

## Animal Ethics and Politics Beyond the Social Contract

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### Résumé de l'article

Cet article est divisé en trois sections. Tout d'abord, je décris la grande pluralité des opinions existant sur les questions de l'éthique animale, montrant que nos désaccords sur le sujet sont profonds. Cette réalité du pluralisme raisonnable en matière d'éthique animale pose un problème politique. Selon la tradition libérale dominante de la philosophie politique, une faction de personnes ne peut imposer ses valeurs à une autre faction qui rejette raisonnablement ces valeurs. Au lieu de cela, nous sommes obligés de justifier nos actions politiques en utilisant des raisons que tout le monde peut accepter. Ainsi, dans la seconde section, je suggère que notre condition de pluralisme raisonnable nous mène à une forme de contractualisme. La tradition du contrat social est justement apparue comme une tentative de réfléchir à la façon dont une société caractérisée par un profond désaccord moral peut néanmoins s'entendre sur les principes fondamentaux de la justice. Dans cette section, je montre que, bien que la tradition du contrat social semble offrir les meilleurs outils pour définir la manière de traiter le désaccord moral, elle ne parvient pas à nous aider à réfléchir aux questions essentielles de l'éthique animale. Dans la dernière section, je suggère quelques façons susceptibles de permettre à la philosophie politique de dépasser le contractualisme dans sa réflexion sur cette question, ceci comprenant l'adoption d'un style de politique agonistique.



# ANIMAL ETHICS AND POLITICS BEYOND THE SOCIAL CONTRACT

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## ABSTRACT:

This paper is divided into three sections. First, I describe the wide plurality of views on issues of animal ethics, showing that our disagreements here are deep and profound. This fact of reasonable pluralism about animal ethics presents a political problem. According to the dominant liberal tradition of political philosophy, it is impermissible for one faction of people to impose its values upon another faction of people who reasonably reject those values. Instead, we are obligated to justify our political actions to each other using reasons that everyone can accept. Thus, in the second section I suggest that our condition of reasonable pluralism inspires us to turn toward some form of contractarianism. The social contract tradition emerged precisely as an attempt to think about how a society characterized by deep moral disagreement could nonetheless agree about the basic principles of justice. I will show, in this section, that although the social contract tradition would seem to contain the best tools for thinking about how to deal with moral disagreement, it fails to help us think through the important issues of animal ethics. In the concluding section, I suggest some ways in which political philosophy might move beyond contractarianism when thinking about this issue, including embracing an agonistic style of politics.

## RÉSUMÉ :

Cet article est divisé en trois sections. Tout d'abord, je décris la grande pluralité des opinions existant sur les questions de l'éthique animale, montrant que nos désaccords sur le sujet sont profonds. Cette réalité du pluralisme raisonnable en matière d'éthique animale pose un problème politique. Selon la tradition libérale dominante de la philosophie politique, une faction de personnes ne peut imposer ses valeurs à une autre faction qui rejette raisonnablement ces valeurs. Au lieu de cela, nous sommes obligés de justifier nos actions politiques en utilisant des raisons que tout le monde peut accepter. Ainsi, dans la seconde section, je suggère que notre condition de pluralisme raisonnable nous mène à une forme de contractualisme. La tradition du contrat social est justement apparue comme une tentative de réfléchir à la façon dont une société caractérisée par un profond désaccord moral peut néanmoins s'entendre sur les principes fondamentaux de la justice. Dans cette section, je montre que, bien que la tradition du contrat social semble offrir les meilleurs outils pour définir la manière de traiter le désaccord moral, elle ne parvient pas à nous aider à réfléchir aux questions essentielles de l'éthique animale. Dans la dernière section, je suggère quelques façons susceptibles de permettre à la philosophie politique de dépasser le contractualisme dans sa réflexion sur cette question, ceci comprenant l'adoption d'un style de politique agonistique.

## INTRODUCTION

Moral questions surrounding the human treatment of non-human animals are both inescapably pressing and inescapably difficult. They are inescapably pressing because our consciousnesses have been sufficiently raised about this issue to be (at least abstractly) aware of the scale and scope of the harms that are daily inflicted upon helpless animals all around the world. Because of this, moral and political philosophers, even if they do not work directly on issues concerning animals, nowadays need to have an answer to the question, “How does your moral or political philosophy deal with the human treatment of non-human animals?” For a long time, philosophers felt no need to have an answer to this question, but today an inability to answer the question betrays a deficiency of some kind in the philosopher’s thought. These moral questions about the treatment of animals are inescapably difficult because the pre-reflective moral intuitions of people about these issues are widely divergent, and furthermore philosophical reflection on issues of animal ethics has yielded widely divergent positions. Thus, we are faced with both the necessity and the difficulty of thinking through the moral issues involved in the human treatment of non-human animals.

