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Weighing Animal Lives

A Critical Assessment of Justification and Prioritization in Animal-Rights Theories

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Abstract

The project underlying this dissertation aims at analyzing three pro-animal-rights theories, evaluating the theories, and outlining an alternative theoretical account of animal rights. The analytical categories are justification and function of animal rights, the definition of the right holder, and the resolution approach to rights conflict. The categories are applied to a natural, a theocentric, and a contractarian approach to defend animal rights. The evaluation is substantiated by the assumption that rights are meant to protect less powerful beings against more powerful aggressors. The constructive segment is an investigation into what extent identified disadvantages of the theories can be avoided by outlining a new model for animal rights.

The analyses and evaluation suggest that all three theories are at risk of contradicting the proper function of rights-based theories. Tom Regan’s naturalist account of animal rights includes a logical possibility to sacrifice less capable beings for the sake of more capable beings. Andrew Linzey’s theocentric case for animal rights may sometimes mean that vulnerable human persons should be sacrificed for more powerful non-human beings. Mark Rowlands’ outlined contractarian model, further reconstructed in this work, fails to provide a way to resolve rights conflicts, making the function of rights inapplicable to conflicts.

In conclusion, it is suggested that defining the right holder as a self-preservative being can be supported by, at least, the contractarian rationale. That would also conform to the proper function of rights-based theories. It is also suggested that this means that rights conflicts should be resolved by a voluntary sacrifice of the most powerful being. Practical circumstances should be created where such voluntariness is both genuine and rationally possible.

*Keywords:* Animal rights, justification, prioritization, applied ethics, proper function, justice, rights language, vivisection, rights conflict

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Fredrik Karlsson
Introduction

It is the privilege of rational persons to always be able to choose between judgement and curiosity. The animal issue is no exception from this rule, although it seems to attract more than its fair share of self-assured judgement.

I had the opportunity to be a visiting undergraduate abroad for some months while still studying biomedicine. The project I was there for involved experimenting on pregnant mice. It was the brains of their fetuses that were the aim of the experiments. I was taught how to anaesthetize and cut open the mice, and how to extract the placenta where the fetuses sat like beads on a necklace. The faces of the fetuses were easily cut away and, as their skulls had not yet hardened into bone, their brains willingly popped out by pinching the back of their heads. Some of the fetuses had been genetically altered into glowing brightly green when lit with ultraviolet light. I was amazed by the beautiful complexity of a young mouse brain, made distinct by fluorescence.

Some years later I had got a job as a laboratory technician. It was part of my work to hold a hen to my chest and cut her claws until some blood could be extracted. The rooster of the family was doing his best to defend her, but all he could do behind bars was to annoy me, crowing loudly. Maybe then he thought I was treating her brutally, but, then again, he did not know what I had done to her as a chicken. Hundreds of starved mosquitoes had been feeding on her while I held her against the mesh of the mosquito net. Initially, she had wriggled and chirped shrilly, but then she just let it happen. Some of my colleagues told me to be careful doing that, because chickens sometimes die from the shock of losing blood that fast.

The rats I was using were respectable, calm, and surprisingly large creatures. I was worried when I first met them because of their size, but as soon as I touched them I sensed the dignity in their behaviour. It was beneath them to bite me. It was necessary to dig deep into their
bodies to reach their precious liver. Although nice to handle, it takes practice to anaesthetize rats so that they remain unconscious even while removing their skin. The twisting of flayed and awakening rats is a strong argument for re-evaluating one’s choice of career.

The discomfort of pursuing destruction was not possible for me to qualify verbally, and it repeated itself with each sacrificed animal. Still, I kept going to work. Life seeped through my fingers and death came to others. I changed breathing bodies into sloppy piles of wet fur and offended flesh. And still, I kept rising each morning for work. I still have poem-like texts and sarcastic experiment protocols from the time of my first experiments where I try to put words to my acts. I was immediately aware of the eeriness of that sort of killing, but animal experimentation is part of an established institution. How could it not be for the best? Surely, my perception was an over-reaction.

Guilt, or whatever that eerie feeling should be called, was not what made me send the resignation e-mail. My social life was in a mess, the relationship with my boss was becoming confrontational, I thought my work was monotonous and dull, I did not obtain any proper results, I did not like the city I lived in, and I had been on a two-week holiday back to Sweden and realized how smoothly functioning a country it really is. Those were the kind of things, I believe, that finally made me realize that I needed to change things. If I would have had a good life, I would probably have kept running on my treadmill until I acclimated my self-understanding to perform systematic and technical killing.

Somehow, the choice of stop killing and start writing about not killing was more practical than moral; at least it seems so when I reconstruct the circumstances. The moral peculiarities of ripping apart other bodies made me feel bad, but they were not enough for change. Killing is such a common and expected way to treat others in our society. Moral sentiments, on the other hand, are mainly viewed to be a cute add-on to commercial forces. Wanting to feel good is another desire that the market can satisfy—at a price.

So did I then exercise that banal evil? Of course I did. But nothing changes by admitting that. It is comfortable to get stuck in a sea of judgement, no matter whether to judge others or oneself. Judgement may be believed to take skill and insight to perform. It does not. Right judgement, however, does. But the perception of rightness cannot be acquired by amassing judgments.
Once I had decided to resign from my job, I became curious about my decision. I knew that the technical killing was wrong; I had known that since the first time I did it. But why was it wrong? That was the question that made me write this book. The book presents some answers to this question. At the same time, the decision to work within rights language also proved to be a decision to not be able to explain my personal experiences of killing. The explanations of rights language are insufficient to explain bolshie, guilt-ridden experiences.

On the other hand, rights language contains a potential to point out the most banal evil, the most established, everyday structure of acts (buying a salami sandwich, only thinking whether you can afford it or not). It is this potential of challenging the inherent structures of everyday life that has made rights language the chosen moral language among some pro-animal theorists. Rights work by way of social and legal institutions. Changing rights is the same as changing those institutions.

Rights are also strongly associated with a sense of being human, and the idea that all human beings are equal. To reform the definition of the right holder may then be feared to question, or make impossible liberal equality and justice itself. To suggest that animals would have some kind of moral status, implying that they ought not to be randomly tortured and killed, may still cause quite some commotion, although the case is usually about misrepresenting the issue at hand and unreflectingly repeating old sentences emptied of any rational meaning. To suggest that animals have rights, however, seriously challenges the still quite viable liberal notion of justice for all, i.e. all humans.

If anyone holds that non-human animals do not have any moral status at all, it is probably because that person simply has not cared to seriously reflect upon the issue. They might spontaneously feel that their illusory right to be inconsiderate is threatened.

People who are against viewing non-human animals as holding rights, however, may feel threatened at a more existential level. Liberal society teaches its citizens, and vice versa, to view ourselves as human before all, and that is precisely why we are all equal and why we should feel as belonging to the same ‘we’. This ‘we’, this existential community, is threatened by the notion that radically different beings—non-humans—may, after all, be a part of the ‘we’.
The case that pro-animal-rights theorists make is not simply about changing the definition of the word ‘right holder’. To treat philosophy as if it were merely about manipulating words is to miss the point of arguing. To define the term ‘right holders’ as animals, or the word ‘humans’ as a kind of animal, does not warrant a more benign treatment of non-human animals.

In the practice of vivisection, a view of humans as being animals is predominant. Still, as just exemplified, there prevails a conventionally destructive relationship between human animals and non-human animals. The inclusion of the word ‘human’ in the word ‘animal’ still does not break the human notion of dominance over other life forms. The basic notions underlying the relationship, at least the ones about the priority of our species, strangely persist even though those notions are considered expressions of ‘the human–non-human relation’, rather than ‘the human–animal relation’. Does it also persist when we let the pro-animal-rights theorists define ‘rights’? The animal issue goes deeper than terminology, and I hope that will, at least, become clear in this book.

This book is about the change in human–non-human relations that are suggested by justifications of animal rights. It is also, and generally more implicit, a pursuit of a suitable and inclusive moral language that may or may not correlate with the purposes of animal-rights theories. When various writers defend animal rights, it may be understood as an attempt to provoke the same change in human conduct as experiences of performing animal experiments did to my conduct. Pro-animal-rights writers, however, must use another kind of rhetoric than providing direct experiences of killing and destruction. Stories of actual events of human conduct against non-humans, or even narrations loosely based on the imagined consequences of various human–non-human relationships, are sometimes used to highlight the animal issue. Also, arguments in the form of statements ordered according to certain deductive and inductive rules are considered to be an acceptable way of presenting reasons not to violate non-humans. Direct experiences of handling animals, anecdotes and narrations about human–non-human relationships, as well as the intellectualist lines of argumentations all have the same aim: changing our view of who has moral standing.

The switch in moral outlook that animal ethics represent is merely a small part of a greater scheme of change. The view that only presently existing humans have moral value, common as it still is, is under siege.
from alternative moral outlooks that also view future generations, ecological systems, all life, and even machines as morally worthy. Numerous changes in ethical thinking have been suggested and although many of them are merely to be the objects of intellectualist fancy, the attempts reflect real problems. Environmental problems are real, poverty is real, arbitrary killing is real, and mistreated animals are also real. Somewhere behind that multi-layered mesh of lines of reasoning that have been produced in the name of changing our moral view to the better, there is a hope, or at least hopefully a hope, that this better view can also help to solve real problems and change the conduct of real people. This is also the most remarkably naïve feature of what ethics is about. The hope that our conduct can be changed by reasonable, thought-through dialogue between disparate perspectives is the vulnerability of the discipline as such.

The purpose and problems

This project has three purposes. The first purpose is to analyze three theories defending animal rights. The analyses are categorized by justification and function of the suggested rights, the definition of the right holder, and the suggested conflict-resolution approach.

The second purpose is to evaluate the theories. The evaluation takes as its starting point a comparison of the analyses, and a hypothetical application of the theories. The evaluative criteria are intersubjectivity, applicability, and proper function.

The third purpose is to investigate whether any potential disadvantages of the theories can be avoided by constructing a new model for animal rights, or if the project of granting animal rights must remain an intellectual experiment due to moral impracticality.

Each analyzed theory represents a particular way to justify animal rights. Tom Regan has famously a natural-rights approach to justification. Andrew Linzey has a quite different approach to justifying animal rights, relying on Christian theocentric thinking. Lastly, Mark Rowlands has outlined a justification of animal rights based on how John Rawls reasons about justice as fairness. This last theory is arguably a kind of contractarian justification.

The focus of the analyses is on four principal problem areas: the suggested justification of animal rights, the function of animal rights,
the definition of the right holder, and how the theories understand and treat rights conflicts. The justification of rights is the line of reasoning that grants the theory moral force. How does each theory justify animal rights? The right holders are the group of beings that are argued to have rights. With respect to which properties are some animals right holders? The function of rights is what the rights do for these beings, in what respects they are protected. Which particular protection is suggested by each theory? Rights conflicts come about when the functions of various rights clash. How does each theory treat such conflict? The analytical categories reflect questions about who ‘the animals’ are according to these theories, in what sense they are meant to be protected, and what that protection means when conflicting with the rights of human beings.

Rights language

The definition of rights, as of any other concept or word, may not be absolute. But there are some definitions that are better than others. This is especially obvious when the issue is narrowed down to stipulative definitions of rights. It is, after all, only relevant here what ‘rights’ mean within a political-philosophical discourse. The exact meaning of rights is naturally debated within such a discourse, but there are a few available alternatives to relate to—in contrast to the freely roaming relativism of ‘rights’ in everyday speech. The major alternatives will be discussed in the subsequent chapter, but this will be preceded by a brief postulation of the role of rights.

Rights are a kind of moral protection from any kind of mistreatment by someone against whom we are otherwise defenceless. This protective function is taken to be the minimal definition of ‘rights’ within this project. The bundle of rights, at the very least the judicial ones, is an artificial and institutional empowerment against misuse of physical, social, and intellectual skill, and other kinds of sources of power. Rights language expresses that the majority, or any other authority, ought not to oppress the minority, or others that are relatively powerless. The individual is the foremost example of something vulnerable that needs to be empowered by rights. To use rights language to justify the oppression of any one individual by someone or something more influential is always nonsensical. No matter whether the
act is right or wrong, rights language simply cannot expedite the justification of such an act.

It will be increasingly clear how seriously I take this postulation about the role of rights. Nevertheless, there is no need to say more about it here.

Justification of animal rights

The most pretentious statement to make concerning animal rights is to say that it is known that animals have rights. To know that animals have rights is to say that the beliefs about animals having rights are both true and justified. If moral truths are not considered to exist, then a justification of animal rights is as strong a case as is possible to make for animal rights. Justification is thus necessary no matter whether moral knowledge is considered to be possible or not.

The stance on moral knowledge depends on the stance on moral truth. Moral ontology refers to meta-ethical problems ingrained with conflicting metaphysical axioms that no one can ask anyone to successfully decipher in order to present a sufficiently complete theory. Much of the discussion today on moral truths is about whether they at all exist or not. Facing such extensive doubts academically will turn any book into a discussion on ontological issues. Thus, the possibility of moral knowledge will remain open to debate.

The other part of the traditional notion of moral knowledge is justification. This is a no-less discussed issue and the doubts over the possibility of justification are as grave as those over moral truth, but moral justification is harder to leave aside when analyzing animal rights. Justifying animal rights provides good reasons to believe that animals have rights. It would not be fair to ask a theorist to show moral truth in order to seriously consider his theory, but it is certainly in line with proper academic etiquette to ask a theorist with which good reasons he would support his claims. This is especially true when the theorist suggests a reformation of society that would affect the everyday life of numerous people.

A classical notion of justificatory procedure would expect pro-animal-rights theorists to first define a foundation of basic beliefs, from where further arguments, or propositional evidence, would be formulated by deduction or induction to support the notion of animal rights. A successful justification results in epistemic duties to believe
in the justified beliefs. This would also, considering the intended application of rights language, result in reformation of social and legal institutions.

A standard justification of human rights is that human beings are born with dignity, which gives us inherent value and rights. Theories defending animal rights characteristically challenge the notion that only humans have rights by pointing to another foundation of common beliefs—one that may or may not rely on the notion of dignity by birthright. In consequence, pro-animal-rights theorists argue for changing the criteria for having rights. Such criteria are considered to be non-speciesist.

The ability to feel—sentience—has been suggested to be a sufficient criterion in order to be a right holder. Feelings must be cognitively experienced and interpreted in a certain manner in order to be morally relevant, further adding conditions to be fulfilled in order to be granted rights. Also, conditions of a certain spiritual status may be said to apply in a certain kind of justification.

The analysis of each theory largely follows the structure of a classical notion of justification, albeit the principal study object is the theoretical rigidity provided by justification. The basic beliefs of each author are outlined and the line of argumentation is explained as based on such basic beliefs. The justification of animal rights is assumed to aim for epistemic duties for believing in animal rights, which, by extension, result in acts of reforming the institutions. Certain aspects of hypothetically practical consequences of such reformation are further analyzed and evaluated. Such consequences are analyzed with in mind that they can very well be expressions of the justificatory line of arguments. Identified problems will be discussed and at least partial solutions suggested.

The right holder

The concrete being that is meant to have rights, the right holder, is a particular kind of being. Each theory suggests a view of the right holder, which, in this case, is called ‘animal’ for short. It is evidently the case that if you justify animal rights, and would like some practical effect of what you are saying, you must also say which beings that you refer to. At least the statements need to be translatable into practical conduct.
In conventional rights-based theories, right holders are often referred to as persons. Personhood, in this (Kantian) sense, is conditioned by demands on moral agency. An ability to subdue spontaneous desires by reason is needed in order to be a person, and thus a right holder. This is one possible way to understand what it means to have dignity, and thus rights. There have been a number of other suggestions to justify rights as being specifically human. Pointing at the advanced linguistic skills of human beings is another common suggestion.

Pro-animal-rights theories challenge all these suggestions. They attempt to provoke a change in the notion of who the right holder can be and is. The sentientist alternative, also the most popular alternative, as well as the theocentric alternative, based on the spiritual status of animals, have already been mentioned. There may be more alternatives than these to expand the notion of the right holder still awaiting public acknowledgement.

No matter how many alternatives there are, or how reasonable they seem, the existence of thought-through alternatives makes us think of the old notions of personhood as relativized. It is no longer sensible to hold notions of the right holder that automatically exclude non-humans, but still insist on not being ideological. The alternatives, no matter whether we agree with them or not, make us think about the position we have as no longer being absolute. At least, this is what alternative ways of thinking are doing if we are curious about what they have to say.

Function of rights

A main function of rights is to protect the right holder in particular respects. This function of rights is inferred from looking at the included beings and concluding what kind of protection they need in order to live a good life.

The function of rights should take the whole right holder into account, while defining the right holder only takes a minimal portion of the right holder into account. Certain beings may be said to be a right holder because they fulfil criteria A to D. In order to figure out which beings that then ought to be included within the scope, attributes A–D should be identified among the group of candidates. Once they are
included, however, and the protection of the granted rights needs to be specified, we need to take the entire included being into account.

The animal-rights approach characteristically defends the view that the goods of individual animals outweigh the public interest. This is suggested by the use of rights language. The rights approach is closely connected to liberal thought, which means that rights language is used to argue for a society where the institutional arrangements secure equal liberties for all individuals by making some key restrictions on people’s conduct. Animal-rights theories argue that the term ‘all individuals’ includes certain non-humans.

The general function of animal rights is then simply to provide the goods of the animal and protect them from being (arbitrarily) overridden by public interests.¹ There are profound disagreements about the proper nature of the protected and provided goods, but they usually at least include various liberties and often certain social values. This, however, needs further specification in order to be practically functional rights. The definition of the particular goods that must not be (arbitrarily) violated depends, of course, on which particular being holds the interests to which the goods correlate. The explication of particular rights depends on the particularities of the right holder in question, for example its biological nature or preferences.

Involving the analysis with the function of rights adds to the understanding of animal-rights theories as relativizing traditional ways of applying rights language. No longer is it self-evident that the bundle of rights includes the right to vote or the liberty of faith. Such rights turn into particularly human rights, while the potential rights of non-humans have specified functions that are particular to each being’s relevant goods. There may then also be the right to ruminate in peace, or the liberty to fly.

Rights conflicts

A conflict between rights is a conflict between duties to protect right holders. The conflict can be between the interests of two or more different right holders, or it can be between two or more different interests of one and the same right holder. The analysis will be limited to the first kind of conflict.

² The brackets around arbitrarily are meant to signify that the protective nature of rights against public interests varies between being prima facie and absolute.
Also, the analysis will be focused on conflicts between two right holders’ good of life. Paul Taylor has discussed conflicts between goods of human and non-human beings. He broadly approaches conflicts in situations of self-defence, conflicts between basic goods and non-basic goods, conflicts between basic goods and other basic goods, and even the issue of restituting failures of resolving conflicts justly. The analysis here will focus only on conflicts between basic goods, and specifically the basic good of life.

In Taylor’s scheme of conflicts between goods, this would mean that conflicts between goods are here issues of distributive justice. The basic character of the good of life, its absolute necessity for the good life for the beings in conflict, gives the conflict a special character. The conflict acquires a more practical character when it is a case of self-defence, or a case of weighing basic goods against less necessary goods. Those conflicts also, of course, have moral connotations, but not at all the same moral tensions as weighing basic goods against each other. Life–life conflicts contain strong tensions that activate and demand to make explicit the underlying notion of justice.

The example of animal experimentation within biomedicine will be used as a point of reference for a discussion on conflicts between rights to life. Admittedly, vivisection will be only an example. It will not work as a case study, as it will not be directly based on real experiments, or be used as a source of inductive and quite particular insights. Instead, animal experimentation will be used as a catalyst for evaluating the practical meaning of various theories defending animal rights. Although the practical meaning is explicated with the help of the example of vivisection, acquired insights are meant to be valid for how humans generally ought to relate to non-humans, according to the analyzed theories.

Animal experimentation is a social institution. It is a fundamental necessity for contemporary forms of biomedical research and thus health care, at least in the kind of society in which I am a writer. It is large scale in the number of animals used, in the number of people involved, and in monetary cost. Its organization and bureaucracy are complex and reproduce the phenomenon over time.

3 Ibid. 279, 291f.
Animal experimentation is an institution where non-human lives are systematically outweighed against public interests. The control mechanisms for avoiding experiments lacking relevance seem to play a mostly symbolic role, as hardly any applications for animal experiments are denied.⁴

This makes animal experimentation suitable as a testing ground for animal-rights theories. Rights language implies an address to institutions. The abolition of the systematic disregard of non-human lives, fairer weighing mechanisms between the lives of non-humans and public interests, is a main conclusion from pro-animal-rights theories.

Not all people agree, though, that animal experimentation is a meaningful example of a life–life conflict. Some people hold for true that animal experiments are completely unnecessary and that alternative methods are presently available. Others say, with as strong a conviction, that it is brutal to let people die because of some misguided sympathy for animals.

It will be assumed in this project that some, probably few, animal experiments actually save human lives. If we would stop doing animal experiments today, we would indirectly hinder terminally ill people’s need for treatment. It is then also assumed that the institution of animal experimentation is thus a genuine, moral problem. Even if this were not true—for example, the universal application of existing alternative methods might produce the same or better results as animal experiments do—animal experimentation can still function well as a basis for discussing life–life conflicts in the hypothetical case where irreplaceable animal experiments sometimes do save human lives.

The weight of the lives of non-humans in vivisection is presently nil. There are animal experiments performed today, and commonly so, simply out of curiosity, for the general advancement of science, or simply to develop a slightly more efficient, mild analgesic that is only used to compete with other already existing brands.

Pro-animal-rights theories argue that the lives of non-humans do have a weight. They even suggest that the weight of certain non-human lives is to be given a weight comparable to human lives. In the subsequent chapters, it is shown that this is not always, not even in

animal-rights theories, the same as granting non-human lives identical weight as human lives.

The analyses of approaches to rights conflicts make it possible to apply each theory to the example of animal experimentation. This will produce a hypothetical practical outcome of each theory. This outcome will be the main object of the evaluative procedure to be discussed next.

Evaluative criteria

The purposes of this work are mainly fulfilled by an interpretative analysis and an evaluation of the theories at hand. The above-presented analytical categories structure the analyses and facilitate comparisons. The analytical categories are normative in the sense that they affect choices of which aspects of each theory to analyze. The categories are not normative, however, in the sense that they contain any precise and explicit evaluative content.

The categories should thus be complemented with evaluative criteria in order to make an evaluation possible. These criteria also affect the analyses, as the analyses aim to prepare for the evaluation. The theories are interpreted with in mind that they will eventually be evaluated with certain criteria.

In short, the evaluative procedure consists of an interaction between the intersubjectivity criterion and the applicability criterion. The interaction is channelled by a third criterion which is used more explicitly, namely proper function.

The intersubjectivity criterion is an approach to the objectivity of each theory. Intersubjectivity may fail to indicate genuine objectivity. The applicability criterion is meant to have the potential to both confirm and challenge the intersubjectivity criterion. Proper function is supposed to narrow the aim of the applicability criterion. Each criterion is necessary for the evaluation, but not sufficient.
Intersubjectivity

Intersubjectivity can be understood as a sub-criterion of objectivity.\(^5\) Alternatively, intersubjectivity is understood as a kind of objectivity.\(^6\) Intersubjectivity often refers to a quality belonging to observations made by various subjects. An observation is intersubjective when it has been confirmed by several observing subjects. An intersubjective observation is, or can reasonably be assumed, to be objectively true.

Here, intersubjectivity is understood to also be a possible and benign quality of arguments. The reading and pondering of arguments are similar to observations, and even involve a kind of observation, in respect of being a usage of perception and cognition. If observations can be made and interpreted in a manner that agrees with the observations of other subjects, then arguments can also be possible to formulate in a way that they are intersubjective.

A criterion of intersubjectivity may be understood as assuming that the involved subjects make the observations or formulate the arguments with, for example, identical methods, values, and competence.\(^7\) The criterion would then be aimed at how the arguments are developed.\(^8\) This understanding is not relevant for evaluating already-formulated theories.

The criterion can also be understood to be satisfied when intersubjectivity of the results is achieved.\(^9\) This is the understanding of intersubjectivity that is relevant here. The importance of intersubjectivity in rights-based theories stems from the idea that rights-based theories are supposed to be applied in democratic societies. The notions that the theories express and the arguments that support them should be challengeable by and understandable to all citizens, at least if the citizens are given, and pursue, the right opportunities.

By intersubjectivity, it is assumed that subjects interpret perceptions of an object with the particular belief system of each subject. It is also assumed that there actually is an external object, for example a line of text presenting an argument, to perceive, along which similarities in the perceptions of each subject order themselves, or at least

\(^{9}\) Ibid. 108.
tend to do so. Talking of intersubjectivity thus also assumes certain metaphysical notions, or rather excludes certain metaphysical options. Intersubjectivity is related, but not necessarily identical to objectivity. Genuine, complete objectivity for human beings is possible to the extent that human perception and language transcend every aspect of the spatiotemporal world. 10 This notion would be held by a realist in the strictest sense. If some properties of the spatiotemporal world are believed to transcend human perception and language, then complete objectivity is believed to be impossible. This would be the moderate-scepticist view. If all properties of the spatiotemporal world are believed to transcend human perception and language, then a radically sceptical outlook would be appropriate. If the spatiotemporal world is believed to be construed throughout, then genuine objectivity is viewed as impossible and an idealist position is taken. Genuine objectivity is apparently impossible to say with certainty whether it is possible or not. It is equally presumptuous, bound by human perception, to say that transcended properties exist, as to say they do not exist.

Complete, genuine intersubjectivity is acquired when complete, genuine empathy with another subject is acquired, practically directed through a commonly perceived object. 11 Arguments can, however, be deemed intersubjective long before complete empathy is achieved. An argument is not the end result of touching upon each aspect of someone’s thinking and emotional life, and the argument can thus be understood by others without empathetically internalizing all those aspects. A certain extent of genuine empathy is, however, necessary for intersubjective arguments to be possible.

If the possibility of a genuinely common understanding of a commonly perceived object is denied, then all forms of intersubjectivity are made impossible. Such a position can be part of various forms of solipsisms. Denying solipsism, the possibility of complete intersubjectivity may still be questioned. Throwing a ball against a wall, and expecting a friend to catch it bouncing off the wall, presumes that the friend has certain similarities in his or her perception of the ball. It would not, however, presume that the friend has an identical perception of the ball, or that the friend has an identical skill in expressing

thoughts and experiences of the ball. Neither does the friend catching the ball, apparently sharing an understanding of the bounciness of the ball, prove genuine intersubjectivity. The commonly shared belief about the ball could be incidental. The possibility of genuine intersubjectivity, like the possibility of objectivity, must be presumed rather than proved.

