

# **BETWEEN THE SPECIES**

## Contractualism and the Moral Status of Animals

### **ABSTRACT**

While contractualism seems to solve some of the more pressing concerns of other moral theories, it does not conclusively address the moral status of non-human animals. Peter Carruthers claims that contractualism excludes animals from having full moral status. I argue that Carruthers' arguments are fatally flawed due to his reliance on contradictory claims, unlikely assumptions, and flagrant violations of the contractualist method. However, Carruthers also claims that it is possible to treat animals wrongly and that doing so deserves moral criticism. This claim is based on indirect moral significance. However, this position makes it impossible for Carruthers to avoid endorsing two extremely counter-intuitive claims. The work of C. Tucker and C. MacDonald allows us to demonstrate that contractualism does give animals full moral standing. They ground the criteria for a contracting agent in three characteristics that animals possess. A look at some possible objections reveals nothing devastating to their proposal.

JENNIFER SWANSON  
University of Miami  
jlswanson73111@yahoo.com

Volume 14, Issue 1

Aug 2011

© *Between the Species*, 2011  
<http://digitalcommons.calpoly.edu/bts/>

## Introduction

The contractualist theory of morality seems to solve some of the more pressing concerns of other moral theories, such as the counterintuitive results endorsed by utilitarian and deontological systems. However, it does not conclusively address one of the current issues in applied ethics—the moral status of non-human animals. In his book *What We Owe to Each Other*, T. M. Scanlon claims that the moral status of non-human animals is outside the scope of contractualism, as the theory is concerned only with what rational beings owe to one another. Peter Carruthers, however, in *The Animals Issue*, claims that the theory can definitively exclude animals from the category of those with full moral status. I will first show that Carruthers' arguments are fatally flawed, and therefore he cannot prove his case. Then I will demonstrate, using the work of C. Tucker and C. MacDonald, that contractualism does, in fact, allow for animals to be afforded full moral standing.

As with other contract systems of morality, Scanlonian contractualism is based on a type of agreement that contracting agents make with one another. However, this should not be interpreted as a type of bargaining in which each participant endeavors to get as much as he can. The contractualist agents are attempting to discover a set of principles that can be reasonably justified by everyone involved. Scanlon provides the following contractualist method of determining whether acts are right or wrong, as he describes moral judgments in this manner:

[T]hey are judgments about what would be permitted by principles that could not reasonably be rejected, by people who were moved to find principles for the general regulation of behavior that others, similarly motivated, could not reasonably reject (Scanlon 1998, 4).

JENNIFER SWANSON

We know that an act is wrong if a person seeking general moral principles could reasonably reject a principle allowing that act. Similarly, an act is permissible if no one could reasonably object to a principle that allows it. It is important to note that, because this is a method of determining the content of morality, we cannot appeal to previously held moral beliefs when engaging in the contracting process. Moral truth is what we are seeking—not what we are presupposing. As Scanlon puts it, we do not reject principles that allow murder *because murder is wrong*. Murder is wrong because we reasonably reject principles that allow it. Moral prohibitions are found in the outcomes of deliberations—not assumed at the outset.

Scanlon does not claim that contractualism is an account of morality in its entirety. Rather, as previously stated, it is merely concerned with what we owe to other persons. As such, its scope is not intended to cover certain categories of moral questions, such as those pertaining to animals or the environment. However, we continue to attempt to ground moral rules regarding such issues on the contractualist system. Peter Carruthers, in his book *The Animals Issue*, believes he can demonstrate that a contractualist system has no place for animals among those of moral standing. However, we can assign animals a type of indirect moral significance. Let us evaluate his arguments.

### **Carruthers: Animals and Non-Rational Humans**

The contractualist methodology is built upon the notion of reasonable justification or rejection of moral principles. Peter Carruthers asserts that animals' lack of rationality excludes them from direct participation in the moral framework, but he is unwilling to say the same of infants, the severely mentally impaired, those suffering from advanced Alzheimer's and the

## JENNIFER SWANSON

like. He claims that mere membership in the human species is sufficient for the possession of indirect moral standing.

Carruthers begins his argument with an appeal to the idea that contractualists are essentially focused on maintaining a peaceful and stable society. In order to achieve this, moral rules must be what he calls *psychologically supportable*—in other words, that rational agents should be psychologically equipped to live as they prescribe. Moral rules must be compatible with human nature, one aspect of which is strong attachment to infants and elderly family members. To ignore such a fundamental facet of our character is to risk societal upheaval.

