eaten.²⁹² It is only eating animals that have been killed for their meat that is disallowed by Zamir’s vegetarianism. And this is not because eating those animals is wrong in itself, but, rather, because eating those animals is part of the wrong that starts with killing those animals. Following Jordan Curnutt’s analysis in his article, ‘A New Argument for Vegetarianism’, Zamir suggests that the killing and the consumption of the animals in question are two parts of the same wrong.²⁹³

Zamir draws an analogy between consuming animals killed for their meat and watching snuff movies.²⁹⁴ Victims of snuff movies are killed so that snuff-movie-watchers can watch the victims die. The watching or consumption of the product is a completion of the initial action.²⁹⁵ The initial action, i.e. killing the victim, anticipated and was predicated on an unspecified individual watching a recording of the killing. By filling that

²⁹⁰ Zamir (2007), p. 48.

²⁹¹ Ibid, p. 49.

²⁹² Ibid.

²⁹³ Ibid, p. 47; Curnutt (1997).

²⁹⁴ Zamir (2007), pp. 47–48.

²⁹⁵ Ibid, p. 48.

unspecified individual's projected position, one makes concrete and completes, Zamir claims, the initial action. Snuff-movie-victims are not just killed; they are killed so that snuff-movie-watchers will watch them die later. Likewise, animals raised for their meat are not simply killed; they are killed so that meat-eaters will eat them later.

Zamir claims that eating meat is 'completing a temporally extended wrong'.²⁹⁶ He also, however, claims that, distinct from this, eating the meat of animals killed for their meat constitutes the wrong of 'participating in a wrong practice'.²⁹⁷ Zamir tries to show that this is a wrong independent of the consequences of one's participation, by drawing an analogy with paying for the services of child-prostitution establishments (which he suggests exist in some countries). Paying for such services, Zamir observes, 'does not necessarily intensify the pain or harm done to the children involved...[o]ne can even make a difference for the better [by] tipping more generously or behaving nicer than other clients would'.²⁹⁸ Zamir is not explicit on the point, but he seems to be appealing to our intuition that it is wrong to pay for such services regardless of the consequences of our participation.

But there would seem to be a gaping hole in Zamir's argument. He has moved on to showing how eating animals killed for their meat is wrong, in light of the fact that killing animals for their meat is wrong, but he has admitted previously that 'one cannot *prove* that killing animals for the pleasure involved in eating them is wrong'.²⁹⁹ One was expecting that at some point Zamir would return to the five widely shared nontrivial beliefs he mentioned and show that holding those beliefs commits one logically to vegetarianism, but he does not do that. Instead, he concludes that one cannot prove that vegetarianism is morally required. In the conclusion of his book, Zamir writes that:

This book's deflation of the case for animals aims to show that there is nothing overly complex or morally groundbreaking in the argument on behalf of animals. The ascription of rights to animals and the endorsement of utilitarianism are unnecessary. Liberationism follows from the simplest argument within applied ethics, one that even a child can

²⁹⁶ Zamir (2007), p. 48.

²⁹⁷ Ibid.

²⁹⁸ Ibid.

²⁹⁹ Ibid, p. 45.

follow: tremendous suffering and large-scale killing take place. These can be avoided. We need to try to do so. One can argue over (some) of the details, but if the moral logic in this rudimentary piece of reasoning is flawed, then something is fundamentally wrong in our core moral beliefs.³⁰⁰

This is quite a claim Zamir makes. In spite of his claim that even a child can follow his argument, it still seems in need of summarising. Zamir's initial claim seems to be that we can retain our intuitive belief that humans are more important than animals, and that our interests should be preferred to the interests of animals, as long as we do not take that belief so far as believing that we are justified in killing an animal in order to advance anything less than our survival interests (though it would seem legitimate to treat killing pest animals as a special case). Zamir's next claim seems to be that since we believe such things as that unnecessary suffering should be avoided, and that animals can suffer, we should avoid causing animals unnecessary suffering, in the absence of proof to the effect that we should not avoid this. And killing animals for their meat causes unnecessary suffering, so we should not eat meat (since to do so would be to complete the wrong of killing animals for their meat).