Intersubjective arguments and observations can be said to consist of subjective interpretations that are resisted by objective qualities. The objective qualities of an argument in a theory are usually recognized as an ink pattern on paper. The result is that intersubjectivity bridges the gap between the subjective and the objective. Without the notion of intersubjectivity, the distinction between subject and object would be at risk of becoming a dichotomy that supports a radically scepticist worldview. Rights would be irrelevant in such a worldview as the function of rights is honed by guesses, which would be no honing at all. There would be no common points of reference more justified than others from which goods to be protected by rights may be concluded.

To ask a rights-based theory to conform to a criterion of intersubjectivity then includes a demand that the theory refers to commonly perceivable properties of spatiotemporal objects. A ball should be talked about as, for example, green and spherical, rather than in terms of childhood memories from playing with a green ball. A more relevant example is that the animal right holder should be talked about as, for example, showing behavioural signs of sentience, rather than being an object perceived as cute by some people.

The parts of the theories that do not relate to objects can also be evaluated by a criterion of intersubjectivity. Theoretical accounts should be expressed in a way that is understandable and challengeable. This would imply a number of other criteria. Clarity is an obvious sub-criterion of intersubjectivity. Precision, coherence, and consistence are other such sub-criteria. These sub-criteria are rather standard criteria for any understandable communication and will not be further discussed here.

Intersubjectivity of a rights-based theory is also obviously related to the applicability of the theory. If the theory is supposed to be applied to institutions that affect the lives of all participants in social life, then a dialogue where all citizens can understand and challenge the premises must be possible.
Applicability
The applicability criterion states that an animal-rights theory, in order to be relevant, can be applied. Rights language is meant as a moral, legal, and conventional language for regulating relationships in society in general. It should thus be possible to apply a rights-based theory generally to relationships in society. These relationships are constituted by communication. If the communication is assumed to possibly be meaningful, it is also assumed that the communication, at least in part, concerns objects that are fully or partly intersubjectively understood.

The applicability criterion can also contradict the conclusions made by the intersubjectivity criterion. The applicability criterion can then be used as a corrective standard for the intersubjectivity criterion. This is done by looking at the practical meaning of the theories, and by using the practical meaning to challenge or confirm beliefs that seemingly are intersubjective and correctly relating to objective circumstances.

The applicability criterion is used to put pressure on the theories, revealing practical meaning. The problem of conflict resolution is used to force the theory in question to take a stand in the case of conflict of rights. Pressing a rights-based theory on its applicability in issues of conflicts of rights reveals hypothetical practical outcomes of the theory and the suggested rights. The hypothetical outcomes are objects of evaluation.

Rights-based theories may include misguidedly intersubjective claims on the nature of right holders. For example, the ability to experience pain and harm has been used to argue for the right-holding status of certain animals. Beliefs about the abilities in question, albeit not about their moral relevance, may very well be said to be intersubjectively construed beliefs about facts, possibly correctly relating to objective properties of the abilities. The abilities in question have been further used, rightly or wrongly, to argue for an asymmetry between the significances of rights among right holders. The abilities vary and thus, it is argued, the significances.

If the differences of such abilities, or other natural properties of the right holders, are misconceived, or if the relevance of the differences is exaggerated, then the asymmetry between significances of rights is also misconceived or exaggerated. The features of such asymmetries
may reflect arbitrary expectations, mistaking a badly conceived view of the right holders for the actual nature of the right holders.

Apparent intersubjectivity is a sign, but not a guarantee, of genuine objectivity. The notion of intersubjectivity assumes that a structure of beliefs is construed with other subjects. It also assumes that the structure of beliefs tends to refer to objective properties of a common surrounding. It does not include the assumption, however, that the reference is always successfully genuine. There is thus no guarantee intended that the intersubjectivity criterion can identify all problems in a theory. A proposition about an object or in a theoretical account can be approved as intersubjective, while the application of such a proposition (assuming that the proposition is prescriptive) may fail morally. The application of the proposition could, for example, suggest arbitrarily harming children, which, at least intuitively, would mean a failed moral applicability.

By using the applicability criterion in the evaluation, it is assumed that beliefs mistakenly supported by intersubjectivity can be revealed by intuitions provoked by a hypothetical application. The applicability criterion approaches the theory not from intersubjective commonalities in beliefs, but from how the beliefs would affect a practical case. To experience a morally charged situation, for example by killing someone else, gives intuitive insights into killing that is of a quality that is not apparently intersubjective. A hypothetical application of a moral theory attempts to provide a similar lead to problems with the theory. The hypothetical practical outcome radiates meaning and provokes intuitions that can be used to challenge certain beliefs supported by the intersubjectivity criterion.

Intersubjectively construed beliefs are then potentially challenged while also using intersubjectivity as an evaluative criterion. The applicability criterion prescribes the theory to be able to be applied. The applicability criterion also generates practical meaning, or at least a hypothetically practical meaning. The criterion does not, however, indicate on which basis intersubjectively construed beliefs might be the result of a failed reference between a thought structure and an object. A third criterion is then necessary to make a distinction between the hypothetical practical outcome of a theory, including intersubjectively, construed beliefs that there are reasons to corroborate, and such a practical outcome that there are reasons to refute. This criterion is referred to as proper function.
Proper function

Considerations of intersubjectivity and applicability underlie the entire analysis, the reading of each theory, although they also surface as criteria affecting the evaluation. The considerations prepare the theories for evaluation, rather than execute the actual evaluation. Proper function, in contrast, has that executive role. This role can be simplified to check each theory; not only to what extent it is intersubjectively supported and applicable, but also that it is intersubjective and applicable in accordance with the proper function of a rights-based theory.

It is obvious that rights-based theories should have a function. They would otherwise be meaningless. Here, however, it is also assumed that rights-based theories have a proper function. The proper function of such a theory is to provide a model for the protection of individuals against a more powerful and potentially aggressive counterpart. This counterpart can be a collective, the state, or a specific individual. The protection is supposed to be minimally necessary for upholding justice, which would not mean a complete protection of the individual from the powers of others. More will be written about this in Chapters 5 and 6.

Formally, a function ‘is an operation which takes elements from one set and produces elements of another (or the same) set’. A function changes something into something else. The concept of function is mostly debated within philosophy of biology, where it is associated with naturalist teleology. A function is then associated with consequences of differences that are beneficial to reproduction and the natural selection of certain individuals. Put more generally, a function of an item has benign effects on the containing system.

Philosophy of biology contains discussions on function as implying teleology. The term function implies a distinction from dysfunction and, by inference, a notion of a good function, or a proper function. The purpose of those discussions, however, is to investigate whether ‘function’ is a proper term to use within biology, and to map what

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'function' means within biology. The discussions certainly imply issues of how to evaluate proper functions, albeit biological functions, but they are rarely extensively discussed.

The work of Alvin Plantinga, in contrast, provides extensive discussions on proper function that may be used for an evaluative apparatus. The purpose of Plantinga’s work has been to show that Christians are warranted to believe in Christian doctrines. He argues that Christians can believe in what they believe in with a soundly functioning cognition and with theoretical support. His work has thus mostly concerned general epistemic issues for a purpose that does not concern this work. He, however, briefly alludes, that his thoughts on proper function can be used for moral issues.15 Also, the step is not far from warranting beliefs of a certain religion and evaluating theories that attempt to justify certain beliefs about animals.

Plantinga aims to warrant the truth of Christian beliefs. Here, the evaluation of moral theories is at hand, which does not necessarily involve claims on moral truth or knowledge. The evaluative procedure is still similar to warrant (and justification) in the sense that it aims to identify a certain kind of theoretical quality of the beliefs at hand that would make those beliefs more trustworthy or theoretically rigid. True beliefs need to be justified or warranted in order to call them knowledge because they may be held by pure chance, and knowledge is supposed to be more rigid than chance. Evaluating moral theories is the same procedure as a justification or warrant, but backwards. The procedure involves a review of the justificatory or warranting arguments, double checking the integrity of the theoretical trustworthiness or rigidity. The evaluation does not, at least not here, aim to evaluate the degree of moral truths in the theories at hand.

Plantinga argues that a proper function is proper in relation to a certain purpose. That purpose is, in either a metaphorical or literal sense, laid down in a design plan. According to Plantinga, the design plan may result from the creative powers of God or be a metaphor for evolutionary processes. The design plan could, however, result from any will, process or other point of reference that would produce some kind of value in relation to which the purpose of the function can be deemed to be proper or not.16

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16 Ibid. 154.
Plantinga also argues that a proper function, in order to be proper, must work in the environment it is designed to work.\textsuperscript{17} This would also be associated with the design plan, the function being designed for a certain environment. The environment should be one that is not misleading the functions, at least not too often.\textsuperscript{18}

The design plan also needs to be aimed, and successfully so, at producing whatever the function is believed to produce if the function is rightly called proper.\textsuperscript{19} The proper function of cognitive processes is, by Plantinga’s general epistemic ambitions, to produce true beliefs. If the ambition is something else, then the aim of the design plan changes accordingly.

This understanding of proper function can be applied to the proper function of animal-rights theories. The purpose of the proper function of rights-based theories is to uphold justice. Justice inherently means to ban and counteract any arbitrary and destructive use of powers over exposed beings. Some arguments will eventually be given for this. But I will mostly trust the strong intuitions saying that the proposition is a true characterization of a major aspect of justice. This purpose of justice also points towards certain characteristics of the environment in which the proper function of rights-based theories is supposed to work.

Firstly, the proper function of rights-based theories is designed to work in an environment that accepts the notion of rights as a political base. Contemporary democratic societies are the most obvious examples of such an environment. The justificatory procedures in the analyzed theories attempt to introduce animal rights in such an environment. Those rights should, however, function in accordance with justice. A properly functioning rights-based theory is possible to apply to the kind of societies that hold human rights in high regard, and do so while also preserving the correlation between justice and the function of rights.

Secondly, rights-based theories are supposed to work in an environment where their protection is needed. This would be an environment where there, indeed, are beings that are exposed to potential aggressors. Even if, for example, a completely peaceful and perfect

\textsuperscript{18} Plantinga, \textit{Warranted Christian Belief}, 159ff.
\textsuperscript{19} Ibid. 155f.
anarchy would constitute rights in, say, local cooperatives, those rights would lack any function. There would not be anything or anyone to protect anyone from. The rights would, however, regain their function as soon as there would be someone with more powers, for example more efficient physical skills, than someone else, and as soon as that person would be tempted to take arbitrary advantage of those extra powers.

All three criteria then support the notion that rights language is supposed to be applied in a democracy. This would also mean that rights language is supposed to be applied in a societal context where there is a close association between justice and equality. Right holders should be able to communicate as equals, or their rights should at least attempt to make such communication possible.

In this context, the intersubjectivity criterion may be viewed to evaluate the degree of possibility for all to form a common understanding of certain aspects of external objects. In other words, the intersubjectivity criterion evaluates the possibility of reasonable conformity of beliefs suggested by each theory.

The applicability criterion can both confirm and refute conclusions made by the intersubjectivity criterion. Conformity in beliefs that are not possible to apply morally in a democratic society, albeit that the conformity is possible to hold intersubjectively, must be questioned.

The criterion of proper function gives the applicability criterion substance and precision. Intersubjectively supported beliefs, i.e. beliefs held in conformity, are inapplicable and should be changed if the (hypothetical) transformation of the beliefs into acts contradicts the proper function of rights-based theories.

Reading

It has been mentioned that the criteria do not only appear in the evaluation, but also affect the analysis. This especially concerns the intersubjectivity and applicability criteria. The criteria are normative claims and demands with which the theories are approached. This means that theories are normatively read and analyzed.

The analyzed texts, however, were not written with the purpose of being categorized and questioned by my particular analysis. It is certain that the analysis procedure is left partly wanting by the original
All analytical categories may not be substantiated by each and every theory. The conditions of being a right holder or other relevant parts of the view of animals may, for example, be only vaguely or implicitly formulated, or certain necessary parts of reasoning are simply missing. This means that a certain degree of reconstruction is necessary while analyzing the texts.

The basic problem of interpreting a text lies in the distance between the horizon of the author’s understanding and the horizon of the reader’s understanding. The actual ink on the paper and the physical weight of a dictionary are signs that say that the meaning of a text is not arbitrary or completely relative to whims. The author does seem to want to say something by writing all those letters. As the text moves the reader, intellectually, emotionally, or some other way, the reader must admit that the text does have meaning. Hermeneutics is about the relationship between that author, that ink, and that reader.

The primary literature of this work has all been written recently and within the Anglo-American and British context of promoting animal rights. Even if I, the reader, do not fit that description, the contextual difference is limited. I might be affected by Swedish egalitarianism, rather than an American and British libertarianism. Some of the analyzed theories may have been formulated before I was even an adolescent. Still, there is little need to construe a formal hermeneutical apparatus as, for example, biblical studies call for.

Rights language has an increasingly standardized and intercontextualized terminology. The extent to which international law uses rights language is an example of this. It is commonplace to interpret rights-based theories, and any rights-based notion, as if they would express ideas that can or should be readily understood by trained readers in other contexts. The necessary interpretative work is thus mostly limited to reconstructions corresponding to analytical categories, while there is no explicit hermeneutical analysis of differing horizons of understanding.

To reconstruct a text is to suggest an implicit meaning of the text, pointing to explicit support for this meaning in the text but without the text expressing that particular meaning.20 A model about the text that goes beyond the text itself is thus necessary in order to reconstruct...
certain meanings of a text. 21 This model is mainly based on explicit propositions in the text. The model is also, however, affected by the particular context in which the text is reconstructed. 22 This context includes the purpose of the reconstruction, including the analytical categories and evaluative criteria of the interpretation at hand.

The reconstruction is then an extension of meaning from the text made with the purpose of the analysis in mind. This means that the reconstruction is not only affected by the text, but also by the analytical categories and evaluative criteria. The analytical categories affect the reconstruction in the sense that it gives it an aim and a purpose. The reconstruction would not be necessary if it would not be to meet an analytical need. The evaluative criteria affect the reconstruction by way of generosity.

Generosity makes interpretation more welcoming of alien perspectives and their elaboration. It attempts to strike a balance between letting the text be itself, while still attempting to understand it as correlating benignly with the evaluative criteria. 23 To read generously is to, at least temporarily, hold back one’s judgmental reaction in order to give the text another chance. It is to push the understanding of the text as close to the evaluative criteria as possible, without contradicting, or otherwise violating the semantical content.

Generosity in interpretation is not about making a text as, for example, politically correct as possible (given that political correctness is not a valid evaluation criterion). If the semantical content of the text forms a justificatory reasoning that, when the practical meaning has been approximated, turns out to have tendencies that contradict the very rights language the text is based upon, then a generous reading of the text paraphrases the text faithful to this contradiction.

When reconstruction is necessary, then the starting point is whatever can be gathered from the text about the view of the animal. This figure is dragged to the analytical category in question and left to expand in it. A coherent continuation of the theory is performed to let the reasoning enter the category and relevant elaborations are made.

23 Cf. ibid. 240. Grenholm argues that generosity when reading means to make the text as factually and logically coherent and consistent as possible. Put more generally, a generous reading should involve an attempt to read benevolently in relation to any evaluative criteria.
Simultaneously, the extension of the reasoning and the broadening of the meaning are checked against the evaluation criteria in order for the reconstruction not to unnecessarily clash with those criteria. Generosity is attempted both by making the reconstruction faithful to the text, at the very least figuratively, and keeping it close to the demands of the evaluation criteria.

Materials

This project includes pro-animal-rights theories that specifically talk of moral responsibility towards animals by making use of rights language. The choice of working solely with animal-rights theories permits a greater focus on a particular moral language, namely rights language, and a particular ethical matter, i.e. the justification of animal rights. It then also allows a more detailed analysis of each theory in itself. The practical meaning and suggested view of animals in each theory can be elaborated upon to a greater extent.

It will be obvious to the reader that the three analyzed theories are still quite different from each other, albeit they all use rights language. The restriction that rights language puts on a theory does, given that rights language is taken to be a particular and meaningful language, exclude certain kinds of rationales. For example, rights language is notoriously hard to combine with ethical rationales that are heavily dependent on quantitative values (a fact that makes the issue of rights conflicts all the more interesting). Still, rights can apparently be justified by quite disparate approaches. The choice of primary literature is meant to reflect this disparateness (rather than the disparateness between utilitarianism, deontology, virtue ethics and so on).

Regan’s arguments for animal rights can be found primarily in *The Case for Animal Rights* (1983). His natural-rights approach gives the nature of animals, most importantly various mental properties, a quite central role in the justification of animal rights. The ability to be harmed is connected to mental properties that thus become key properties that determine whether an animal has rights or not, as well as what the function of those rights would be. The animal, human and non-human, becomes, in Regan’s thinking, an experiencing being, which should be protected from harmful experiences as far as possi-
ble. The human–non-human relation thus turns into a relation between beings capable of being harmed.

Linzey has formulated his position on animal rights primarily in *Christianity and the Rights of Animals* (1989) and *Animal Theology* (1995). His theocentric approach gives a fundamental, justificatory role to divinity and the spiritual status of animals. He challenges deeply rooted Christian notions about the relationship between animals and God. The Creator cares for the creation, it is assumed, and the animal turns into an inspirited being that is granted the protection of God. Human beings, on the other hand, are caretakers of the creation. This gives the human–non-human relation a quite distinct character where certain sacrifice is expected on the part of the human.

Rowlands formulates a defence of animal rights in *Animal Rights* (1998). His contractarian, or at least Rawlsian, approach focuses rather on animals as a kind of being that is theoretically rational to treat justly. Rowlands argues that the Rawlsian original position must include certain animals in order to be consistently applied. Animals acquire rights if they indeed can fit the game-theoretical mechanisms of the original position. Animals turn into beings that are, first and foremost, rational survivalists, and individually so. Human beings are equally viewed as self-interested before anything else. The human–non-human relation becomes one of mutual disinterest between self-interested beings.

It could be argued that the narrow scope of chosen theories decreases objectivity to an unacceptable level. Possibly, someone would argue that the degree of objectivity is even more questionable considering that all theories defend animal rights. Even the concluding theoretical construction is pro-animal rights. This would, however, assume that this work is meant to be read in isolation from other works in the field. Also, it would assume that the purpose of this work would be to solve the question whether animals have rights or not.

The purpose of this work is to analyze and evaluate animal-rights theories mainly with the aim of deciding whether their application contradicts the proper function of a rights-based theory. The main purpose is not to ultimately decide whether animals have rights or not, only to analyze and evaluate hypothetical outcomes of granting animals rights. The constructive suggestion in Chapter 6 should be viewed as primarily a suggestion to solve a problem within a limited discourse of animal ethics. It should neither be taken as a political
suggestion, nor as an ultimate philosophical answer to the moral status of animals. The outlined rationale in Chapter 6 could, possibly, be further developed into political programmes and more refined philosophical models.

This work would need to be considered together with the numerous other works that have been produced in the field. I cannot alone be held responsible for giving a complete view of all relevant perspectives on the entire field of animal-rights discourse. Rather, with the demand for objectivity in mind, as many relevant perspectives as is practically possible should be included within the time limits of the project, thus helping to fulfil the purpose of this particular project, and do this in a way that is communicable and challengeable to others.24 Limiting the analyzed theories to three deontologically oriented pro-animal-rights theories is intended to make it possible to study the intersubjectivity and applicability of pro-animal-rights theories to a sufficient degree, given practical circumstances and the purpose of the project.

An alternative limitation could have been to compare utilitarian pro-animal authors with authors of rights-based theories. Numerous analyses of that kind can be found in much of the animal-ethics literature of the 1980s and 1990s. One of the most relevant aspects of that discussion for this project would be the utilitarian Peter Singer’s criticism of approaching the animal issue with rights language. Singer argues that a rights-based approach to animal ethics is impossible to apply because it cannot resolve conflicts of interests.25 Singer further contends that attempting to solve this problem causes any rights-based theory to become a kind of utilitarian theory.26 This kind of discussion could fit into the theme of this dissertation. It would not, however, assist in accomplishing the purpose of the project. Comparing utilitarian approaches to deontologically rights-based approaches leads to a theoretical discussion that may identify similarities and differences, and advantages and disadvantages with utilitarian and deontological approaches to animal ethics. Such analysis would not, however, identify anything directly relevant to the purpose of this project. Singer’s argument has some relevance in identifying an important problem

concerning rights-based theories, but it lacks relevance in analyzing and evaluating solutions to this problem in relation to the proper function of a substantial rights-based theory.

Another alternative would have been to make a comparative study between rights-based theories and non-utilitarian theorists who are critical of rights language. There are a few anthologies on feminist care-ethical criticisms of animal-rights theories that are themselves pro-animal.27 Again, such a study would be full of considerations about ethical theory, including considerations about the sense of comparing an institutional moral language, like rights language, with the non-institutional moral language of care ethics. The purpose of the project draws attention to the animal issue with the help of ethical theory, not the other way around.

A problem with the selection of primary literature is the decision to not include Martha Nussbaum’s work on entitlements for animals and the capabilities approach. Frontiers of Justice (2006) was her first monograph on the subject. This book offers a neo-Aristotelian and partly Marxist account of animal rights based on the capabilities and dignity of animals. It also includes a well-aimed criticism of a dominant contractarian rationale on justice. Although Nussbaum’s work on animals is not analyzed separately, it does play an important role as a source of inspiration in the concluding chapter. Even if I do not agree with all aspects of Nussbaum’s criticism of the contractarian rationale, she definitely provides a most interesting and useful theory of good for animals. This will be further discussed in Chapter 6.

Narrowing the scope of the project to rights-based theories is a way to discuss less what animal rights ‘are’ or if they can ‘be’ (and maybe to compare this to the definitions and ontology of central concepts of other ethical traditions) and more what their agitators try to do to us, our worldview and the notion of justice. Still, even if rights language will be used as a baseline rather than the focal point of the discussion, an outline of such a baseline should be provided. This will be done in the subsequent chapter, where also some other theoretical background issues will be dealt with.

Previous research

The discussion of the animal issue may have been pursued for a long time, but it has never before been as broad, intensive, and strongly aimed at a practical change as the last four decades. The intensity of the contemporary animal-ethics debate was initiated by an analogy put forth by Singer. If it is wrong to discriminate by natural properties like skin colour and sex, it is also wrong to discriminate by species membership. In *Animal Liberation* (1975), and less polemically in *Practical Ethics* (1979), Singer pursued this idea to develop a utilitarian theory of animals as sentient persons. He argues that all beings that have preferences have moral status. Certain non-humans at least have preferences of avoiding pain. Those non-humans thus have moral status.

Regan was another important character in the early stages of this debate. His seminal *The Case for Animal Rights* (1983) is a much discussed justification of animal rights from a natural-rights perspective. It has become the standard deontological alternative to Singer’s theory. Regan argues that beings that may be harmed have moral status. Certain non-humans have beliefs about their preferences and can thus be harmed. Such beings are called subjects-of-a-life, are postulated to have inherent value, and are argued to have natural rights.

Regan and Singer are still considered to be the main, early pro-animal advocates, although their approaches have been joined by others. In *Animal Rights and Human Morality* (1981), Bernard E. Rollin outlines a neo-Aristotelian approach to granting animals legal rights. There have also been attempts to use contractarian thinking to grant animals a higher moral standing. In *Animal Rights: A Philosophical Defense* (1998), Rowlands reforms certain strands of neo-Kantian notions in order to include animals in the scope of justice. Nussbaum has applied her neo-Aristotelian interpretation of the capabilities approach to the animal issue in *Frontiers of Justice* (2006). These approaches, including Regan’s and Singer’s writings, have become known as ‘extensionist’. They characteristically use conventional traditions, often taken from analytical philosophy, and extend those rationales to include non-humans.

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In parallel to the extensionist approaches, there have been certain attempts to more radically reform traditional schools of moral thought in order to include animals. In *Animal Rights: A Christian Assessment* (1976), Linzey began his still-ongoing elaboration on why Christian doctrines can include animals as valuable in themselves. Carol J. Adams and Josephine Donovan are the editors of *Beyond Animal Rights* (1995), which contains papers criticizing animal rights and outlining a care-ethical approach to the animal issue. In *Animal Pragmatism* (2004), American pragmatist thinking is applied to the animal issue. It is edited by Erin McKenna and Andrew Light. In *Corporal Compasion* (2006), Ralph R. Acampora outlines some body-philosophical lines of thoughts regarding animals. There have been a number of other additions to the animal discourse from the Continental philosophy, *The Moral Menagerie* (2007) by Marc R. Fellenz being one of the more comprehensible and recent ones.

Environmental and animal ethics have had a significant role in the ethics research at Uppsala University. The series of publications that constitute the research of social ethics at Uppsala University is characterized by a broad theoretical and thematic scope, as well as a high degree of relevance to the contemporary society. The first publication on animal ethics within this series was Mats G. Hansson’s *Human Dignity and Animal Well-Being* (1991). Hansson elaborates in detail on Kantian theory and suggests a way to understand it in relation to the animal issue so that the animals are included in the moral community. In 2001, Helena Röcklinsberg published her thesis *Das seufzende Schwein* [The Sighing Pig]. Röcklinsberg clarifies and elaborates on German theories for granting moral value to animals. She concludes by defending a theocentric model for granting animals inherent value.

In parallel to the contributions to animal ethics, there have been several publications on environmental ethics. The first one was Staf-fan Kvassman’s *Samtal med den värdefulla naturen* [Dialogue with Valuable Nature] (1999). Kvassman elaborates on various environmental-ethics theories. He concludes by suggesting a dialogue-based environmental ethics that insists on the unique dignity of human beings. David Kronlid published his thesis *Ecofeminism and Environmental Ethics* in 2003. Kronlid focuses on ecofeminism’s potentiality of treating certain environmental issues, as compared to environmental ethics that is not explicitly feminist. He concludes that an advantage of ecofeminism is its inherent variation that offers a broader
span of ethical tools for environmental problems. Most recently, Kerstin Andersson’s *Människan, naturen och Gud* [Human Beings, Nature and God] (2007) was published. Andersson analyzes environmental-ethics theories formulated from various Christian traditions. She further suggests a model for environmental ethics based on the existential vulnerability of human beings.

