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Heather M. Werner

University of Missouri-St. Louis, heathermwerner@gmail.com

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Man Alone: An Examination of Animal Rights

Heather M. Werner

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Advisory Committee

John Brunero, Ph.D.

Chairperson

Jon McGinnis, Ph.D.

Berit Brogaard, Ph.D.

Man Alone: An Examination of Animal Rights

By Heather M Werner

In our modern age, it seems as if we are flooded by choices. How we will live or fill our days is no longer pre-determined for us. It turns out, there seems to be a de-emphasis on many of the seemingly metaphysical concepts that humanity has grappled with since our emergence from the State of Nature. One prevailing concept that has not diminished, and in fact could be said to have flourished in post-modernity, would be how we understand rights. Human rights, and by extension animal and environmental rights, have dominated our cultural, political and social policies. There is a very great need to understand how to treat other living things and the justification for why we treat them as such. In regards to animals, and a rights structure in general, this paper aims to answer this query. Animals, because of their inability to exhibit the necessary characteristics of an agent who is capable of contracting, cannot contract and do not possess rights. I will use the three premise argument below as a starting point to build a framework of rights.

Basic Argument Against Animal Rights:

P1: Humans poses certain characteristics that animals do not.

P2: Having these characteristics is necessary for participation in a rights structure.

P3: Participation in a rights structure is the only way we can be said to obtain rights.

C: Animals do not have rights.

I will establish in this argument through looking at Aquinas, a rights theory in general, and Contractualism in particular. I will also consider edge cases inside of my established formal rights structure. I will develop a notion of a contract rights structure that keeps the best of

contract rights theory and modifies it to avoid some of the major problems. This paper will also offer a normative solution to the treatment of animals, taken from Kantian ethics. Finally, I conclude by examining some of the recent philosophical work on animal rights from Peter Singer and explain why he is in error.

What Do We Mean by "Rights?"

In order for me to start on this endeavor of creating an accurate picture of a contract rights structure, I must come to a working definition of rights. Because so much has been written on the nature and origins of rights, we must survey the field briefly, and settle on a definition that seems to be the closest to the most approximate truth. For the discussion on what is a right, we are going to dispense with the most mystical parts of rights. In the next section, Aquinas focuses on rights as a kind of "metaphysical inheritance" from God. Aquinas wants rights to be a gift or some type of grant from an external authority, something that has to be given. Alternatively, I will examine rights from a Contractual Perspective and avoid the need for rights to hinge on a metaphysical conception.

Rights from a Contractual Perspective

There are two different ways to look at rights as a contract: 1) Kantian Contractualism and 2) Hobbesian Contractarianism. More time will be spent with the latter view but the distinction between the two deserves an explanation. Contractualism finds roots in the philosophy of Immanuel Kant. The two main assumptions of this view state that 1) we as agents both respect other persons and 2)

that moral requirements are the type of thing of that can apply to every person. The first claim, that we respect other persons, is rationally motivated, namely, that, we as agents are rationally motivated based on the rights that we ourselves wish to possess, and are able to extend those rights to others. Ann Cudd explains this as, "Thus, individuals are not taken to be motivated by self-interest but rather by a commitment to publicly justify the standards of morality to which each will be held."¹ This theory of Contractualism seeks to do more than state whether something is wrong or right but rather offers justification as to why this is the case. The notion of an act being right or wrong, is completely grounded in how other agents perceive the actions. An action is right or wrong in terms of how that act helps or harms others.² The only conclusion we can arrive at given these observations is that there is no fact of the matter as to the nature of the wrong or rightness of a particular action. This theory however, will not work for the aims of my paper. We need a theory that gives us rights in a direct sense, not grounded in an ambiguous sense of what is morally right.

Hobbesian Contractarianism will get us a fully uninhibited view of rights that is not conditional on the metaphysical commitments of Kantian Contractualism.

Nature hath made men so equall, in the faculties of body, and mind; as that though there bee found one man sometimes manifestly stronger in body, or of quicker mind then another; yet when all is reckoned together, the difference

¹ Cudd, Ann, "Contractarianism", *The Stanford Encyclopedia of Philosophy (Fall 2008 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2008/entries/contractarianism/>.

² Ashford, Elizabeth and Mulgan, Tim, "Contractualism", *The Stanford Encyclopedia of Philosophy (Winter 2009 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2009/entries/contractualism/>.

between man, and man, is not so considerable, as that one man thereupon claim to himselfe any benefit, to which another may not pretend, as well as he.³

Using this quote, we can understand that humans are separate beings, with particular abilities, but when humanity is taken as a whole, we tend to come to an average. What Hobbes is trying to argue here is that while there might instances of particular variation, it is not the case that those variations are pronounced enough to change humanity as a whole. In this quote he argues that primarily, agents are self-interested beings. What we mean by this, is that there are not motivating external commitments when we consider both our own rights and the rights of others. In other words, agents always act in such a way as to promote that which will benefit them the most in a given situation. Hobbes argues that an agent, when assessing a situation, will always look for the best way to maximize their self-interest. What turns out to be the case, is that when an agent is acting in their best, long-term interest, it is often the case that they are acting in line with what most people conceive of as an external moral structure.