According to Carruthers, people care deeply about our young and old family members without regard to their status as rational agents. Therefore, “contracting agents should accord moral standing to all human beings, and not just to those human beings who happen to be rational agents” (Carruthers 1992, 2.2).<sup>1</sup> To do otherwise would be to reduce infants, etc. to the level of personal property. This would provide them with some level of protection, just as our property is protected through societal and legal injunctions. However, there would certainly be no guarantee that they could not, for example, be sacrificed for the public good (as long as their “owners” were adequately compensated, of course). A society configured in this fashion would be extremely volatile. Therefore, contracting agents must come to the agreement that all human beings are worthy of being granted moral status.

---

1. Citations are in reference to a later essay titled “The Animals Issue,” which summarizes the book of the same name and can be found at:

<http://www.philosophy.umd.edu/Faculty/pcarruthers/The%20Animals%20Issue.pdf>

## JENNIFER SWANSON

The objection that first comes to mind is that some people care about their pets as much as other people care about their grandmothers. If the government were to suddenly decide to remove everyone's pet dogs from their homes, there would be a societal outcry that would likely be accompanied by violence. The imagined consequences are clearly not that far-fetched—there have been numerous violent acts committed in the name of animal rights. It would surely be even worse if the animals targeted were those with whom we have personal relationships. So, if contractualists are concerned with preventing societal chaos, why should dogs not have full moral standing under their system?

Carruthers addresses this objection and claims that it fails because members of such groups as the Animal Liberation Front are acting “not out of attachments that are a normal product of human emotional mechanisms, but out of (what they take to be justified) moral beliefs” (Carruthers 1992, 3.1). Carruthers is correct in pointing out that the contractualist system allows for no appeals to antecedent moral beliefs. We can only account for moral principles after it has been demonstrated that no rational agent could reasonably object to them.

While this response may succeed concerning laboratory mice and the like, it does not seem to apply to household pets. Our moral beliefs do not provide the impetus for the acquisition of pets and the love we feel for them. Surely the contracting agents would know that people are greatly devoted to their animal companions and, as such, realize that granting them moral standing would enhance social stability. Carruthers rejects this argument as well and offers two reasons. His first claim is that, while being attached to our infants, etc. is a universally human trait, attachment to pets is not. Rather, such bonds may

## JENNIFER SWANSON

be attributed to cultural forces that are present in some places but not others. As such, perhaps rational agents might decide that society as a whole would be improved without such attachments.

His second claim is that we are rarely, if ever, as attached to our pets as we are to our relatives. Thus, it should be easy for people to accept the notion that pets are, in moral terms, equivalent to private property. While we may love our pets, we do not believe that they are our moral equals. We do not keep a dog, for example, that threatens our child with a severe allergic reaction, just as we do not keep a carpet that poses the same threat. As the carpet is clearly secondary to concern for the child, so is the dog.

There are two responses we may make to Carruthers. First, a closer look at his two claims regarding our relationships with our pets will show that they are contradictory in nature. His first claim urges us to disregard our societal norms. While we (in this society) have a great deal of affection for our pets, perhaps this is not ideal. It is possible that we might be better off without them.

His second claim is based on the fact that we are generally more attached to our (human) family members than we are to animals, even if they are our own pets. However, this evidence arises from our societal norms—to which we are prevented from appealing in his first claim! Are we to conclude from this that we are to adhere to our social norms or to discard them?

There is no reason to believe that rational agents, especially those concerned about social stability, would contract for a society without attachments to animal companions. There is overwhelming evidence that proximity to animals greatly en-

## JENNIFER SWANSON

hances the quality of our lives—in both the mental and physical realms. Regarding Carruthers' first claim, it is more reasonable to believe that such agents would approve of our attachments to our pets than otherwise. And as for his second claim, while granting that we probably should not keep the allergy-inducing dog, societal harmony would certainly not be served by tossing him into the dumpster with the carpet.

Carruthers next discusses Scanlon's proposal that animals could be assigned representation for their interests. While, as previously stated, Scanlon is not committed to addressing the standing of animals within contractualism, he is not opposed to the possibility that they are entitled to trustees who represent their interests in the contracting process. Such trustees would be charged with assessing moral principles from the point of view of animals. Thus, actions permitted by principles that would face reasonable objections from these representatives would be considered morally wrong.