Apart from environmental and animal ethics, there have been significant contributions in the Uppsala research environment on bioethics, work ethics, ideology in economics, as well as the issues of human rights, value, and dignity. Of these works, Per Sundman’s *Human Rights, Justification, and Christian Ethics* (1996) was the most instrumental for the earliest outline of this project. Sundman reconstructs and scrutinizes four Christian justifications of human rights. He concludes by suggesting a constructivist model for justifying human rights and argues for its relevance to Christian theology. The analytical method of this work owes much to the methodology of Sundman’s work.

Animal ethics and environmental ethics have often been presented as competing groups of theories. Animal ethics has a mainly individualist orientation, while environmental ethics includes communitarian-like thinking. The biocentric conclusions of this work, based on a separation between existential commonness and particular individual goods, may be viewed as a negotiation between the two streams of thought that characterize the local research environment.

The dissertation distinguishes itself from the previous research in the usage of proper function as an evaluative criterion, and how hypothetical practical outcomes are used in the evaluation. Less space is given to meta-ethical considerations, and more to the procedure of preparing and performing a hypothetical application. Also, the concluding chapter offers an account whose substance is particular to this work.

**Outline**

In the subsequent chapter, rights language is outlined. Wesley Newcomb Hohfeld’s conceptual scheme of rights is used as a starting point. It is argued that such a scheme does not inherently exclude, or
include, non-human beings. The theoretical background of the project is outlined in dialogue with rights theorists.

The three main analyses are presented next. Each of these chapters is introduced by clarifying the foundation of the theory. Next, the justification of animal rights is outlined. This is followed by analyzing and reconstructing accounts on function, definition of the right holder, and approaches to rights conflicts.

In Chapter 2, Regan’s natural justification is outlined as mainly based on arguments by analogy, and on rather conventional notions of justice and equality. The analogies are argued to arouse suspicion that the theory may have anthropomorphic tendencies. This theory is the only one analyzed with clearly stated prioritization rules.

Chapter 3 looks at Linzey’s theocentric approach. The justification is understood to shape a three-level hierarchy of moral values. Eschatological and Christological reinterpretations are important in this work. The theory is the only one analyzed where human beings are sometimes expected to sacrifice themselves for nonhumans.

In Chapter 4, Rowlands’ reinterpretation of Rawls’s justice theory is discussed. More reconstructions than in the other analyses are performed. Rowlands’ approach is argued to be possible, especially after some reconstructions and clarifying elaborations. The reconstructed theory has a strong notion of equality, but this also restricts the application of the theory.

In Chapter 5, the analyses are briefly compared. The theories are then hypothetically applied with the help of the analyses. The hypothetical practical outcomes are evaluated, and the outcome of the evaluation is discussed. The contractarian approach is concluded to have relatively mild problems, and is further used as a justificatory background in Chapter 6.

Chapter 6 begins by defining the main problem to solve in order to develop a fair pro-animal-rights theory. A property should be found that provides a bridge of commensurability between right holders in conflict, without letting that commensurability be a channel for stereotypical, anthropomorphic or otherwise arbitrary expectations, or in any other way distort the proper function of rights-based theories. It is argued that this property is recognizable as self-preservative behaviour. By further elaborations, it is concluded that unpreventable rights conflicts should be resolved by genuinely voluntary sacrifice by any of the involved right holders.
1. Rights Language and Animals

To talk of rights has a high rhetorical potential. It follows that people find uses of the word ‘right’ in our everyday life that go well beyond its political, legal, and moral meaning. Rights language has been innocently misused in advertisements to sell a couple of extra cups of coffee or some other morally irrelevant luxury. At other and more worrying times, the rhetorical force of rights is hi-jacked, called a social putty, and used to express collectivist ideas. Some thinkers see the same kind of hi-jacking tendencies, or at least innocent and ignorant misuses, when rights language is applied to the animal issue. Others argue that rights language is indeed possible to apply to the case of animals.

This chapter contains an outline of certain aspects of rights language, as (British and American) political, moral, and legal philosophers understand its use. The purpose is to point out the conceptual possibilities of applying rights language to the animal case. Some analytical distinctions concerning rights are outlined in order to develop a tool for the subsequent analyses.

In subsequent chapters, analyses will show various justifications for granting rights to some non-human animals. The analysis here will instead investigate whether such justifications are doing something conceptually impossible when designating the supposedly justified moral status of those non-human animals as the moral status of right holders. It is then presumed that the conceptually possible definition of the right holder may be more inclusive than the definition of the right holder that can be justified. In order for animal rights to make sense, the application of the concept of rights to non-human animals should be linguistically possible. In order for animal rights to be prescriptive, there needs to be a justification for granting animals rights. This chapter deals with the issue whether animal rights make sense at all.
The discussion has its origins in the writings of Wesley Newcomb Hohfeld. He proposed a conceptual scheme for legal rights that are still widely used, albeit in various modified forms. Hohfeld’s thoughts on legal rights have been adapted to the issue of moral rights by L. W. Sumner. Sumner works with the notion that legal and moral rights are different species of the same genus, and that they can be differentiated by certain characteristics. The full potential of rights language is further investigated with the help of Ronald Dworkin, Joel Feinberg, Joseph Raz and others.

The work on rights language is naturally not exhaustive. Many notions underlying rights are presumed without much argumentation. Basically, these notions are what make rights language a universal language that is meant to protect individuals against the interests of the collective and other forceful stakeholders.

For example, it is presumed that rights language is a political language in the sense that it prescribes societal values. It is a language meant to be applied to the collective, but for the sake of the individual. The respect of rights is a collective goal, while the rights are held by individuals. The collective always has the power to circumscribe the freedom of the individual. At times, such regulation is necessary for the common good. Rights are the promise from the collective to each individual not to oppress certain aspects of their existence, at least not arbitrarily.

The theories treated in this work are rights-based theories. They have been contrasted to duty-based theories and goal-based theories. All three kinds of theories may use rights language, but it is only rights-based theories that prioritize rights and only secondarily involve duties and goals. The scheme of theories was originally suggested by Dworkin. He also points out some practical differences between the three kinds of theories. Duty-based theories give priority to demands of obligation to a certain standard. Conformity of action is more important than independence of action. Dworkin associates goal-based theories with theories that put society before the individual. The protection of society is more important than the protection of the individual. Rights-based theories, on the other hand, prioritize the independ-

30 Ibid. 171f.
ence of the individual. Contrasted with duties and goals, rights protect the individual’s development and emancipation of its particularities.

The concepts of rights applied to the animal case

Rights language has originally been developed for human societies. It may have a number of facilitating and clarifying functions useful for everyday human relationships. Rights language may be used to express the special relationship between particular persons who have entered a rental contract, loaned and borrowed money, or have otherwise interacted in a manner so that they owe the other something. Rights language may also be used to express a kind of general and more fundamental relationship that human beings share. The basic human rights of international law use rights language in that manner, talking about human needs and dignity as the foundation of human rights. Then, too, there is something that is owed, but it is something more fundamental than paying back a loan. We may owe each other a kind of practical conduct that cannot be generally expressed by any less vague terms than ‘respect’ or ‘integrity’. It is the latter kind of rights, called general or universal rights or, more judicially, in rem rights, that concerns this work.

Another qualification that is worthwhile to make in this early stage is that this work specifically concerns moral rights. Judicial philosophers and other lawyers have surely done most of the work on rights. Some of their works will be used here, but only at points where legal and moral rights converge. Conceptually, there are plenty of such points. The same, basic conceptual scheme will be used for moral rights, as has been developed for legal rights.

The main difference between moral and legal rights is the manner in which the rights are established. Legal rights result from the law of a society. They are particular to that society, and can be altered by changing the law of that society. Moral rights depend on a moral justification, i.e. good moral reasons. Moral rights are meant to be applied globally although their philosophical background and justification, as well as cultural and political differences between people, may sometimes be practical obstacles to such a wide application. The issue whether moral rights can be changed or not depends on the underlying philosophy of the particular rights at hand.
Moral and legal rights are sometimes further contrasted with conventional or customary rights, and international rights. Conventional rights are based on local customs, for example family norms, which are not necessarily regulated by law. International rights are based on formalized and international conventions, typically in the form of United Nations conventions. Both conventional and international rights may find support in, but are not direct results of, various legal systems and moral theories.

One more characteristic is typical of moral rights. They have a stronger prescriptive character than other kinds of rights. It makes sense to adapt legal or international rights, or even conventional rights, to the content of moral rights. Civil disobedience as well as acting against custom can be morally justified and even a sign of honourable character. The reverse does not make sense. There is no reason for moral rights to adapt to other kinds of rights only because they would have a different or even contradictory content. The process of moral justification gives moral rights a stronger prescriptive force.

Rights and powers

Hohfeld’s paper on ‘Fundamental Legal Conceptions as Applied in Judicial Reasoning’31 is still an authoritative, if not the most authoritative, text clarifying rights language. He writes for his fellow judicial philosophers, but the text is also useful for the moral philosopher. Hohfeld’s work suggests a distinction between four pairs of correlatives which are all broadly called ‘rights’.32 These are right–duty, privilege–no right, power–liability, and disability–immunity. He proposes that only one of these usages actually refers to rights in the narrower sense, namely rights as a kind of claim that gives rise to correlative duties.33 The other pairs of conceptual correlatives, however, also give some insight into the context of rights language that is useful for discussing animal rights.

A claim-right to X is always the correlative to a duty.34 In Hohfeld’s field of scholarly interest, such a duty is a legal duty. Later, various authors have argued that the rights and duties that Hohfeld

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32 Ibid. 30.
33 Ibid. 32.
34 Ibid.
writes about could also be understood as moral rights and duties. The
difference between legal and moral duties and their corresponding
rights would be the way they come about, i.e. their specific type of
justification. In the subsequent chapters, there will be in-depth discus-
sions and analyses of various kinds of moral justifications of rights.
Here, however, it suffices to say that the moral justifications are for-
merly not dependent on any legislating body.

A liberty or a privilege refers, in Hohfeld’s thinking, to something
allowable, but not mandatory.35 A privilege to X is to have the liberty
of acquiring X to the best of one’s capacities, without anyone having a
duty to help or hinder. In comparison, a claim-right to X rather would
suggest that the granting of X to the right holder is a legal and/or
moral necessity and that there is someone having a duty to assist the
right holder in acquiring X. Generally, Hohfeld makes the point that
‘rights’ are, in the broader sense, sometimes used to express allowable
actions that are not legally mandatory. ‘Rights’, in the narrower sense,
do not have this meaning, neither in law, nor in morals.

To hold power, in Hohfeld’s sense, is to be able to alter legal rela-
tions.36 The correlative to power is liability or responsibility, which
anyone who has used its power to alter or suggested to alter legal rela-
tions.37 The important issue when talking about animal rights is to note
that Hohfeld makes a distinction between holding a claim-right and
the power or ability to alter such relations that give rise to claim-rights
and their corresponding duties. This distinction will prove to be quite
important for the forthcoming analysis.

Immunity is a legal (or moral) hindrance to the legal (or moral)
powers of others.38 This also implies an exemption from responsibility
of some legal relation that would apply in many similar cases.39 The
correlative of immunity is disability, and more specifically a disability
to alter legal relations. The immunity–disability dyad may be under-
stood as making room for the ‘ought-implies-can’ rule of thumb even
within this conceptual scheme. Still, much particular legal immunity
might be simply decided by the legislating body, rather than being a
general clause referring to the practical circumstances forbidding ap-
propriate action. In the moral case, with immunity from responsibility

35 Ibid.
36 Ibid. 44.
37 Ibid. 53f.
38 Ibid. 55.
39 Cf. ibid.
it is harder to see how it would transpire other than from practical circumstances.

Rights, in the narrow sense, only include (valid) claims and corresponding duties. Rights, in the broader sense, include at least all the four categories. In practice, there is no case of a pure claim–duty relation. There need to be liberties, powers, and immunities in order for a claim–duty relation to be functional. Even though the conceptual isolation of various parts of a right in the broader sense may facilitate in-depth discussions on rights, functional rights are more realistically thought of as bundles of claims, liberties, powers, and immunities.

The four categories of correlatives are divided into two groupings. Rights and liberties are considered to be each other’s opposites, and so are powers and immunities.40 The first grouping consists of two different kinds of moral or legal relations, while the other grouping is centred on the opportunity to establish and revoke such relations.

Sumner argues that rights and liberties propose first-order relations, reflecting a modal logic based on what is required, forbidden, and permitted.41 These are relations that suggest how we should act. Powers and immunities, on the other hand, are suggested to be second-order relations, reflecting a modal logic based on the necessary, impossible, and possible.42 These are relations that enable and facilitate first-order relations.

There may also be higher-order rights and powers involved, in total forming a three-dimensional network of Hohfeldian relations eventually pointing towards right holders and the conduct of moral agents. Rights need powers to be established and powers need righteousness to be just. A well-established way of avoiding the question of which comes first is simply to focus on first-order and second-order relations, where powers seemingly have the upper hand.

Hohfeld’s distinctions involve many elements that are common for both the judicial and moral spheres. Common and fundamental issues, such as power, responsibility, duties, and logical relations, are addressed. It is an abstract conceptual scheme useful to clarify practical cases and prepare for more precise and, hopefully, right judgments. Especially his distinction between being part of some relations (by

40 Ibid.
42 Ibid. 22f., 28, 30f.
right or privilege) and to alter relations (by power) is most useful for clarifying a misunderstanding about the possibility of animal rights.

Sumner broadens Hohfeld’s conceptual scheme to also include moral issues. Sumner is especially careful to make clear that rights, in the broader as well as in the narrower sense, are relational between actual beings. He writes of someone having claims against someone else, and someone having powers over someone else. By highlighting the involved subjects, or rather that there are subjects involved, he manages to develop and rectify parts of Hohfeld’s scheme. The style of painfully precise Hohfeldian language is preserved, while introducing clear references to actual right holders and those that the rights are held against. Still, his views broadly correlate with Hohfeld’s and what has been presented above. He makes some points that I wish to make even more tangible.

Hohfeld’s conceptual scheme is just that, a conceptual scheme. It could be held together with a scheme of minimal descriptions for the beings said to have powers, immunities, claims, duties, and so forth. Such a scheme would make other distinctions more subtle and precise than the ones to be made below. It is enough here, however, to work with the relation between powers and claims, and claims and duties.

Concerning powers, Sumner argues that a power is the ability to alter any normative, not only legal, relations. Also, he claims that a ‘rule which confers a power [...] creates the normative analogue of a physical ability’. A power, in this sense, is an opportunity created by rules expressed in normative relations. To have the moral or legal power to take a walk downtown is not the same as having the physical power to actually do it. Physical abilities, even if they may function as an analogue to power, are also directly involved in Hohfeld’s concept of power.

In order to alter normative relations, we need certain faculties, quite physical in existence as far as we know, that make it possible to conceptualize such a relation and argue for its change. The faculties in question are those that generate moral agency, which very well could be approximated to be the ability to understand, alter, and live according to certain normative relations. A moral or legal power, even in Hohfeld’s sense, is thus directly dependent on physical abilities (pre-
suming that reflection, self-criticism, developing a character, and other similar actions are indeed performed by physical abilities).

This is an important point to make if rights language is brought outside the particular case of a healthy adult human being living in a functioning democracy. Hohfeld makes a distinction between having a normative relation and altering the relation. Sumner reminds us that the fact that there are actual beings involved in these relations, affects how we may understand the relations. A conclusion that must be drawn from this is that the kind of actual beings involved in normative relations are not necessarily, meaning conceptually, the same kind of actual beings who alter or establish the normative relations. The one who has a claim *may* be someone completely different from the one who has the power to establish a relation that makes such a claim possible.

The conceptual distinction between claim-right and power means, among other things, that any similarity between a claim-right and a power must be specifically argued for. The conceptual distinction thus includes a presumption of a prima facie distinction between the physical abilities that must be held in order to hold claim-rights and the physical abilities that must be held in order to hold power to establish claim-rights. To fulfil the physical requirements (if there are any) to hold rights is not the same as to fulfil the physical requirements to establish or cooperate in the establishment of rights. A conceptual distinction is made. Without any reason to believe that there are practical similarities between that which the concepts refer to, one may not presume such similarity.

A kind of theory includes arguments for such similarity. Egoists entering a contract for establishing rights may only do so rationally with an expectation that all counterparts can and will respect their rights. Then, physical abilities conjoining into moral agency are a necessary similarity between those holding rights and those who can establish rights by force of their moral agency. This, however, is only one of many possible kinds of theories. The extent to which my assertion is weakened by rational egoism depends on the extent to which rational egoism is believable. That kind of discussion will not be entered into here, but some more will be written about it in Chapter 4. There, it will be contrasted to another kind of contractarian thinking that is less detrimental to the animal issue.
There is a practical similarity between the establisher of rights and the duty holder, although no necessary similarity between either of those and the right holder. The basic difference is that an establisher of rights and a duty holder, in order to perform such acts that make them what they are called, similarly need moral agency. It is a mistake to think that any kind of moral agency is prima facie necessary in order to have a certain moral status. Acting like a moral agent has prima facie nothing to do with acting like a right holder. Moral agency has, just like any other ability, a specific function, namely the function of making, or discovering, moral values and living accordingly. The function of having a certain moral status is to enjoy some kind of circumscription of acts that others may do to you. The same kind of being, namely a moral agent, that has the power to establish rights, is the being which rights are held against.

The correlation between right and duty does not involve any necessary commonality between the subjects of rights and the objects of rights; it only presumes a conceptual relation between the two groups. In order to establish rights, and to be an object of a right in any relevant manner, a being must be the kind of being that has moral agency. In order to have claims and hold rights, a being must be the kind of being that has intrinsic goods. The kind of beings that have moral agency, usually we recognize them as healthy adult human beings, also have intrinsic goods. Not all beings, however, that may be said to have intrinsic goods are capable of moral agency.

To make a claim to protection of one’s goods, which rights are about, does not presume the conceptual understanding of ‘rights’ or insight into the underlying theoretical mesh. Most healthy adult human beings do not know precisely what rights are or even know they have them, and still they have them. They have rights because they have relevant goods, and because there is somebody to make their claim. The same conditions must be appropriate even for animal rights.

So far, I have presumed that rights, in the narrow sense, are claims, and I will continue to do so. Some things should be said, in any case, about at least one alternative.
The claim-right view and the entitlement view

The connection between rights and claims is a point of disagreement. One line of thinking contends that ‘rights’ are equal to the activity of making valid claims against others. Those ‘others’ have, if the claim is indeed valid, the correlating duties to meet the demands of the right. This understanding of rights was suggested by John Stuart Mill. Both Hohfeld and Sumner follow Mill’s terminology. Feinberg is another strong representative of this notion. Feinberg argues that rights are performative claims. A right is a claim and a claim is the act of claiming whatever the right concerns. This concept of rights is essentially social in respect of presuming some kind of interaction between people. The rights are still individually held, but they presume that the individual somehow reaches out to others, at least in time of need or when violation is at hand, and claims justice.

H. J. McCloskey, in contrast, suggests that rights are better defined as entitlements. The entitlement view, according to McCloskey, holds that rights are not necessarily or directly connected to claims, or even any rules. Rights are individual entitlements that may only indirectly involve the activity of making claims. A right to free expression is an essentially individual entitlement to express oneself freely. Such a right may, in some situations, call for making claims on others that they must not stop me from expressing myself freely. That, however, is not what the right ‘is’; the right ‘is’ an entitlement. In comparison to the claim-right view, this view is more strongly individualistic. McCloskey often champions his position with examples of hermits or last persons in the universe. He argues, for example, that it is meaningful to say that a hermit on an isolated island has a right to life.

The claim-right view expresses the idea of rights in the most relevant sense. An example may show the irrelevance of using rights language to describe the moral situation for an isolated human person.

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47 See, for example, Chapters 6 and 7 in Joel Feinberg’s *Rights, Justice and the Bounds of Liberty* (Princeton, NJ: Princeton University Press, 1980) for comprehensive discussions of the claim-right view.
48 Ibid. 150f.
50 Ibid. 116.
51 Ibid. 118, 119, 121.
Say that a particular human person has a right to life. Say, also, that the right would mean, independent of either of the above two views, that this particular human being is at liberty to choose life or death without interference from others.\textsuperscript{52} It would also mean that others would have a duty to provide opportunities for this choice to truly be possible to make. The conceptual logic would then imply a duty to provide opportunities for survival, if the right holder chooses to live.

Say that the human right holder unfortunately is the only survivor on a sunken submarine, which nobody else knows has sunk. Imagine that some time elapses before that human being loses the personhood altogether and that the person for that time is somewhat similar to any person, at least in respect of having moral agency. Would such a being have rights?

The answer is that it would make conceptual sense to call this person a right holder, but that it would have little relevance. Any correlating duty would conceptually be held by every other moral agent, but practically only the one survivor would be able to act on such a duty. The case would be about a right holder whose rights correlate with duties which only the right holder itself has, if anyone has them.

The weight of the right to life emerges in this situation. What does this mean? According to the claim-right view, it means that the right holder in question can make a claim for assistance to whatever moral agent that happens to be around. The only moral agent that can be communicated with, however, is the sole survivor. While looking for an emergency buoy to release, the survivor may thus loudly claim to himself that he indeed has the right to look for an emergency beacon and that he has the duty to assist himself in searching for the beacon, as well as not only feeling disappointed, but also guilty when failing to fulfill his duty. Still, it is conceptually sensible to say that he has a right to life, and it may be sensible to say that he also has the correlating duty. It is just that the words are simply too many and too irrelevant. He is trying to survive and there is nobody to help him—there is no need for more words than that.

The entitlement view can describe the situation in concise terms. The right to life would be an individual matter without any mandatory correlating rules or duties and without the need to make a claim to

\textsuperscript{52} Cf. Feinberg, \textit{Rights, Justice and the Bounds of Liberty}, 222. The narrow understanding of the meaning of the right to life is borrowed from Feinberg. Still, it should not give the claim-right view any unfair advantage.
someone. There are no other moral agents present, so there is no need to talk about correlating duties. The right to life would just mean that he, on his own, is entitled to live. He could tell himself, whilst trying to get the emergency beacon to work, that ‘Yes! I am entitled to do this!’ What would he then do without rights language? He would surely still try to survive. It would be just the thought or the sound of the word ‘right’ that would disappear. Everything else would be similar. The same could be said about the case of the claim-right view.

The hint of ridicule when using rights language describing the moral peculiarities of this example arises from the irrelevance of using rights language in such a situation. It is not that rights language is essentially social to the extent that it does not make sense to use it talking about someone completely isolated. It is just that it does not make anything clearer, quite the contrary. Rights-language usage is irrelevant for the isolated right holder. All it could morally do is to make the unfortunate person feel guilty for not surviving, or angrily shake his fist at the emptiness and, with his last breath, shout ‘Dammit! I am entitled to live!’

Rights language must be applied to a social context with possibilities of interaction and communication and coordinated action, a society, in order to be relevant and helpful. The claim-right view presumes and makes use of a social context, while the entitlement view only wastes inefficient moral terminology on the lone survivor.

Richard Brandt expressed the following typical opinion, discussing moral rights and specifically the right to education: ‘My having such a right implies roughly that each individual in my community has an obligation to do what he can, in view of his opportunities and capacities and other obligations, to secure and maintain a system in which I and persons in my position are provided with an opportunity for education’.53 This is a statement about a social right, the right to education. At the time, it was a common notion that social rights were the only positive rights. In contrast, property rights and political rights were considered to be negative rights, i.e. correlate with duties that are fully respected in principle by not acting.

It is true that we respect the rights of others in many everyday situations by not acting against those rights. Other times, we or our government representatives need to positively act in order to respect rights. Enthusiasts of negative rights say that there is never any need

for positive acts in order to respect political rights or property rights. However, as Alan Gewirth has pointed out, in societies with, for example, racist tendencies, positive acts are necessary in order to respect the political rights of the persecuted race or ethnic group.54

Furthermore, liberal democracy with rights and all were constituted and actively built, just like any other kind of society. Institutions making democratic elections possible need positive acts in order to be established. This kind of positive act, sometimes violent and sometimes not, still forms new democracies. Brandt’s outlook on the practical background of the right to education and, presumably, all social rights, may then be applied to all rights, or at least all in rem rights.

In order for rights language to be relevant and effective, it must be applied to a societal context, a group of beings with opportunities for communication or at least interaction, where there are established institutions that coordinate the positive acts, as indirect as they may be, in order to uphold a society that respects rights.

It is with this in mind that I support the claim-right view vis-à-vis the entitlement view. The entitlement view may be easier than the claim-right view to use when speaking about hermits or stranded submariners, albeit equally irrelevant, but it fails to grasp the social aspect of rights. The claim-right view is more cumbersome to use even in social situations, but it is also more realistic in the sense that it presumes in the very definition of the concept of rights that rights need a social context in order to be practically relevant.

The claim-right view is also more realistic to presume a social context in the sense that rights, no matter whether they are believed to arise from a natural law or not, need a society in order to be officially explicated and predictably followed. It is indeed hard to see why a hermit would choose to think in terms of rights if it were not the case that she would have moved from a society in which rights language is used, and brought that kind of language with her. But then, the language would be as much a memory as the social context would be, and the only way to make such language relevant again would be to make contact with society.

It may also be the case that a hermit lives within a state’s area of jurisdiction, but unaware or deeply uninterested in this. Then the hermit would presumably be considered a right holder by the state, although

such granting of rights would not affect the life of the hermit in any way so long as the hermit decides to pursue the secluded life (and the state is not paternalistic).

The claim-right view and the entitlement view may also be more practically compared. What would rights be according to each view? A claim-right is a straightforward performative statement. A claim is something we do with our voices, and maybe we raise our voices and slam our fists on the table just to make the expression more decisive. A claim-right is the physical performance of moving and acting in such way so that others understand that it is a claim we are doing. But what is actually, i.e. tangibly, an entitlement?

The most concrete thing an entitlement can be is a title-deed. Such document could, of course, be combined with a statement: ‘I am entitled to this!’ Even the entitlement view could then be represented in concrete, bodily acts, beyond being a piece of paper with some construed writing. The question is: Why would such a statement be anything else than a claim against others? If it was not meant as a performative statement, why bother to say it at all? One may also question the purpose of writing a title-deed in the first place, if it was not a mere instrument for making one’s claim against others stronger and more precise.