I am interested in exploring the following question: given the depth of the disagreement we experience about matters of animal ethics, is there any hope for an overlapping consensus on these issues—and if not, what are the implications? This paper will be divided into three sections. First, I will describe the wide plurality of views about questions of animal ethics, showing that our disagreements on these topics are deep and profound. This condition of reasonable pluralism presents a political problem. According to the dominant liberal tradition of political philosophy, it is impermissible for one faction of people to impose its values upon another faction of people who reasonably reject those values. Instead, we are obligated to justify our political actions to each other using reasons that everyone can accept. Thus, in the second part of the paper I will suggest that our condition of reasonable pluralism inspires us to turn toward some form of contractarianism. The social contract tradition emerged precisely as an attempt to think about how a society characterized by moral and religious disagreement could nonetheless agree about the basic principles of justice that would govern shared political institutions. I will show, in this section, that although the social contract tradition contains some well-developed tools for thinking about how to deal with the fact of reasonable pluralism, it fails to help us think through the important issues of animal ethics. In the concluding third section, I will suggest some ways in which political philosophers might move beyond contractarianism when thinking about these issues. First, I suggest the plausibility of a two-tiered moral system that proposes “contractarianism for humans, utilitarianism for animals.” Second, I recognize that this proposal will not satisfy the demands of all reasonable people, such as the radical animal liberationist. Ultimately, those in deepest disagreement about animal ethics should recognize themselves as engaged in agonistic political struggle outside of any implicit social contract with each other, thus blurring the lines between advocacy, extremism, and terrorism.

## THE AXES OF DISAGREEMENT

Our moral disagreements about the human treatment of non-human animals can be separated out into three categories, or axes, of disagreement. First, there is the issue of *moral membership*, which poses the question, “Which beings are part of the moral community?” Beings that are part of the moral community are in some way deserving of moral consideration. But who or what counts? This is a complex question with many possible answers. For some, only humans count as having moral membership.<sup>1</sup> For others, cognitively advanced non-human animals (like great apes) count,<sup>2</sup> but other animals do not. Still others count all sentient life as members of the moral community. Questions about what counts as sentience, and how to measure it, include both philosophical and empirical issues. Still others are even willing to extend moral membership beyond sentient life to include non-sentient nature.<sup>3</sup>

To further complicate the question, the issue of moral membership is (arguably) not all-or-nothing, but rather membership can come in gradations. Indeed, controversy here arises even when trying to assign moral membership to different classes of humans. For some philosophers there are some humans who are not fully moral persons, such as stem cells or fetuses, which might be thought to have only partial moral membership, and thus deserving of only partial moral consideration (leaving open the possibility that their concerns can be overridden by countervailing concerns). With non-human animals, some believe that moral consideration should be accorded in proportion to cognitive complexity—the more complex, the more consideration. For others, all animals should have absolute consideration in the form of absolute rights (which are thought to be unoverrideable). Providing a full account of the necessary and sufficient conditions for membership in the moral community is a matter of profound disagreement, and inevitably leads one into complex empirical and metaphysical issues.

Second, there is the issue of *moral obligation*, which poses the question, “What is the nature of our moral obligations to animals (assuming that they are members of the moral community)?” This question is addressed differently in each of the many moral and religious traditions. For some deontological thinkers, we are obligated to respect the rights of animals, with “rights” understood as moral side-constraints against unwanted interference by others.<sup>4</sup> For some utilitarian thinkers, we are obligated to maximize the utility of all sentient beings, including animals (with “utility” being understood in different ways even within the utilitarian tradition itself).<sup>5</sup> For some care ethicists, we are obligated to practice certain forms of care toward those animals who are caught up in interactions with humans and who are dependent upon us, with “care” being understood in different ways.<sup>6</sup> For others, however, humans have no direct moral obligation towards animals. We may have indirect moral obligations toward animals—namely, we may be obligated to respect other humans’ claims over animals they own. Or perhaps, as Immanuel Kant famously argued, we should not abuse animals because doing so would corrupt our moral character (not because of the harm inflicted upon the animal). Furthermore, each of the major religious tradi-

tions contains a great deal of material about how humans ought to treat animals.<sup>7</sup> Given the fact that each of these moral and religious traditions has a large number of reasonable adherents, it makes it hard to imagine the possibility of agreement about the content of our moral obligations towards animals. Providing a full account of our moral obligations to non-human animals is a matter of profound disagreement, and inevitably leads one into complex debates in moral and religious philosophy.

Third, there is the issue of the relationship between the *moral* and the *legal*, which poses the question, “Which of our moral obligations (whatever they happen to be) are legally enforceable?” This question highlights the fact that the moral domain is not completely coextensive with the legal domain, since there are some moral infractions which are not (and should not be) legally punishable, and there are some morally virtuous acts which are not (and should not be) legally rewarded. For example, there are some cases in which lying is a legally punishable offence (such as lying under oath), but there are other cases in which lying, although morally reprehensible, is not legally punishable (such as lying to a spouse about one’s true feelings about the relationship).<sup>8</sup> In the case of animal ethics, it is unclear which moral offences against animals trigger a justification for legal and political regulation and punishment. Jan Narveson, for example, argues that the state should prohibit wanton cruelty toward animals, and that it should act so as to preserve endangered species, but he then argues that the other more morally ambiguous practices should be devolved to private judgments, letting people individually choose how to treat and whether or not to consume animals, but none of these private views should be coercively legislated so as to regulate the practices of others.<sup>9</sup> We might call this the position of “liberal toleration.” Those who accord animals a higher moral status, of course, feel not only entitled but also obligated to impose their moral views on others through legislation, since abstaining from this would permit the continued exploitation and slaughter of countless animals. Descending from the more egregious harms of slaughter and experimentation, there might be cases like the ownership of domesticated animals where even those who find the practice immoral might recognize that the use of state power to enforce that view would be problematic. Providing in detail the necessary and sufficient conditions under which moral values can be legitimately imposed with state force is a matter of profound disagreement, and inevitability leads one into complex debates in political and legal philosophy.