Contractarianism for the Modern Age (Objections and Responses): Gauthier

Another philosopher who has also taken up this line of reasoning and adapted it to more modern, relevant problems is David Gauthier. Contract rights theorists, we understand, are motivated purely by long-term self-interest. Gauthier argues, "A Contractarian theory of morals, developed as part of the theory of rational choice, has evident strengths. It enables us to demonstrate the rationality of impartial constraints on the pursuit of individual interest to persons who may take no interest in others'

³ Hobbes, Thomas. *Leviathan*. Penguin Books. First pub: 1651. Ch 13, p 183.

interests.”⁴ While Contractarianism is a strong theory, it also is not without its weaknesses. One possible weakness of accepting the Contractarian point of view is understanding its intimate relationship with rationality, and by extension forcing us to establish an accurate definition of what we mean by rationality. Having a theory rest entirely on a difficult to define concepts like rationality is a huge obstacle to overcome. While many formulations of this theory have been put forward to deal with this issue, I believe that the criteria that will be established in this paper, namely the four criteria established for the admittance into a Contract rights structure, answers this worry. Under my conception, we are no longer forced to base our understanding of this moral system on rationality, but instead, we can make distinctions as to the admittance of members using the specific expression of features by the agent in question. Whether they come from rationality or some other cognitive power of the brain is not our worry. It is only with the expression of these abilities that we need to concern ourselves.

Now that we need not worry about establishing a definition of rationality, we can now look at how animals might fair under our conception of rights. While some theorists might see excluding animals from our rights structure as a hindrance, I see it as an advantage, in that we are getting closer to what we actually mean when we speak of rights. Gauthier states, “Our theory does not assume any fundamental concern with impartiality, but only a concern derivative from the benefits of agreement, and those benefits are determined by the effects that each person can have on the interests of their fellows. Only beings whose physical and mental capacities are either roughly equal

⁴ Gauthier, David. *Morals by Agreement*. P 17 Clarendon Press, Oxford. ©1986

or mutually complementary can expect to find cooperation beneficial to all.”⁵ Generally, Gauthier is arguing that since we are free to enter only into contracts that we find beneficial to ourselves, we are not obligated to operate in a moral way that inhibits our own long-term desires. We also need not worry that we are infringing on someone’s interests, in so much as they have an the equality to not enter into a contract that would not benefit them. We can generally be assured that both parties in every contract are engaging in a contract that each finds advantageous. This idea also frees us from the concern that we must worry about lesser beings and their “rights.” If they are found to be ineligible of engaging in contracts, then it is the case that their ‘interests’ if they have any of the long-term variety, are also none of our concern. My conception of Contractarianism frees us from having to posit a definition of rationality. We are also freed from the worry that we might be operating under a selfish and inconsiderate delusion of self-importance in regards to rights.

Rights and Motivation

What motivation do we have to act? A Contractualist would argue that we are motivated to act based on some adherence to an external (to the agent) sense of duty. This duty commands and compels moral actions. However, Hobbes wants to place the motivating factor squarely inside the agent. Since our goal in this paper is to avoid, if possible, any unjustifiable commitments to external motivators, we must side with

⁵ ibid P 17.

Hobbes.⁶ Given this, we must look at rights as being motivated out of self-interest. This then establishes criteria for who can and cannot participate in rights. A rough idea would look like:

Criteria for Agents to Participate In A Rights Structure

- 1) Is capable of independent agency.
- 2) Is capable of recognizing their own self-interest.
- 3) Generally motivated to act in a way that promotes their own self-interest.
- 4) Is capable of creating and applying the social contracts to all members of their species who exhibit the first three criteria.

Criterion one is obviously necessary. If agents are not capable of acting on their own behalf, then they cannot possibly enter into any sort of contract that could be seen as binding. This holds across the board, for almost any conception of rights. If agents are unable to act freely, and fully embrace their independent agency, we would not be able to hold them morally responsible for their actions. A. J. Ayer argues for this very point of view in his essay *Freedom and Necessity*.⁷ Ayer writes, "...my actions are the result of my own free choice: and it is because they are the result of my own free choice that I am held to be morally responsible for them." If we understand rights as the governing guidelines for social interaction, then we can understand morality as the judgment cast

⁶ The desire to appeal to the metaphysically unknowable is a strong one. Many brilliant philosophical theories have slipped into obscurity based solely on the need to appeal to a vague notion. I am arguing that Kantian Contractualism makes this kind of appeal. Without an appeal to duty, the theory holds no power of explanation. While it might be the case that duty plays a role in motivating us to act, the idea of duty is not something that could ever be fully understood, based solely on the paradigmatic ephemerality of it. Avoiding commitments to these kind of theories, keeps my argument less vulnerable to obvious attacks.

⁷ Ayer, A. J. *Philosophical Essay: Chapter 12: Freedom and Necessity*. ©1954
http://www.informationphilosopher.com/solutions/philosophers/ayer/freedom_and_necessity.html

on the adherence or deviance from those guidelines. When we make a claim such as 'Bonnie acted immorally', what we are arguing is that she failed to adhere to the right-contract guidelines. It is therefore the case that agents who are incapable of free action are not held to be in violation of the rights contract, for no other reason than they cannot participate in them. Without free agency, there cannot be a rights-contract. If there is no contract, then there cannot be a moral value to the action. I will pick this up later, but lets move to the second criteria.

Secondly, it is crucial that agents are capable of understanding their self-interest. This is a necessary condition if they are going to fulfill a contract that hinges on their self-interest, namely, that they are able to act in such a way that promotes their interests. In order for agents to agree to a right-contract, it seems essential for them to be able to pick out what their long-term interests are. For instance, humans have the ability not to pull up and to eat all of the strawberry plants in a particular field (rather they pick the berries and leave the plants unharmed), in light of their long-term goals of having strawberries growing in that field for x number of growing seasons to come. Animals, however, do not have the ability to make these kinds of long-range decisions, even in their own interests. The concepts of preservation, growing cycles, etc. for long-term use are too abstracted for them to grasp. Therefore, a robust understanding of self-interest can only be attributed to humans fully, but attributed to animals in only a slim, weak sort of way.