The entitlement view seems to be a possible way of understanding rights, but a view that promotes an irrelevant kind of individualism of a concept that is relevant only to individuals in a social context. The claim-right view is equally irrelevant to isolated individuals, but adds meaning and relevance to the concept of rights in a social context.

It may be argued that the claim-right view makes the case for animal rights impossible. How can non-human animals make claims for anything, while it is impossible for them to understand what a claim-right is? An answer to this is that non-human animals can have representatives performing the claims for them. This is how children’s rights can be made sensible and upheld. Also, it can be argued that their kind of existence is indeed a kind of performative claim. This would be in line with arguments that will be discussed in the forthcoming chapters. For example, the vulnerable body and life of a non-human animal ‘perform’ a claim simply by living and existing. Bodies may perform a claim without understanding the word claim.

Viewing rights as performative and valid claims does not contradict the possibility of animal rights. The claim-right view does, however,
suggest that the notion of animal rights assumes that human beings and non-human beings can share the same social context. Here, social does not mean benevolent friendship, not even when limiting the considerations to human beings, but rather the fact that various beings meet in a morally relevant manner that raises issues of claims, powers, immunities, and so forth. Pro-animal-rights theories contain arguments for human and non-human beings to share a common kind of existence that makes morally relevant meetings possible.

The function of rights

Rights protect. This is nothing that is worthwhile to challenge. If rights would not protect individual right holders, and generally do so even when collective interests or the overall welfare compete with individual interests, then rights would not have the status they have in international law, in morals, and anywhere else. There is some disagreement, however, over what exactly rights protect.

There are two main schools of thought on the protection that rights offer. The interest conception holds that rights protect interests. 55 Joseph Raz and Neil MacCormick are among the supporters of this notion. The choice conception holds that rights protect choices. 56 Sumner, here, represents this common school of thought.

According to Raz, rights are meant to protect the well-being of beings that are right holders. 57 It is a question for a separate line of reasoning to justify what kind of beings that would be. The important issue here is that well-being is presumed to be possible to express in interests. To protect well-being is taken to be the same as to protect those interests that are or support well-being. Needless to say, interests of intrinsic value, i.e. interests that are ‘pieces’ of the well-being, are protected. 58 Instrumental interests, i.e. interests that are supporting the well-being, are also protected by rights. 59 Instrumental interests may

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59 Ibid. 179 f.
not be as important to protect as the intrinsically valuable interests, but they need to be protected by rights as well. Taken together, all interests that are relevant to the well-being are protected, albeit by rights of differing significance.

According to Sumner, rights are meant to protect choices, or simply the will. The right holders are taken to be autonomous beings whose freedoms to choose among a set of options should be protected by rights. To have a right in a particular situation means that one’s choice concerning the issue at hand is preeminent over the choices of others. It is an issue for a separate line of reasoning to decide who is autonomous and whether there is a special kind of autonomy that is morally relevant.

Sumner says that a significant difference between the choice conception and the interest conception is that the latter has the conceptual potential to include more particular aspects of the right holder to protect than the choice conception. MacCormick, a supporter of the interest conception, concurs that this is indeed a difference between the choice conception and the interest conception. The two authors differ, however, in the assessment of this difference.

MacCormick concludes that the choice conception is lacking due to its inability to explain children’s rights. He argues that the interest conception can include all beings that have some kind of good in their life, especially children, while the choice conception can only include beings that have a specific kind of will.

Sumner, on the other hand, finds the interest conception wanting because ‘there are no internal connections on this model between rights and such values as autonomy, self-determination, and freedom’. If the protection by rights would be explicated by the interest conception, then rights would loose its role as unique moral concept for relating to the priority of individual autonomy.

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64 Ibid.
65 Ibid. 164ff.
The disagreement in assessing the two conceptions can be explained by differing relations to paternalism. If rights were not associated with choices, then rights could become a tool for coercive paternalism.

A paternalist act is to provide someone with a good without being concerned about the voluntarity of such provision.\(^{67}\) Overriding personal choices and wishes are feared to do more harm than good in the long run.\(^{68}\)

Often, paternalism is understood to be a coercive intervention, violating autonomy in order to prevent self-inflicted harm.\(^{69}\) At other times, paternalism is also viewed to include non-coercive acts that provide goods where the provision of goods could also be performed by the receiver of the goods.\(^{70}\) The latter understanding of paternalism, as opposed to the former, does not make paternalism inherently wrong. Any of the understandings of paternalism suggest, however, that paternalism can be problematic, especially if practiced in a liberal democracy.

The right to life means, according to the choice conception, a protection of the choice to continue to live, or a protection of the choice to live in a certain way. The right to life then does not seem to provide the right holder goods, but to provide opportunities to choose goods. This does not seem to be paternalism.

The interest conception makes it possible, although not necessary, to understand the right to life to mean a protection of life or a certain way of living. Particular interests of the right holder are identified and protected, and appropriate goods provided. An interest of a right holder could be the opportunity to make a choice, but it is not necessarily so. This makes the interest conception more vulnerable to allegations of supporting coercive paternalism.

The interest conception can suggest the provision of a certain good to prevent usages of autonomy that are harmful. The interest conception makes it possible to provide education for a child even against the

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\(^{70}\) Fotion, N., ‘Paternalism’, *Ethics*, 89 (1979), 197.
choices or wishes of the child. Other examples could be the heroin addict or the deranged person, where proper interventions, even against their immediate choices, can be argued to be in their interests. This potential of the interest conception makes it seem more paternalist than the choice conception.

The choice conception can, however, be construed to handle and even support the kind of paternalist actions exemplified above. It is, however, less evident that the choice conception suffers from the risk of supporting coercive paternalism.

The choice conception has two subdivisions. One school of thinkers contends that any choice should be protected by rights as long as it does not arbitrarily harm others. The other school of thinkers argues that only rational choices should be protected by rights, where rationality implies prudential choices.

The latter school makes it possible to justify the above-exemplified paternalist interventions, even within the choice conception. The interventions may then be viewed as emancipatory acts that make it possible for the receiver of paternalistically provided goods to make rational, i.e. prudential, choices. The ability to make rational choices would be necessary to meaningfully grant rights protecting the opportunities to make such choices.

Furthermore, both schools of the choice protection must be able to grant particular rights. The decision on which particular kinds of choices that human persons, or others, must have protected in order to be relevantly protected, is also a matter to define. The definition of relevant choices is dependent on a view of the good for the right holder, as much as a definition of relevant interests. For example, if the right to life is to be understood as a right to a choice to continue to live or not, then it is implicitly claimed that the opportunity to make such a choice is a good for the right holder. The provision of the opportunity to choose life would then be a good provided to the right holder without asking the right holder to choose to have that opportunity.

Even the choice conception then contains a certain amount of necessary paternalism. It will be left as an open question whether the pa-

ternalist provision of an opportunity ever can be said to be coercive in any meaningful manner. The choice conception may, to a lesser degree, be at risk of supporting coercive paternalism than the interest conception. It should also, though, again be underlined that the interest conception does not necessarily imply coercive paternalism any more than the choice conception.

Sumner puts forward another kind of argument to support the choice conception, although loosely related to the problem of paternalism. He claims that the interest conception tends to form rights into concepts that support societal structures prioritizing welfare, while the choice conception instead supports such structures that prioritize autonomy.73

Structures which highlight autonomy will treat individuals as active managers of their own lives even when doing so will work to their overall detriment. On the other hand, structures which highlight welfare will treat individuals as managers when that is likely to be in their interest and will otherwise treat them as the passive beneficiaries of the services of others.74

Sumner intends this to be an argument for the choice conception, again highlighting its direct association with autonomy. The quotation shows an example of the expectations built into the choice conceptions. Right holders are expected to be active and independent managers of their own lives.

The realized particularity of some right holders may suit the description ‘active managers’, but it is hardly ever a universal condition for all right holders. It is in the interest of, for example, malaria victims to be the passive beneficiaries of health care.

The interest conception of rights is flexible enough to explain the provision of health care as a matter of respect for rights. Sumner’s notion of the choice conception can only explain the provision of health care as long as the patient is energetic enough to actively choose health care. Again, however, certain understandings of the choice conception could explain the provision of health care to an apathetic patient as an act that would emancipate the ability of taking rational choices.

73 Sumner, The Moral Foundation of Rights, 47, 97.
74 Ibid. 97.
From this short discussion, it can only be concluded that the interest conception and the choice conception have advantages and disadvantages. Neither of the conceptions is unqualifiedly and universally appropriate to express the function of rights. Both conceptions assume a certain view of the good for the right holder that may turn into paternalism, sometimes even justifiably. Neither of the conceptions is necessarily supporting coercive or arbitrary paternalism.

It is suitable to view both conceptions as viable options when discussing animal rights. The interest conception may very well be viewed as more appropriate for making animal rights conceptually sensible. As the subsequent chapters will discuss, however, the concept of autonomy, and thus choices, is expanded by certain pro-animal-rights thinkers. The choice conception does not thus make the case for animal rights insensible, albeit some reformation may be necessary.

The good for animals

No matter whether rights protect choices or interests, they do so by providing goods to the right holder, and thereby realizing the good life. The academic interdisciplinary field of animal welfare has provided some basic insights into what the good life for animals may be. Specific notions about the good and the good life for animals will be further discussed in later analyses, although a brief outline of some common categories is offered here.

Animal welfare is a relatively new academic subject where both scientific and philosophical methods are used to learn more about the characteristics of the good lives for animals. The concept of welfare refers, within this field, to both subjective states of mind (e.g. happiness) and objective states of the right holder (e.g. good health).

An increasingly used scheme of animal welfare is based on some inductive results. David Fraser et al. reported that public discussions express the aspects of feelings, functionings, and natural living as important for animal welfare.\footnote{Fraser, D., Weary, D. M., Pajor, E. A. and Milligan, B. N., ‘A Scientific Conception of Animal Welfare That Reflects Public Values’, \textit{Animal Welfare}, 6 (1997), 187–205.} Based on these results, Michael C. Appleby and Peter Sandøe have suggested a conceptual scheme of
animal welfare. There are four suggested categories of goods for animals.

Two categories of the good life for animals are external to the subjective perspective of the animal. First, the natural-living approach understands the goods for animals to provide for its role in ecological relations. The good life is defined by the correspondence between the overall situation for an animal, and the ecological telos for that kind of animal. The realization of the animal's ecological role may further be suggested to be associated with the satisfaction of certain particular interests of the animal. Alternatively, it could be argued that there are certain kinds of choices that an animal should be able to make in order to live a good, ecological life.

Secondly, the biological-functioning approach suggests that the goods for animals typically improve the health of the animal. The good life for animals is defined as the correspondence between physiological events of an individual animal and a predefined normality of such events. Relevant interests to protect would be associated with the physiological states of the animals. The choice conception does not correspond well to this category, but opportunities to choose methods to maintain the health may be suggested as relevant.

The biological-functioning approach is more narrowly focused on physiological health, while the natural-living approach has a more vaguely and broadly defined telos. A point of disagreement is, for example, whether an animal caged in a safe and completely artificial environment could ever be said to live a better life than in its natural and more unsafe environment.

Next, the third and fourth categories of the good life for animals are internal to the subjective perspective of the animal. The preference-satisfaction approach, the third category, understands the goods for animals to be things and events that satisfy preferences. The good life

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for animals is defined by fulfilling desires, no matter whether the animal is aware of the fulfilment or not. In this approach, interests are expressed by states of satisfaction (albeit some of them may not be known). Relevant choices adapt themselves to preferences and which ones to satisfy.

Fourthly, the other subjectivity approach is an understanding of goods for animals that grant conscious mental states, excluding moral meaningfulness. The good life for an animal is being directly and consciously aware of its happiness. This is the hedonist way of understanding animal interests, making the time-span and content of relevant interests directly relative to happiness. Relevant choices are also defined in relation to what extent they result in happiness.

A point of disagreement between the last two approaches, assuming that the animal indeed has these kinds of mental states, could be whether the right or wrong of animal experiments is dependent on the possibility of the completely imperceptible administration of anaesthetics.

The categories are associated with various traditional theories of good. One category seems to be specifically designed to correspond with hedonist thoughts, while Aristotelian perfectionism lingers in another category. Such associations may blur the analyses if they are taken too decisively. But it is logically possible to talk of happy mental states as morally relevant without accepting every aspect of Benthamesque utilitarianism. It is logically possible to talk of a natural telos for each natural grouping of beings without believing that every sentence in *Nicomachean Ethics* is true. Fraser and others who have worked on the establishment of this conceptual scheme have tried to give a novel academic subject a terminology. They have not treated theories of goods as inviolable wholes. If there is any whole to talk of within animal welfare, inviolable or not, it should, after all, be the animal body. That body a basis for all or a large part of the most relevant interests and choices. Those interests and choices could arise from mental states, preferences, natural telos, or striving for health.

All these categories assume that human and non-human animals alike have goods; it is sensible to talk of them having a good life or a bad life. This is not self-evident, at least according to some notions of

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80 Cf. ibid. 290f.
the non-human animal. It is part of the work of a pro-animal-rights theorist to show that it is sensible to talk of animal goods, for example by arguing or showing what those goods would be. Such an argumentation would be part of, but not a full account of, a justification of animal rights.

Moral justification

Moral justification stems from the issue of moral knowledge. To know something assumes that the supposedly known fact at least correlates with truth, justification, and beliefs. To show that we are right in saying that we know that animals should have rights would then include showing that animal rights are true (according to a supposedly correct notion of moral truth), that animal rights are justified to believe in (according to a supposedly correct notion of moral justification), and that we have sufficiently strong beliefs that animals should have rights. This is the classical, Platonist way of understanding what it means to know that animals should have rights.

Moral justification, in this sense, is a part of the process of establishing moral knowledge. There will be no treatise on moral knowledge here, and it is thus not necessary to extensively discuss the possibility or nature of moral truth, or what it means to have sufficiently strong beliefs. The focus on moral justification in this work makes it impossible to say as a result of the work whether we know that animal rights should be implemented or not. A justification of animal rights should be considered to be a necessary but insufficient step in the establishment of moral knowledge. Some of the analyzed pro-animal-rights theories are based on notions of moral truth and use them in the justification of animal rights. Their notion of moral truth will be described when outlining the justification of animal rights, although not with the purpose of offering any in-depth treatise on moral truth. If moral truth and, by extension, moral knowledge are considered to be impossible, then a successful moral justification of animal rights gives as strong a reason as possible to believe and act as if animals have rights.

Moral justification is justification of a belief about the nature of a right action. To justify animal rights, or anyone’s rights, is generally to provide good reasons for why we would believe that animals, or
anyone, have rights. Such reasons can traditionally be based on intuition, a-priori reasoning, and hypothetical cases. To intuit is to directly sense moral values without further reasoning, presuming the sensory ability to do this. Once detected, those moral values may be considered to be true and known. A-priori reasoning is based on the Kantian notion of the possibility of pure reason. Pure then means empty of sensory experiences. Hypothetical cases can be tools for estimating practical consequences or they can be arguments for or against the reasonableness and practicality of a certain position.

A classical notion of moral justification, just like a classical notion of any epistemic justification, also contains deontological elements. The mentioned reasons ought to, by virtue of certain intellectual duties, give rise to certain beliefs that are called knowledge. The exposure of good reasons to believe in a certain notion makes it obligatory to indeed believe that. This notion of moral justification largely correlates with the classical view of any knowledge in the sense that they refer to internal states and intellectual duties.

Contemporary discussions on epistemic justification have found it necessary to challenge the classical view of knowledge. The necessity of a fourth epistemic criterion, or at least a new kind of justification of knowledge, is discussed. Edmund L. Gettier pointed out by way of a few examples that the classical view of knowledge solely considers internal states to the extent that it runs into problems when we mistakenly, or by being deceived, believe we know something, and at the same time, by pure chance, still happen to believe something as true. For example, someone may pass by a field with poodles made to look just like sheep. One may then form the belief that there are sheep in that field. This belief may be justified in the classical sense as ‘sheep’ are observed. It would not, however, be knowledge. The belief is apparently false. There are, however, some sheep hidden behind some rocks in the same field. Then, the belief would indeed constitute knowledge in the classical sense, albeit the basis for justification is

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mistaken. The classical epistemic criteria may be fulfilled without the actual fact (that the sheep in question are behind the rock) being known.

A suggested solution is to add an epistemic criterion. The criterion states that proper belief-forming cognition should not only function properly internally (for example making proper a-priori conclusions), but also externally. The cognitive processes, in order to be trustworthy, must be able to handle external, perceptual impressions properly. Alvin Goldman and Alvin Plantinga have each developed a version of this solution.84 Both Goldman and Plantinga are externalists and have similar epistemic views, but I choose to elaborate on Plantinga’s view because his theory, as was mentioned earlier, is also important to the evaluative apparatus.

Plantinga views cognitive processes as designed, either by God or by Darwinian evolution, for a certain environment. To be able to form knowledge, it is necessary that those processes are used in the environment in which they were designed to properly function. The sheep-like poodles can then be explained as a novelty in the environment of which the cognitive processes are not designed to properly identify.85 The senses and interpretative apparatus lack the necessary resolution to distinguish sheep from sheep-like poodles.86

It is unclear to what extent this ongoing reformation of epistemic justification is applicable to moral issues. Should we consider moral knowledge to consist of true beliefs that are warranted by cognitive processes in an environment for which those kinds of thinking have been designed to work? Would it be part of a moral justification to explain how perceptions should be handled properly? Surely, this must then be about a special kind of cognitive process. Even then, though, epistemic justification by references to reliable processes and external states (reliabilism) gives an impression of being much like naturalistic epistemology, with the same failure to properly separate values from facts.

Plantinga admits that at least his form of externalism is, indeed, a kind of radical naturalistic epistemology.87 He also, however, argues

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that there is a normativity built into his notion of proper cognitive processes.\textsuperscript{88} There is a division between norm and fact in the notion that cognitive processes can function properly, or improperly.

Would then moral justification be about showing that a certain moral theory prescribes a proper function of our cognitive processes preparing moral acts? A pro-animal-rights theory would then optimally argue that our thinking is proper only if it would result in, by a chain of cognitive processes translated into acts, institutions protecting animal rights. There is no time to examine the details of reliabilism, or the tension between externalist justification and classical justification, but later some pointers will be suggested as to how the justification of animal rights can be understood in terms of proper function, and which prescriptions such an approach would make.

Three kinds of moral justification
Throughout this book, three kinds of justification of animal rights are examined. They are referred to as natural justification, contractarian justification, and theocentric justification. The distinctiveness of each justification rubs off on the concept of rights. Natural rights, contractarian rights, and theocentric rights are all claims for protection of the interests or choices of the right holder, but they also have some points of disagreement.

Natural rights and contractarian rights have been characterized by Sumner. Natural and contractarian rights are both moral rights, in the sense that they are justified by some, but not the same, moral standard.

According to Sumner, natural rights are claimed to be formulated from a basic, objective moral principle.\textsuperscript{89} Such a rights principle may be supported by certain rationales not being moral rationales, but it is still an absolute foundation of moral rights that goes somehow beyond social convention.

Sumner also notes that it is characteristic for natural-rights theories to make use of a natural property of the beings claimed to be right holders in order to point out which beings have rights and which rights they have.\textsuperscript{90} He, however, also rightly claims that this is not unique to

\textsuperscript{88} Ibid. 45f.
\textsuperscript{89} Sumner, \textit{The Moral Foundation of Rights}, 95, 108.
\textsuperscript{90} Ibid. 102, 108.
natural-rights theories.\textsuperscript{91} He adheres to mainstream scientific ideology and suggests that a natural property is generally observable and not directly or indirectly construed by social convention.\textsuperscript{92}

In contrast, contractarian rights are formulated by a collective-choice procedure.\textsuperscript{93} This means that these rights are subjective in the sense that they arise from coordinated acts and thoughts of moral subjects (moral agents).\textsuperscript{94} Contractarian rights may be based on well-structured rationales involving quite rigid theoretical mechanisms, but they are never claimed to have an origin beyond human thinking.

Just like natural justification of rights, a contractarian justification of rights needs a way to point out who the right holder is. Natural properties, understood in the mainstream scientific manner, are typically used to do this, although it is not logically necessary. The relevant properties of the right holders could be identified by other means.

Sumner, like so many other philosophers, does not consider rights that are based on religious doctrines. The combination of rights language and religious language is provocative. Rights are intended by many to emancipate the right holder from any religious, cultural, political or other doctrine. Still, there is an attempt to justify animal rights based on a certain understanding of Christian doctrines. This may be understood as giving certain Christians a reason to re-evaluate the standing of Christendom in the animal issue. It is not necessary to understand such an attempt as competing with or excluding the relevance of secular justifications, nor the contrary.

There is no self-evident manner to put a theocentric justification of rights fairly next to natural and contractarian justifications. Failure to balance the need to simplify with the risk of oversimplification is always quite impending in religious matters. There are, however, at least two characteristics of a theocentric justification that may relate to how Sumner defines natural and contractarian justifications.

Theocentric rights are objective in the sense that they are ultimately based on something beyond the thought and act of beings that may be observed by common empirical method. Even if it were argued that God is a subject with a subjective perspective, theocentric rights would still be claimed to have an epistemic firmness and independ-

\textsuperscript{91} Ibid. 103.
\textsuperscript{92} Ibid. 102f.
\textsuperscript{93} Ibid. 129, 151.
\textsuperscript{94} Ibid. 130.
ence from human thinking comparable only to the objective, basic rights principle of natural-rights thinking.

Theocentric rights are also associated with a richer and more particular view of the world than the scientific worldview. A Christian worldview, just like other religious outlooks, offers more aspects of the impression of the world than a positivist, empirical worldview can offer. Something that has the form of a simple geometrical figure can mean the collection of historical and/or supernatural events that characterize a certain religion. In the same way, what simply looks like physiological functions or anatomical structures of the potential right holders may, in the perspective of a theocentric writer, also mean the sign of a spiritual significance with all its religious and spiritual consequences. This affects the kind of criteria that theocentric-rights theories use to identify right holders, and specify the function of rights.

The types of justification could be viewed as representing three different ways to emancipate our perspective from conventional thought and argue anew for who shall have rights. A natural justification of rights points to certain natural properties that are argued to objectively be a basis for rights. The linguistic ability or the capacity to feel pain may be viewed as rational grounds for rights. The emancipation of one’s perspective is in how the references to natural properties force ‘us’ to compare ‘our’ body, ‘our’ functionings, with those of ‘others’. The properties constitute similarities between us and others and by bridging the contrast of me and you, or us and them, we also see that the concept ‘we’ is, rationally speaking, broader than may be experienced from the everyday tribalist perspective. The other two kinds of justification have a similar role of provoking old notions.

A contractarian justification of rights uses agreement as the common point of association. The agreement often becomes an idea of consensus, a notion that becomes deeply embedded in a game-theoretical rationale, which, in turn, is meant to justify rights. The self-interest of the contractors is assumed to create a game-theoretical tension of fair competition between them, upon which rights are founded. The tension is the source of justice, but it ceases without anyone to compete with. The awareness of the necessity of having counterparts is also an awareness of justice involving more than myself, more than us.

Theocentric justification uses spiritual commonalities in order to show how the individual particularities are less than absolute. A soul
stemming from the same source as other souls, given that people believe in such a doctrine, may very well function as a source of insight into an existential togetherness that goes beyond the group of people we happen to like and identify ourselves with.

The justification of animal rights is one of the main themes of the subsequent analyses. Each pro-animal-rights theory contains justifications, i.e. a line of arguments, for a number of points for reforming the thinking about rights. It has already been mentioned that it should be justified to believe that there is a good for animals. Furthermore, however, a certain definition of the animal right holder should be justified.

The justification of the reformed view of the right holder is only partly independent of the justification of the good for animals. Both lines of arguments often involve arguing for the moral relevance of the same properties.

Justification of animal rights can surely involve more reformations than the notion of good and the definition of the right holder, but the focus will be on those two aspects in the subsequent analyses. The notion of animal goods has already been outlined, but the right holder still awaits attention.

The right holder

Rights are for someone, a right holder. Sumner argues that rights involve four basic and practical aspects. The scope of rights is the group of right holders, as well as the individuals or institutions that the rights are held against. The content of rights is which goods the rights are rights to. The strength of rights is which weight certain rights have when measured against other claims. The four aspects are obvious and practical aspects of rights. There must be someone who holds the right; there must be someone whom the rights are held against, and there must be something that the right holder has a right to. Also, there are definitely conflicts between claims. If a rights-based theory is to be used as a decision tool, the weight of the right must be decided. The content of rights has already been discussed in the section on the function of rights. Approaches to rights conflicts will soon be dis-

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discussed. In this section, the scope of rights will be discussed, and specifically the right holder.

The scope of rights consists of all those persons who are involved in the relations that rights are. Sumner suggests a terminology of ‘subjects’ and ‘objects’ of rights to identify two principal groups within the scope of rights. The subjects of rights are the holders of the rights. The objects of rights are the beings which the rights are held against. This terminology is open to a wide array of interpretations and applications. The only thing it really says is that there is a conceptual distinction between the terms referring to two groupings of the scope of rights. The terminology also implies the perspective of the right holder as some kind of starting point. The conceptual distinction may also be understood as establishing a prima facie practical difference between the subjects and objects of rights. These groupings are distinct at the starting point of reasoning and specific arguments need to be formulated in order to establish commonalities among the groupings, if such commonalities are indeed believed to exist.

The distinction correlates with the above-discussed distinction between a moral claim-right, a moral power, and a moral duty, and beings that can have moral claim-rights and beings that can have moral powers and duties. The subjects and objects are on each side of the claim–duty relation. The terminology starts with the subjective perspective of the claimant, and involves the duty holders as objects for the good of the claimant. The responsibility that rights entail arises because of the particularity, the nature, of the claimants. But the responsibility is still held by the one who has the duties.

The distinction thus suggests that it is conceptually possible that the right holder (the claimant) is a different being, even a different kind of being, than the duty holder. The kind of existence that makes someone a right holder is the kind of existence which inspires moral responsibility. The kind of existence that makes someone a duty holder is the kind of existence that understands and can act on moral responsibility. It may be the case that these two kinds of existences can be unified in the same being, someone having rights as well as duties, but Sumner’s terminology suggests that we need to think in two separate ways when identifying the two distinct groups.