And when it comes to the objection that the animals would not suffer in being killed for their meat if they were killed painlessly, Zamir seems to have two replies: (1) we all believe that an animal is harmed by being killed, regardless of whether it is killed painlessly or not; and (2) it seems a one stage negative argument is available to Zamir to the effect that we all believe that a human is harmed by being killed, regardless of whether they are killed painlessly or not, and it is not clear why an animal should be different from a human in this respect, so the burden of proof falls on those who would claim there is a difference between humans and animals in this respect. Certainly (2) is much more simple than the argument set out in Chapter Three for the claim that a painless death harms an animal. But the minimalist argument seems insufficient by itself. Those who deny that a painless death harms an animal seem to be successful in discharging what is referred to in legal circles as an 'evidential burden', i.e. an obligation to produce evidence sufficient to raise an issue.³⁰¹ The fact that only humans have a

³⁰⁰ Zamir (2007), p. 136.

³⁰¹ See Gallavin (2008), pp. 64–66.

conceptual relationship to their future has the potential to form the basis for an argument that only humans are harmed by a painless death. And even if that argument cannot be proved conclusively, the minimalist argument that the persuasive burden, i.e. the burden of proof proper, has not been discharged may be legitimate, but it will not be convincing. The discharging of an evidential burden does not shift the persuasive burden in the eyes of the law, but it can shift the tactical burden, i.e. the tactical evaluation of who is winning,³⁰² in a case, and cause the jury to look to the other side for a substantive countering argument; and it is ultimately the jury that decides the case.

Zamir's admission that 'one cannot *prove* that killing animals for the pleasure involved in eating them is wrong',³⁰³ would seem to be no more than required by his remarks about the problem of proving anything foundational in ethics. Zamir contends that, in ethics, basic assumptions, preferences, and sensitivities, such the assumptions underlying the judgment that child molesting is wrong, cannot be conclusively proved. But he also contends that moral reform has never proceeded from the provision of such proof, and proceeds, instead, from bringing the suffering caused by the status quo to public attention, and from arguments that undermine the justificatory basis of the status quo.

Arguments that aim to undermine the justificatory basis of the status quo typically appeal to internal coherence within one's moral perceptions and judgments, claiming that achieving such coherence entails reform. Zamir has endeavoured to offer such an argument for animal liberation, but his failure to show that holding the five nontrivial beliefs he mentions logically implies that one should be vegetarian, calls into question whether he has succeeded in his endeavour. That he cannot conclusively prove the five nontrivial beliefs is not a problem within the context of his argument, but the fact that holding the five nontrivial beliefs does not logically imply that one should be vegetarian *is* a problem. One might believe that there are cases in which avoiding animal suffering should trump even intense human pleasures, without believing that meat-eating is one of these cases.

³⁰² Gallavin (2008), p. 66.

³⁰³ Zamir (2007), p. 45.

Zamir leaves us then to fall back on the argument that killing animals for their meat causes the animals involved unnecessary suffering, and avoidance of unnecessary suffering is a principle that should be extended to animals, in the absence of proof that it should not be so extended. The idea of avoiding *unnecessary* suffering (much like the legal defence of necessity) invokes the thought that prospective suffering should be avoided unless it is necessary to avoid some greater harm. Zamir's difficulty with relying on this principle is that he accepts the intuition that humans are more important than animals, and so he would have to give human suffering more weight than animal suffering in any assessment of whether animal suffering is unnecessary.

Zamir claims that our intuitions do not extend to believing that marginal human interests override substantial animal interests. This suggests that, in spite of believing that human suffering has more weight than animal suffering, we would assess meat-eating as involving unnecessary suffering, since an animal has a substantial interest in living, and our culinary pleasures are presumably somewhat marginal. But most of us do eat meat, so either our actions are inconsistent with what we believe, or we do believe that marginal human interests sometimes override substantial animal interests.