The third criterion is probably the most inclusive. In either the thin or thick way, agents must have the ability to act in a way that promotes their own self-interest. If this

were not the case, then agents would be prevented either from entering into a right-contract or would be unable to act fully in regard to upholding their obligations of that contract. Animals are able to act in ways that support their short-term goals, albeit, in a very thin way, (i.e., finding shelter in a storm, finding and gathering food etc.) While we might admit animals in this thin sense, they surely fall short of being able to act in a robust, long-term goal oriented way.

And finally, humans understand that when they enter into a rights contract with one member of their species, the contract must universally apply to all members of their species. This is by far the most strict and difficult to meet. The distinction between an agent's ability to universalize interests in a contractual rights situation and their inability to do so, is crucially important. Humans enter into family, community and country contracts, in a way that animals are unable to do. For instance, even though groups of chimpanzees are able to create both family and community social structures, they are unable to extend the same sense of obligations to other members of their species, outside of these groups. Humans on the other hand, can understand that are contracted to both their neighbor and the Chinese people that they have never met. This ability is both a reflection of humans' ability to understand the abstract concept of humanity and apply it to all humans, those close and near at hand.

Given these criteria, even the most advanced theories of animal cognition would be hard pressed to find animals that would fit all of these requirements. For instance, if it were the case that I only recognized those that I know personally as capable of having rights, the notion of "human-rights" has to be discarded. Even if I expanded the idea of

rights to include only the people in my city or country, it would still not be a full and accurate picture of how we understand rights. Aquinas will argue that all people have access to particular rights based solely on their cognitive abilities. If this is true, then all people that can meet the first three essential contract building requirements need to be included, while all animals need to be excluded from an accurate conception of rights.

On My Side: Cohen

Carl Cohen argues, "A right is a valid claim, or potential claim, that may be made by a moral agent, under principles that govern both the claimant and the target of the claim."⁸ This supports the previous criterion of being able to universalize rights to all members of your species. He puts this in juxtaposition to the notion of interests by arguing, "Your rights, being valid claims, must be respected, while my interests, even when important, do not always command respect."⁹ Cohen argues that it must always be the case that rights trump interests. I have argued that rights are composed of interests, a claim consistent with Cohen's position. It is the application and universalization of interests that succeed in turning interests into rights. Under the view of Cohen and myself, animals are possessors of some limited, short-term interests. The long-term interests that humans possess are what allow them to be considered rights, and also that which compels humans to contract with other humans to protect these interests.

⁸ Cohen, Carl and Regan, Tom. *The Animal Rights Debate*. Rowman and Littlefield, © 2001 p 17-18

⁹ *ibid*

Cohen would ultimately stand on my side of the debate. He argues that we should regard animals as bearers of interests and not of rights. Since we understand that interests never trump rights, our interests and by extension rights should always be taken with a higher level of understanding. This means that normatively that we can use animals for all they can give us, up to and including labor, food and fur. Animals, for Cohen as for myself, are merely warm-blooded tools.

Aquinas on Cognitive Powers

To explain why it is that non-human animals have less capabilities than humans, Aquinas fractures a general sense of ability into two types. The first is the ability to create order. Humans have the capacity, unlike the very highest, rationally functioning animals, to make sense of, synthesize and categorize the very chaotic things in the world. What Aquinas means by this is that humans are capable of taking in quite a bit of varied empirical information from their environments and synthesizing information with already understood scientific and moral concepts. Cognitive powers are those features of the mind that allow those who possess them to understand large scale abstractions, plan, and organize their conception of the world around those considerations. By large scale problems I present the examples of the origins of the universe, our connection to other living being, physics, etc. Our powers of cognition, in short, allow us to look at world in terms of large scale problems and solutions. The powers of cognition also allow us to see the usefulness of cause of and effect relations and our operative powers give us the ability to use these relationships to our benefit on a macro scale. Meaning, we

are able to string together an event (either caused or un-caused by us) and the effect that this event produces. Humans are able to understand the effects that emanating our will unto the world produces. Animals, because they lack these powers, cannot. Animals can understand that, to quote David Hume, there is a constant conjunction of events, but not *why* that conjunction holds. Animals, aside from a very limited capacity to manipulate the basic organic substances in their environments, cannot approach this level of reasoning. Aquinas understands this failing we find in animals to be evidence for their lack of cognitive powers. It seems almost too simple of a point to make, but is relevant nonetheless. Animals simply do not possess the ability to organize, systematize, and categorize their world based solely on a diminished capacity for cognitive powers. It is not the case that animals, given the best possible environments, would be able to even come close to approximating the levels of cognition that even that the average human agent can achieve. Animals merely have the power to move, with limited foresight or understanding of what their actions are causing or working towards.

Operative Powers

Just having the higher capacity for cognition is not enough. The human capacity for cognition has to be coupled with another attribute to make it successful. Raw potential will get us nothing, in and of itself. Aquinas proposes that it is the operative power, is shared by both humans and animals. We can understand the operative power, of both humans and animals, to be the brute force, or power-force of a being. The operative is what gives us the ability to carry out the very actions that we are informed of by our cognitive powers. For instance, we see a fracture between cognitive and

operative powers when we consider the case of those agents in pervasive comatose states. While it is debatable and varying on a case-by-case basis, it would seem that these agents probably still possess some cognitive powers, however they are limited in action by the damage to their operative powers. They might very well have an interest to get out of their hospital bed and raise their children, kiss their wife, etc., but they do not possess the operative powers needed to do this.