97 Ibid.
The objects of rights, the duty holders, are reasonably moral agents. In order to identify who are moral agents, there needs to be a psychological description. Moral agency presumes a special kind of perception and the ability of a special kind of theoretical and practical reasoning. Assuming that human beings are throughout biological beings, the question of who is a moral agent and who is not can be established by science. At least, it could be the case once we settle the philosophical issue of how moral agency should be understood.

The subjects of rights can be defined in any number of ways, as long as the definition is justified. Some traits of the right holder can be concluded from the discussion on the function of rights. The right holder is someone whose interests or choices can meaningfully be protected, at least in some societal constitution. Right holders, then, must have interests or be able to make choices. Also, the interests and choices should be morally relevant to protect.

Furthermore, the right holder should have a property which makes it reasonable to treat the right holder as equal to other right holders. This does not have to be a natural or even an observable property. It must, however, be a property that grants equality for reasons of justice. It is also practically suitable that the property can, at least, be explicated in or translated into terms of observable properties. It will otherwise be unclear who right holders are, albeit they are defined.

The conditions may be specified to the right to life. A being may hold the right to life if the being can be said to have an interest in living or, alternatively, that it is able to choose to live. Furthermore, the interest in living, or the choice concerning living, must be morally relevant. It should also be shown that the being should be treated as equal to other right holders.

There are more criteria for having rights than this. One of the most important of these further criteria is that the being in question is morally more reasonable to protect primarily as an individual than as a part of a collective. To discuss this criterion would result in a debate between liberalism and communitarianism, a discourse that would surely engulf the project. In order to keep to the animal issue, the analysis of the definition of the right holder will be limited to the outlined criteria.

The question is what kinds of beings can have relevant interests or choices. By backtracking, starting in the justification, identifying the theory of good, and looking there for criteria for having relevant inter-
ests or choices, the holder of such interests can be identified. These are some vital aspects of the definition of the right holder.

This work involves identifying the criteria for being a subject of a right, but it does not identify the criteria for being an object of a right. The reason is simply that the ‘animal’ in animal-rights theories is just another word for a new definition of the ‘right holder’. The definition of the object of a right is not challenged by animal-rights theories. ‘Who is the right holder?’ is, after all, a question that is most directly posed by animal-rights theories.

The role of the objects of rights does appear at certain points in the analysis, but then only to identify suspected points of arbitrary diffusion of the distinction between subjects and objects of rights. If an argument says or implies that a subject of a right must have some commonality with an object of a right in order to be a subject of a right, without further arguments for why we would accept such diffusion of two meanings, then the argument is flawed. Also, Sumner’s terminology is rarely used in the forthcoming analyses. I simply talk about right holders instead of subjects of rights, and moral agents instead of objects of rights.

The distinction between right holder and moral agent opens up the conceptual possibility to include beings that do not have nor will develop, or have lost their moral agency within the scope of rights. Justificatory reasoning needs to be performed in order to suggest how far this possibility may be used. The different justificatory approaches critically described in this work result in different ways of using this conceptual potentiality.

Conflicts of rights

A conflict of rights is due when acting on any of all the possible alternatives would violate at least one right. The conflict may be between rights with similar or different functions. It may also be a conflict between rights held by one and the same person, or rights held by two or more different persons. Rights language offers a diagnostic tool and a conceptual apparatus that can identify as well as specify conflicts. It does not, however, inherently have any standard way of solving the problem.
Dworkin has outlined the prerequisites of rights conflicts. He puts the focus on conflicts of individual rights. His notion of a rights conflict includes many aspects of rights language.

Someone has a competing right to protection, which must be weighed against an individual right to act, if that person would be entitled to demand that protection from his government on his own title, as an individual, without regard to whether a majority of his fellow citizens joined in the demand.98

There is someone with a right to protection. There is also someone with the right to act. The act may violate the protected issue, and there is thus a conflict between the two rights. The right that Dworkin calls ‘an individual right to act’ can also be understood as a right to the protection of the opportunity to act (or the protection of the interest in having the opportunity to act). The conflict is thus between two rights with the function of protecting something. The conflict occurs only if both parts are actually entitled to such protection. Furthermore, Dworkin adds, the question whether the claims to protection are valid cannot be settled by a majority vote. A non-political kind of justification is necessary in order to validate the claims.

John Broome is a theorist who provided extensive thoughts on weighing goods, although his treatise on rights conflicts is quite limited. Broome discusses claim-rights as a sort of strong reason to prioritize the provision of goods for the right holder.99 Broome’s structure of the typical conflict of goods has some similarities to Dworkin’s view of rights conflicts. He acknowledges four dimensions of a conflict between goods.100 Firstly, there are alternative states of nature which frame the conflict. For example, either a biomedical experiment is performed on an animal, or it is not performed on the animal. Secondly, there are some beings involved in the conflict.101 This would be the right holders, which may or may not be harmed by the outcome of the conflict. Thirdly, time is relevant to a conflict. For example, a conflict of goods may mean different things before and after granting rights to the beings involved. Fourthly, the sort of good affects the

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98 Dworkin, Taking Rights Seriously, 194.
100 Ibid. 25.
101 Broome actually use the term ‘people’, not ‘beings’. The term has been adapted here to be more relevant to the present theme.
conflict. For example, a life–life conflict is harder to morally resolve than a conflict between life and luxury consumption. If the provision of goods in question is assumed to be protected by rights, then this structure of a conflict is applicable to rights conflicts.

These views of rights conflicts have some similarities. Both views maintain that the right holders involved matter to the conflict. Their natures affect the character of the conflict. Also, both views suggest that the type of good affects the conflict. Dworkin assumes that the good is relevant enough to be protected by a right and thus outweighs the interests of the collective. Broome includes the presence of such a good as a possibility. This also points towards a third similarity. Both authors make or assume a distinction between any good and a good to which there is a valid claim. A justification of claims to some goods is necessary.

In other words, both views of a rights conflict include the relevance of the definition of the right holder and of the protected good, and a justification for those definitions. The analytical categories of this project—the justification, the definition of the right holder, and the function of rights—are thus aspects of the content of a rights conflict. Analyzing those aspects of a theory then also assists in analyzing the approach to a rights conflict, and, by extension, the hypothetical practical outcome.

The introduction of new rights or new right holders is a basis for new rights conflicts. Most such conflicts can be prevented by proper institutional arrangements. Some rights conflicts, however, will persist. It is hard to predict exactly which kind of rights conflicts would constantly disturb the order in a society adapted to the demands of pro-animal-rights theories. Conflicts between rights to life, however, are so common in present society that there is no reason to presume anything else other than such conflicts will also be present in an animal-rights society.

Prioritizations within health care routinely cost human lives, and save others. Granting rights to the laboratory animals used to improve health care, and the number and complexity of conflicts should increase rather than decrease even after institutions have adapted. As will be seen in the forthcoming analyses, pro-animal-rights theories do not necessarily ban animal experimentation; they, however, suggest changes in the conditions under which a lethal experiment on a non-human animal may be performed.
The evaluation of the pro-animal-rights theories is performed by applying the theories to the practice of biomedical animal experiments. This practice is treated as an example of a conflict between rights to life. Most relevantly, the examined rights conflicts are between the laboratory animal and the human patient suffering from whatever disease the experiment is supposed to find a cure for. The welfare and life of the laboratory animal are measured against the welfare and/or life of the patient.

Conflicts between the protection of relevant interests or choices, given that all beings involved are right holders, do not have any prima facie order of priority. Rights language presumes that all right holders are equal, which makes any prima facie order of priority arbitrary. Pro-animal-rights theories are expected to include mechanisms for approaching conflicts between the right to life of different right holders. They are not expected, however, to necessarily make priorities between any rights.

The bundle of right to life

Conflicts between rights to life are here used as points of discussion and evaluation. Considering the overview of rights language, the right to life includes at least:

- a claim against moral agents to let the life of the right holder be persevered;
- a liberty to employ the fact of being alive;
- a power to waive or insist on one’s claim to live against moral agents;
- an immunity against moral agents waiving or insisting on one’s right to life.

This should be a fair but not exhaustive listing of anyone’s right to life in the broad sense. This is true no matter what species the right holder happens to belong to. The aspect of power may raise some protests. Non-human animals and some human marginal cases, it may be argued, cannot communicate a waiving or insistence of their right to life. Remember, then, that this is moral or legal power. The practical power (i.e. practical ability) to insist on or waive a right to life may be held by a representative of the right holder. Rather, the moral power to
insist on or waive a right to life states that the right holder has the right to such a representative in case a direct communication with the right holder is impossible. More communication than expected, however, may be possible by non-human right holders and non-linguistic human beings. If they justifiably are right holders, then their mere existence could be taken as a clear communication of their insistence on their right to life. The communication of waiving the right to life should not be assumed to be as easily communicated, but very painful, lethal, and irremediable harm is probably involved in such communication.

Say that the above listing is indeed a fair listing of the main ingredients of the right to life. All right holders, no matter whether they are moral agents or not, have that bundle of aspects to protect their life. The implications of having that bundle of Hohfeldian relations, however, changes if the right holder also happens to be a moral agent. Then, the right to life also implies:

- a duty to let the lives of other right holders be persevered;
- no claim against other right holders to intervene in the pursuit of their lives;
- a liability to act according to other right holders’ decisions about their right to life;
- a disability to act against such decisions of other right holders.

The ability of moral agency gives the correlating responsibility implied by the protection by rights. There is nothing per se, however, that says that the protection is conceptually possible to have without having the correlating responsibility.

A conflict of rights to life, in the broad sense, involves all aspects of protection as well as, for moral agents, all aspects of correlating responsibility. This multilayered complexity of a rights conflict is rarely mentioned in the subsequent analyses and evaluation. This is a necessary reduction of a rights conflict due to issues of space and time. An explication of the full complexity of rights in conflicts is offered, however, in order to avoid the impression that the treatise of a rights conflict would represent a complete account.
The complexity of rights in conflict

Jeremy Waldron has outlined some basics of rights conflicts and some suggestions for how to resolve them.\textsuperscript{102} Waldron conceives a rights conflict to consist of conflicts of subsequent waves of duties.\textsuperscript{103} He argues that a single right corresponds to a number of corresponding duties, or at least conflicting aspects of a duty.

A rights conflict is those duties arising against each other in subsequent waves.\textsuperscript{104} Resolving one conflict of duties is never the end of the story. Rather, the high number of conflicting duties and the high number of possible ways to improve the institutions make one resolution of a conflict suggest further adaptation and improvement of the institutions and other structures of society, than the end of a problem. The resolution of a conflict and the institutional changes that would prevent similar conflicts are highly likely to cause more conflicts. The resolution of new conflicts will, in turn, give rise to further institutional changes and further conflicts. A rights conflict can, therefore, only be resolved in a particular manner. Universal resolution approaches assisting in rights conflicts may be possible, but their function is to resolve existing conflicts rather than stopping conflicts from arising.

The complexity of Waldron’s view of a rights conflict is representative, but not exhaustive. Rights conflicts are not only about conflicts between duties. A rights conflict is a conflict of duty only when seen from the perspective of a moral agent, and only when rights are understood in the narrow sense. The focus on duty disregards other aspects of rights from the perspective of the moral agent—disabilities, liabilities, and no-claims. Taking all involved beings into account, as well as the wider notion of rights, conflicting rights are dynamic networks of waves of numerous conflicts of differing kinds. There may be conflicting claims, powers, liberties, and immunities intermingling, according to Hohfeldian rules, with each other as well as disabilities, liabilities, duties, and no-claims.

The analyses in subsequent chapters discuss rights conflicts as conflicts between different claim–duty relations. Pro-animal-rights theories are introduced to interpret the practice of animal experimentation within biomedical research. This practice is then an example of con-

\begin{thebibliography}{9}
\bibitem{103} Ibid. 509.
\bibitem{104} Ibid. 512.
\end{thebibliography}
flicting rights, notably involving the right to life. The conflict is more precisely described as a network of conflicting Hohfeldian relations developing the protection of individual life where waves of new relations are constantly created because of changing circumstances. The complexity of the conflict is, however, limited by focusing on a single pair of conflicting claim–duty relations, particular in time. The experimenter is faced with a conflict between the duty corresponding to the claim to life of the laboratory animal and the duty corresponding to the claim to life of a human patient. Possibly, the experimenter should be replaced by a politician with influence over the institutions, but the conflicting claims would be the same. Involving other kinds of Hohfeldian relations may sometimes be necessary, but focusing on how the various theories would approach conflicts between claim–duty relations generally gives sufficient reason for evaluating the suggested human–non-human relationship. The claim–duty relation includes the moral agent, the right holder, and some vital content of their moral relationship, although it does not include all aspects of each perspective.

Maximizing and non-maximizing resolution approaches

Resolution approaches to rights conflicts are about interpreting and applying the meaning of equality. The reasoning should explain why the notion of equality results in the priority of a certain right. There are at least two different main approaches to resolving rights conflicts.

First, the resolution may be aimed at maximizing the number of respected rights. Second, the resolution may be aimed at a non-maximizing approach, for example generating a lexical order of rights.

It is possible to understand each approach as an expression of equality. One may treat all involved right holders equally in respect of everybody counting as one and no more than one in maximizing calculations. One may also treat all involved right holders equally with regard to everybody having the significance of their rights decided by the same lexical order.

Both approaches could also involve unequal treatment. A maximization calculation could ignore counting certain involved right holders, or double the significance of the rights of some. A lexical order could be based on the arbitrary or prejudicial weighing of goods.
It should be possible to say from an analysis of resolution approaches to rights conflicts how equality should be understood in the case of a rights conflict. This understanding of equality can then be evaluated.

The maximization approach is probably prima facie more appealing to utilitarians, while lexical orders are easier to associate with deontological rationales. Still, either approach is possible to use in both utilitarian and deontological rationales. Also, the approaches are not mutually excluding, at least as long as they are not viewed as complete rules of prioritization. Rather, it is common to include a maximizing approach, which is combined with and controlled by a non-maximizing approach.

Dworkin suggests that the application of rights must not be limited if not for the sake of respecting other rights.\(^{105}\) A limit for collective costs would then be to limit the protection of each right holder only to the extent that the detrimental effects on such protection because of overly high collective costs, if the protection were unlimited, are controlled. Note the circular references to the protection by rights. These kinds of limits to collective costs and the application of rights are supposed to optimize themselves. Waldron argues that this kind of maximizing thinking is useful in most kinds of rights conflicts where the protected values are commensurable.\(^ {106}\) The costs for the collective, the society, to respect a single right holder’s rights must not be so high that the protection of other right holders’ (comparable) rights is infringed.

John Broome also combines a maximizing approach with a non-maximizing approach. He argues that weighing goods generally leads to a maximizing rationale.\(^ {107}\) Still, the good of equality is argued to be produced by a respect for individual claims.\(^ {108}\) Goods that can be (validly) claimed correlate with a duty to provide the goods.\(^ {109}\) Such a obligatory status of providing validly claimed goods would outweigh the provision of all other goods. Broome further argues that claims are weighed depending on their significance or strength.\(^ {110}\) If the claims are equally strong, then lottery is argued to be the fair weighing pro-

\(^ {106}\) Waldron, ‘Rights in Conflict’, 514, 518f.
\(^ {108}\) Ibid. 198.
\(^ {109}\) Ibid. 195.
\(^ {110}\) Ibid. 195 f.
Maximization is then the rule to a certain extent. Cases where equality and claim-rights are involved, however, are solved by other methods. The collective good, no matter which amount, is no more important than the good of individual equality.

The rightful protection of the well-being and life of a single right holder is probably not sufficient enough to provide a 100-year-old person with colorectal cancer and a failing heart with anything more than proper palliative care. It would surely be wrong to provide curative health care for this person, given that the resources directly or indirectly would have to be taken from the budget of a children’s hospital. Of course, if the practical circumstances would make it possible to provide cures for that patient, specifically drawing on the resources of a rights-violating activity (for example an irrational war offensive), then the cures should be given. The underlying rationale is to maximize the number of respected rights and right holders, but the maximization is qualified by a lexical order that gives more weight to individual goods than collective goods.

Waldron also raises the issue of conflicts between rights protecting qualitatively different duties. The duty to grant survival to a right holder is qualitatively different from the duty to punish those who violate someone’s right to survive. These duties are clearly in a lexical order of significance. In this instance, the application of any maximizing rationale in the case of a rights conflict would be arbitrary. It may support acting on a very high number of different duties or aspects of duties correlating with the right to life, while also failing to support acting on the most central duties protecting the lives of others. We may spend so much money on police and prisons—punishing offenders of the right to life—that there would be no funding for an efficient public health care or social security—directly supporting people’s survival.

This kind of rights conflict shows the deontic rules underlying rights language from their most useful aspect. Waldron recommends us to look for internal relations between the rights, and especially the protected interests, to assist in the resolution of some of this kind of rights conflict. For example, acting on right holder A’s claim to a

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113 Ibid.
certain, seemingly relevant, good may be the direct reason for the forfeiture of seemingly relevant goods for right holder B, while the opposite is not true. In that case, the internal relation between the claims for that good may be a justification for not acting on A’s claim. Of course, whether this is actually the case depends on the particular good in question and probably other particularities of the situation and the involved beings. Waldron makes the case that a political grouping that claims free speech in order to express opinions which will cause another political grouping to practically cease having the freedom to speak actually does not have any valid claims to speak freely in that particular manner. Their way of using free speech undermines the idea of free speech. That idea is the equal treatment of all right holders. Their claim to free speech thus becomes self-defeating.

A similar point is made by Dworkin. He makes a distinction between respecting people’s personal preferences in moral decisions and their external preferences. Personal preferences are prudential preferences. External preferences are preferences that concern the surroundings, for example people with a certain skin colour or religious attributes, or beings of certain species. Including each and every person’s personal preferences in moral reasoning would count each person as one.

Preferring that animal experimentation should be pursued because one would personally benefit from the improved health care is not a sign of not holding the value of equality in high regard. Including people’s external preferences would make them able to discount some kinds of beings and overestimate the meaning of other kinds of beings. It is unequal and, by extension, unjust to base the practice of animal experimentation on arguments supported by preferences that non-human animals should be treated worse than human animals. Counting such external preferences defeats the personal preferences of laboratory animals, in effect not including their perspective in the calculations. For the sake of equality, personal preferences should be viewed as valid and external preferences should be viewed as invalid in moral reasoning.

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114 Ibid. 518.
116 Cf. ibid. 237. Dworkin makes a similar example, arguing that black people’s personal preferences and thus their moral status in preference utilitarian calculations are defeated if certain racist external preferences would be counted.
Dworkin further argues that calculations of preference utilitarianism are sometimes incapable of differentiating between the personal and external preferences.\textsuperscript{117} Not excluding the usefulness of utilitarian rationales, he argues that rights language can be corrective to utilitarian conclusions. Rights language is not dependent on preferences at all, but on an ideal of equality.\textsuperscript{118} That ideal can then function as a marker where the maximizing resolution approach to rights conflicts is no longer working in the interest of justice. As soon as there is reason to believe that a maximizing resolution approach works against equality, the maximizing resolutions must be stopped and other resolution approaches need to be found.

Equality and rights conflicts

Dworkin asserts that anyone who takes rights seriously must concur with either one or both of two ideas.\textsuperscript{119} The first of these is Immanuel Kant’s view that each and every human being has a certain dignity that grants a unique moral status. The second is the idea of political equality. Pro-animal-rights theories are not possible to combine with the notion of unique human dignity. They are, however, readily using some notion of equality in order to argue for the inclusion of certain non-human animals. According to Dworkin, political equality ‘supposes that the weaker members of a political community are entitled to the same concern and respect of their government as the more powerful members have secured for themselves’.\textsuperscript{120}

The strategy of applying the notion of equality in rights conflicts that has been outlined above is supposed to use equality as an obstacle to maximizing rationales engulfing rights language. It is, however, also possible to use equality in a constructive and suggestive manner in rights conflicts.

If pro-animal-rights theories are to use rights language as a meaningful moral language that, furthermore, differs from utilitarian calculations, then the notion of equality should be used as something more than a hindrance to rationales that maximize commensurable values. The analyzed pro-animal-rights theories can indeed be understood to

\textsuperscript{117} Ibid. 236.
\textsuperscript{118} Ibid. 239.
\textsuperscript{119} Ibid. 198.
\textsuperscript{120} Ibid. 198f.
utilize the notion of equality within rights language in order to suggest a constructive approach to rights conflicts. It is argued in subsequent chapters that equality is used as an axis along which to compare the significance of rights. Such comparisons give informative assistance when rights conflicts are to be justly resolved. Various properties are argued within the treated pro-animal-rights theories to make the significance of rights conditional. Once the significances of the conflicting rights are established, equality is used as a guarantee for comparing the various significances fairly. This mechanism will become clearer as the subsequent analyses are performed.

The value of equality means equal treatment. Equal treatment in the case of a rights conflict depends on the significance of the conflicting rights. Formally, each right holder is equally entitled to have his or her claim heard in the case of a conflict if that is the most significant claim. What, then, determines the significance of certain rights? Each of the subsequently analyzed theories has its own way of answering that question. Each different answer makes the theory behave differently in the life–life conflicts exemplified by the practice of animal experimentation. Equal treatment is conditional and can only result in identical treatment—which would also result in a stalled and unresolved rights conflict—if the particularities of both sides of the conflict are identical in respect of the relevant conditions. A recurring theme in subsequent chapters is which are these conditions, and the moral aspects of the practical outcome of life–life conflicts within the practice of biomedical experimentation. The analyses will show the details of equality functioning in a constructive manner in the resolution of rights conflicts.

Summary

Some aspects of rights language, deemed relevant to this project, have been outlined in this chapter. Rights were argued to be valid claims, adhering to the most common understanding of the concept of rights. It was argued there is an inherent conceptual possibility to include animals as right holders, considering the distinction between claim-rights and moral powers. It was also pointed out that it is unclear whether this conceptual possibility should be used or not.
The function of rights was outlined as either satisfying certain interests or making certain choices possible. The two views of the function of rights were harmonized with various views of the good for animals.

Moral justification of rights was outlined as an extension of epistemic justification, but where the relation to objective truth has an unclear status. Possible justifications of animal rights were outlined as natural, theocentric or contractarian. Some, but not all, of these assume an objective moral truth.

The right holder was argued to be conceptually separated from the moral agent. It is an issue for further argumentation to what extent this conceptual separation is also practical.

The understanding of conflicts of rights was argued to assume knowledge about the function of rights, the justification of rights and the definition of the right holder. Resolving a rights conflict can be made in a maximizing manner, or not, but should always aim towards preserving the respect for equality.
2. Natural Animal Rights

Animals are distinct beings. Animal nature makes animals distinguishable creatures. Biologically, animals are organisms that characteristically can move by themselves and are in need of nutrition in the form of other organisms.

Natural justifications of animal rights typically provide good reasons to conclude more than just biological circumstances from animal nature. Attempts at justifying animal rights with a natural approach are attempts at arguing for a moral dimension of the understanding of animal nature. Animal nature is then argued to, in itself, be a basis for rights. Animals are said to have a kind of existence in nature that inherently lays claim to on a certain treatment and correlating obligations.

The purpose of this chapter is to analyze Tom Regan’s theory of animal rights. He offers a significant attempt to justify natural rights for animals, which will be outlined. Also, the suggested scope and function of rights are analyzed and briefly discussed. This is done in order to prepare a hypothetical application, and evaluation, of the theory in question. The hypothetical application is presented in a later chapter.

Regan’s theory of animal rights was published as the monograph *The Case for Animal Rights* (1983). It is written to a large extent as a rejoinder and alternative to Singer’s preference-utilitarian animal ethics. It is admittedly as much against alternative theories, as for animal rights. The focus here, however, will be on the positive argument for Regan’s own position. The discussion on alternative ethical theories is only brought up when deemed necessary to clarify his position within rights theory.

Regan’s thinking in *The Case for Animal Rights* consists of four separate theoretical accounts with four separate, but interrelated roles. Firstly, there is the actual rights-based theory that outlines the meaning of granting rights to animals. Secondly, there is the evaluative
framework that Regan uses to justify the rights-based theory in ques-
tion. Thirdly, there is the theory of good for animals that assists in
applying the rights-based theory by providing a morally relevant view
of animal nature. Fourthly, there is a model for explaining animal
nature that plays an important role in the three other theoretical ac-
counts. All four theoretical accounts are outlined and discussed in this
chapter.

In short, it can be said that Regan’s reasoning takes as its starting
point philosophy of science and philosophy of mind. He develops a
theoretical account of how to explain animal behaviour which con-
cludes that it is reasonable to assume animal consciousness. Animals
are argued to consciously hold preferences. Regan further contends
that if animals have preferences, they may experience the difference
between a good life and a bad life. It thus becomes meaningful to pro-
tect their well-being. Regan suggests an array of mental capacities that
are necessary for a person in order to experience a good life and its
counterpart. Whoever has such a mental constitution is referred to as a
subject-of-a-life and is postulated to have an inherent value. Further-
more, he claims that formal justice imposes a postulation that a being
that is a subject-of-a-life ought to be protected by a principle of re-
spectful treatment. With this claimed-to-be objective rights principle,
he formulates animal rights.

Non-human animal consciousness

Regan bases his thinking on the notion that human and non-human
animals have a common nature, and that this commonness includes
certain animals being conscious. His argument is, in short, that we
must conclude from a commonsense use of language about animals, as
well as from modern scientific theory, that human beings have a na-
ture that lies in continuum with the nature of other life forms, espe-
cially other animals. The notion of animal consciousness is later used
in how Regan defines the right holder, the function of rights as well as
how he reasons about rights conflicts. His thinking on this issue is
thus quite central to the aspects of his theory with which this analysis
is concerned.
A common nature for human and non-human animals
Regan argues that it is commonsensical to talk of animals as having consciousness.\textsuperscript{121} It is inherent in our language about animals to grant them feelings like anger and joy. Regan quotes a psychological experiment where the purpose was to avoid language about a group of chimpanzees that gave the animals mental states. The results are explained as lists describing particular movements failing to communicate any meaning.\textsuperscript{122}

This argument may be understood as simply saying that human beings are used to and think it is a practical and simple solution to talk of animals as conscious. The question would then be why this practicality would mean that animals actually have consciousness. This would be to misunderstand Regan’s purpose of using common sense here.

