Commentary

William S. Robinson
Iowa State University

In this paper, Professor Boonin-Vail has made many points that we must certainly attend to in our efforts to identify the proper relation between ourselves and animals. He has also raised questions about the results of contract theory that may lead some to skepticism about its usefulness as a tool in applied ethics. The justifiability of such skepticism is a large question that I shall not try to resolve. For, fortunately for me, Boonin-Vail has made my job as commentator much easier than that. He has done so by setting himself a task that is extremely difficult. His approach is to concede, for the sake of the argument, a great deal to Carruthers, and then to show that, even with the concessions, he can force Carruthers into a number of dilemmas, in which Carruthers must either settle for less than he claims, or concede more than he allows. My comments will be confined to the narrow question of whether Boonin-Vail has succeeded in hoisting Carruthers with his own petard.

Boonin-Vail considers three main arguments. In each case, there is some distinction at stake. If Carruthers can make the distinction in a principled way, then he can satisfy common intuitions about treatment of animals for cases on one side of the distinction, while refusing to extend that treatment to cases on the other side of the distinction. However, if he cannot make the distinction in a principled way, then he must either give up the common intuition, or allow for the extension to a wider class of cases than he wishes. It will be convenient, therefore, to think of Boonin-Vail as arguing that certain distinctions are not available to Carruthers in a principled way. Correlatively, the critical points I shall make all have one of two forms. They either suggest how Carruthers might be able to make the distinction in a principled way after all; or they suggest that, at least, Boonin-Vail has not shown that Carruthers cannot have his distinction in a principled way.

The first distinction is between public and private animal suffering. Carruthers accepts that contractors would agree to prohibit public exhibitions of acts that cause animal suffering, but he holds that they would not agree to prohibit acts with similar consequences, so long as they were done out of the public view. Boonin-Vail does not believe that this distinction can be maintained. He argues that a contractor who would object to having to witness the kicking of a dog would also object to factory farming, no matter how hidden.

This seems immensely plausible, perhaps because in general, the morality of an action is not affected by whether others know about it. But if we hew austerely to contractualism, as the terms of Boonin-Vail's critique require us to do, then I believe that we can make a distinction at the place where Carruthers needs it. To do this, an analogy will be helpful. So, let us consider the extreme reaction that some people have to the sight of their own blood. This reaction can unnerve them to the point of interfering with tending to their injury. The key point is that this emotional reaction can take place, even when they are well aware that their injury is quite superficial and therefore not dangerous at all. This shows that we can separate the emotional reaction due to actual confrontation (which is great in this case) from the reaction one might have to the mere thought of something (which would be mild in the absence of the confrontation). Armed with this distinction, we can imagine that contractors might agree to rules that enable them to avoid confrontation with upsetting scenes, but not to rules that prohibit activities that do not risk causing such confrontations.

Boonin-Vail makes a perfectly natural move here by replying, in effect, that contractors will also want to avoid the distress of having to think about what goes on behind the walls of the confinement building. But here is where I need to make the essential point of my criticism of this case: This reply seems so natural because we are apt to imagine contractors as having a moral repugnance to factory farming and not wishing to have to suffer with the thought that this immoral activity is being tolerated. But contractors cannot be in this frame of mind. Moral judgments depend on the outcome of the contractors' deliberations, and therefore cannot enter into their deliberations behind the veil of ignorance. If we are careful to take account of this point,
then we have only the avoidance of the emotional charge involved in direct confrontation to worry about; and this is taken care of by a prohibition that draws the line where Carruthers wants it, i.e., between public and nonpublic cases.¹

Boonin-Vail may reply that even the distress of thinking about factory farm animal pain without any moral suppositions would be believed by contractors to be enough to take steps to avoid. I have not proved that this isn’t so. I do think, however, that we need more argument to convince us, since there does seem to be a general rule that what is done out of sight is far less distressing that what we cannot avoid seeing.

Let us turn to the second argument. This centers on the idea that contractors might agree to prohibit mistreatment of animals from a motive of cruelty, because they worry that people who have a habit of disregarding animal suffering will be insensitive to pain in other humans. Carruthers wishes to allow this consideration to have some force, but regards this force as limited. To draw this limit, he needs to distinguish between knowingly causing pain in animals from a motive of cruelty and knowingly causing pain in animals as a result of activities that stem from other motives. I have been unable to find a perfectly satisfactory way of abbreviating the arms of this distinction, but one is surely needed and I have adopted the pair: brutality and indifference. Using these abbreviations, we can state Carruthers’ position this way: Contractors have something significant to fear from people who exhibit brutality and they will therefore agree to rules that discourage it; but they have little or nothing to worry about from those who are merely indifferent, so they will not agree to rules that discourage mere indifference. Factory farming involves indifference, but not brutality. Therefore, contractors will not agree to rules that would prohibit factory farming.