Aquinas also makes the distinction between the art of accomplishing something, and the tools that are required to make the finished product possible. There has to be a guiding plan, or force, that is capable of seeing the final product and the steps needed to get to that product. The tools needed along the way to get there, seem to be important, but only as tools, or conduits through which the final product is achieved. Very clearly Aquinas draws a very strict parallel between the conceptions humans are capable of creating and the tools used to achieve this final product, namely, any non-human tools, specifically, animals.

The formal argument would look like this:

- P1: Animals and humans both express operative powers.
- P2: Humans alone, retain the power of cognition.
- P3: The power of cognition allows humans to understand the world in terms of abstractions and causal chains of events.
- P4: Animals do not express cognitive powers and cannot understand the world in terms of abstraction and causal chains of events.
- C: Humans and animals are distinct types of beings that express and possess different abilities.

With Different Types of Beings, Comes Different Abilities

We can now understand the difference between humans and animals to be a difference in the cognitive powers they express. With this distinction, comes a separation of powers and abilities of the two. Aquinas writes:

Moreover, superior intellectual substances receive the influence of divine wisdom into themselves more perfectly, because each being receives something according to the being's own mode. Now, all things are governed by divine wisdom. And so, things that participate more in divine wisdom must be capable of governing those that participate less. Therefore, the lower intellectual substances are governed by the higher ones.¹⁰

Since it is the case, based on the expression of properties, that humans are composed of a higher intellectual capacity, it is that capacity that grants them the ability to rule over those organisms that do not possess this capacity. The capacity for wisdom (understood as the expression of their cognitive powers), grants humans not only a right to govern other creatures, which do not express these powers, but also the obligation to do so.

The objection could be raised that it seems to be the case that cognitive powers, expressed by ruling of other humans or animals, seems to be the type of thing that can vary from person to person. I don't want to delve into this too far here, but I do think at least a cursory response is needed. Aquinas, would, I imagine, argue that it is not the case that cognitive abilities vary wildly between agents, rather, it is the ability to synthesize the cognitive and operative powers that accounts for this perceived difference. In other

¹⁰ <http://dhspriority.org/thomas/ContraGentiles3a.htm#78> Aquinas, Thomas. *Summa Contra Gentiles*. Book Three, Chapter 80.

words, some humans are better capable of synthesizing their cognitive desires, with the operative powers, and therefore can achieve a state of dominance. By dominance I mean that some humans have the power to govern and manipulate other human beings. The ability that comes with fully utilizing all of a person's cognitive and operative powers combined is what allows certain humans over others, the cultivation of the skills needed to govern. Thus, we can explain why it is that some humans *seem* to possess more of an ability to rule. This concern will be answered in a later section with a response by Thomas Hobbes.

Fringe Cases: Children and the Cognitively Impaired

Any good account of rights, as I am trying to present here, must explain how outliers or edge groups fit into the proposed structure. Two groups that are primarily considered to be of note in these kinds of situations are children and the cognitively impaired. Both groups possess separate and distinct problems for a conception of rights. Children must be considered in a conception of rights because ideally, they are the ones who will one day be the bearer of rights. This seems to imply that they stand in some type of particular, potentiality relationship to a rights structure. The cognitively impaired present a different problem of classification. For the sake of this paper, I will consider the cognitively impaired to include anyone who is not capable of fulfilling the criteria for contractual rights agreements laid out earlier in this paper. This would include any individuals who either never achieved these criteria or are no longer capable of expressing the cognitive powers that separates them from animals. This is a concern,

not only in determining what rights we may grant to a group, but it is essential that we guard the dissemination of rights closely. Will Archard writes:

One background worry against which such skepticism may be set is a currently oft-expressed concern at the proliferation of rights. Rights are, so it is alleged, now promiscuously ascribed in two ways. First, the list of right-holders has been extensively lengthened. Second, many more demands are expressed as rights claims. The concern is properly understood as one that the prodigality of rights attributions is damaging to the cause of rights. If you give away too many rights they may cease to have the value and significance they once had, and ought still to have.¹¹

It may seem like the easy answer is to just regard every living thing as bearers of rights and our distinction problems would disappear. It is easy to see how this would ultimately end up. Rights, by over-distribution, would come to be almost meaningless. Archard gives an analogy that compares rights to a monetary system. He argues that just as it is the case that if a government prints too much currency, they will soon be faced with runaway inflation, if we attribute rights to all or too many groups, they cease to be a distinguishing factor, and are ultimately, worthless. We generally regard rights as something of value, to be protected and safe-guarded against trespassing. If we were to expand our conceptions of rights to include members who cannot fully participate in a rights structure, we effectively remove all barriers needed to gain admittance. It would then stand by reasonable extension that all living things have rights. If we are going to embark on this extension, we would morally be able to make claims such as "The corn plant has rights, equal to mine, therefore it has just as much right to life and thriving as I do." It seems absurd to give plants the same regard and treatment as we do other

¹¹ Archard, David William, "Children's Rights", *The Stanford Encyclopedia of Philosophy* (Summer 2011 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2011/entries/rights-children/>.

humans. If corn plants deserve the same regard as a person, then neither of us have much in the way of rights and certainly not rights based on anything other than a loose conception of what we mean by "life". This is simply not enough of an explanation if we are going to discuss the application or use of rights in any normative sense. Therefore, in the following sections we must diligently examine the cases for awarding rights to these outliers, and consider carefully before admitting them into our structure.