For most of us, it is true, even to ask whether any nonhuman animals are conscious is to strain our robust sense of reality. What could be more obvious than that cats like stroking, dogs feel hungry, elks sense danger, and eagles spy their prey? The attribution of conscious awareness to animals is so much a part of the commonsense view of the world that to question animal awareness is to question the veracity of common sense itself. But though the belief in animal awareness accords with common sense, and though the attribution of consciousness to animals is in harmony with the ordinary language we use in everyday life […], though both these facts are well established and relevant, the role they play in the debate over animal consciousness can be reasonably weighed only after, not before, we have examined both sides.\textsuperscript{123}

A weak interpretation of Regan’s purpose with the argument is that he would like to point out that it would be hasty to presume that nonhuman animals do not have consciousness. Such an assumption must be preceded by weighing arguments. More strongly interpreted, Regan might be viewed as saying that if anything about this issue is to be assumed prima facie, it is more reasonable to assume that animals are generally conscious than that they are not.

The weaker interpretation has a restricted use of common sense. Neither linguistic common sense, nor everyday use of language about

\textsuperscript{121} Regan, Tom, The Case for Animal Rights, Berkeley, CA: University of California, 1985, 2.
\textsuperscript{122} Ibid. 25f.
\textsuperscript{123} Ibid. 2.
animals, is proof of animal consciousness, but an indication that the notion of animal consciousness cannot be ruled out without further argument. The continuation of Regan’s reasoning, where he provides further arguments for animal consciousness, suggests that his usage of common sense is indeed meant to be in this more restricted sense. Regan does not simply push the burden of proof over to the other side and expect them to do the job. The reference to commonsensical and everyday use of language can be understood to show that this issue is not solved beforehand and both pro- and contra-arguments need to be provided.

Regan argues that the differences over animal consciousness are not about differences over which animal behaviours are actually observed. The differences are in how to explain the behavioural patterns that can be observed. He frames the issue of animal consciousness as having two main options.

The first option is to demarcate human nature from other life forms, and associate the behaviour of human beings with an equally demarcated set of explanations. Regan uses the views of René Descartes as an elaborated example of this option. Human beings are conscious according to this option, and behave as they do because they are conscious. Other life forms are impossibly conscious, meaning ontologically bound to not have a mind, and behave like they do for mechanistic reasons. The Cartesian dualism between mind and body is used to show that human beings have a body and a mind, while non-human beings only have a body. Non-human animals may have bodily sentiments, but those sentiments do not become conscious to the animals in question.

Descartes argues that the typically human skill of using language in a flexible manner is a sign that human beings are conscious. According to Descartes, the typically human conscious adaptation of language usage to particular situations would sooner or later reveal even the most perfect non-conscious and mechanistic language imitators. Non-humans cannot use human language in such a flexible manner, although some of them can repeat the sounds of some words, and are thus not conscious. Non-human animals may communicate, but it is

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124 Ibid. 6.
125 Ibid. 3ff.
only their bodily sentiments, or passions, that are based on the communication, not thoughts.\textsuperscript{126}

Regan has two main answers to Descartes’ claim. First, there are non-human apes that have learned to communicate by sign language somewhat intelligibly with human beings. The point is that these apes communicated about keys and combs and not only about their hunger, sexual needs, and other bodily sentiments. It could, nevertheless, be argued that these apes communicated only about their physical sensations of a key or a comb, or that they might have trained to associate tasty treats with using certain signs about certain things. It might then be claimed that they actually communicate aspects of bodily sentiments and not proper thoughts. As Regan points out, the actual behaviour of an ape using sign language is not an indication of which explanatory model is right.\textsuperscript{127}

The second reply to Descartes is against the notion that properly used human language is the only sign there is for consciousness. If language comes before consciousness, as it must do if consciousness is dependent on language, it would make it very hard to explain how children learn language. How could anyone who is not conscious learn to speak a human language? Is it not necessary to be conscious of something in order to develop a language about that something, at least a complex and conceptualizing language like human language? The answers to these questions may not be what we would spontaneously give, even though Regan might be right in presuming that they are. A Cartesian could retort that a child may be conscious before learning a language, but that is proven if, and only if, a child indeed develops language. The Cartesian could elaborate a further explanation, outlining how the child learns language by developing an ever-clearer association between the body and the mind. When the body–mind relationship becomes stronger, it gradually activates a latent skill of using reason to conceptualize the surroundings and affect one’s will and acts. The reason for the child not speaking human languages to


\textsuperscript{127} Ibid. 12f.
begin with is that the dualistic body–mind nature of the child is blurred, rather than non-existing.\(^\text{128}\)

The point is to show that Cartesians might counter Regan’s view by developing their view of the mind–body relationship. Regan, however, has a way of stopping Cartesians and other opponents of the notion of animal consciousness from making these kinds of fantastic elaborations of their view.

The second option of the issue of animal consciousness is to view human nature as part of a continuum of all life forms, and explain the behaviour of human and non-human beings with the same kind of explanations. This option is the one that Regan supports. He uses Darwinist evolutionary theory as a basic support for the notion that there is no difference in kind between human beings and other life forms, especially not non-human animals.\(^\text{129}\)

Darwinist evolutionary theory is used here as a collection of notions that support many other beliefs that are reasonable to believe in. It is reasonable to believe that human and non-human forms of lives are of the same kind and should be subjected to the same explanatory models because of the same kind of reasons that we should believe (non-Cartesian) scientific notions. Evolutionary theory is thus not primarily used here as a way to explain the development of life, but as a reasonable specification of the notion that human and non-human animals are of the same kind.

This means that the specific use of Darwinist evolutionary theory for satisfying the proposition that humans and non-humans are of the same kind of existence can be replaced with other specifying collections of beliefs. The important issue is not whether Darwinist evolutionary theory is a satisfactory model for the development of life, or even whether present life forms really were developed (as opposed to created at a point in time). The relevant issue at hand is whether human and non-humans have a common kind of existence.

If Regan’s use of Darwin’s theory is understood as a particular suggestion for elaborating on the idea of a common kind of existence of human and non-human animals, then there should be deeper elements that should justify such an idea. Such elements would typically be general criteria for beliefs about the human kind of existence in relation to the non-human kind of existence.

\(^{128}\) Ibid. 15f.

\(^{129}\) Ibid. 18ff.
Regan is very clear that these criteria are simplicity and explanatory power.\textsuperscript{130} Simplicity is dressed as Occam’s razor by Regan. The idea is that a theory explaining behaviour (or anything else) should make as few assumptions as possible.\textsuperscript{131} Explanatory power is a measure of how many phenomena can be explained by a certain theory.\textsuperscript{132} Taken together, this means that the more phenomena a theory can explain without making unnecessary assumptions, the better the theory.

These criteria also counteract the fantastic elaborations with which Cartesians may escape Regan’s arguments against their position and for animal consciousness. If Cartesians want to avoid Regan’s arguments against their position, they cannot do so with the kind of fantastic elaborations suggested above, at least not without clashing with simplicity and possibly explanatory power. This could be elaborated into a general argument for animal consciousness.

Exact and particular similarities in the behaviour of human and non-human animals are not easily found. Very simple behavioural patterns, like the ingestion of food, are similar at least among apes. If random coincidences are taken as such, it is doubtful whether further exact and particular similarities can be found.

If, however, general similarities are looked for instead, it becomes easier to find similarities. Hunting, mating, mating rituals, and play are all obviously present in a large number of species, although their particular expressions vary.

An even more common similarity can also be found by looking at a more existential level. Human beings exist as flesh and bone, to keep the complex simple, and so are many non-human animals. When we move, we move flesh and bone, and so do many other animals. It is not the case that when human beings perform various behavioural patterns, it is as flashing lights, while the biological bodies of non-human beings are contrasts. In this sense, human and non-human behaviour is of the same kind as far as anyone can tell by observing human and non-human beings.

The norm of simplicity that Regan introduces as a criterion for a good explanation asks to make as few assumptions as possible when explaining something. A basic assumption is that the observed behav-

\textsuperscript{130} Ibid. 21.
\textsuperscript{131} Ibid. 7.
\textsuperscript{132} Ibid. 21.
Iours of human and non-human animals are not illusions. If the explanations of human and non-human behaviours should be kept as simple as possible with that basic assumption in mind, and if it indeed is the case that there are existential, or otherwise observable, general, and fundamental similarities between the behaviours of human and non-human animals, then we should apply an explanatory model to both human and non-human behaviour that is in resonance with the existential similarity. To explain human behaviour by way of a model assuming that human beings are of a dualist mind–body existence, while explaining non-human behaviour by way of a model assuming that non-human beings are of a monist and biological body existence, is not as parsimonious as it is to explain human and non-human behaviour by way of a model assuming an evolutionary, or otherwise existential, similarity between the beings involved. According to the criterion of simplicity, Regan is right in relation to Cartesians.

The norm of explanatory power does not seem to contradict this conclusion. The scope of physical phenomena that can be explained is not narrower when using Darwinist evolutionary theory, than when using Cartesian explanations. On the contrary, as Regan points out, Cartesian models must explain the transference of information between mind and body in order to explain human bodily behaviour by reference to mind. Such a specification of the Cartesian dualism either tends to make fantastic assumptions, or fails to actually explain why human beings behave as if it were painful to step on a tack. The Cartesian would go against either the norm of simplicity or the norm of explanatory power.

Regan’s argument for a common kind of existence of human and non-human animals can then be understood as saying that we do not have any good enough reasons to believe that non-human animals would be of a separate kind of existence, given the great similarities that can be seen between the behaviour of non-human animals and that of human animals.

His well-known ‘Cumulative Argument for Animal Consciousness’ can be viewed as a list of similarities and indications of similarities between human beings and non-human beings that provide further support for working from the basic assumption that human and non-human animals are of the same kind of existence. The cumulative argument is a summary of what has been said so far about Regan’s

133 Ibid. 22f.
thinking. Common-sense linguistic notions, the everyday use of language, the observed similarities in behaviour between human and non-human beings, and the insistence on using non-Cartesian scientific models are all partial arguments supporting the cumulative argument.\footnote{Cf. ibid. 28.}

The cumulative argument is not meant to be decisive for the outcome of the debate on animal consciousness. Rather, it is an argument for it \textit{seems} to be more reasonable to assume that human and non-human beings have a common kind of existence, than to assume the opposite proposition. The cumulative argument can also be seen as an argument that could, and possibly can, be expanded by adding further indications of similarities between human and non-human animals. Actually, Stephen P. Stich should be accorded the formulation of a platform for the cumulative argument. He claims that human and non-human animals alike could be argued to be able to hold beliefs by referring to Darwinist evolutionary theory as well as the behavioural similarities between the groups of beings.\footnote{Stich, Stephen P., ‘Do Animals Have Beliefs?’ \textit{Australasian Journal of Philosophy}, vol. 57, no. 1 (1979), 18.} With this in mind, Regan can be viewed as having added further indications of similarities to Stich’s suggested pair of similarities, and Regan’s account of the cumulative argument can surely be expanded today by more indications of similarities. The more kinds of similarities that can be added, the more reasonable it would be to assume a common human and non-human nature.

\textbf{The belief–desire theory and common preference-beliefs}

Regan’s argumentation for a common nature, or a common kind of existence for human and non-human animals, is meant to also show that non-human animals are conscious. The commonness would then presumably be a commonness of consciousness. As Regan points out, this is not obviously so.\footnote{Regan, \textit{The Case for Animal Rights}, 9f., 17f.} We could say that the commonness between human beings and other beings means that human beings are not conscious.\footnote{Cf. ibid.} We could also say that this common nature includes many aspects of what it means to live as an animal, but not the aspect of being conscious. It might be insisted on that being conscious is some-
thing uniquely human, something which evolution, if Darwinist lan-
guage is to be used, has commenced with the human species. There
may be some similarities between human and animal behaviour, but
those are behavioural similarities that do not need consciousness to be
performed, not even when they are performed by human beings.
Regan’s further reasoning about the complexity of animal conscious-
ness provides some reasons for believing that the common nature of
human and non-human animals includes the aspect of being con-
scious.

Regan follows Stich’s view of ‘the intuitive “belief–desire” psy-
chological theory’ when arguing for a meaningful content of animal
consciousness.138 The belief–desire theory is a model for psychologi-
cally explaining behaviour. The ability to desire, it is assumed, is de-
pendent on the ability of having beliefs. Desires may generally be
viewed in this model as vehicles of motivation, while beliefs instead
give the motivation directions. The link between desire and beliefs is
complex, interactive, and non-hierarchal.

Stich exemplifies this relation by way of a dog with the belief that
there is some food in the next room. In such a case, one may assume
that the motivation given to the dog by the desire for food acquires a
goal with the belief that there is some food close by. This belief might,
in turn, be said to give rise to further desires that are needed to psy-
chologically explain why the dog becomes motivated to get up and go
to the room where the food is (like the desire to go to that room). The
desires needed for such an explanation might, in turn, need even more
assumptions about which beliefs the dog has.139

In the case of human beings and possibly some other animals, this
model may be further complicated by talking about different levels of
desires (desires to desire X) and different sets of beliefs (basic beliefs
and non-basic beliefs). Further, Stich argues that if animals can be
said to have beliefs, they could, based on their behaviour, also be said
to make both deductive and inductive inferences, creating novel be-
liefs.140

The argumentation for why the belief–desire theory would be rea-
sonable to use for non-human animals is based on the conclusion that
it is reasonable to assume that human and non-human kinds of exis-

138 Ibid. 35f.; Stich, ‘Do Animals Have Beliefs?’, 17.
139 Ibid. 16.
140 Ibid. 16f.
tence are the same. There are two main arguments for the hypothesis in question.

First, there is an argument by analogy. The argument is that if the belief–desire theory is a reasonable and sturdy psychological model for much of the behaviour of human beings, then, given the continuity of human and non-human life forms suggested by the cumulative argument, the model is also applicable to the behaviour of non-human animals.\textsuperscript{141} The argument is more complex than this, and will be returned to shortly.

The second argument is that anyone who does not agree with the notion that the belief–desire theory can be applied to non-human animals must, in order to have a case, provide good reasons for believing it is wrong. An increase in the strength of claims is obvious here. Regan states that ‘in force of the Cumulative Argument as outlined above, we are right to insist that the burden of proof falls to those who deny the application of this theory to animals and their behavior’.\textsuperscript{142}

The total weight of all indications for the commonness of human and non-human animals is used to say not only that animal consciousness is an issue to be considered with pro- and contra-arguments, as the case was initially, but also that the opponents of the notion of conscious non-human animals owe the proponents of this idea arguments.

Grant, then, that the belief–desire model for explaining behaviour is as good for non-human animals as it is for human ones. How would this support the notion of non-human consciousness? Regan further uses the notion of a common kind of existence for human and non-human animals in order to make a case for non-human consciousness based on the belief–desire model.

Imagine a dog that spots a bone, gets it, and starts to gnaw it. Next, imagine a human person who opens the freezer, takes out a meaty bone, and starts making a soup out of it. Regan argues that these two chains of acts have psychological similarities and that these similarities can be clearly explicated by the belief–desire model.\textsuperscript{143} The similarities mainly consist in the relation between a desire for a certain taste, and the belief that a bone can somehow satisfy that desire. Regan uses the term preference-belief for describing the similarity.\textsuperscript{144}

\textsuperscript{141} Regan, \textit{The Case for Animal Rights}, 36 f; Stich, ‘Do Animals Have Beliefs?’, 18.
\textsuperscript{142} Regan, \textit{The Case for Animal Rights}, 37.
\textsuperscript{143} Ibid. 57ff.
\textsuperscript{144} Ibid. 58.
A preference-belief is a belief about how to satisfy a preference (which is based on a desire).

If it is reasonable to assume that the behaviour of non-human animals can be explained by granting them preference-beliefs, then it is implied that it is also reasonable to assume that animals are conscious. Preference-beliefs need some degree of consciousness. Why would we believe that the similarity that ‘preference-belief’ refers to is an actual similarity?

Regan answers this question partly by arguing against certain alternative and opposing views, and partly by further developing the already-mentioned argument by analogy.

An opposing view is held by Raymond G. Frey. Frey argues that, in order for someone to have a belief, that being needs to have a linguistic ability. A belief is viewed as necessarily in the form of a true sentence. If you cannot form sentences, then you cannot believe. Non-human animals cannot form sentences, hence their lack of beliefs. The belief–desire model cannot thus be applied to non-human animals.\footnote{Ibid. 39. R.G. Frey, \textit{Interests and Rights}, New York: Oxford University Press, 1980, 89 f.}

Frey’s contention has obvious similarities to Descartes’ about language as a sign of the presence of a mind. Regan’s replies to Frey are lengthy and cannot even be outlined here. They are, however, similar to Regan’s replies to the Cartesian view. The strongest argument against Frey is how children learn language. Frey cannot explain how children learn language, at least not without making fantastic (unparsimonious) presumptions.\footnote{Regan, \textit{The Case for Animal Rights}, 44f.} How can anyone learn to form a sentence if there are no beliefs about what the sentence is about?

Another alternative and opposing view is taken from the work of Stich who suggests that even if animals had beliefs, human beings would not have any way of knowing what they are. Stich indicates that a belief can have the characteristic ‘functional or psychological state’ and the characteristic of being a ‘propositional attitude’.\footnote{Stich, ‘Do Animals Have Beliefs?’; 25.} Stich obviously uses Willard Van Orman Quine’s thoughts on beliefs.

A belief in its role as a psychological state is said to interact with desires, perception, and other beliefs, and may be viewed as a structural feature of the belief–desire theory. A belief in its role as a propositional attitude gives expressible content to those psychological...
states. Stich’s point is that these characteristics are logically independent. A belief could be a psychological state with no expressible content.\textsuperscript{148} The question is: If someone, like a non-human animal, would have such a belief, would it really be meaningful to call it a belief?

Stich’s suggestion is obviously based on an assumption that human beings and non-human beings are different enough to be complete strangers regarding each other’s beliefs. This is the opposite view to the view of the idea of human and non-human animals having preference-beliefs in common. According to the possible view that Stich suggests, it would be overly presumptuous to say that there is something similar going on in the mind of the dog gnawing on the bone as compared to what is going on in the mind of a human person making a soup out of a bone. Regan’s reply to Stich is also a development of the already-mentioned argument by analogy.

Regan points out that it is quite admissible to claim that we know something about how Fidel Castro experiences smoking a cigar, even though we cannot imagine exactly how it is to smoke a cigar being Fidel Castro.\textsuperscript{149} ‘We do not believe that we are obliged to say that we do not know something because we are unable to fulfill a requirement for knowledge that it is impossible to fulfill’.\textsuperscript{150}

Regan thus underscores that it is usually allowable to assume a certain degree of psychological similarities between oneself and another human being. This claim can be further supported by the classical argument by analogy formulated by Mill as proof of the presence of other human minds. This will be further discussed in another section.

Secondly, Regan argues that the experiences of cats and dogs can be and are readily comparable in kind. ‘For we ought not to multiply kinds of experience (canine, feline, etc.) beyond necessity’.\textsuperscript{151}

Regan uses the criterion of simplicity in order to give a rational background for the linguistic habit of talking about the experiences of a dog mainly being of the same kind as the experiences of a cat. The criterion of simplicity could also be used to support the mentioned habit of making assumptions about the similarities between my experiences and those of other human beings.

\begin{flushleft}\textsuperscript{148} Ibid. 25f.  \\
\textsuperscript{149} Regan, \textit{The Case for Animal Rights}, 64.  \\
\textsuperscript{150} Ibid.  \\
\textsuperscript{151} Ibid. 65. \end{flushleft}
Next, the two permissibly assumed associations between the experiences between, in some ways, different kinds of beings are used to make a final analogy.

If I know that you are thirsty and desire some water, I naturally expect you to drink a glass of water rather than down a cup of sand, when given the choice. Human-thirst behavior has its animal counterpart, and so I expect that animals would make a similar selection. In claiming that human-thirst (or taste, etc.) experience and animal-thirst (or taste, etc.) experience are similar, what we claim is not inconsistent with the observable facts about human and animal behavior. Once again, therefore, since, on grounds of simplicity, I ought not to multiply kinds of experience beyond necessity, I ought not to postulate a human-taste experience, say, that is totally different from canine-taste experience. On the contrary, I ought to postulate a shared, a common taste experience, even though dogs belong to one species of animals and humans to another.\(^{152}\)

The line of these three arguments can be formalized into a multilayered argument by analogy. If we accept that it is sensible to assume similarities in kind between the experiences of different human beings, and that it is sensible to assume similarities in kind between the experiences of different non-human species, then we must also accept that it is sensible to assume similarities between human and non-human experiences. Experiences consist of beliefs. If these analogies are fair to make for experiences, they are also fair to make for beliefs, at least such beliefs that create experiences. Humans can make assumptions about what certain non-humans believe. Regan’s suggestion that we can make the assumption that preference-beliefs are held by human and non-human animals seems to be a good suggestion of how to explicate the similarity in experience, or beliefs, between human and non-human animals.

The argument is forceful as long as it is accepted that the relation between the experiences of humans and those of nonhumans is not relevantly dissimilar to the two other involved relations. It is not logically necessary to assume this, of course. One may simply assume that human beings, in essence, happen to be the only beings with experiences or at least morally relevant experiences.

Then again, the function of Occam’s razor, implied in the quote above, safeguards against this kind of assumption. There must not be

\(^{152}\) Ibid. 65f.
assumed to be any relevant differences between the three kinds of relations that the analogies suggest as long as there is no (observable) reason to assume that there are such differences.

Regan’s argumentation approach seems to be good enough to make a case for the basic commonness of human and non-human animal existence, as well as for providing good reasons to allow the assumption that non-human animals are conscious in a similar manner to how human beings are conscious. The usage of similarities and analogies, linguistic habits, as well as the recurring demand for simplicity provide a basis for believing that both human and non-human animals are conscious. The argumentation approach also, however, makes the reasonableness of assuming animal consciousness dependent on certain similarities between human and non-human animals. This will be discussed later.

Regan’s argumentation makes it reasonable, given that the criteria of simplicity and explanatory power are acceptable, to assume that non-human animals are conscious, at least non-human animals that have significant and observable similarities to human beings. This assumption is actively made and used in Regan’s way of understanding the good for animals, as well as in his justificatory argumentation for animal rights.

A natural justification of animal rights

Regan justifies animal rights by way of a natural justification. As stated in the previous chapter, a natural justification is characterized by using a basic and objective principle as a foundation for rights. Also, a natural property is used to identify right holders and their rights. The latter characteristic is not unique to natural justifications, but it usually plays a more central role.

Regan characterizes rights as universal, equal, and independent from acts of any individual or group.\textsuperscript{153} That rights should be universally held by all those beings that have the relevant properties is generally accepted, even by theorists who use other kinds of justifications. The same is true for the notion that rights involve the value of equality.

\textsuperscript{153} Ibid. 267f.
The third characteristic is, however, controversial and is not confirmed by all rights theorists. Regan writes that ‘moral rights … do not arise as a result of the creative acts of any one individual (e.g., a despot) or any group (e.g., a legislative assembly)’.154 This is obviously a criterion for objectivity of rights. The view that rights are independent of the subjective perspective of any individual, as well as of the collective opinions and acts of any group, leaves no alternative other than to say that rights are viewed as objective, and presumably viewed as based on an objectively true rights principle.

It is obvious from the outline of Regan’s discussion of animal consciousness that he considers animal nature of great importance when defending animal rights. The mere quantity of text that he spends arguing for a certain explanatory model for animal nature associates his thinking with natural-rights theory. The view that rights have an objective quality confirms that he indeed belongs to the cohort of natural-rights theorists.

The main aim of the natural justification is, according to Regan, to show that there are certain non-human animals that have valid claims to a certain treatment. Regan adheres to the claim-right view of rights.155 Rights are valid claims, and valid claims are performances of a certain relevant kind.

Regan follows Joel Feinberg’s view of validity.156 Feinberg claims that validity is ‘a justification of a peculiar and narrow kind’.157 Feinberg further holds that valid moral rights are such claims that are supported by ‘moral principles, or the principles of an enlightened conscience’.158

The notion that certain non-human animals have claims is supported by Regan’s outline of how to explain animal nature as well as his further thoughts on animal welfare, soon to be outlined and discussed. If it is reasonable to assume that more beings than human beings have consciousness, then it should also be reasonable to assume that those non-human beings have claims (albeit mediated by representatives) to a certain treatment. Justification of animal rights means taking the next step and arguing that there are non-human animals that not only have claims, but that those claims are valid in a moral sense.

154 Ibid. 268.
155 Ibid. 271.
156 Ibid.
157 Feinberg, Rights, Justice, and the Bounds of Liberty, 153f.
158 Ibid. 154.
The theoretical basis for evaluating moral principles

Regan makes his evaluative tool for moral theories quite explicit. The apparatus for evaluating moral theories is also a preparation for the justification of Regan’s moral theory. His approach is to use ‘reflective intuitions’ or ‘considered beliefs’ as a basis for any ideal moral judgment, including such judgments that evaluate moral theories.\(^{159}\) The raw material of reflective intuitions is ‘prereflective intuitions’.\(^{160}\)

Pre-reflective intuitions are spontaneous beliefs about rights and wrongs which moral agents are supposed to have whenever asked about a particular and morally charged event or situation. The collection of pre-reflective intuitions is, according to Regan, more than simple prejudices.\(^{161}\) They have a conscientious quality that can be refined and harvested by the right theoretical apparatus.\(^{162}\)

This theoretical apparatus consists of five rather familiar criteria for an ideal moral judgment. They are conceptual clarity, adequate information, rationality, impartiality, and emotional calmness.\(^{163}\) Pre-reflective intuitions are meant to become morally trustworthy, and promoted to reflective intuitions, when examined with these five criteria in mind.

We are to begin by considering our prereflective intuitions – those beliefs about right and wrong that we happen to have. We then make a conscientious effort to make the best review of these judgments we can, and we do this by striving to purge our thought of inconsistency and unquestioned partiality, and by thinking as rationally and coolly as we can, with maximum conceptual clarity and on the basis of the best relevant information we can muster. Those moral beliefs we hold after we have made an honest effort to meet these requirements are our considered belief, our reflective intuitions, and any ethical theory that fails to match our considered beliefs, in a broad range of cases, cannot be reasonably judged the best theory, all considered.\(^{164}\)

The five criteria for refining pre-reflective intuitions into ideal moral judgments are standard issue and do not need any individual presentation. The quote shows how he imagines the machinery of analytical-

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\(^{160}\) Ibid. 134f.