Clearly the issues surrounding the human treatment of non-human animals divides people over questions of metaphysics, moral philosophy, political philosophy, and legal philosophy. One response to the presentation of this plurality of views is to insist, “Yes, there are many views, but only one view—namely my own—is true!” Those attracted to this response are convinced that one of the views on offer is uniquely reasonable, with all the other views being obviously unreasonable—that is, the latter views could be arrived at only through some fairly obvious epistemic or moral missteps. I want to suggest that this would be a mistake. The debate about animal ethics features a reasonable pluralism of

views. This is not to say that *all* the views are reasonable, only that some broad set of the views are reasonable. The reasonable views of others on this issue cannot be dismissed out of hand, but must be respected.

This fact of reasonable pluralism on the subject of animal ethics reflects a broader condition of reasonable pluralism that has long been recognized in the liberal tradition, from the classical social contract thinkers through contemporary articulations of “political liberalism.”<sup>10</sup> Pluralism appears as a historical fact that demonstrates that the free exercise of human reason does *not* issue in identical judgments on all issues of religion, morality, and philosophy, but rather in a rich diversity of such judgments. In *Political Liberalism*, Rawls argues that “a plurality of reasonable yet incompatible comprehensive doctrines is the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime.”<sup>11</sup> Rawls puts the point more strongly when he later argues that pluralism regarding moral worldviews (or “comprehensive doctrines”) is the “*inevitable* outcome of free human reason.”<sup>12</sup> Rawls refers to the cause of this reasonable pluralism as “the burdens of judgment,” which expresses the fact that people reasoning in good faith are beset by so many complexities that disagreement is to be expected (and thus respected) even in epistemically ideal conditions.<sup>13</sup> Galston likewise notes, “Modern liberal-democratic societies are characterized by an *irreversible* pluralism, that is, by conflicting and incommensurable conceptions of the human good.”<sup>14</sup> Reason itself, it seems, breeds a pluralism of values.<sup>15</sup>

This fact of reasonable pluralism poses a challenge. If we accept that the views of (some) others are reasonable, we will be uncomfortable with enlisting state power to impose our own views upon others who have reasonable objections to them.<sup>16</sup> This discomfort at imposing sectarian views on others, and the hope of living under a regime affirmed by all reasonable people, lies at the heart of liberal political philosophy. As Jeremy Waldron articulates the view, “a social and political order is illegitimate unless it is rooted in the consent of all those who have to live under it; the consent or agreement of these people is a condition of its being morally permissible to enforce that order against them.”<sup>17</sup> Nagel echoes, “The task of discovering the conditions of legitimacy is traditionally conceived as that of finding a way to justify a political system to everyone who is required to live under it.”<sup>18</sup> Finally, Fred D’Agostino writes, “*No regime is legitimate unless it is reasonable from every point of view.*”<sup>19</sup> Some articulation of this commitment can be found in the writings of all contemporary liberal political philosophers.

The challenge faced by the contractarian tradition (and, indeed, by all of modern political philosophy), then, is clear: we seek consensus about justice, but recognize the fact of reasonable pluralism. Is it possible to overcome pluralism? Is the hope of living under a mutually agreeable regime realistic? The social contract tradition has attempted to answer this question. Social contract thinkers have recognized that our personal values and judgments differ, and this can lead to social conflict. The proposed solution is to set up some kind of hypothetical



fair bargaining situation, in which we temporarily bracket those values that divide us and restrict ourselves to values or interests that we share, which thereby permits us to deliberate and (hopefully) agree upon social rules and institutions that can achieve the benefits of social cooperation and avoid the costs of social conflict.<sup>20</sup>

Many philosophers recognize the power of the social contract tradition to deal with the problems generated by the fact of reasonable pluralism, and thus many of those concerned about animal ethics have turned to the social contract tradition. But we face a problem when we turn our attention to the issue of animal ethics. Namely, none of the major social contract thinkers included animals or their interests in the contract. Up until very recently, only humans have counted. Animals have been vulnerable outsiders to the contract, and therefore outside the purview of justice. This blindness in the social contract tradition has been exposed as a serious flaw, and many philosophers are now attempting to find ways to deal with the question of animals within the social contract tradition.

In what follows, I will review some of these attempts. I present three separate strands of the social contract tradition (Hobbesian, Lockean, and Kantian), and evaluate whether or not they can adequately deal with the reasonable pluralism we experience about animal ethics. I hope to show that each of them fails in some way. This will lead me to draw a pessimistic conclusion: although contractarianism is a powerful and sophisticated framework for thinking through matters of justice in conditions of reasonable pluralism, it is incapable of offering a viable solution for this particular issue.