In the end, it would seem that Zamir's argument comes down to what he says it comes down to: we should be vegetarian because we do not need to eat meat, and to eat meat is to participate in, and complete, a practice that causes the vast number of animals involved tremendous harm. He has no argument to deploy against those who suggest that human culinary pleasure justifies meat-eating, other than restating this argument. He cannot logically compel these people to change their thinking; he can only endeavour to persuade them by means other than strictly logical ones. It is suggested that Zamir has perhaps done enough to show that it is unreasonable to ask for logically compelling argument, but it is also suggested that he has failed to do all he can to persuade us that vegetarianism is morally required.

Chapter 7

Final Thoughts

7.1 ROWLANDS' NEO-RAWLSIANISM VS ZAMIR'S MINIMALISM

It was stated at the outset that this thesis will consider whether we should make a social contract with animals, or whether we should abandon social contract theory (and all such broad moral theories), and opt for a minimalist approach, in order to make the best moral argument for animal liberation. Having considered Rowlands' Neo-Rawlsianism as an application of social contract theory to animal ethics in Part A, and Zamir's Minimalism as a minimalist approach to animal ethics in Part B, the time has come to undertake the weighing of the strengths and weaknesses of each approach. In this way it will be determined which approach offers a better moral argument for animal liberation, and so should be taken up by liberationists in their endeavours to advocate for animal liberation in social, legal and political contexts.

The major strength of Rowlands' Neo-Rawlsianism is that it is an application of social contract theory. The great attraction of using a social contract theory, in general, is that it promises to avoid the unsatisfying task of fixing the demands of morality with direct reference to our moral intuitions. Fixing the demands of morality thus typically provides little in the way of justification for the resulting principles that can be used to convincingly fend off conflicting intuitions and principles.

Rowlands is able to construct his 'impartial position' with reference to two broad abstract moral principles that he claims are fundamental to all contemporary moral theories: the Principle of Equal Consideration and the Principle of Desert. And, once he has his impartial position in place, he can use the device to answer any moral question by directing us to the answer a self-interested and rational person in the impartial position would give. The great strength of social contract theory is that we seem to be able to

ascertain the answer of a person in the impartial position with relative ease, and it seems that, no matter how many people there are in the impartial position, they will all agree on the answer. A person in the impartial position does not endeavour to give a moral answer; they endeavour only to give a self-interested and rational answer. If we are trying to answer a controversial moral question, we expect that people (whether they are in the impartial position or not) will not agree on a moral answer (i.e. an answer based on considerations of right and wrong). But we expect that people will agree on a self-interested and rational answer if they are in the same position as each other, such as the impartial position.

We expect self-interested and rational choice to point to one answer (so long as we are in the same position as each other), whereas there is an expectation of reasonable disagreement when it comes to moral choice. This is not to say that we believe that there is no single correct moral answer when it comes to controversial moral questions, such as whether we ought to adopt a vegetarian diet. It is only to say that we do not expect to be able to demonstrate to those that disagree with us on these questions that they are unreasonable. We may believe that our moral answer is more reasonable, but we do not expect to demonstrate to those in disagreement that there are difficulties in their position such that a reasonable person could not continue to advance it. Of course, this is to speak in generalization, but the existence of moral controversy would seem to confirm what is being said, since it seems improbable that the sole cause of moral controversy is unreasonableness.

So the main strength of Rowlands' Neo-Rawlsianism resides in the fact that, once the impartial position is in place, it can avoid the problem in making any moral argument posed by the existence of reasonable disagreement over controversial moral questions—and animal liberation is certainly controversial. By contrast, every moral claim Zamir makes is left exposed to the winds of reasonable disagreement. The essence of a broad moral theory is that it is grounded in broad abstract moral principles that can be readily agreed with. It then builds on these foundations to arrive at concrete moral claims that are directly relevant to our lives. Kant, for example, grounds his moral philosophy in his

categorical imperative, which we can readily agree with in its abstract form. He then applies the categorical imperative to arrive at the concrete moral claim that we should never tell lies or break promises. Zamir believes that we should bypass constructing elaborate foundations for concrete moral claims such as the claim that we should adopt a vegetarian diet. He claims that constructing elaborate foundations for concrete moral claims in the field of animal ethics is unnecessary, and that a better moral argument for animal liberation is a minimalist one.