Boonin-Vail seeks to undercut this distinction. There are more points made than I can review in detail, but the general direction is this. First, let us distinguish between nontrivial indifference and trivial indifference. Nontrivial indifference, as I shall understand it, occurs when the motive for the action that produces animal pain is nontrivial; trivial indifference occurs when the motive is trivial. Briefly, but correctly to the best of my belief, Boonin-Vail’s thought is that, while nontrivial indifference may be pardonable, trivial indifference is a serious moral flaw, which contractors would agree to avoid for the same reason they would want to avoid brutality. Factory farming involves trivial indifference; therefore, contractors would prohibit it. Remember that trivial indifference does not mean a low degree of indifference, or indifference to a trivial amount of suffering; it means that the motives of the action are trivial. The motives for factory farming are trivial, argues Boonin-Vail, because, again very briefly, there are equally satisfactory alternatives that will not produce comparable suffering and will enable humans to satisfy their needs.

This seems very plausible, because indifference to suffering is a serious moral flaw. Unfortunately, however, it is not legitimate to introduce this plain fact into the contractors’ deliberations. We must not say, as Boonin-Vail does, that “the question which the rational contractors behind the veil of ignorance must face is precisely whether it would be best that this be the sort of world in which they live” unless it is clear that moral considerations are excluded from what is meant by the “best.” We should not represent contractors as interested in “moral superiority” (as Boonin-Vail does). The reason is the same as before: What is moral is not determinate until after the contractors have finished agreeing.

If we adhere austerely to the contractualist point of view, we must consider only this question: Would contractors believe that they have as much to fear from people whose characters have been influenced by engaging in factory farming as they do from those whose characters have been influenced by a general acceptance of brutality toward animals? This is a psychological question for which psychological evidence would be appropriate. I do not think that Boonin-Vail has established that it is reasonable to suppose that the two cases are at all comparable; and so, I do not think he has established that contractors would be likely to treat them similarly, I have aot, of course, disproved the claim that the cases are similar in their character effects, nor can I do so. However, although I have no evidence for this whatsoever, I nonetheless suspect that there are factory farmers who treat their hunting dogs extremely well and who would not tolerate their children’s acting otherwise. This makes me think that the psychology of factory farmers is probably quite different from the psychology of adults who, say, severely beat their animals.

A further argument in Boonin-Vail’s second section concerns consumers of the products of factory farming. I believe that this raises issues that are similar to the ones just reviewed. In the interest of time, therefore, let
us pass on to the most important of Boonin-Vail's arguments, the one that concludes that Carruthers cannot maintain a distinction between the moral status accorded to animals and that accorded to marginal humans.

Boonin-Vail's case here is immensely plausible. I shall try to restate its essential structure very briefly. Let us start with a key distinction to which Carruthers appeals. On the one hand, the regard that we are to have toward animals or marginal humans after the veil is lifted is direct, that is, harms to them are to be regarded as wrong in themselves, not merely instrumentally wrong. On the other hand, the justification is indirect: When contractors are behind the veil, they will be considering only the instrumental value to themselves of adopting this or that rule. Now, Boonin-Vail's point can be glossed as follows: If we stay behind the veil, the kind of justification that we have for our regard for animals is of the same kind as the justification that we have for our regard for marginal humans (namely, indirect). And, if we lift the veil, then the regard we are to have for animals is of the same kind as the regard we are to have for humans (namely, direct).

In both cases, there is no principled distinction between the situation regarding animals and the situation regarding marginal humans. We can get what looks like a principled distinction by taking the post-veil lifting point of view for one case and the pre-veil lifting point of view for the other; but, of course, that is cheating. (Besides, if we allowed comparison from the different points of view, we could come out with animals having a fuller status than marginal humans!)