## VARIETIES OF CONTRACTARIANISM

The first strand of contractarianism comes from Thomas Hobbes. Hobbes imagines a hypothetical social contract in which bargainers are motivated solely by self-interested calculations, stripped of all the moral and religious values that divide them. Can self-interest alone generate shared moral obligations? At first glance, it seems unlikely—why would self-interested bargainers ever agree to “moral” constraints on their behavior? Well, in most cases it is in my self-interest to give up my right to harm you on the condition that you give up your right to harm me. The potential benefits I might gain from harming you are dwarfed by the potential harms that you might inflict on me, and the same goes for you. Thus, mutual non-aggression (secured by state power) will likely be a matter of agreement for Hobbesian bargainers, no matter what moral and religious values they are committed to. Other basic rights can be secured through this kind of idealized bargaining. The difficult questions of morality can (seemingly) be reduced to the simple ground of prudence.<sup>21</sup> The power of this version of contractarianism is that it is able to generate moral obligations without any controversial moral inputs at all. Regardless of which moral or religious ideals that you hold, you are likely to agree with the principle of mutual non-aggression simply because of your self-interest.

Despite these benefits, the problems of Hobbesian contractarianism are many. Returning to the question of the human relationship to non-human animals, it is clear that the Hobbesian contract entirely excludes animals from consideration. Why? We humans have the opportunity to use animals to our benefit in all kinds of ways—by owning them as pets, by using them in scientific experiments, by eating them, etc. Under the terms of the Hobbesian contract, we would only be obligated to curtail our self-interested activities towards animals if doing so was reciprocated by animals altering their behavior in ways that provided us humans more benefit than could be gained by self-interestedly exploiting them.<sup>22</sup> However, it is clear that the human use of animals benefits humans' narrow self-interest more so than does the non-use of animals. Therefore, it is in our interests to remain in a pre-contract (state of nature) situation *vis-à-vis* non-human animals. This places animals entirely outside the realm of justice, and leaves them vulnerable to all kinds of human-interested use and abuse.

This problem of the Hobbesian contract applies not only to animals, but certain classes of humans as well, namely infants and the disabled. These beings cannot offer anything in return for non-aggression. Nothing in our narrow self-interest discourages us from exploiting these beings, using them, perhaps, for scientific experimentation.<sup>23</sup> This conclusion is, to be sure, entirely unacceptable, and clashes strongly with the moral intuitions of most human moral agents.<sup>24</sup> The Hobbesian contract hopes to generate our moral obligations out of a non-moral bargaining situation, but in starting with such a morally stingy framework, it is completely incapable of explaining why we should take into consideration the interests of those beings who cannot buy off our non-aggression. Not even minimal obligations of non-cruelty toward vulnerable groups can be secured. The repulsiveness of this outcome exposes the unacceptability of Hobbesian contractarianism. As Chris Tucker and Chris Macdonald rightly note, "Tying morality to mutual advantage seems to exclude those lacking productive capacities. Any moral theory which fails to afford consideration to children and the congenitally handicapped is hardly worthy of its name."<sup>25</sup>

We turn, then, to the second strand of contractarianism, which traces back to John Locke. For Locke, the pre-contract state of nature is not the moral free-for-all that Hobbes describes. Instead, Locke insists that people have pre-political rights; that is, rights that are grounded in our nature, not created through human political agreement. For Locke, these natural rights include the right to life, liberty, and property. Robert Nozick, a contemporary Lockean, describes our natural rights as "moral side-constraints" against the unwanted interference by others.<sup>26</sup> Thus, Lockean bargaining over the social contract takes place against the backdrop of natural rights. This element of the Lockean tradition responds to the main problem identified in the Hobbesian tradition, which is that vulnerable humans, like infants and the disabled, are not afforded protection because doing so is not in the narrow self-interest of the bargainers. For Locke, all humans have pre-political rights that afford them protection against the aggression of others.



But where does this leave animals? For Locke, animals do not have natural rights, and therefore human interactions with animals are property governed, as with Hobbes, on the basis of our self-interest alone. Following Martha Nussbaum, however, we might insist on extending some package of pre-political rights or entitlements to animals as a constraint on the outcome of human bargaining.<sup>27</sup> While this extension of pre-political rights to animals would provide them with moral side-constraints against self-interested use and abuse by humans, is it a defensible philosophical move?

I think not. Recall that which motivated us to engage with the social contract tradition in the first place. We find ourselves experiencing reasonable disagreement about the moral questions surrounding the human treatment of non-human animals. Recognizing this, we are inclined to resist straightforwardly imposing the values of one group upon another group who reasonably disagrees. This partisan first-order moral disagreement inspires us to ascend to a non-partisan second-order position where our deliberation is undertaken in a hypothetical and idealized contract-situation in which our partisan views are temporarily bracketed. This is done with the hope that the agreement reached at the second order can allow us to return to and better navigate our first-order disagreements. One of the things that we disagree about at the first-order level is whether animals have rights and, if so, what the content of those rights are. When someone proposes building pre-political rights into the (background of the) contract-situation, then partisan first-order commitments are being smuggled into our supposedly non-partisan second-order deliberation. This defeats the purpose of the social contract move. If we are not going to bracket at least some of the controversial partisan views that divide us, then deliberating about a social contract will be just as hopeless as our everyday moral disagreements are when none of our values are bracketed. The insistence on extending natural rights to animals is of course a reasonable position, but, since people can reasonably reject it (so it seems to me), it cannot structure the contract situation.