One of the key reasons Zamir contends that a minimalist approach to animal ethics is a better one, relates to the systematic nature of broad moral theories like Rawls's Neo-Rawlsianism. The truth is that the systematic nature of Neo-Rawlsianism has advantages and disadvantages for Neo-Rawlsianism, and the non-systematic nature of Zamir's Minimalism has advantages and disadvantages for his Minimalism. The systematic nature of Neo-Rawlsianism resides in the fact that, once the impartial position is in place, we have the means to answer any moral question in a manner that is consistent and justified by the principles underlying the impartial position. The advantage of this is that it seems to be relatively straightforward to answer any moral question within the impartial position, and we value bringing consistency and justification to our moral reasoning. The disadvantage is that, because Neo-Rawlsianism is a broad moral theory, and so systematic, we must rigidly adhere to furthering the rational self-interest of the persons in the impartial position. And it has been argued that this results in a *reductio ad absurdum* of Neo-Rawlsianism, since it would seem to be in the rational self-interest of the persons in the impartial position to prohibit the killing (in many instances) of sentient pest animals, and require that sentient wild animals be protected from the hardships of life in the wild.

It has even been suggested that it would be in the rational self-interest of the persons in the impartial position to decree that the human race and domesticated animals be wiped out. This absurdity, the enormous complexity of trying to work out how we would design the world in the impartial position, and the mere fact that Neo-Rawlsianism must seriously consider genocide as an option, would seem to put Neo-Rawlsianism out of

contention in our endeavour to uncover the best moral argument for animal liberation—it would seem to demonstrate that we should *not* in fact make a social contract with animals. To ignore the apparent intolerable implications of Neo-Rawlsianism when it comes to pest animals and wild animals would be nothing less than disingenuous and a betrayal of the theory.

The non-systematic nature of Minimalism resides in the fact that it abandons the project of trying to justify concrete moral claims as logically deriving from a single set of broad abstract moral principles. The advantage of this is that it allows Minimalism to avoid the *reductio ad absurdum* that takes Neo-Rawlsianism out of contention. Because the principles that Minimalism relies on are basically just moral intuitions, they are quite capable of shuffling over to accommodate competing intuitions. So even though Zamir sets up as moral principles the claims that unnecessary suffering is to be avoided, and that only human survival interests justify actively thwarting an animal's survival interests, these principles are not justified in a way that prevents them being displaced in the case of pest animals and wild animals if some minimally persuasive argument can be hit on for the claim that they should be displaced in these cases. The disadvantage of this is that it is all very *ad hoc*, and the impression is given that any number of conclusions could be arrived at following a minimalist approach. The impression given is that a minimalist approach allows one to start with the conclusion one wants to reach and then elaborate on our intuitions that support that conclusion. This impression is strengthened when one proceeds beyond Zamir's argument for vegetarianism to his consideration of other animal-related practices (something there has not been space to do in this thesis) and sees just how eclectic and non-systematic his minimalist approach is.

7.2 A MORE MINIMAL MINIMALISM

Though it has been argued that Rowlands' Neo-Rawlsianism is subject to a *reductio ad absurdum*, which takes it out of contention, and thus hands the title of better moral argument for animal liberation to Zamir's Minimalism, it has also been seen that Zamir's Minimalism suffers from a number of weaknesses that make it a disappointingly weak

champion. To a large extent, it seems that this disappointment was inevitable. The grand claims of broad moral theories that they can, in effect, conclusively prove concrete moral claims, have apparently caused us to expect too much of moral argument. Zamir argues convincingly that we cannot conclusively prove concrete moral claims, such as that child molesting is wrong or that a world that cultivates equality among men and women is morally superior to a patriarchal system. But Zamir is in danger of going too far in claiming that moral reform is ‘less a matter of offering argument and more of creating and accommodating perception of hitherto unobserved suffering, or of facilitating a vivid grasp of wrongs that have been superficially rationalized away’.³⁰⁴