\(^{161}\) Ibid. 136.

\(^{162}\) Ibid. 126ff., 148f.

\(^{163}\) Ibid. 127ff.

\(^{164}\) Ibid. 148f.
philosophical criteria and refined moral intuitions aimed at evaluating ethical theories. By extension, the apparatus explicated the circumstances under which a rights-based moral theory, including animals, can be justified.

The main idea is that they point to typical aspects of considering and reconsidering spontaneous moral reactions in a calm and systematic way without concerning oneself with private whims of the day or whichever temporal gods that happen to be in fashion.

The refining of usable moral beliefs from spontaneous intuitions is the most controversial, but not the only part in the apparatus that Regan suggests for evaluating ethical theories.

Properly understood, ethical theories are to be assessed in terms of how well they “systematize our considered beliefs.” That theory is best, all considered, that does this best, and the theory that does this best is the one that (1) systematizes the maximum number of our considered beliefs, thereby having maximum scope; (2) systematized them in a coherent fashion, thereby achieving consistency; (3) does this without compromising the degree of precision it is reasonable to expect and require of any moral principle(s); and (4) satisfies these other criteria of evaluation while making the fewest possible assumptions necessary to do so, thereby meeting the criterion of simplicity.165

Once spontaneous moral reactions (intuitions) have been duly considered by a certain philosophical standard, they should be exposed to the systematizing power of an ethical theory. A theory is more preferable if it can include more beliefs in its system of thought, if it can do so following basic logical rules, and preserving the precision of the involved moral principles. The moral principles can be, but are not necessarily, conclusions from refined (reflective) intuitions.166 Also, the simplicity criterion is highlighted again. The simplicity criterion is meant to be evoked when there is more than one theory that meets all other criteria equally well.167 Regan presumably means the situation where there are two or more mutually contradicting theories that are equally supported by the criteria of scope, precision, and consistency. The simplicity criterion would then point to choosing the theory that makes fewer assumptions. This is preferable, according to Regan,
because it would make conflicts between assumptions and principles less likely.\textsuperscript{168}

As a theorist who wants to change how people view animals, it is of great importance for Regan to find a communicable method to think about the animal issue while distancing oneself from old and worn ways of thinking. Philosophy typically provides such methods. These methods may provide the principles of an enlightened conscience that Feinberg associates with validity. They may be effective at provoking change in old lines of thought, albeit they give a quite artificial and mechanical impression. Regan makes use of them in order to prepare the ground to show why we should believe that animals have rights, an idea that is structured by two moral principles.

The harm principle

The justification of animal rights is made in two main steps. Firstly, Regan argues for the harm principle as a basic point of reference for all morals. Secondly, he champions the respect principle as the basic principle for formulating rights. The arguments are formulated through the theoretical apparatus outlined above. The evaluation approach is thus also used as a justificatory approach.

The argumentation for the harm principle starts by pleading to the reader’s pre-reflective intuitions that it is typically wrong to cause moral agents harm in a large number of particular cases. The harm principle is an expression of the common feature of all those intuitions promoting non-harm. It says that ‘we have a direct prima facie duty not to harm individuals’.\textsuperscript{169}

Subsequently, Regan argues that it is arbitrary to have such intuitions of moral agents, but not of other beings that can be harmed.\textsuperscript{170} The idea is that the reason why it should be held that moral agents are wrong to harm is because they can be harmed. This is conceptually self-evident. The word ‘harm’ has inherent connotations of ‘evil’.\textsuperscript{171} If someone can be caused harm, it is inherently wrong, at least inherently prima facie wrong, to cause that someone harm.

\textsuperscript{168} Ibid. 146.
\textsuperscript{169} Ibid. 187.
\textsuperscript{170} Ibid. 188f. Regan uses the term ‘moral patient’ to refer to moral objects that are not moral agents.
If it is wrong to harm healthy adult human beings (moral agents) because they can be harmed, it must also be wrong to harm any other being that may be harmed. Any other conclusion would either be arbitrarily speciesist, or say that it is sometimes prima facie right to do evil. There is thus a prima facie duty not to harm moral agents or any other being that can be harmed.

Regan also puts his energy into arguing that this duty is a direct duty towards both human and non-human animals. As long as it is reasonable to assume that the harm done to harmable non-human beings is relevantly similar to the harm done to harmable human beings, it is also reasonable to claim that any duty of non-harm is directed both towards human and non-human animals.\textsuperscript{172} The defended explanatory model for animal nature does support the notion that the harm to both human and non-human animals can be assumed to be similar.

This position can be contrasted with Kant’s well-known position. Kant admits that non-human animals should be treated well by people, but only because their mistreatment is detrimental to the character of the (human) mistreater. Kant thus argues for us having indirect duties of non-harm towards non-human animals.

Regan puts the suggested harm principle through the theoretical apparatus described above. He claims to have refined the pre-reflective intuitions with proper rationality, emotional calmness, impartiality, conceptual clearness, and adequate information.\textsuperscript{173}

He also claims that the harm principle, as a basis for a moral theory, would not produce contradictions. It would have a considerable scope, structuring a large number of common beliefs about right and wrong. The precision is good enough, according to Regan, considering his outline of the concept of harm that is presented below.\textsuperscript{174}

Regan does not consider the simplicity criterion while evaluating the harm principle. Nevertheless, the principle, quoted above, does have a simple ring to it. There is nothing theoretically complex or overly presumptuous about a command not to harm individuals. Defining the concept of harm may add great complexity to thinking about this principle, but that would not affect the simplicity of the

\textsuperscript{172} Regan, \textit{The Case for Animal Rights}, 188.
\textsuperscript{173} Ibid. 189ff.
\textsuperscript{174} Ibid. 191f.
principle as such. The concept of harm may be in need of revision, but not the harm principle.

The harm principle has, in Regan’s theory, the status of being a normative point of reference for any moral theory.\textsuperscript{175} A valid moral theory, in order to be valid, must confirm the harm principle. If a moral theory concludes that a prima facie right act would mean harming somebody, the moral theory must be flawed.

The respect principle

The respect principle is the main rights principle as well as the justice principle of Regan’s thinking. As such, it is considered to be a basic and objective moral principle from which particular rights are formulated. Summarized in brief, the respect principle states that anyone with inherent moral value is owed not to be harmed, and owed to be helped out of a harmful situation. The principle importantly also states that all beings with inherent moral value are equally owed this.

The respect principle is a justice principle and thus an interpretation of formal justice. Regan argues that formal justice, the notion that each object of justice should be given its due, ought to be understood in egalitarian terms. The meaning of formal justice should be narrowed down to equality of individuals. Accordingly, all right holders are granted equal inherent value.\textsuperscript{176} The respect principle is formulated from this idea. ‘We are to treat those individuals who have inherent value in ways that respect their inherent value’.\textsuperscript{177}

Equal inherent value is understood to mean that all right holders have an equal, basic right not to be harmed.\textsuperscript{178} Regan argues that this is an apparent consequence of granting inherent value to individuals. Inherent value is defined as distinct from intrinsic value, where the latter is associated with experiences of pleasure or preference satisfaction and thus implies a utilitarian rationale.\textsuperscript{179} Inherent value is said to be categorical, non-quantifiable, and independent of any merits, or optimizing calculation of utility and the like.\textsuperscript{180} Regan makes a reference to Kant, claiming that the meaning of inherent value is that we

\textsuperscript{175} Ibid. 194. 
\textsuperscript{176} Ibid. 235f. 
\textsuperscript{177} Ibid. 248. 
\textsuperscript{178} Ibid. 248f. 
\textsuperscript{179} Ibid. 235, 248f. 
\textsuperscript{180} Ibid. 235ff.
should never treat someone as merely a means to acquire certain consequences.\textsuperscript{181}

Also, it can again be pointed out that the concept of harm in itself has clear connotations of physical evil. It should then be self-evident that someone with inherent moral value should prima facie not be harmed. In any other case, the granting of inherent value would be morally meaningless.

It is initially postulated by Regan that at least moral agents have equal inherent value and are thus included within the scope of the respect principle.\textsuperscript{182} His subsequent reasoning has an approach that is quite recognizable by now. He points out that it is reasonable to assume that human and certain (conscious) non-human animals can be harmed in the same way. If moral agents are postulated to have inherent value, if the meaning of inherent value is to avoid harmful treatment, and if there are other beings than moral agents that can be harmed in a relevantly similar way, then, Regan concludes, it would be arbitrary not to grant those other beings inherent value.\textsuperscript{183}

It is clear, then, that beings with inherent value are defined differently than only referring to their ability to be moral agents, or the property of being of a certain species. Beings with inherent value, according to Regan, are beings that comply with certain threshold criteria of mental abilities. These abilities are meant to be sufficient in order to contain inherent value and reflect a being that can self-consciously comprehend the difference between a life in opulence and a poorer life. Those are the beings that are called subjects-of-a-life and are protected by the respect principle and its derived rights.\textsuperscript{184}

The respect principle is justified by reference to the harm principle. This does not mean, however, that the respect principle is any less basic in Regan’s moral theory. It means that there is a difference between the structure of Regan’s rights-based moral theory and his evaluative theoretical apparatus. The respect principle is part of a moral theory, while the harm principle is a focal point where considered moral beliefs meet. The harm principle is deduced from Regan’s evaluative criteria. The respect principle is essential in Regan’s moral theory of defending animal rights. The harm principle is a systemati-

\begin{footnotesize}
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\item \textsuperscript{181} Ibid. 249.
\item \textsuperscript{182} Ibid. 235, 237.
\item \textsuperscript{183} Ibid. 239f.
\item \textsuperscript{184} Ibid. 243f.
\end{itemize}
\end{footnotesize}
zation of considered moral reactions that can be used to check other moral principles, for example the respect principle.

Regan claims moral validity of the respect principle as applied to moral agents because it conforms to the considered intuitions of non-harm. The respect principle, furthermore, ‘illuminates and unifies’ those intuitions.\textsuperscript{185} It conforms to the harm principle and the intuitions it is founded on, and formalizes those intuitions into a proper justice principle. Furthermore, the respect principle is briefly evaluated for consistency, precision, and adequacy of scope.\textsuperscript{186}

Subsequently, the scope of the principle is expanded to include all beings that may have the same kind of interests in not being harmed as moral agents have.\textsuperscript{187} It would be inconsistent for the principle to apply to a subgroup (moral agents) of all beings that may be harmed, as the function of the principle is to protect against harm. The evaluative apparatus thus validates the respect principle, as well as expands the scope of the respect principle to include all relevantly harmable beings.

The difference in content between the harm principle and the respect principle is small, but significant. The respect principle, like the harm principle, promotes the moral view that harming right holders ought to be avoided, and, unlike the harm principle, the avoidance of harm is of equal moral relevance no matter which right holder is in question.

Also, because the respect principle is a principle of justice, it ‘not only imposes duties of non-harm; it also imposes duties of assistance, understood as the duty to aid those who suffer from injustice’.\textsuperscript{188} Injustice, according to Regan, is harmful treatment. The harm principle is not a justice principle, but rather an evaluative principle. The harm principle thus does not as clearly as the respect principle ask people to assist others that are being harmed.

The right to respectful treatment

A right to respectful treatment is meant to follow from the respect principle.\textsuperscript{189} If the respect principle is indeed justified, the right to re-

\textsuperscript{185} Ibid. 259.
\textsuperscript{186} Ibid. 259f.
\textsuperscript{187} Ibid. 260f.
\textsuperscript{188} Ibid. 249.
\textsuperscript{189} Ibid. 276f.
spectful treatment and any other derivable rights are justified. This, however, assumes that it is conceptually possible to derive rights from the respect principle. Valid claims should be conceptually possible to derive from the respect principle. Regan provides some arguments for that this is possible.

The respect principle is a justice principle. A justice principle prescribes what we owe others. There is something that is due the recipients of justice. Regan argues that it is thus conceptually expected that the recipients of justice can be said to have claims on how others, at least moral agents, treat them.\textsuperscript{190}

To derive claim-rights from the respect principle makes sense because of the obligatory character of any justice principle. Regan maintains that it is thus also sensible to talk of corresponding obligations. The recipients of respectful treatment not only have claims to a respectful treatment, which is their due, but also claims against moral agents to provide this treatment. Moral agents have the corresponding obligations to treat the recipients of justice with respect.\textsuperscript{191}

Regan also points out that the right to respectful treatment, if it could be derived from the respect principle, would be universal. The respect principle involves specifying properties which all recipients of justice should have in order to have the right to respectful treatment.\textsuperscript{192}

It could also be added that the respect principle entails equality, which further supports the notion that rights could be derived from it.

These conceptual circumstances together point to a claim-right to respectful treatment that can indeed be derived from the respect principle. Regan does not, however, discuss the possibilities of also deriving liberties, powers, and immunities from the respect principle. He focuses the discussion on claims. It could be argued, nevertheless, that once satisfactory arguments have been provided for the notion that both human and non-human animals have valid claims to a certain treatment, the other aspects of a full Hohfeldian right would follow. Can someone hold a valid moral claim, without also having the moral liberties, powers, and immunities that are necessary for the claim to be realized? A negative reply may be too hasty to make here, but a negative reply is surely safer to assume than a positive reply.

\textsuperscript{190} Ibid. 277.
\textsuperscript{191} Ibid. 278.
\textsuperscript{192} Ibid.
The function of the right to respect

The concept of harm—physical evil—is weaved into the thinking of Regan and recurs in several places in his reasoning. It has become clear that the concept of harm plays a central role in Regan’s justification of animal rights. It will also become clear that the concept of harm is central to how Regan approaches rights conflicts. Also, the concept of harm recurs in Regan’s theory of good and, by extension, the function of animal rights.

It was claimed in the previous chapter that the function of rights is to protect the goods for individuals. Each individual life has aspects whose liberty is guaranteed by rights. The right to respectful treatment has the function to grant the right holder protection from inflicted harm. This means that harmful aspects of life should be chosen to be lived by the right holders themselves. If that choice is not made, then no one else has the prima facie moral liberty or prima facie moral power to force those right holders to live a harmful life.

Animal autonomy

In Regan’s thinking, individuals are harmed when their welfare is seriously reduced. Animal welfare is construed to be expressible as interests. It should be noted that I use ‘a good’ interchangeably with Regan’s term ‘an interest’. Regan does not make any conceptual point for the interest conception of rights, or against the choice conception of rights. Neither does his theory of good for animals necessarily imply an interest conception of rights. It is thus more proper for this work, considering the outline of rights language in the previous chapter, to use the more general and vague term ‘good’ for what Regan refers to as ‘interests’. For consistency, ‘good for animals’ tends to be used here where Regan would say ‘animal welfare’. There is no difference intended, except terminological.

The concept of animal welfare, according to Regan, is meaningful because animals are autonomous in a certain sense. Animals ‘have preferences and have the ability to initiate action with a view to satisfying them’. In other words, animals have preference autonomy, an

193 Ibid. 185ff., 262f.
194 Ibid. 94.
195 Ibid. 87ff.
196 Ibid. 84f.
ability to live and act in accordance with one’s preferences. This notion is obviously supported by the initial reasoning about animal consciousness, and preference-beliefs as a common, mental point for human and certain non-human animals.

Preference autonomy is contrasted to the Kantian sense of autonomy. A being needs to be able to be impartial in order to be autonomous in the Kantian sense. This includes the ability to abstract the issue at hand and override private preferences in order to achieve an impartial purpose.\footnote{197}{Ibid. 85.}

In his discussion, Regan dismisses the importance of the Kantian sense of autonomy. If it presupposes impartiality of the autonomous individual, then it only refers to the autonomy of moral agents. Regan offers the possibility of having several autonomies, but limits the discussion in question to preference autonomy only.\footnote{198}{Ibid. 86.}

A being with preference autonomy is a conscious being whose acts are motivated by preferences, or more specifically the desires that underlie preferences. Such a being may have its preferences satisfied, or it may have its preferences frustrated. Its life can then take a turn for the better, with much satisfaction, or for the worse, with much frustration. It is thus sensible to talk of animal well-being, animal welfare or the good for animals. It also follows from this that the good for animals is not an inherent part of the life of any animal. It must be acquired by autonomous acts.

The good for animals

A categorization of understandings of the good for animals was briefly outlined in the previous chapter. To define the good for animals could be taken to be an exercise of figuring out elements of the animal’s subjective perspective. Happy mental states, or satisfied preferences, could be such elements.

The good for animals could also mean something that can be defined without referring to the animal’s subjective perspective. Needs for natural patterns of behaviour, or healthy biological functionings, are elements of good that have been suggested to be associated with the objective good for animals.

\footnote{197}{Ibid. 85.}
\footnote{198}{Ibid. 86.}
Considering Regan’s view of autonomy, talking about the animal’s subjective perspective acquires a specific meaning. An animal’s subjective perspective should be understood to refer to the perspective of a subject that consciously holds preference-beliefs. The issue is not about claiming that there are nonhuman animals that have a subjective perspective, or a personhood, like the one of a moral subject (moral agent). That would be to use the Kantian, and perhaps the most common, sense of a subject.

Regan uses both subjective and objective aspects of the good for animals. He makes a distinction between goods that animals themselves are interested in and goods that are in the interest of the animals at hand, and grants both kinds of goods moral relevance. His formal definition of a good life for animals contains the same mixture of objective and subjective elements of the good for animals. Animals are said to ‘live well if (1) they get or pursue what they prefer, (2) they take satisfaction in pursuing and getting what they prefer, and if (3) what they pursue or obtain is in their interests’. 199

The first point of this definition of the good for animals expresses the notion that animals should themselves be active in pursuing their goods. It is, for example, not generally good for animals to be kept in a pen and given pharmaceuticals in order to keep their biological functionings healthy (although this could be good for particular sick animals during a limited period). Regan argues that animals are autonomous beings that have social and psychological needs as well as biological needs. He also argues that the needs of animals are reflected in their preferences. Those preferences fuel the autonomy of animals to pursue a wide range of goods. The point is that animals must be given opportunities to practically exercise such autonomy.

The second point expresses the importance of the animal’s subjective perspective. Regan argues that goods that animals themselves are interested in are preferences, meaning propositional attitudes, and their satisfaction. This is not to say that the goods for animals are merely episodic mental states. An animal may have tendencies towards wanting to move freely within its habitat, without having that want as a present mental state. There should, however, be some occa-

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199 Ibid. 87f.
200 Ibid. 93.
201 Ibid. 90.
202 Ibid. 88f.
203 Ibid. 87.
sional mental states of satisfaction with accomplished preferences. Preference-autonomous animals should find some conscious satisfaction with the pursuit and acquirement of goods in order to say that they live well.

The third point importantly expresses the notion that the good for animals also includes objective aspects. Regan argues that this is a kind of good that benefits the animal without being a mental state or a propositional attitude.204 In other words, the goods are goods objectively. It can, for example, be in the interest of many animals to put up fences along motorways, although the animals in question may not have propositional attitudes, and even less likely have episodic mental states, about such fences. The fences would be a tool to strive for the objective (in this particular case meaning ‘empirically measurable’) good of the bodily health of animals.

This view of the good life for an animal is obviously multifaceted. The subjective and objective aspects may be misunderstood as mutually contradictory. This would also be the case if the subjective and objective aspects were of equal strength in Regan’s theory of good. This is, however, not the case.

The mixture of subjective and objective aspects of goods in Regan’s thinking is constantly qualified by the notion that the objective aspects are more basic and decisive than the subjective aspects. It has already been mentioned that he writes of preferences as arising from needs.205 This implies that even if there were preferences independent of needs, they would be deemed irrelevant.

Regan explicitly provides a number of examples where other people’s judgments of the good for oneself are reasonably a better judgment than a personal judgment of the good for oneself.206 Medical doctors are, for example, generally more reasonable to trust than one’s own dispositions when wanting to regain physical health.

Also, Regan argues for euthanasia of animals. Euthanasia is claimed to be right if it is done to relieve the animal from a foreseeable future of constant suffering.207 That suffering is wrong is expressible as a frustration of certain preferences. The subjective perspective of the animal should thus be taken into account when decid-

204 Ibid. 88.
205 Ibid. 88f.
206 Ibid. 91.
207 Ibid. 113f., 118f.
ing whether to euthanize it or not. The general idea, however, is that a person can know when it is time for an animal to die. This implies a strong idea that there is an objective good for such decisions to rely upon, and that present preferences of not dying should not be heeded.208

Furthermore, Regan mentions cases of harm that are objectively viewed as mild, but subjectively viewed more seriously. A paper cut shocks, hurts, and bleeds more than it harms. To Regan, such cases of excessively intense experiences, if they are claimed to be cases of relevant harm, are hypochondriac cases which should not be given moral relevance.209

There is a definite mixture of subjective and objective aspects, of preferences and needs, in Regan’s view of the good for animals. Nevertheless, there is a hierarchy as well, where the objective aspects are given the final say.

Harm

Harm is caused when the good for animals is seriously reduced.210 Regan identifies two kinds of harm—inflictions and deprivations. Inflictions are characterized by any kind of suffering. Regan describes typical suffering as being subjected to considerable pain for a prolonged period of time that may or may not have valuable consequences and may or may not be caused by a moral agent.211 Cardinal cases of suffering are amputations, intestinal cancer, brutal torture, the death of a loved one, loss of self-esteem, and public shame.212

Deprivations, on the other hand, do not need to involve pain or direct suffering. Deprivations are instead viewed by Regan as losses of benefits that the deprived person may or may not be aware of. Examples of deprivations include captivity, denied access to education, and death.213

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208 It should be noted that Regan argues that nonhuman animals cannot communicate their preferences (cf. ibid. 118f.). It may then be the case that possible and present preferences should not be heeded.
209 Ibid. 94.
210 Ibid.
211 Ibid. 94ff.
212 Ibid. 94.
213 Ibid. 97f.
Benefits increase opportunities for satisfaction. Individual liberties, wealth, and talent are all viewed as benefits in this respect.\textsuperscript{214}

Inflictions and deprivations involve the subjective–objective character of Regan’s view of animal goods. Intestinal cancer is an infliction as it is painful and leads to directly experienced suffering. The cancer is also a deprivation because it disturbs the normal functionings and opportunities for natural behaviour of the animal in question. The animal surely has a preference to have neither the infliction nor the deprivation that is the harm of the cancer. Also, both the infliction of painful suffering and the deprivation of opportunities for natural behaviour and other sources of satisfaction correspond to hindering a natural living. The objective aspect and the subjective aspect of the good for animals cut across the categories of harm of inflictions and deprivations and are included in both.

Some things about estimating and measuring the good and harm of animals can be concluded from this. The preference-beliefs of the non-human animal are not only a psychological element that it has in common with human animals; preferences also make it possible to be autonomous and actively pursue the satisfaction of desires. This understanding of the psychological effects of preferences implies that it is possible to estimate the state of the subjective perspective by external means, i.e. by observing behaviour. An animal that cannot move freely, cannot skip, grub, slither or whatever it may do to pursue its desires is an animal that may very well be harmed. A still animal is probably a harmed animal. Or it may just be a sleeping animal.

Also, external instruments, more or less by definition, measure objective goods (for example natural behavioural patterns). Even if such measurements may not always give a fair representation of the subjective goods of the animal, it does give a reliable estimate of the animal’s objective good. External measurements, observations by an external person, may thus be trusted to give a fair estimate of the relevant good of animals because the objective goods are more relevant for this than the subjective goods. From Regan’s insistence on the role of preference autonomy and opportunities for satisfaction, the most important aspect of the objective good is the natural-living approach. Healthy biological functionings are only important to the extent they provide opportunities for natural living. Preferences are argued to fuel

\textsuperscript{214} Ibid. 88, 93.
a meaningful and relevant natural living. The aim is to provide opportunities to exercise natural behavioural patterns.

Respectful treatment

The right to respectful treatment is explicitly and necessarily both negative and positive. This would mean that animals should be left to enjoy potential benefits innate to the present system, and that they should be assisted when at risk of being harmed. To show holders of the right to respectful treatment respect, according to Regan, is (i) not to cause them to suffer or deprive them of opportunities to satisfy their preferences; (ii) relieve those that suffer or are deprived of opportunities to satisfy their preferences; and (iii) do (i) and (ii) in ways that respect the equal inherent value of all right holders.

If the understanding of Regan’s concept of harm is fair, then respectful treatment of animals would mainly involve providing animals the freedoms necessary for them to actualize their natural behaviour while not depriving other animals of their freedoms to actualize natural behaviour.

The right to respectful treatment might seem to put unachievable demands on moral agents due to its positive aspect. It must be remembered, then, that there is a difference between the function of rights and the significance of rights. The function of rights is to grant moral protection in certain respects. The significance of rights is the weight of that protection as compared to the protection of other rights. Even if wild animals were granted rights, and even if the function of those rights would involve protecting elk calves from bears, it does not follow that the significance of that protection would be stronger than the significance of rights that would allow the bear to pursue and capture elk calves or the significance of other rights that the resources of the society should be channelled to guarantee. The function of the right to respectful treatment seems like a function possible to uphold, although it must be weighted as usual.

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215 Ibid. 249.
216 Ibid. 249, 276f.
The right holder

Regan defines the scope of the right to respectful treatment as based on natural properties. The right holder of the theory is the sentient and cognitively capable subject-of-a-life. It is, Regan postulates, the subjects-of-a-life that have inherent value and, by extension, are granted the protection of the right to respectful treatment.

Certain non-human animals are argued to be similar to certain human beings in respect of them having preference-beliefs—meaning that they consciously have a welfare, of which they may be robbed. By postulating the inherent value based on formal justice and justifying that formal justice establishes duties of non-harm, the beings that have inherent value, Regan seems to reason, should be all beings that can be harmed. 217 Those beings are all beings that have a mental life that is similar to human beings in respect of having preference-beliefs and are called subjects-of-a-life.