Needless to say, Carruthers disapproves of Scanlon's proposal. He claims that allowing for animal representation is completely incompatible with the essence of contractualism. He questions why we would find it necessary to assign representatives to animals "unless it were believed that animals *deserve* to have their interests protected?" (Carruthers 1992, 3.2). But to believe this is to appeal to a preexisting moral principle—that animals are deserving of this type of consideration—before the contracting process has even begun. This is a violation of the contractualist system.

While this is perhaps the most compelling argument Carruthers has yet offered, not only does it fail, but it is incompatible with his own views. As we have seen, he believes that

JENNIFER SWANSON

infants, etc. have full, yet indirect, moral standing. This is not, as he puts it, some sort of “second class moral citizenship” (Carruthers 1992, 2.4). Because it does not arise from such individuals’ participation in the contract procedure, however, it is an indirect standing. Recall that Carruthers is willing to attribute moral standing to infants, etc. because of the negative social ramifications of doing otherwise. But this standing does not consist of making principles *regarding* infants, etc. that are in the interest of rational beings. Such principles are in the interest of the non-rational beings themselves. How is this determined? Certainly a newborn baby is not qualified to act for himself in a contract procedure. His interests must be protected by a rational representative—someone who will advocate for what the child would reasonably accept or reject.

As we have seen, if we are concerned about societal stability, we cannot exclude either infants, etc. or animals from moral consideration. Thus, if infants and the like are to be represented by trustees, animals should be afforded the same courtesy. They need not “deserve” (in a moral sense) to be included in order to merit inclusion. It is merely the recognition that, if they are to be included for the same reason that infants, etc. are included, they must also be provided representation in a trustee system.

Thus, if we are to accept the inclusion of infants, etc. in the company of those granted moral standing because we do not wish to risk social instability, then there is no justification for excluding animals. Carruthers has so far failed to convince us that infants and animals should be categorized differently under the contractualist system. Since the idea that infants and other humans lacking rationality have no moral standing is extremely counterintuitive, it is more reasonable to attribute moral standing to animals instead.

JENNIFER SWANSON

### **Carruthers: An Argument for Indirect Moral Significance**

Based on what we have seen, it is surprising that Carruthers goes on to assert that it is possible to, in fact, treat animals wrongly, and that those who do so are deserving of moral criticism. If animals have no moral standing, how can this be? Carruthers wants to accommodate our intuitions that treating animals badly is to act in a morally reprehensible way—that to set a cat on fire, for example, is to behave wrongly. In order to do so, he appeals to the notion of indirect moral significance.

Essentially, his claim is that such acts are wrong because of what they demonstrate about the character of those who commit them. If we see a person set a cat on fire, he has exposed the cruelty of his character, and it is by this that we judge his act as wrong. Carruthers tells us that “we sometimes judge actions by the qualities of moral character that they evince, irrespective of any morally significant harm that they cause, or of any rights that they infringe” (Carruthers 1992, 4.2). To illustrate this, he provides the following example:

Suppose that Lazy Jane is a doctor who is attending a conference of other medical professionals at a large hotel. She is relaxing in the bar during the evening, sitting alone with her drink in a cubicle. The bar is so arranged that there are many separate cubicles surrounding it, from each of which the bar itself is plainly visible, but the insides of which are invisible to each other. Jane is idly watching someone walk alone towards the bar when he collapses to the floor with all the signs of having undergone a serious heart-attack. Jane feels no impulse to assist him, and continues calmly sipping her martini (Carruthers 1992, 4.2).

## JENNIFER SWANSON

Why do we want to say (as I assume we do) that Jane's actions are wrong? As Carruthers points out, no harm comes to the heart-attack victim. As there are dozens of medical personnel around, someone quickly attends to him, just as Jane knew would be the case. Furthermore, the man had no claim on Jane, thus his rights were not violated. Perhaps he would have been correct if he had said, "Someone ought to help me." But what if he had said, "Jane in particular should help me?" It is hard to say that he would have been correct in this. However, we still believe that Jane, in her inaction, has acted wrongly. Carruthers explains our intuition thusly: "[I]t is wrong because of what it reveals about *her*. Specifically, it shows her to be callous and indifferent to the suffering of other people" (Carruthers 1992, 4.2).

This example lays the foundation for his beliefs about our indirect duties towards animals:

They derive from the good or bad qualities of moral character that the actions in question would display and encourage; where those qualities *are* good or bad in virtue of the role that they play in the agent's interactions with other human beings (Carruthers 1992, 4.2).