Zamir is in danger of putting ethicists out of business, or, rather, turning them into mere activists, in denigrating their ability to offer logical argument for moral reform. Perhaps Zamir does not go quite this far, for it would be to go too far, but his claims need to be recalibrated. Ethicists are not unique in facing limitations on their ability to prove their claims. Policy-makers and lawyers equally face limitations on their ability to prove their claims. But (good) policy-makers and lawyers do not relegate logical argument as their most important tool, or shirk their responsibility to offer logical argument, and neither should ethicists (though obviously it is legitimate and important to employ the other forms of persuasion Zamir refers to). Rowlands’ attempt to systematically construct a logical argument for animal liberation from fundamental moral principles is admirable (as are his endeavours to create perception of the unobserved suffering of animals³⁰⁵), and Zamir’s failure to offer greater substantive argumentative support for his concrete moral claims is disappointing. But it would seem that animal ethics is a field in which it is hard to come across robust substantive logical argument,³⁰⁶ and Zamir seems justified in reframing the debate over animal liberation by revisiting what needs to be proved and who needs to prove it.

Zamir’s Minimalism is founded on the simple demand that it be specified what it is that animals lack that validates treating them in ways it would be objectionable to treat

³⁰⁴ Zamir (2007), p. 31.

³⁰⁵ See Rowlands (2002).

³⁰⁶ Perhaps this could be said of all fields of applied ethics, or at least the controversial ones.

humans. Applied to the practice of meat-eating, Zamir's argument is that killing animals for their meat causes the animals involved unnecessary suffering, and avoidance of unnecessary suffering is a principle that should be extended to animals, in the absence of proof that it should not be so extended. Embodied in this is the demand that it be specified what it is that animals lack that validates treating them as though death itself were not a harm to them. Laying the burden of proof upon anti-liberationists in this way, seems abundantly justified. The law lays the burden of proof upon the prosecution in accordance with the presumption of innocence, which is tied to the premise of a fair trial.³⁰⁷ It seems that the reason for this must be tied to the entitlement of the defendant to their good name and the rights and/or property that the trial threatens to deprive them of. Since the defendant is entitled to their good name and the rights/property in question, the presumption should be that they remain entitled to them, i.e. are innocent, until proven guilty. It would be less than desirable to complete the analogy by claiming that animals are entitled to certain rights. But it would seem sufficient to lay the burden of proof upon anti-liberationists to observe that animals suffer under exploitative practices, such as meat-eating, and their suffering is much greater than ours would be if we ceased these practices.

However, liberationists will never persuade the masses of the immorality of animal exploitation by merely pointing out the holes in anti-liberationist arguments. Admittedly, this is why Zamir is correct in pointing to the importance of the task of 'creating and accommodating perception of hitherto unobserved suffering' of animals, and 'facilitating a vivid grasp of wrongs' done to animals that have been 'superficially rationalized away'.³⁰⁸ However, if liberationists give up on logical argument as a tool of persuasion, they lose their integrity as ethicists. Anti-liberationists are clearly successful in discharging an evidential burden that informally shifts the tactical burden (unjustifiably perhaps) back to liberationists in the eyes of the public. Rightly or wrongly, liberationists are expected to defend their position. Zamir fails in this, in respect of his argument for vegetarianism, because his five nontrivial beliefs do not logically imply that one should

³⁰⁷ Gallavin (2008), p. 59.

³⁰⁸ Zamir (2007), p. 31.

adopt vegetarianism. But it does not seem unreasonable to expect vegetarians to have a better go at showing that our basic beliefs logically imply that we should be vegetarian. It would seem to be the responsibility of liberationists to continue to try to achieve this, as Rowlands tries.