Rights and Children

For the sake of this paper, I am going to define children as any being post-birth through cognitive maturity. What defines cognitive maturity is a question, and a whole other paper unto itself. We will, for the sake of this paper, define cognitive maturity as an agent capable of meeting each of the four requirements set up earlier. I apply this definition to the criteria set out earlier and conclude with why or why not children can participate in the kind of rights structure we are proposing.

The first criterion an agent must meet to be admitted to our rights structure is the ability to have an independent agency. Independent agency can be defined as the ability to make analysis of complex situations and act in light of those analyses. Children, by necessity, as they get older are able to understand and process increasingly more complex situations. So while an infant may not understand the concept of fairness or universal application, surely as a child approaches cognitive maturity they would be able to understand and make sense of situations in which these concepts arise. But even the most mature children are not able to understand extremely complex or hard to analyze

cases. For example, trying to explain to a child that there are people in another country, with whom we are at war, and hurting to promote our oil interests would be impossible for them to understand. There are so many concepts and accepted theories tied up in these types of statements, that a child would be unable to make sense of it. Children generally before a certain age, can only understand something if it *directly* affects their immediate short-term interests. We therefore have to couch everything we commend or reprove in their behavior in terms of how it affects them, in the moment. Therefore, while children may have independent agency in a very limited, finite way, it is not clear that they can fully grasp and utilize these concepts in complex and meaningful ways. It would be a mistake to argue that after the age of 12 or 18 that a person has developed the skills needed to enter into a contractual rights structure. Individuals mature at varying levels of speed, and so our only requirement on them is that they are able to meet the criteria established. If it is found, through further research, that infants are able to do this, then they can be admitted to our rights structure. However, this is very unlikely to be the case. From this we must conclude that individuals can begin contracting in rights structures when and if they are able to fulfill the criteria established.

The second criterion asks that the person is capable of recognizing one's own self-interest. In order to do this, a child must be capable of understanding some basic concepts that are tied into the understanding of self-interest. The child must be able to recognize themselves, as a self, meaning the child must have the awareness that they are separate and distinct being from the other beings and objects in the world. Most

children reach this stage earlier on in their development, so this does not seem to be a stumbling block. However, understanding the self as a self is not the same as understanding their own self-interest. This requires that the child comprehend both that they have a self-interest, and understand how that interest is separate and distinct from other selves and their interests. Though children learn this distinction, it is still a process that requires time, and few would argue that the distinction is comprehensible from the moment of birth.

Thirdly, for a child to be admitted into our rights structure, they must be able to act in a way that promotes their self-interest. Generally, children are capable of doing this in a very slim kind of way. A child is able to form the interest in getting a particular toy and is also able (barring physical elements) to move across the room to acquire it. These kind of slim desires are closely matched to the child's ability to fulfill them. However, it would take quite a bit more for a child to recognize the need for food and then possess the skills to acquire it from an outside source. For instance, it would be completely outside of a toddler's ability to acquire cookies from a supermarket, if based only on his or her cognitive abilities. It would equally be as absurd for a three-year old to have the desire to run for president of the United States and to possess the means to make this happen. So while children may be able to meet a very slim proportion of their over-all self-interest, complex, life-sustaining interests seem outside of the realm of possibility for them.

The fourth requirement asks for agents to be capable of applying this rights structure to all members of their species. As demonstrated by the first three

requirements, children generally are not capable of developing or expressing a robust self-interest. If this is the case, proposing that they then apply this concept to others would be absurd. Therefore, they absolutely cannot meet the requirements set to enter into a contractual rights structure. Given this, it is a bit unsettling to argue for the case that children do not have rights of any kind. This is often contradicted by our courts system, public policy, popular sentiment, etc. But as demonstrated by my previous argument, under a contractual rights structure, this must be the case. This paper will offer a solution to this worry, but let's first look at the somewhat more difficult case of cognitively impaired.

Rights and the Cognitively Impaired

Since I just went through the arguments for why children cannot participate in our contractual rights structure, I will try not to belabor the point here for the cognitively impaired, as much of the same reasoning will hold. In examining the first criterion, the ability of an agent to have an independent agency, we must first come to an understanding of what type of cognitive impairment we are dealing with in a particular person. For instance, while those who have a mild case of bipolar disorder may be cognitively impaired in some ways (inability to control moods, violent outbursts, etc.) they would most likely still be considered independent agents, albeit somewhat restricted. However, someone that is in a completely vegetative state, would most definitely not be able to retain an independent agency. This would be especially true if the person was relying on medical aids to keep their heart beating, lungs working, etc. In short, whether or not a person meets this criterion for participation would depend

entirely on the impairment itself and the severity of the impact on a person's cognitive functions.

The worry might be posed that we are making an argument of degrees. However, based on the criteria we have established, it is more than a matter of degrees that we are speaking of. There are specific skills that need to be mastered if we are to be able to participate in a rights structure. If we are unable to ever master these skills, then we are doomed to live a right-less existence, which, would be understood as being our due. This being said, someone with an aggressive mental disorder, say dementia, can lose their ability to contract with other individuals and therefore, lose their access to rights.