We then turn, finally, to the third and last strand of the social contract tradition, which is most fully articulated by John Rawls, but is rooted in the thinking of Immanuel Kant. Rawlsian contractarianism pictures bargainers as motivated merely by self-interested calculations (like in the contractarianism of Hobbes), but these bargainers are placed behind a “veil of ignorance,” which removes from them certain knowledge that might bias their bargaining strategy, and this information includes categories such as race, gender, social class, natural ability, and more. This veil of ignorance helps ensure that the outcome of the bargaining is truly impartial, since no bargainer will be inclined to seek advantages for a particular group to the detriment of others.<sup>28</sup> So Rawls is able to embrace the moral minimalism of Hobbes (since the bargainers have no controversial moral or religious values, but are motivated strictly by self-interest), to drop the question-begging natural rights assumption of Locke, but to avoid (at least some of) the repugnant conclusions of Hobbes by including the veil of ignorance (which helps to guarantee that the bargainers take into account the interests of all moral agents). On this last point, although Rawls had little to say about the issue of disability, many

have argued that his position can be extended to include the disabled, by simply making “ability” a piece of information removed by the veil of ignorance. If I were a self-interested bargainer and did not know my level of ability, then I would surely extend basic rights to the disabled, as a way of protecting myself if I happened to be disabled when the veil of ignorance was lifted.

How do animals figure into Rawls’ impartial social contract? For Rawls, impartiality only covers humans; that is, the bargainers are partial toward the human species and do not take into account the interests of animals. Many political philosophers who find this unsatisfying, then, propose making “species membership” a piece of information removed by the veil of ignorance. If the bargainers are forced to decide upon rights and obligations without knowing to which species they will belong when the veil of ignorance is lifted, then they will (out of self-interest) extend certain basic rights to all or most non-human animals.<sup>29</sup> While this tweak to the contract situation would indeed result in the extension of moral and political protection to animals, is it a defensible philosophical move? Again, I think not. The reasons for this skepticism are identical to those discussed above about my objection against building in pre-political animal rights to the background of the Lockean contract situation. Namely, placing species membership behind the veil of ignorance is not a neutral way of framing the contract, because doing so already chooses sides in the first-order disagreement about whether or not animals count as moral agents. Contractarianism requires a morally thin starting point, and promises to generate morally thick principles of morality and justice. Thus, if people experience disagreement about the nature and limits of the veil of ignorance, then the contract situation itself is a matter of reasonable disagreement, and is thus not able to help us deal with first-order disagreement.

What I have shown in this section is that all three major versions of contractarianism fail to help us deal with our disagreements over animal ethics because how we construct the contract situation is itself contestable.<sup>30</sup> While contractarianism promises to help us rise above our moral disagreements and find common ground, no such common ground can be found. Our disagreements about animal ethics follow us up into our disagreements about how to structure the contract situation.

### BEYOND CONTRACTARIANISM?

While contractarianism is the tradition that most systematically thinks through the problem of reasonable pluralism, it fails to help deal with the many disagreements we have about animal ethics. This failure poses serious problems for political philosophy. My main contribution in this article is to point out the failure and the reasons for its importance, but I am not entirely clear about how the failure is to be resolved or overcome. So, to conclude, I will outline a few provisional and tentative thoughts about how philosophers and activists concerned about animal ethics might think about this issue beyond the contractarian framework.

First, political philosophy might benefit by dropping the insistence, so common to moral and political philosophy, upon a “unified theory” of morality or justice. That is, perhaps we should not expect a single set of principles to adequately deal with all moral and political questions. One way of breaking away from this assumption is spelled out by Nozick, who outlines a possible two-tiered system of morality under the slogan “utilitarianism for animals, Kantianism for people.”<sup>31</sup> He explains, “It says: (1) maximize the total happiness of all living beings; (2) place stringent side constraints on what one may do to human beings. Human beings may not be used or sacrificed for the benefit of others; animals may be used or sacrificed for the benefit of other people or animals *only if* those benefits are greater than the loss inflicted.”<sup>32</sup> So Nozick insists upon a minimal baseline commitment that all positions must meet in order to be considered reasonable: “Animals count for something.”<sup>33</sup> Any position that grants *no* moral status to *all* non-human animals can safely be dismissed as unreasonable, and we should feel entitled to impose legal obligations on adherents of these views regardless of their protest.

But this moral minimalism regarding animals would rule out only cruelty toward animals that does not have sufficient compensating benefits for humans—a far cry from the moral demands of many animal advocates. Nozick recognizes that his proposal is too modest for many people, himself included, but he takes it as a reasonable moral minimum. Perhaps the difficulties outlined in this article might be tackled with the following philosophical strategy: the rights and responsibilities of humans *vis-à-vis* other human members of the political community should be hashed out through some version of contractarianism, while the obligations of humans *vis-à-vis* non-human animals should be worked out through other moral theories, starting with a minimalist utilitarian core, and working outward.<sup>34</sup>

I find this two-tiered system of morality quite compelling, and it meshes with many of my moral intuitions about animal ethics. However, we are not looking for a view that best mirrors *my* moral intuitions—we are looking for an overlapping consensus that might capture the moral intuitions (or at least most of the moral intuitions) of the *entire* political community. When we broaden our scope to think about the moral intuitions of all other reasonable citizens on the issue of animal ethics, we must accept that the two-tiered moral system, which applies seemingly “weaker” moral standards to our treatment of animals (as compared to our treatment of humans), will surely not satisfy all reasonable people. Some animal advocates will view utilitarianism as an unacceptable moral theory for animals (asking, “if it’s not good enough for humans, why impose it on animals?”). The moral minimalism of Nozick will be rejected by many philosophers and activists who demand stronger protections for animals. The social contract tradition and political liberalism seem unhelpful in resolving this stand-off. Political liberals insist that we bracket our “non-shared” values when we engage in “public reason” about matters of basic justice. But what does this require of us in this context? Which values get bracketed? If political liberalism prohibits citizens from coercively imposing their values upon others who reasonably disagree, then what is to be done when *any* policy that we choose con-

cerning the treatment of animals will *inevitably* generate loud yet reasonable objections from some segment of the political community?