It has been argued that Rowlands does not succeed in his attempt to show that our basic beliefs logically imply that we should be vegetarian. And with this thesis drawing to an end, there is no space to consider further attempts to show this.³⁰⁹ But, as a concluding thought, it does come to mind how to get the ball rolling. It was mentioned above that policy-makers face limitations on their ability to prove their claims. When policy-makers are considering an action that may cause harm, and there is an absence of scientific consensus on whether the action is harmful or not, they may be obliged to follow the precautionary principle, which requires that the action be avoided until it is shown not to be harmful. This sort of risk aversion seems only reasonable. And so, it would seem only reasonable that, in the absence of ethical consensus on animal exploitation, we adopt the precautionary principle by avoiding exploitative practices, such as meat-eating, until they are shown not to be wrong, given that meat-eating (and other exploitative practices) may constitute a serious wrong, while vegetarianism (and other means of avoiding exploitation) raise few (if any) moral concerns.³¹⁰

³⁰⁹ It would have been interesting to consider other minimalist attempts in order to show that they can have a greater role for logical implication than Zamir's Minimalism. Andrew Tardiff (1996), for example, makes a very simple argument for vegetarianism that relies on the demand for consistency in our beliefs and actions. It starts by noting that if there were a scientist who was seeking to conduct important experiments that necessitated the killing of living things, and they could use either animals or plants in their experiments, they should clearly (according to widespread intuition) use plants, and avoid needlessly killing animals. Tardiff then points out the analogy to nutrition in that sustaining ourselves necessitates the killing of living things, and we can sustain ourselves on either animals or plants, so, as a matter of being consistent, we should clearly eat only plants.

³¹⁰ Clearly a discussion of what constitutes animal exploitation is warranted; not all uses of animals necessarily amount to exploitation. There simply has not been the space in this thesis to discuss the matter, but Zamir gives considerable space to this matter in his book, *Ethics and the Beast* (2007). He comes to the conclusion that using animals to produce milk, eggs and wool is not exploitative in itself. Of course the conclusion cannot be avoided that lethal animal experimentation is exploitative, but when such experimentation genuinely furthers human survival interests (which liberationists argue is not that often) it falls outside the scope of the animal exploitation that Zamir and Rowlands object to (presuming, in the case of Rowlands, that the numbers of animals killed is not too much greater than the number of humans saved). So it is not being suggested that *important* and *necessary* animal experimentation be avoided merely because it *might* be morally problematic.

Adopting the precautionary principle in this way would seem to be the reasonable and decent thing to do while we wait for animal ethicists to come closer to consensus founded in logical argumentation. This approach can be thought of as a more minimal Minimalism because, while Zamir claimed (albeit on negative grounds) that the principle of avoiding unnecessary suffering should be extended to animals, adopting the precautionary principle does not involve extending any moral principle to animals; it merely involves proceeding cautiously. If meat-eating is indeed wrong, then the scale on which we kill animals for their meat would seem to more than warrant the remark found in Isaac Bashevis Singer's short story, *The Letter Writer*: 'In relation to [animals], all people are Nazis; for the animals it is eternal Treblinka'.³¹¹ But if we are prepared to even risk this being true—if we are prepared to even risk being Nazis—just for the pleasure of our palate, then the truth is that we already are Nazis.

³¹¹ Singer (1983), p. 271.