Many mental disorders, physical brain damage, etc., can bar persons from being capable of recognizing their own self-interests. Someone who is severely schizophrenic may not be able to understand that it is contrary to their own, long-term self-interests to not cut out the "space alien implant" from their brain. The ability to recognize and understand which actions will overall harm and which actions will overall hurt themselves, is also something that will have to be evaluated on a case-by-case basis. In the type of situations where a person is afflicted with a severe mental disorder or even is in a persistent vegetative state, we cannot understand these people as being capable of having a complete and accurate awareness of their own self-interest.

A cognitively impaired person would then, if unable to recognize their own long-term self-interests, be equally unable to apply them. This conclusion would run parallel

to the case of children. If a person is unable to recognize and act in accord with their own self-interests, then they are also not going to be able to make an application of these principles to other members of their species. Given that the cognitively impaired do not meet any of our requirements set forth for membership into a contractual rights structure, we must come to the same conclusion arrived at in the case of the children, in that they cannot have and do not have an access to rights. This is an equally unsettling conclusion, again, for all the same reasons that we do not want to say this of children, we also do not want to say it of the cognitively impaired either. The next section will present a solution to both of these worries.

Kant Weighs In

So far in this paper I have laid both a conception of rights generally and also defined why some edge cases don't seem to fit inside of the proposed structure. Again, this solution, the withholding of rights from children and the cognitively impaired seems to fly in the face of our most basic intuitions. However, we have established basic differences between humans and animals as summed up by Korsgaard: "So as rational beings we are conscious of the principles on which we are inclined to act. Because of this, we have the ability to ask ourselves whether we should act in the way that we are instinctively inclined to."¹² Let me propose a solution that might account for how it is that we are supposed to understand not only human edge cases, but also lower forms of animals that cannot ask whether they should act in a certain way or not. My conception

¹² Korsgaard, Christine M. *Fellow Creatures: Kantian Ethics and Our Duties to Animals*
<http://www.people.fas.harvard.edu/~korsgaard/CMK.FellowCreatures.pdf> Accessed May 7th, 2012

of the Kantian normative claim will also divest us from the notion of rationality to which both Kant and Korsgaard want to appeal so strongly.

Using Kant's Theory of Means and Ends and the Categorical Imperative, we can understand the processes or things that allow us to arrive at a desired result. One form of the Categorical Imperative demands that we are able to universalize or expand to all applicable agents the moral judgments and actions that we commit. Kant, much like Aquinas, argues that it is not just our physical features that separate us from animals, but rather it is the expression of cognitive abilities. It is the lack of these cognitive abilities that also bar children and the cognitively impaired from participating in rights.

Korsgaard sums it up this way:

According to Kant, the fact that human beings live under this kind of normative self-government is the distinctive difference between human beings and the other animals. And it is clear from this account why Kant thinks that we are the only moral animals, in the sense that we are the only animals whose conduct is subject to moral guidance and moral evaluation.¹³

By this, we can understand Kant to be agreeing that humans possess some kind of capacity for an ability, namely, that of understanding a "wrong" versus a "right" action. Animals clearly do not have this purely cognitive ability. This echoes strongly the distinction made by Aquinas, it is not the physical but rather the *expression of certain cognitive abilities* that separates humans from animals.

¹³ Korsgaard, Christine M. *Fellow Creatures: Kantian Ethics and Our Duties to Animals*
<http://www.people.fas.harvard.edu/~korsgaard/CMK.FellowCreatures.pdf> Accessed May 7th, 2012

Means and Ends

Kant argues animals are merely means and do not have ends. What Kant means here is that animals' values do not exceed their utility. Human value, on the other hand, is exceeded by the mere utility of their being. This leads to the conclusion that we may treat animals in any manner that leads to our desired ends, but that we may never treat humans in such a way. Therefore, animals do not participate in rights and they also may be used in any manner that human agents deems capable of fulfilling their ends.

How Should We Act? The Normative Push

Ends and means underscore the distinction between humans and animals, but it does not give us the normative claim we want, if we are to know how to treat animals (and other non-rights-bearers). Korsgaard sums up Kant's normative push this way:

Kant does think we have the right to kill the other animals, but it must be quickly and without pain, and cannot be for the sake of mere sport. He does not say why we should kill them, and the subject of eating them does not come up directly, but presumably that is one of the reasons he has in mind. He does not think we should perform painful experiments on nonhuman animals "for the sake of mere speculation, when the end could be also be achieved without these." He thinks we may make the other animals work, but not in a way that strains their capacities. The limitation he mentions sounds vaguely as if it were drawn from the golden rule: we should only force them to do such work as we must do ourselves.¹⁴

The rationale that Kant will eventually give for this kind of temperance in our behavior is the theory that when we abuse or treat an animal cruelly, we are not necessarily

¹⁴ Korsgaard, Christine M. *Fellow Creatures: Kantian Ethics and Our Duties to Animals*
<http://www.people.fas.harvard.edu/~korsgaard/CMK.FellowCreatures.pdf> Accessed May 7th, 2012

harming the animal, or at least that becomes a less primary concern than the worry over the damage that this does to our own souls and natures. This theory carried out, argues that by repeated, needless harming of animals, our own nature and souls will be permanently damaged. One way to look at this particular warning, and avoid the metaphysical commitment to a "soul" is to understand the concept of habituation. When we harm animals, we steel ourselves to the cry of a thing in pain, desensitize ourselves to the suffering of other living things. This desensitization will in effect establish a precedent that would increase the likelihood of humans breaking their no-harm contracts with other humans. Generally, if we are the provocateur of suffering, and do not keep an awareness of the pain we are capable of inflicting, the line between animal and human suffering is certain to blur. That being said, there is no contractual reason (generally) why we may not harm animals. This harming of animals is just ill advised for us, especially if we mean to be in the practice of keeping our own contracts with other humans.