When we experience these deep yet reasonable disagreements about matters of basic justice, we are forced into *agonistic politics*. In the context of agonistic politics, we should mutually recognize the right of each other to violate the basic political liberal prohibition against coercively imposing one's views over the reasonable objections of others. That is, we should feel entitled to engage in political action without bracketing our non-shared moral values, and we should reconcile ourselves to the fact that others will do so as well.<sup>35</sup> The agonistic contest will hopefully be one mostly between Adversaries, not Enemies, in which both sides agree to willingly abide by the results of the democratic struggle when they lose, even as they keep preparing for the next political battle. In sum, while agonistic politics suspends the basic liberal requirement to abstain from imposing values on others over their reasonable objection,<sup>36</sup> our disagreements about animal ethics are so deep and profound that we cannot avoid imposing controversial values when legislating on this issue one way or the other.<sup>37</sup>

The moral minimalist will likely permit the continued slaughter of animals (provided that the practices are relatively humane) and animal experimentation for medical research, among other human uses of animals (whenever the harms to the animals are outweighed by the compensating benefits to humans). The animal liberationist, on the other hand, will insist upon the complete elimination of these practices throughout society, enforced and punishable by law. This impasse (which spans metaphysical, moral, and political questions) is enormous, with common ground entirely lacking, and in which neither side is obviously and uniquely reasonable (or unreasonable). This divide cannot be adequately dealt with in the tradition of social contract theory, which insists upon a bracketing of non-shared values, since what should be bracketed is itself a matter of reasonable contestation.<sup>38</sup>

In the terms of the social contract tradition, then, we should recognize that, when it comes to issues surrounding animals ethics, we confront each other *in the state of nature, without an agreed upon social contract to regulate our interactions*. This leads to some troubling implications regarding political action – namely, the lines become blurred between important categories like advocacy, extremism, and terrorism. The animal liberationist faces only weak moral constraints (but many prudential constraints) on radical political action for the sake of animal liberation. The moral minimalist, on the other hand, is permitted to try to capture and use state power to punish those who engage in radical actions for the sake of animal liberation. This does not, of course, sanction all violent action in the name of (or in opposition to) the liberation of animals, but it should open us up to the reasonableness of certain forms of radical political action. This issue requires much more elaboration than I can give it here. Surely it is not the case that anything goes in conditions of agonistic politics, since we *do* have socially contracted constraints on our behavior *vis-à-vis* other humans (such as the bodily and civil liberties that we are likely to agree about), and possibly also *vis-à-*

*vis* the legitimately acquired private property of others. Thus, while extremist political action may be permissible in the context of agonistic politics, there are undoubtedly limits within which reasonable political activism must remain.

Moving beyond contractarianism means moving beyond the comfortable hope that our disagreements can be settled on the basis of shared values, shared interests, or an agreed upon decision-procedure. But move beyond we must. The metaphysical, moral, political, and legal questions that surround the issues of animal ethics do not admit of clear rational answers. Only so much ground can be won in the rational world of philosophy. The rest must be won in the wild realm of agonistic politics.