Conclusion

This thesis undertook to consider whether we should make a social contract with animals, or adopt a minimalist approach, in order to make the best moral argument for animal liberation. A handful of limitations on the scope of the thesis were adopted in order to make it possible to move toward a clear and definite conclusion about the approach liberationists should adopt in their endeavours to advocate for animal liberation in social, legal and political contexts. ‘Animal liberation’ was broadly defined as covering many distinct views in the field of animal ethics that challenge the exclusion of animals from substantial moral consideration. There was only space in this thesis to discuss one implication of animal liberation, i.e. vegetarianism. It is hoped that this was enough to demonstrate the difference between how Neo-Rawlsianism and Zamir’s Minimalism approach animal-related practices. Though, if Zamir’s approach to other animal-related practices had been discussed, a better appreciation could have been gained of how eclectic his approach is. Another limitation adopted was that Neo-Rawlsianism was simply assumed to be superior to other broad moral theories in order to treat it as a representative of such theories. This enabled the broad moral theory and minimalist approaches to be contrasted, so that the advantages and disadvantages of each approach could be considered. And another limitation adopted was that the thesis did not claim to substantially test the overarching case for animal liberation. There was not space to properly consider arguments *against* animal liberation, so the focus was placed on uncovering the best argument *for* animal liberation.

With the purpose and scope of the thesis set out in the introduction, Part A undertook to outline and discuss Rowlands’ Neo-Rawlsianism as an application of social contract theory to animal ethics. Rowlands’ approach to moral argument and the principles he claims are fundamental to all contemporary moral theories were first described. The varieties of social contract theory were then discussed in order to show how Rowlands comes to regard his Neo-Rawlsianism as a logical development of social contract theory. Rowlands argument for vegetarianism was then considered as a test case. It was seen that

this argument could be divided into two parts, with only one part being the actual application of Neo-Rawlsianism to meat-eating, which made for a relatively satisfying argument for vegetarianism (presuming the other part of the argument worked). The other part of the argument needed to show that a painless death harms an animal. Noting that it would be unfortunate to avoid this issue, but was not possible to give it the space it deserved, some brief original suggestions were offered as to how the argument that a painless death harms an animal might be made. Finally in Part A, two hard cases for Neo-Rawlsianism were discussed; namely, the fact that making a social contract with animal entails making a social contract with pest animals, and the fact that making a social contract with animals entails making a social contract with wild animals. It was argued that these two hard cases prove too hard for Neo-Rawlsianism and topple Rowlands' carefully constructed theory by means of *reductio ad absurdum*.

With Neo-Rawlsianism knocked out of contention, Part B needed merely to present Zamir's Minimalism as a viable alternative argument for animal liberation. It was firstly explained how Zamir claims to deradicalize liberationism by showing that it can accommodate speciesism, and argued that Zamir thus succeeds in avoiding the *reductio ad absurdum* Neo-Rawlsianism falls foul of. It was then explained how Zamir rids liberationism of the need to establish moral status for animals, lays the burden of proving their case on anti-liberationists, and dismisses the request for liberationists to conclusively prove their case. Zamir's argument for vegetarianism was then considered as an example of the application of his approach. It was seen that he leads us down the garden path with his discussion of the five nontrivial beliefs, and fails to show that our basic beliefs logically imply that we should be vegetarian. In the end, Zamir leaves us to fall back on the argument that killing animals for their meat causes the animals involved unnecessary suffering, and avoidance of unnecessary suffering is a principle that should be extended to animals, in the absence of proof that it should not be so extended.

The conclusion this thesis has arrived at, within the constraints of the limitations adopted, is that we should *not* make a social contract with animals, and the best moral argument for animal liberation is minimalist, rather than based on a broad moral theory. However,

various weaknesses in Zamir's Minimalism were observed, and a more minimal Minimalism was suggested as a place-holder until better substantive logical argument can be offered and animal ethicists move closer to consensus. This more minimal Minimalism is simply an application of the precautionary principle. Thus it has ultimately been concluded that the best ethical approach to our treatment of animals at the present time is to acknowledge that, in the face of moral uncertainty over our exploitative treatment of animals, the reasonable, decent and right thing to do, is to simply refrain from unnecessarily participating in this exploitation by doing such things as adopting a vegetarian diet. The fact that we instead push ahead greedily with exploitative practices on a massive industrial scale and mindlessly fill our bellies with the corpses of sentient creatures we have butchered for the pleasure of our palate, ignoring the possible serious wrong we commit simply because it is not a wrong that involves harm to us, demonstrates extraordinary callousness and gluttony.

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