In other words, setting a cat on fire is evidence of a cruel character. However, he asserts that a cruel character is bad because it will doubtless express itself through cruelty directed toward other human beings. This will explicitly violate the rights of those individuals who are harmed. Carruthers claims that this explanation accounts for our intuitions that to set cats alight is to behave wrongly, while at the same time it allows him to maintain the stance that animals do not have moral status.

## JENNIFER SWANSON

Is this position defensible? It seems that Carruthers makes an excellent point when he notes that contracting rational agents are not “calculating machines;” rather, we have “limited time, limited memory, and limited intellectual powers” (Carruthers 1992, 5.1). We cannot always take the time to reason slowly and thoroughly when a decision must be made. Thus, it would be in the best interests of contracting agents to agree on a principle advocating the cultivation of certain character traits. This leads to the further agreement that people’s actions can be judged according to the qualities of character that they demonstrate—regardless of other factors. We would be hard pressed to object to what he has said here.

However, it is not clear that this explains why it is wrong to set fire to a cat. It seems that Carruthers would find it difficult to explain why it is more wrong to perform the action than to simply have the *desire* to perform the action. If acts are only wrong because they are representations of character, then the act in and of itself has no moral weight attached to it. Intuitively, this is suspect, for we do want to say that it is more wrong to actually set a cat on fire than to merely have the character of a cat-burner. Acts and desires are not judged by the same standard. But if the action is only morally wrong because it signifies a bad character, then we must discard our intuition. This seems problematic.

Furthermore, Carruthers’ position also forces him to endorse a second counter-intuitive claim. If setting a cat alight is only wrong because it is an expression of a cruel character, and cruelty is wrong because it will be directed at humans, then it would not be wrong to set a cat on fire if there were no other human beings on Earth. As long as other humans could not be affected by a particular individual, that person would have free

JENNIFER SWANSON

rein to treat animals in any manner he chose—regardless of the pain and suffering this would inflict upon them. Again, this is not a claim that most of us would countenance.

Therefore, it seems that Carruthers has failed to adequately defend any of his arguments. His attempt to separate the standing of infants, etc. and the standing of animals with an appeal to societal stability cannot withstand scrutiny. If maintaining order is a central concern, it is clear that animals should be granted moral standing. In addition, in attempting to explain away our feeling that it is wrong to treat animals poorly, he violates some of our deepest intuitions. While it is certainly not the case that intuition is the guiding force behind morality, such a glaring transgression compels us to investigate whether, in fact, contractualism might have something better to say about the moral standing of non-human animals.

### **Tucker & MacDonald: The Nature of Contracting Agents**

So far, we have described contractualism as a moral system based on principles agreed to by rational agents. It is precisely this characterization that threatens to exclude animals from the scope of morality. But perhaps we are describing contractors too rigidly. Is rationality really a requirement to take part in the contractualist system?

C. Tucker and C. MacDonald, in their article “Beastly Contractarianism? A Contractarian Analysis of the Possibility of Animal Rights,” claim that rationality is not necessary for an individual to be a contracting agent. What is important is not the precise mental mechanism that is used. This is not something with which agents should be concerned. Rather, what matters is that the behavior of the agent “can be reliably pre-

JENNIFER SWANSON

dicted or, if need be, modified” (Tucker and MacDonald 2004, 9). The problem, as they see it, is that we have been interpreting the “contract” too literally. To realize that it is just a metaphor will enable us to lessen the demands upon those who would take part in the system. As they put it:

That there is a contract... only requires (roughly) that each party to the contract modify its behaviour in a way that enhances the utility of at least some other parties to the contract, and that each party to the contract benefit by being a party (Tucker and MacDonald 2004, 9).

This allows contractualists to include beings in our moral system that common sense says should be included, such as infants, the mentally deficient, and animals. They propose three characteristics that are collectively sufficient for engaging in a contractualist agreement: potency, vulnerability, and responsiveness. We will look at each characteristic and see how it relates to animals.

Potency is the ability of an individual to behave in a range of ways that affect the utility of other agents. Without this ability, others stand to gain or lose nothing by refusing to contract with them. Such individuals would merely be treated with indifference, and as such would not be able to be party to a contract. Animals are certainly potent in this sense. Our household pets can make us angry by disobedience and bad behavior, and such behavior can even affect our relationships with friends and neighbors. On the other hand, they also provide us with affection and loyalty. As we noted previously, pets enhance our lives in a number of ways—even including our health. Animals in the wild meet the potency criterion as well. Most of them are

## JENNIFER SWANSON

predators and, as such, have the appropriate physical apparatus—fangs, claws, poison, etc.