Nonetheless, I believe that there is a way of sailing between the Scylla of over-regard for animals and the Charybdis of under-regard for marginal humans. This way is to agree that in both cases we have indirect justifications for direct attitudes of regard but to hold that what I shall call the content of those direct attitudes may differ. The best way I can think of to make this clear is to imagine two different rules that contractors behind the veil might propose to be adopted and instilled in their children as fundamental principles. Of course, as they are still behind the veil, they preface each proposal with the statement that, as rational agents, they all ought to agree to promote the rule being offered because its adoption is in their interest. But WHAT they propose is different in each case. Namely, they propose for adoption,

(H) Marginal humans intrinsically possess the same human rights as normal humans, and

(A) Cruelty to animals for no further purpose is intrinsically evil.

Despite the fact that these rules both embody a direct attitude and have the same (indirect) kind of justification, they differ in what they enjoin. For example, (H) disallows termination of life, (painless) castration, and use in medical experiments; (A) does not disallow any of these, so long as they are done without unnecessary pain. There is therefore a sense in which (H) accords full moral standing to marginal humans, while (A) does not accord full moral standing to animals.

I have not, of course, proved that principles (H) and (A) are principles that contractors would adopt. My conclusion is only that we have not been shown that things could not turn out this way; and, if they did, animals would have some intrinsic moral status, but not full moral standing.

As I implied at the outset, I do not think the upshot of these remarks will be that everyone will want to go out and become a contractualist. Nonetheless, I do think that if one does adopt contractualism, it may be more defensible than Boonin-Vail believes.

Notes

1 I add two cases that I take to support the point here, and that may come up in discussion, but that I don't think I will have time to read.

1. Homosexuality case. A person could think that gay rights ought to be protected, but still dislike witnessing two men kissing. (For that matter, a heterosexual person could feel uncomfortable at witnessing public displays of heterosexual affection.) So, I think there's a big difference between the distress one might have at witnessing homosexual acts and the distress one might have at contemplating them—i.e., since one of these reactions can occur without the other, their sources are different even when both are present. Further, the only reason I can see for being distressed by private sexual acts, that is, acts where the witnessing is absent, depends on the belief that they are immoral; which, as I've said in the text, is not something we can legitimately introduce if we hew to the contractualist background assumption.

2. Erotophiles like explicit, erotic photographs; erotophobes dislike seeing them. My friends in psychology tell me there are both kinds of people. We can easily imagine an erotophile who thinks
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"I'd be a better person if I weren't turned on by these pictures; after all, the personalities, which are what really ought to count in eroticism, are not represented." We can also imagine an erotophobe who thinks "These are natural human activities, I would be a better person if I related more positively to this material." That is, morality may crosscut the witnessing reaction. Again, it is only the analogue of the witnessing reaction that is properly included in the contractors' deliberations.

2 The question arises whether the suggested way of maintaining a distinction between the cases of animals and marginal humans can be attributed to Carruthers. It is true that he does not crisply distinguish content of principles from type of justification and type of attitude that goes with them. Nonetheless, I think (but shall not argue in any detail) that my discussion is quite in accord with Carruthers' views. I note that in P. Carruthers, The Animals Issue (Cambridge, Cambridge University Press, 1992), the pages from 110 to 118, which deal mostly with marginal humans, are filled with talk about rights. The section on animals and character (pp. 153-156) is, by contrast, focused upon cruelty and sympathy. A notable exception occurs near the beginning of p. 154. Here, however, the kind of wrongness that cruelty to animals has, and that is to be further discussed in this section, is explicitly contrasted with violation of rights.

Reply

David Boonin-Vail
Tulane University

I take the general thesis of Professor Robinson's comments to be this: in conceding so much to Carruthers for the sake of the argument, I have provided the contractarian with sufficient grounds on which to overcome the initially plausible-looking objections I have raised (or at least I have failed to show that I haven't provided such grounds). In keeping with the spirit of his comments, then, I will limit myself here to the narrow question of whether Robinson has succeeded in hoisting me not so much with my own petard, as with the one I have tentatively accepted on loan from the contractarian.

I.

My first argument maintained that if the contracting agents would decide to avoid the risk of being distressed by the sight of animals suffering for trivial reasons in public, then they would also decide to avoid the risk of being distressed by their knowledge that animals are suffering for trivial reasons in private. Robinson's objection, I think, can best be summarized in the form of a dilemma: either I am relying on there being a moral aversion to this suffering, in which case I am reneging on my commitment to argue the issue on the contractarian's own terms, or I am appealing to a nonmoral aversion, in which case I have failed to account for the fact that, in general, what is done out of sight is less emotionally distressing than what is done in full view.

I will focus on the first horn of the dilemma and make a brief comment about the second. With respect to the first, I think that there is a way for me to appeal to the existence of a moral aversion to private animal