## NOTES

- <sup>1</sup> For defenders of this view, see Carruthers, Peter, *The Animals Issue*, Cambridge, Cambridge University Press, 1992; Narveson, Jan, "Animal Rights", *Canadian Journal of Philosophy*, vol. 7, no. 1, 1977, pp. 161-178, and Narveson, "On a Case for Animal Rights", *The Monist*, vol. 70, no. 1, 1987, pp. 31-49.
- <sup>2</sup> See Cavalieri, Paola and Peter Singer (eds), *The Great Ape Project: Equality Beyond Humanity*, New York, St-Martin's Press, 1993.
- <sup>3</sup> This latter position is arguably defended by advocates of "deep ecology." See Sessions, George and Bill Devall, *Deep Ecology: Living as if Nature Mattered*, Layton, UT, Gibbs Smith, 1985.
- <sup>4</sup> See Regan, Tom, *The Case for Animal Rights*, Oakland, CA, University of California Press, 2004.
- <sup>5</sup> For example, John Stuart Mill defends the idea of a hierarchy between "higher" and "lower" pleasures, as opposed to Jeremy Bentham's insistence on the non-hierarchical sameness of all pleasure. For the most influential application of utilitarianism to the issue of animal ethics, see Singer, Peter, *Animal Liberation*, New York, HarperCollins Publishers, 1975.
- <sup>6</sup> See Adams, Carol and Josephine Donovan (eds), *Beyond Animal Rights: A Feminist Caring Ethic for the Treatment of Animals*, New York, Continuum, 1996.
- <sup>7</sup> However, religious traditions are often not straightforward or even internally consistent about the moral issues involved in the human treatment of non-human animals. Thus, religious traditions can be mobilized in opposition to, or on behalf of, ethical concern for animals, depending on how the tradition is interpreted and applied. For a debate about the role of religion in the debates about animal ethics, see Sajoo, Aryn, "Religion has a rich tradition of taking animal ethics seriously", *The Guardian*, 10 June 2010, and Peter Singer, "Religion's regressive hold on animal rights issues", *The Guardian*, 8 June 2010. For essays dealing with a variety of religious traditions in relation to animal ethics, see Waldau, Paul and Kimberley Patton (eds), *A Communion of Subjects: Animals in Religion, Science, and Ethics*, New York, Columbia University Press, 2006.
- <sup>8</sup> However, the legal domain is not just a subset of the moral domain. That is, there are some moral obligations that are not legal obligations (such as some cases of lying), and there are some legal obligations that are not themselves moral obligations (such as driving on the right side of the road, wherein the legal obligation is merely a way of prudentially coordinating behaviour).
- <sup>9</sup> Narveson, "On a Case for Animal Rights", *op. cit.*, p. 45.
- <sup>10</sup> For a compelling account of the philosophical continuity between the social contract tradition and contemporary "political liberalism" (or "public reason liberalism"), see Gerald Gaus, "Public Reason Liberalism", unpublished.
- <sup>11</sup> Rawls, John, *Political Liberalism*, New York, Columbia University Press, 1993, p. xviii.
- <sup>12</sup> *Ibid.*, p. 37; my italics.
- <sup>13</sup> Rawls describes the burdens of judgment as follows: "(a) The evidence—empirical and scientific—bearing on the case is conflicting and complex, and thus hard to assess and evaluate. (b) Even where we agree fully about the kinds of considerations that are relevant, we may disagree about their weight, and so arrive at different judgments. (c) To some extent all our concepts, and not only moral and political concepts, are vague and subject to hard cases; and this indeterminacy means that we must rely on judgments and interpretation (and on judgments about interpretations) within some range (not sharply specifiable) where reasonable persons may differ. (d) To some extent (how great we cannot tell) the way we assess evidence and weight moral and political values is shaped by our total experience, our whole course of life up to now; and our total experiences must always differ... (e) Often there are different kinds of normative considerations of different force on both sides of an issue and it is difficult to make an overall assessment. (f) Finally...any system of social institutions is limited in the values it can admit so that some selection must be made from the full range of moral and political values that might be realized" (*Ibid.*, pp. 56-57).



- <sup>14</sup> Galston, William, "Pluralism and Social Unity", *Ethics*, vol. 99, no. 4, 1989, p. 711; my italics.
- <sup>15</sup> After mentioning the intractable, millennia-long disputes in epistemology, ethics, and metaphysics, Michael Huemer convincingly notes, "It is therefore difficult to escape the conclusion that the human mind is subject to sources of differing judgment apart from irrationality, ignorance, and person bias". Huemer, Michael, *The Problem of Political Authority*, New York, Palgrave Macmillan, 2013, p. 49.
- <sup>16</sup> This general account of political legitimacy is characteristic of the liberal tradition, but has its most systematic contemporary defence in Rawls, *Political Liberalism*, *op. cit.*.
- <sup>17</sup> Waldron, Jeremy, "Theoretical Foundations of Liberalism", *The Philosophical Quarterly*, vol. 37, no. 147, 1987, p. 140.
- <sup>18</sup> Nagel, Thomas, *Equality and Partiality*, New York, Oxford, University Press, 1991, p. 3.
- <sup>19</sup> D'Agostino, Fred, *Free Public Reason*, New York, Oxford University Press, 1996, p. 30.
- <sup>20</sup> For a discussion of the power and inescapability of contractarianism in helping to deal with the fact of reasonable pluralism, see Jan Narveson, "Social Contract: The Last Word in Moral Theories", *Rationality, Markets, and Morals*, Vol. 4, 2013, pp. 88–107.
- <sup>21</sup> The most ambitious contemporary attempt to ground morality in prudence is Gauthier, David, *Morals by Agreement*, New York, Oxford University Press, 1986.
- <sup>22</sup> The possibility that some animals might alter their behaviour to further the interests of humans is unconvincingly argued in Tucker, Chris and Chris MacDonald, "Beastly Contractarianism? A Contractarian Analysis of the Possibility of Animal Rights", *Animal Ethics*, vol. 5, no. 2, 2004, pp. 1–15.
- <sup>23</sup> Here is Hobbes's discussion of animals: "To make covenants with brute beasts is impossible, because not understanding our speech, they understand not, nor accept of any translation of right, nor can translate any right to another; and without mutual acceptation, there is no covenant." Gauthier, the most prominent contemporary Hobbesian contract theorist, agrees: "Animals, the unborn, the congenitally handicapped and defective, fall beyond the pale of a morality tied to mutuality." Narveson, also a Hobbesian, concurs: "Contractarianism leaves animals out of it... They are, by and large, to be dealt with in terms of our self-interest, unconstrained by the terms of hypothetical agreements with them. Just exactly what our interest in them is may, of course, be matter for debate; but that those are the terms on which we may deal with them is, on this view of morality, overwhelmingly indicated" (all quoted in Garner, Robert, "Rawls, Animals and Justice: New Literature, Same Response", *Res Publica*, vol. 18, 2012, pp. 159–172, note 167).
- <sup>24</sup> We might say that these outcomes of the Hobbesian contract fail to achieve "reflective equilibrium" with our considered conviction that "marginal" humans have moral rights, and should not be dealt with through self-interest alone.
- <sup>25</sup> Tucker and Macdonald, "Beastly Contractarianism: A Contractarian Analysis of the Possibility of Animal Rights", *op. cit.*, p. 6.
- <sup>26</sup> See Nozick, Robert, *Anarchy, State, and Utopia*, New York, Basic Books, 1974.
- <sup>27</sup> Nussbaum, Martha, *Frontiers of Justice: Disability, Nationality, and Species Membership*. Cambridge, MA, Belknap Press, 2006, pp. 41–43. Nussbaum grounds her conception of animal ethics in her "capabilities approach," which is quite different than other accounts in the natural rights tradition. Nonetheless, Nussbaum admires and in her own way follows Locke's view that some set of moral rights and responsibilities precede and constrain human political bargaining and agreement.
- <sup>28</sup> See Rawls, John, *A Theory of Justice*, Cambridge, Belknap, 1971, Chapter 3.
- <sup>29</sup> For defences of this position, see Hilden, Julie, "A Contractarian View of Animal Rights: Insuring Against the Possibility of being a Non-Human Animal", *Animal Law*, vol. 14, no. 5, 2007, pp. 5–28; Humphreys, Rebekah, "Contractarianism: On the Incoherence of the Exclusion of Non-Human Beings", *Percipi*, vol. 2, 2008, pp. 28–38. For an alternative proposal for reforming Rawlsian contractarianism so as to include the interests of animals, see Rowlands, Mark, "Contractarianism and Animal Rights", *Journal of Applied Philosophy*, vol. 14, no. 3, 1997, pp. 235–247.