Regard in a Normative Sense

Kant does not define how we should treat animals but he gives us a list of examples as a guide to judge our actions by. I want to argue that we can encapsulate all that Kant wanted to say in a developed notion of regard. I propose that if a creature does not bear rights (as so any non-cognizing, grown human), we should treat it with a level of regard commensurate with its cognitive abilities. This would force us to draw a distinction between rocks, trees, lower cognitively functioning animals, children and

cognitively impaired humans. What this means for us agents, is that we must be able to temper our consideration and reactions to moral situations in light of what type of thing is doing the acting in a moral situation.

An application of this theory would look something like this: A rock expresses no cognitive powers. Therefore, the rock would not have to have any consideration under our moral structure. Trees and plants would also fall under this description. When we get to the higher functioning animals like rabbits and cows, we are able to recognize that they express some cognitive abilities, but not so much that they may be admitted to our rights structure. (That is because they do not fit the criteria we have established for something to be admitted.) However, because they do possess some cognitive power, they are worthy of our regard. The higher the cognitive capacity of a being, the more regard and care we should take in the conservation of the thing. However, as a means (namely that they produce oxygen for us) it is in our own, long-term interests to preserve their lives. They are due a low level of regard and conservatory efforts. We could then consider ants or cockroaches. These animals have some very low level of cognitive ability, but not enough to admit them to our rights structure. But they do express enough ability that we can reasonably argue that burning ants with a magnifying glass on a sunny day is harmful to us. The harm that is done to us is a more salient consideration in why we would argue against someone committing such an act. As Korsgaard interprets Kant, "... these moral duties, it turns out, are not owed to the other animals, but rather to ourselves. Kant thinks we are misled by what he calls an 'amphiboly' in this case, a natural tendency to mistake an internal relation for an

external one – to suppose that we owe these duties to the other animals.” As we start to examine higher and higher cognitively functioning animals, our rights structure demands that we treat those animals with a level of regard commensurate to their cognitive abilities. To be clear, let me argue that we are not saying that these animals 1) participate in our rights structure or 2) are owed anything under our rights structure. All animals can be used as merely means, warm-blooded tools. This means that we are agents capable of recognizing our own self-interest, and understanding the harm that comes to us by abusing weaker animals, and in light of some animals very advanced cognitive abilities, we can argue that they are due a particular level of regard but not an admission to our rights structure.

The Other Side or Why Animals Do Have Rights

So far in this paper, I have made the distinction between humans and animals, based on the expression of cognitive abilities. I have discussed why it is that Contractarianism is the description of our rights structure, and I have examined where children and the cognitively impaired fit into that structure. Given this established framework, I am going to examine alternative views to mine and to present reasons why these are misguided views.

Utilitarianism and Singers' Response

Let's begin with Peter Singer's stance on animals. To do so we must first examine the Utilitarianism viewpoint upon which much of his philosophy rests. Let's consider the

work of Jeremy Bentham and John Stuart Mill. Bentham argued for the main principles of Utilitarianism, namely, that one must always act in such a way as to promote the overall well-being. Actions that do not promote this standard of overall well-being are considered morally wrong. Mill, a student of Bentham's, also argued for the Utilitarian point of view. Mill moves beyond Bentham's generalities and defines well-being as pleasure creating actions, situations, etc. Mill speaks more specifically to the problem of pleasure: which pleasures count for more, and how pleasures, and ultimately Utilitarianism, relate to animals. Julia Driver sums up Mill's positions by stating:

Bentham's view that there were no qualitative differences in pleasures also left him open to the complaint that on his view human pleasures were of no more value than animal pleasures and, third, committed him to the corollary that the moral status of animals, tied to their sentience, was the same as that of humans. While harming a puppy and harming a person are both bad, however, most people had the view that harming the person was worse.¹⁵

The idea of cleaving human pain from animal pain will be a crucial distinction between Mill and Bentham/Singer.

In laying out his case for animal rights Singer reports Bentham as arguing:

... Bentham does not arbitrarily exclude from consideration any interests at all-- as those who draw the line with reference to the possession of reason or language do. The capacity for suffering and enjoyment is *a prerequisite for having interests at all*, a condition that must be satisfied before we can speak of interests in a meaningful way.¹⁶

¹⁵ Driver, Julia, "The History of Utilitarianism", *The Stanford Encyclopedia of Philosophy (Summer 2009 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2009/entries/utilitarianism-history/>

¹⁶ Singer, Peter. *Animal Liberation*. P 5-9 ©1975, Harper Collins.

Singer does not consider cognitive ability, but rather *the ability to avoid pain and seek pleasure*. Under this conception of 'rights' Singer might be on to something. If rights are for nothing more than our pleasure/ pain concerns, then it seems that all creatures capable of these features would need to be included. However, rights are not established solely for our pleasure/ pain concerns. Rights are contracted into in order to govern the relations between two parties who possess distinct long-term self-interests. Rights themselves are not concerned with an individual's pleasure or pain but rather, with how best to promote ones long-term interests.