The second characteristic, vulnerability, is the other side of potency. Contracting agents must be susceptible to being affected by the actions of others. Without being vulnerable, the agent would have little or no reason to contract with others, or to change its own behavior. It would simply be indifferent to other agents. Pets are clearly vulnerable to the whims of their owners, but all animals are vulnerable to humans to some extent. Many wild animals are killed by humans or threatened by the destruction of their natural habitat by human encroachment.

The last characteristic is responsiveness. This is the ability of individuals to respond to others and to change their behavior in return. Without this quality, a potential agent would not be able to modify its own behavior when it sees that other agents have done so. It should be clear that animals possess this last criterion as well. Both domesticated and wild animals are capable of altering their behavior when rewards and punishments result from doing so. Any being that can be conditioned would meet this criterion.

These three characteristics are sufficient for contracting agents, Tucker and MacDonald claim, because the aim of the contract is to create the best possible relationship between the parties. The fact that an entity is both potent and vulnerable “is what makes it rational to ‘ask’ another to constrain its behavior” (Tucker and MacDonald 2004, 10). “Asking”, however, is not to be interpreted in the human language sense. It might be something as simple as making it apparent that we are willing to do the same. In this sense, “asking” and “offering” do not necessarily require rational capacities. As long as an individual

JENNIFER SWANSON

is able to modify its behavior in a mutually beneficial manner, this is enough to meet the criteria for inclusion in a contractualist system.

### **Objections and Responses**

Tucker and MacDonald assert that they have provided a successful defense of the claim that animals can be part of a contractualist moral framework. However, it may be observed that their proposal does not address the fact that their three central characteristics come in varying degrees. Does this mean that moral standing varies as well? Or is there a minimum standard—and if so, what is it? Does a fish, for example, have full moral standing, minimal moral standing, or none at all?

One point that I believe can be easily addressed is that moral standing in a contractualist system is not the sort of thing that admits of degrees. An individual either possesses it, or he does not. The creation of a kind of moral hierarchy is in total opposition to our current project. While this could be taken to imply that contractualism is simply not equipped to deal with the moral status of non-human animals, to accept this view is to fall prey to the common intuition that different kinds of beings have different degrees of worth. It is true that this belief has been defended by Mary Anne Warren among others. However, I do not believe this position is strong enough to result in a rejection of contractualism as a foundation for animal ethics.

Some individuals do not count more than others in a contract system—it is inherently equalizing. Even proposals to afford animals and/or infants, etc., “indirect” or “secondary” moral standing do not intend for those phrases to indicate a kind of attenuated value. The use of those terms is meant to refer solely to the way that such individuals come to be participants in the

JENNIFER SWANSON

moral system—not the level of their moral worth. The contractualist is committed to the idea that every contracting agent has the same degree of moral standing.

The more difficult notion is that of delineating between animals who have the relevant characteristics and those who do not. The animals that are generally subjects of concern in moral theorizing—dogs, cows, bears and the like—can be seen to meet the criteria. It is the “lower” animals that are cause for concern. Sometimes we simply do not know enough about a certain animal to determine its characteristics with certainty. Just as utilitarians are still trying to ascertain whether fish can feel pain, the contractualist is charged with determining whether fish have the qualities of a contracting agent. Intuitively, it seems that all sentient creatures will fulfill the requirements. It is difficult to conceive of such animals lacking the ability to act upon and be acted upon by others in the relevant ways, as well as the ability to modify their behavior when necessary.

However, it is certainly not impossible that such a being could exist, and there is a two-part response to this consideration. First, it is better to err on the side of caution and grant moral status to undeserving beings than to exclude from such status those who belong. Second, if faced with such a creature, it would be very easy to fall into utilitarianism and take its ability to suffer as justification for inclusion in the moral realm. But as contractualists, this is not an acceptable solution. Perhaps we will simply have to bite the bullet and deny moral status in such a case. A more optimistic viewpoint is that, in a contractualist society such as the one we have been discussing, people will be sufficiently accustomed to treating all animals with moral concern that such a creature would be well treated as a mat-

JENNIFER SWANSON

ter of course. That seems like a society to which no one could reasonably object.

### References

- Carruthers, Peter. 1992. *The animals issue: Moral theory in practice*. Cambridge: Cambridge University Press.
- Scanlon, T. M. 1998. *What we owe to each other*. Cambridge: Harvard University Press.
- Tucker, C. and C. MacDonald. 2004. Beastly contractarianism? A contractarian analysis of the possibility of animal rights. *Animal Ethics* 5:2.