<sup>30</sup> For a somewhat different argument that nonetheless also reaches this conclusion, see Garner, “Rawls, Animals, and Justice: New Literature, Same Response”, *op. cit.*, p. 172 : “It is understandable why attempts have been made to utilise Rawls on behalf of animals. Not only is contractarianism in general able, apparently, to answer key questions about moral obligation, but, in addition, Rawls’s version of it has, of course, taken a central place in Western political thought. It is time, though, to look elsewhere for a theory that can provide the elevated moral status for animals that many of the scholars discussed in this article seek”.

<sup>31</sup> Nozick, *Anarchy, State, and Utopia*, *op. cit.*, p. 39.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*, p. 35.

<sup>34</sup> This kind of moral minimalism is echoed by Richard Posner, who defends a “soft utilitarianism” against the “hard utilitarianism” of Peter Singer. See “Animal Rights,” a debate between Posner and Singer, *Slate*, June 2001.

<sup>35</sup> For a fuller account and defence of agonistic politics, see Mouffe, Chantal, *The Democratic Paradox*, Brooklyn, Verso, 2005, and Chantal Mouffe, *The Return of the Political*, Brooklyn, Verso, 2006. For an argument defending the displacement of “rational consensus” from the centre of liberal thought, see Gray, John, *The Two Faces of Liberalism*, New York, Blackwell Publishers, 2000.

<sup>36</sup> Some agonist philosophers suggest disposing of the term “reasonable” altogether. Mouffe writes, “But who decides what is and what is not ‘reasonable’? In politics the very distinction between ‘reasonable’ and ‘unreasonable’ is already the drawing of a frontier; it has a political character and is always the expression of a given hegemony” (Mouffe, *The Return of the Political*, *op. cit.*, pp. 142-143).

<sup>37</sup> This case of deep yet reasonable pluralism about animal ethics helps illustrate the limits of contractarian liberalism itself – namely, its quest for consensus is thwarted when members of the political community are deeply divided about justice. Enzo Rossi suggests that perhaps “consensus theorists set themselves an impossible task, given the persistent ethical diversity that characterizes liberal polities.” If so, he goes on, perhaps political liberalism belongs to a previous and less pluralistic era, not the present one: “on the consensus theorists’ own account of the connection between liberal institutions and persistent diversity, those conditions seem unlikely to obtain in modern liberal democracies... [T]he consensus view may owe its deficiencies to its historical roots, in the sense that *it is only designed to accommodate the relatively low level of diversity found in early modern European societies*” (Rossi, Enzo, “Modus Vivendi, Consensus, and (Realist) Political Legitimacy”, *Public Reason: Journal of Political and Moral Philosophy*, vol. 2, no. 2, 2010, p. 37; my italics).

<sup>38</sup> Gerald Gaus presents a version of contractarianism in which the bargainers do not bracket their non-shared values. Encumbered by their whole set of values, the bargainers propose their optimal policies, but, after seeing the other competing proposals, realize that some proposals can be lived with while some are unbearable. Gaus assumes that, because of the large benefits of social cooperation and the large costs of social conflict, diverse bargainers will be able to agree upon a policy that everyone can live with, even if only some bargainers deem it optimal. However, it seems unlikely that the moral minimalist and the animal liberationist will come to an agreement with even these deflated standards of consensus. For the animal liberationist, any concessions to the moral minimalist represent entirely unacceptable concessions to the continuation of large-scale domination of humans over animals. Unfortunately Gaus does not confront the pluralism of views surrounding animal issues. See Gaus, Gerald, *The Order of Public Reason*, New York, Cambridge University Press, 2011.