Singer's other main complaint is that drawing a line between humans and animals based on cognitive ability is arbitrary. In Singer's own words, "To mark this boundary [of concern] by some other characteristic like intelligence or rationality would be to mark it in an arbitrary manner. Why not choose some other characteristic, like skin color?" The analogy that Singer goes on to argue for is one between racism/sexism and what he has coined as 'specism'. Generally, the idea is that if it is wrong to discriminate among people based on arbitrary characteristics such as skin color and sex, then it is equally wrong to discriminate against animals just because they are unable to speak. At first glance this seems plausible, but Singer is forgetting a very important distinction. Animals do not participate in rights because we are "discriminating" against them based on some arbitrary characteristics; animals cannot participate in rights because they do not retain the characteristics needed to do so. *Animals simply do not express the cognitive functions needed to participate in a rights structure*. This inability does not stem from an artificially imposed bias on our part, but rather from the animal's lack of

capacity for expressing cognitive abilities. Even if we choose to admit animals into our rights structure, how would they participate in any meaningful way?

Another way to approach this issue would be to look not at whom we are excluding but rather, whom we are including. Under my conception of rights, any being capable of meeting the four criteria established would be admitted into our rights structure. For instance, say that we were visited by another race of beings exceedingly intelligent and matching our abilities to understand self-interest. In this case, we would absolutely allow them to participate in the rights structure. How could we not? Also, looking backwards, if we were to consider pre-human ancestors, we would certainly admit them into our structure, that is, as long as they were able to meet the four criteria established. Singer simply does not have any grounds on which to stand, in regards to claiming that my point of view is "speciesist". The willingness to admit other species clearly and definitively answers the worry that he believes to be unavoidable without the whole-hearted acceptance of his theory. We threw out Utilitarianism, because of its inability to make any clear distinctions between who could be considered bearers of rights and who could not. I have previously explained why Contractarianism is the best theory to conceive of rights under, and given this, and the requirements to participate in a contract based rights system, animals simply do not have the tools needed to be successful in this venture.

Singer argues “I do not deny that normal human beings may possess capacities lacked by both retarded humans and animals...”¹⁷ Here Singer and I are in agreement. I have argued already in this paper, from a modified Thomistic point of view that (most) humans have access to both cognitive and operative powers, a synthesis of the two that allows for the universalization of rights across a species. Animals and the cognitively impaired, it turns out, do not have access to these cognitive abilities. Singer continues, “...I do not deny that normal humans may, on the basis of these capacities, possess rights lacked by both retarded humans and animals.”¹⁸ Add to this a statement from *Animal Liberation*,

There are obviously differences between humans and other animals, and these differences must give rise to some differences in the rights that each have. Recognizing this evident fact, however, is no barrier to the case for extending the basic principle of equality to nonhuman animals.¹⁹

Singer would, therefore, agree with me at least to the extent that humans and animals retain distinctly different capacities, and that with these different capacities come different rights (where we part ways is that I believe animals simply have no rights at all.) Singer himself however does not see that humans possessing certain rights that animals do not, could be seen as possible justification for treating humans and animals differently. Humans have rights that animals don't, but for Singer, this is of no consequence to how animals should be regarded or treated. Generally, according to

¹⁷ Singer, Peter. The Fable of the Fox and the Unliberated Animals. *Ethics*, Vol. 88, No. 2 (Jan., 1978), pp. 119-125 Published by: [The University of Chicago Press](http://www.jstor.org/stable/2379980) Article Stable URL: <http://www.jstor.org/stable/2379980>

¹⁸ *ibid*

¹⁹ *Ibid*, P 2

Singer, rights are really of no relevance when it comes to consideration of that individual. This stands in complete contrast to what it means to have a right. Rights by definition, afford a privileged level of concern and consideration. If it is the case that we acquire rights to protect our self-interests, then what good are they to us if they do not aid us in this goal? If being a bearer of rights in no way affects our self-interests, for good or bad why do we want them? And if this truly is what Singer believes, that being a bearer of rights is inconsequential to how we are to treat other humans or animals, then why does he make such a strong push for, "extending the basic principle of equality to nonhuman animals?" If rights fail to differentiate the treatment of humans, from the treatment of animals, then how does Singer believe that including animals into our structure as bearers of rights is *going to affect any change?* Given his conception of rights, it clearly will not.

Conclusion

In this paper, we have tracked through hundreds of years of philosophy to get to an accurate and correct understanding of rights, and how they apply to humans and animals. We started with a discussion of the values and weaknesses of potential theories of rights, and ended up with a Hobbesian based theory of Contractarianism as the most explanatory. To remove the worry of defining the vague notion of rationality, I established criteria of conditions necessary for an agent to participate in a rights structure. Aquinas argues that expression of cognitive abilities crucially distinguishes humans from animals. He further distinguishes between cognitive abilities and operative

abilities, which allows for the distinctions between humans and animals, and also distinctions among humans. I then explained how it is that children and the cognitively impaired are unable to participate in a rights structure, according to my criteria established. Korsgaard supports my view using a Kantian account to show, how it is that we should conceive of animals (and children/ the cognitively impaired) and how they should be treated. I ended this paper by analyzing some of Singer's counter-examples to my thesis, and explained why his arguments, especially the "speciesist" charge, fail to establish that animals participate in our rights structure.

This small paper does not answer all of the questions that we have on the subject of rights, in regards to humans or animals. Questions about rights are difficult and complex, and the answers equally so. But, hopefully, this paper begins to establish a conception of rights grounded in something solid and non-vague. If we are to advance our understanding of rights, we must focus on the very real, practical nature of rights. We must also let go of the presuppositions and emotional appeals made by animal rights theorists to advance their positions.

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