...individuals are subjects-of-a-life if they have beliefs and desires; perception, memory, and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain; preference- and welfare-interests; the ability to initiate action in pursuit of their desires and goals; a psychophysical identity over time; and an individual welfare in the sense that their experiential life fares well or ill for them ... 218

The sentience and cognitive abilities that Regan lists in this quote are the ones that are necessary to have in order to be a subject-of-a-life, although there is no demand for having them to a certain degree. The inherent value is categorical, and so are then the criteria of being a subject-of-a-life. 219

The concept subject-of-a-life is another one whose definition stems from the thinking about animal consciousness. The definition of a subject-of-a-life is a list of specified properties that are necessary to have in order to have preference-beliefs, have preference autonomy, exercise such autonomy, and enjoy the satisfaction of exercising such autonomy. To have subjectivity of an autonomy fuelled by preferences and the desire to satisfy them is to live as a subject, albeit not a subject

217 Ibid. 239f.
218 Ibid. 243.
219 Ibid. 244.
with full Kantian personhood. To live as a subject is to be a subject-of-a-life.

The subject-of-a-life and inherent value

Subject-of-a-life is a concept that standardizes the definition of the right holder by connecting the notion of inherent value to the suggested fact that certain animals are conscious in a way so that they may be relevantly harmed. The elaboration of the concept of inherent value is performed in opposition to alternative rationales.

The inherent value of individual moral agents is to be understood as being conceptually distinct from the intrinsic value that attaches to the experiences they have (e.g., their pleasures or preference satisfactions), as not being reducible to values of this latter kind, and as being incommensurate with these values.220

Regan remarks on his position against utilitarianism and underlines the categorical nature of the inherent value. To grant inherent value to subjects-of-a-life is to grant a moral status to those animals, a moral status that grants rights to the animals as themselves. As a utilitarian, to grant intrinsic value to animals is to grant value to the experiences, mental states or other subjective elements of those animals. Regan would, in his repeatedly demonstrated resistance to utilitarianism, mean to grant moral value to the entirety of the animal being, to its existence. If an animal is a subject-of-a-life, then it has categorical inherent value merely due to its property to exist. This value is categorical in the sense that its strength is not affected by particular experiences or other mental states. Neither, Regan argues, is it affected by the deeds or arbitrary properties of the subject-of-a-life.

If moral agents are viewed as having inherent value to varying degrees, then there would have to be some basis for determining how much inherent value any given moral agent has. Theoretically, the basis could be claimed to be anything – such as wealth or belonging to the “right” race or sex. More likely, the basis might be claimed to be possession of certain virtues or excellences, such as those favored by Aristotle. […] Such an interpretation of justice is unacceptable.221

220 Ibid. 235.
221 Ibid. 236f.
Here, Regan writes of Aristotelian perfectionism, but also indirectly of other non-egalitarian ideologies. To relativize inherent value to certain arbitrary natural properties as sex and race is said to be as bad as relativizing inherent value to merits of virtue or skill. Inherent value must be equal among all subjects-of-a-life. It is only relative to the subject-of-a-life kind of existence. Either a subject-of-a-life exists or it does not. There are no degrees of existence, and there are thus no degrees of inherent value.

The subject-of-a-life as a new view of animals

The inherent value of subjects-of-a-life is undeniably defined to be categorical. Nevertheless, it is also relative to a certain kind of existence. Moral status as a right holder depends on a specific mental constitution, and specific abilities to actualize such mentality into acts. Non-human animal consciousness is argued to be reasonable to assume and it is this assumption that much of Regan’s thinking is based on, including his thinking on the subject-of-a-life.

It has been outlined that the reasonableness of assuming that some non-human animals are conscious is argued by way of a complex of analogies. Analogies are comparisons of similarities that establish further similarities. Regan argues that it is reasonable to assume that certain non-human beings are conscious because they are similar to human beings in certain regards. Such similarities are primarily behavioural and evolutionary similarities.

The promoted constitution of non-human animal consciousness is thus human-like by definition. This is most obvious in how preference-belief is used to be a common point of human and non-human consciousness, and the consequences this has on the notion of good for animals. The above-quoted definition of a subject-of-a-life should also be understood as a list of suggested similarities between human and non-human animals.

The concept subjects-of-a-life transgresses the human–non-human boundary and points to similarities between beings on both sides of the boundary. The point of making analogies is to create a notion that the similarities are more fundamental than the differences between human and certain non-human animals. The similarity of existing like subjects-of-a-life is more fundamental than the particular differences that individual human and non-human subjects-of-a-life may have.
It is this change in the existential view of the human–non-human relation that one should see in Regan’s argumentation for animal consciousness as well as in his thinking as a whole. The arguments by analogies that Regan makes in support of non-human animal consciousness is a way of showing that Regan’s argumentation is aimed at changing basic and existential beliefs, rather than, for example, merely showing that it is logically necessary to understand the concepts of rights and justice as including animals.

Subject-of-a-life and analogies

The change in view of animals from being species-oriented to being oriented by a certain mental and physical constitution is not without problems. Regan’s usage of analogies to transgress the species border brings with it old problems. An analogy must start somewhere in order to make an argument. Regan starts his analogies in human behaviour and human evolutionary state. This puts his thinking at risk of being human-centred even when the species border is transgressed.

The argumentation that leads up to the definition of the subject-of-a-life makes the transgression of the species border steered by human standards. It is argued that non-human animals are relevantly conscious to the extent that they show similarities to human behaviour and closeness to human evolutionary development. The postulation of inherent value to subjects-of-a-life and the reliance on animal consciousness to define a subject-of-a-life make human-likeness morally relevant. A being must be a little bit like human beings in order to be postulated to have inherent value, although there is no demand for membership of a certain species.

Formally, an analogy states that a is to b ‘almost as’ c is to d. Analogies are thus about proportions or relations. The proportion or relation between a and b is suggested to be similar to the relation or proportion between c and d.

The argument by analogy has long been in use, and long been criticized, as an argument for consciousness of other beings. A classical version of this argument, concerning humans only, was formulated by Mill. Mill argues that if I believe that it is true that an observed input (a) makes my inner state change and that this change of inner state is

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the reason for a certain output of mine (b), then I must also believe that an observed similar input (c) of another person and the following observed similar output (d) is connected by a similar (unobservable) change in the inner state of that person.\textsuperscript{223} The relation is causal in this case and consists of a change in inner state.

For example, say that I am exposed to heat for a prolonged period. The heat makes me thirsty. The thirst makes me pour a glass of water and drink it. Next, I observe another person to be exposed to heat for a prolonged period. That person subsequently pours a glass of water and drinks it. In Mill’s view, I am then obliged to believe that the other person drinks the water because he is thirsty. I should believe this no matter whether I can observe the thirst or not. The relation between a prolonged period of exposure to heat and the drinking of water is thirst. The analogy between me and the other person points to the similarity of being exposed to heat and the similarity of subsequently drinking water, and by virtue of those similarities postulates a constant relation between the two pairs of similar events.

Mill ponders the assumptions about other human beings that are necessary to make in order to accept the argument. ‘I must either believe them to be alive, or to be automatons: and by believing them to be alive, that is, by supposing the link to be of the same nature as in the case of which I have experience, and which is in all other respects similar, I bring other human beings, as phænomena, under the same generalizations which I know by experience to be the true theory of my own existence [my italics]’.\textsuperscript{224} He must assume that the relation (link) in question is of the same kind (nature) between the two parallel chains of events in order for the analogy to work. But the argument by analogy is meant to show that the relation or link indeed is of the same kind between the two different chains of events. Mill then says that in order to be able to say that the relation is indeed of the same kind, he must assume it to be of the same kind. This is a rhetorical curiosity of analogies that, if generously understood, makes analogies suitable presentation devices for new views of the relation between the chains of events in question. The curiosity also, however, makes Regan’s approach to justifying animal rights weaker.

\textsuperscript{224} Ibid. 244.
Regan’s arguments by analogy have the same basic structure as Mill’s argument by analogy. There are two observed chains of events between which there is made an analogy that would point to a constant and similar relation explaining the chains of events. The acts of a human being cooking a soup using a meaty bone may be psychologically explained by referring to a preference-belief about the taste of bones. By analogy, a dog drooling and walking towards a bone should also be psychologically explained by referring to a preference-belief about the taste of bones.

For the analogy to work, however, it must be presupposed that the human being and the dog indeed are of the same basic psychological set-up; they must have the same kind of psychological existence. If the dog is instead presupposed to be more like a robot, the analogy establishing preference-beliefs of dogs would be unbelievable. If it were argued to be impossible to know or presuppose anything about the dog’s kind of existence, the agnostic’s position, the analogy would be impossible to make.

Merely calling the human acts towards consuming bones similar to the canine acts towards consuming bones presupposes that there is a similarity in existence and psychological nature between people and dogs. The analogy is a structured way of presenting the similarity.

The benefit of using analogies is that it awakens people’s will and imagination to consider new views, new ways of understanding relations and similarities between groups that may be viewed as disparate. The reason why Mill’s argument by analogy may be easier to accept than Regan’s may be because there are more established beliefs in question. Who would honestly doubt that another healthy adult human being is a conscious being? There are numerous people, on the other hand, who doubt that non-human animals can be conscious. By presenting the view that certain non-human animals are conscious by way of a number of analogies, Regan forces the reader, even the doubting reader, to at least consider the possibility that non-human animals are conscious in a structured manner. The analogy may not prove anything that has not already been assumed, but it presents an idea cleanly and neatly and thus facilitates a fair consideration.

Occam’s razor, which Regan refers to consistently in this argumentation, has a function to encourage people to make their axiomatic beliefs about animal consciousness consistent without presuming the existence of relevant differences without proper observations. The
subtleness and veiledness of analogies make them suitable to carefully advance new ideas about axiomatic beliefs. Axiomatic beliefs, for example beliefs about human and non-human kinds of existences, cannot be further argued for, but they can be presented in a way so that they are seriously considered before deciding whether they are worthwhile to believe in.

Regan’s way of making arguments by analogy regarding the question of animal consciousness has consequences for the character of a subject-of-a-life. It has already been pointed out that there are similarities presumed between humans and non-humans in Regan’s argumentation. The subject-of-a-life is modelled on human beings as the point of reference. Non-human subjects-of-a-life are supposed to have consciousness that is similar to human consciousness in respect of containing preference-beliefs. The good life of non-human subjects-of-a-life is assumed to be a bit like the good life of human subjects-of-a-life in respect of involving a certain kind of autonomy, satisfaction of preferences, and living according to natural behavioural patterns.

Regan’s reasoning is based on the assumption that there are certain non-human beings that have the same kind of psychological and physical existence as do human beings. His approach to using analogies does not prove that this is the case, but presents the idea in a way that asks the reader to consider it. Also, one must not forget that he also uses the principle of simplicity to argue that there should be one and the same explanatory model for the behaviour of human and certain non-human animals. To refuse to agree with Regan’s assumption of a common kind of existence for human and certain non-human animals is associated with making fantastic assumptions about the nature of animals (for example that they would be a kind of robot). He thus assumes, with good reason, similarities between human existence and certain non-human existence.

Regan, however, does not provide any good reasons for why it should be accepted that human standards (human behaviour, human evolution) should be the standard to which all right holders should be compared. There will be a hypothetical application of Regan’s theory in a subsequent chapter. Some practical consequences of the theory will then be discussed. It will become obvious that Regan’s approach to using analogies entails serious problems that are not obvious before the theory is applied. These problems are associated with anthropomorphic tendencies.
Conflict resolution and the natural-rights approach

Regan is quite explicit and aware that rights language has an inherent problem in rights conflicts. Rights conflicts were previously outlined as conflicting networks of Hohfeldian relations. It was also said that there are two kinds of conflict-resolution approaches—maximizing and non-maximizing approaches. Regan uses a combination of both approaches in order to develop a tool to resolve rights conflicts. He then also implies that he believes that rights can justifiably be overridden.

Regan formulates two principles of prioritization in order to construct an approach to resolve rights conflicts. He considers both to be derivates of the respect principle. According to the miniride principle, it is better to override few rights, than many rights. The worst-off principle states that it is best to choose to override rights which do least harm, irrespective of the numbers involved.225

The miniride principle

The miniride (minimize overriding) principle has a maximizing conflict-resolution approach. As many rights as possible should be respected. The principle is supposed to be applied to situations where all rights in the conflict are equally strong, but where the numbers of potentially overridden rights differ depending on the chosen alternative to act upon.

Special considerations aside, when we must choose between overriding the rights of many who are innocent or the rights of few who are innocent, and when each affected individual will be harmed in a prima facie comparable way, [...] then we ought to choose to override the rights of the few in preference to overriding the rights of the many.226

There is no need to repeat that this principle states that as few rights as possible should be overridden. The quote, however, clarifies that the principle is meant to be applied only with certain limitations. There may be occasions when the principle is void and other prioritization strategies ought to be used. There are at least three such limitations to this principle.

225 Regan, The Case for Animal Rights, 305, 308.
226 Ibid. 305.
Firstly, there are the special considerations. These are limits that suggest that ‘acquired duties’, duties created due to choices by the moral agent or institutional circumstances, may influence the usage of the miniride principle. 227 This will be discussed further in a separate paragraph.

Secondly, Regan writes of innocent right holders. He argues that any animal that does not have moral agency should by default be counted as innocent. 228 If someone does not have the ability to see the difference between right and wrong, then it cannot be morally guilty of anything. Regan, however, also argues that innocence is not a reason for never being justifiably subjected to harm. 229 Culpability is obviously a reason for some potentially harmful measures to be taken against the guilty person. But in conflict situations, even the innocent may be justifiably harmed. Regan, for example, argues that there are good reasons for defending oneself from an attacking rabies-infected dog, even if the dog is innocent in the sense that it cannot morally understand or help what it is doing. The miniride principle states that innocents may be harmed if it could save more innocents from comparable harm.

Thirdly, another limit to the principle is that it applies to cases where each alternative to act upon has comparable, individual harm as a consequence. Regan writes that ‘harms are comparable when they detract equally from an individual’s welfare, or from the welfare of two or more individuals’. 230 He does point out that the subjective experience of one and the same seemingly harmful event, for example the infliction of pain, may vary depending on whom the pain is inflicted upon. Still, he claims, all things being equal, one ought to assume that what seems to be the same kind of harm, is the same kind of harm and thus diminishes the welfare in a comparable manner. 231 This is consistent with Regan’s view of objective measurements of harm being more trustworthy.

These three limits clarify that the miniride principle is a derivation of the respect principle. The latter principle is an egalitarian interpretation of formal justice. By establishing the setting of the principle by

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227 Ibid. 298, 317, 322.
228 Ibid. 295f.
229 Ibid. 296.
230 Ibid. 304.
231 Ibid.
way of the mentioned limits and only allowing the number of right holders to vary, Regan lets the basic insight of equality show through.

Prioritization in light of the miniride principle is a strategy to treat people differently in order to respect their equal inherent value. By removing complicating issues like culpability, special agreements, and varying levels of harm, Regan suggests a prioritization principle that attempts to show how the respect principle should be applied in a situation where one must choose to either harm the few or the many and why this is so.

The miniride principle’s prioritization of the rights of the many may seem utilitarian. The practical meaning of the miniride principle of the miniride principle maximizes the harm avoided. Utilitarian thinking would also conclude that, if all involved right holder fare equally much harm by being the loosing party, the alternative to act upon should be the alternative that gives the highest number of right holders priority. The intention, however, of the utilitarian would be to maximize aggregated utility, considering the value of each saved individual to be relative to its addition to such aggregation. The intention of Regan’s rationale is that the maximization of avoidance of individual harm is done because of the inherent value of each individual. The practical meaning of the two intentions is the same in the case of the miniride principle, but not in view of the entire prioritization apparatus.\textsuperscript{232}

The case could be, however, that a particular utilitarian rationale would be built on the notion that the only good that is morally relevant to aggregate is the good of respecting the inherent value of right holders. It would then be quite unclear what the difference in practical meaning, or in intention, would be between Regan’s rationale and that utilitarian rationale. On the other hand, if a utilitarian rationale adapts a notion of inherent value, where the inherent value is associated to dignity or justice or other moral (in the narrow, Kantian sense) quality, it should not be called utilitarianism anymore.

When applying the miniride principle, each individual right holder is equal to each and every other right holder in respect of them belonging to the largest group of right holders that can be prioritized. The miniride principle is thus a principle for applying the idea of inherent value and formal justice expressed by the respect principle. When Regan’s ideas of inherent value and justice are applied via the

\textsuperscript{232} Ibid. 305f.
The miniride principle, right holders are considered equally in respect of them belonging to the most populous group that is possible to prioritize.

The simplification of the settings, where the miniride principle is supposed to work, suggests that Regan’s theory needs to have further principles of prioritization. His resolution approach to rights conflicts should also cover the established parameters in the miniride principle in order to be more widely applicable. The special considerations, issues of culpability, and cases where afflicted harm differs should also be regulated in order for Regan to put forward a fully fledged conflict-resolution approach. It is not necessary or fair to demand a theory of retributive justice, dealing with issues of culpability, in order to say that Regan has a satisfying resolution approach to rights conflicts. He should and does, however, offer an account of special considerations and the issue of differing levels of harm.

The worse-off principle

Regan’s articulation of the worse-off principle is a significant addition to his conflict-resolution approach. It is a guideline for resolving a rights conflict in cases where the seriousness of the harm inflicted differs between various alternatives to act. Here, too, limitations are given when the principle is defined.

Special considerations aside, when we must decide to override the rights of the many or the rights of the few who are innocent, and when the harm faced by the few would make them worse-off than any of the many would be if any other option were chosen, then we ought to override the rights of the many.\textsuperscript{233}

According to the worse-off principle, one should always prioritize the respect for rights in a manner that results in as little harm as possible to any one individual, irrespective of the number of individuals involved. Relevant harm is harm caused to individuals, and should be counted individually rather than as an aggregate. This is why respecting the rights of a small group of right holders might be more important than respecting the rights of a larger group of right holders. Talking of different-size groups of right holders is meant to show more

\textsuperscript{233} Ibid. 308.
clearly that numbers do not count when applying the worse-off principle. The specific articulation of the worse-off principle above is not meant to say that being part of a smaller group of right holders makes one’s rights more significant. The application of the worse-off principle is, just like the application of the miniride principle, limited by special considerations and issues of guilt and innocence.

This principle differs from the miniride principle in that it introduces the view that harm can be of varying degrees. Also, while the miniride principle is a maximizing conflict-resolving principle, the worst-off principle belongs to the category of non-maximizing conflict-resolving principles. The quote above highlights the difference between Regan’s theory and utilitarianism by underlining that on certain occasions Regan’s conflict-resolution approach comes to conclusions that contradict the maximizing rationales. Regan uses the example of having to choose between harming a thousand right holders to a degree of -1, and harming a single right holder to a degree of -125. According to the worse-off principle, the single right holder should be saved from harm, while act-utilitarians, according to Regan, would tend towards sacrificing the single right holder in order to minimize the total harm done.

The worse-off principle is a derivate of the respect principle. This means that it is a conflict-resolving principle that is meant to assist in the practical application of the idea that all individual right holders have equal inherent value and should be treated as such. The worse-off principle, like the miniride principle, is a guideline for how to treat right holders differently in a way that respects their equal inherent value. The worse-off principle suggests that the equal treatment of right holders means to prioritize avoiding harming the individual right holder which would be most harmed. Each right holder is treated equally in respect of having their rights prioritized as soon as they have the role of being worst-off in a potential future situation. Anyone’s right to not be harmed might be overridden, but only as an expression of the meaning of equal inherent value and as a way of avoiding worse harm. Both equality and the avoidance of harm, expressed by the respect principle, are thus protected by the worse-off principle.

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234 Ibid.
235 Ibid. 302f., 307.
Special considerations

The above two conflict-resolving principles take the factors of numbers of affected right holders and the level of harm respectively into account. There are more relevant factors usually affecting any rights conflict. These have been referred to as special considerations.

Special considerations are additional factors which may justifiably affect the outcome of a conflict resolution. Duties acquired by social contracts and agreements are such special considerations. For example, promises and legal arrangements that are not contradicted by moral principles should be taken into account and might influence the outcome. Regan argues that acquired duties and their influence upon a conflict-resolution outcome are justified as long as the acquirement of those duties and the duties themselves conform to the respect principle. According to Regan, acquired duties and their potentially corresponding claims typically influence the prioritization outcome by adding significance to various rights.236

Regan also mentions special considerations that instead weaken the strength of claims. These are considerations that are raised because the right holders ‘voluntarily participate in high-risk or competitive activities’.237 To choose to involve oneself in such activities, indirectly means, Regan seems to say, to voluntarily decrease the protection that claims normally offer.

A third kind of special consideration that Regan mentions is past acts that include the violation of justice. If a right holder is not to be prioritized according to the miniride or worse-off principles, and if that right holder has been put in the position that is not to be prioritized because of a previous violation of the right holder’s rights, then those principles are considered void. Regan uses the example of one single slave who has been trapped in a mine, which the slave has been forced to work in by slavers. The slave will die, if not rescued. Say, also that the slave can be rescued, but only by an explosion that would kill ten slavers trapped in another part of that mine. Both the miniride principle and the worse-off principle are made void in this situation. The single slave is in the said situation because of a violation of his rights. According to Regan, the single slave should always be priori-

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236 Ibid. 298, 317f., 322.
237 Ibid. 322.
tized in a case like this. This is irrespective of the difference in numbers, or the difference in degree of harm.\footnote{Ibid. 322f.}

Imagine that the slave could be rescued by other means than killing the slavers, but only after three days. Also, imagine that the slave hurt his arm when the mine caved in and that the arm must be amputated if not medically tended immediately. In accordance with Regan’s rationale, it would be right to kill off a million slavers or more if necessary just to save the slave from the harm of losing his arm.

A fourth category of special considerations that Regan discusses is personal relationships to some of the right holders that are involved in a case of prioritization. He suggests that a special personal relationship is founded on a special moral relationship. This kind of moral relationship is different from a social contract, according to Regan, in that the terms are not printed on paper, though there are similarities in that the personal relationship as well as the contract are based on ‘mutual trust, interdependence, and the performance of mutually beneficial acts’.\footnote{Ibid. 316.} Given this close, special, and personal relationship, Regan argues that it would be morally otiose to require that we ought to ignore those personal and special moral relationships in all cases of prioritization. The type of case he considers is a choice between harming a family member rather badly and harming an unknown right holder even more. He says that in such a case personal relationships could very well justifiably influence the decision to choose to harm the stranger, but that the justifiability of removing the (in this case) worse-off principle is relative to the difference in degree between the harm of the family member and the stranger. Regan does admit that the degree of difference in harm between the stranger and the close friend or family member that would justify prioritizing the friend/family member is uncertain, although he still contends that such special considerations justifiably affect prioritization.\footnote{Ibid. 316f.}

The various categories of special considerations limit the scope of situations where the miniride principle and the worse-off principle can be applied. They are complicating facts of life which must be considered before knowing whether the two other principles are applicable.

The two principles and the special considerations form a nuanced conflict-resolution approach that covers many relevant aspects of ac-
tual rights conflicts. It does not contain an example of a fully fledged theory of retributive justice, but its precision, degree of substance, and realistic account of the complexity of actual conflicts clearly outshine other conflict-resolution approaches discussed in this work.

The conflict-resolution approach is, however, not without problems. The problems with anthropomorphism mentioned in the analysis of the definition of the right holder seeps through to the conflict-resolution approach, although it has not yet been made obvious. Further discussion, explication, and evaluation of these problems will be made in a subsequent chapter.

Summary

Regan defends animal rights by a natural approach to moral justification. He works towards justifying the right to respectful treatment, the function of which is to provide moral protection of animals from harm. The scope of the right is defined by a physical and psychological profile that includes both human and certain non-human animals as right holders.

The justificatory line of argumentation is based on commonsense notions of animal natures, common scientific values like simplicity and explanatory power, and analogies between the human and the non-human nature. Regan creates several theoretical accounts and uses them for justifying animal rights, as well as to give meaning to his rights-based theory for animals.

The argumentation generally states that harm is wrong and those beings that can be harmed must be morally protected, and that rights language is a possible and suitable language to express this protection. The natural basis for being a right holder is thus the collection of natural properties that is claimed to be necessary in order to be harmed. Animal consciousness is highly relevant in order to experience harm, according to this thinking.

One of Regan’s main arguments for assuming consciousness among certain non-humans is their close evolutionary relationship with humans. This kind of relationship, it is argued, makes the constitution of certain non-humans similar to human biology to the extent that non-human consciousness becomes reasonable to assume. The relation is given further content by pointing to certain behavioural
similarities. Regan further suggests that the most parsimonious psychological model for explaining these behavioural similarities is, at least when the case is about species that are evolutionarily close to *Homo sapiens*, to consider them the expressions of commonly held beliefs about one’s preferences.

The harm to animals is argued to essentially be frustrated preferences. Relevant harm is defined both by the subjective experiences of the animal, and by objective measurements. The free exercise of preference-fuelled autonomy is a central idea in how Regan combines subjectively held preferences and objective ways of measuring the satisfaction of preferences. Satisfied preferences are part of a good life for the animal, but living conditions where the exercise of preference autonomy is made possible are objectively measurable circumstances that affect the notion of harm.

The principal right holder is the subject-of-a-life which is defined as a being that can act consciously, motivated by desires and preferences, in a life which can become good or bad and it can experience that life to be good or bad. The subject-of-a-life is the kind of being, in other words, that can be harmed in the sense that harm is meant here.

Regan’s theory has well-developed resolution approaches for rights conflicts. The equal value of right holders must be reflected in the treatment of right holders. One suggested way of doing this, in the case of a rights conflict, is to always avoid harming the right holder that would receive the most severe harm. Another suggested way, applicable to situations where each choice involves harming more than one right holder, is that one should always avoid harming the right holder that belongs to the largest group of right holders that will be harmed simultaneously. The equal value is thus transferred to equal treatment by treating people equally according to the severity of harm and the number of simultaneously harmed right holders. Harm is re-appearing in the reasoning.

The justification and function of rights, the definition of the right holder, and the conflict-resolution approach reflect a particular human–non-human relation. The justification points towards certain morally relevant properties among the beings involved. These properties recur in the function of rights and when the right holder is defined. They also have a role when resolving rights conflicts. The properties are the prerequisites for being harmed. The properties are also natural and common for all right holders. They thus express a relation that
bonds the right holders closer to each other than others. The relation is existential because it refers to the nature, or natural existence, of right holders.
3. Theocentric Animal Rights

The many religious attempts to show why we should treat animals as if they had moral status are probably even more diverse and numerous than similar secular attempts. There are several clear examples of how the Christian tradition actively attempts to relate itself to the moral status of animals, albeit the tradition involves disparate views of the issue. The Anglican theologian Andrew Linzey has brought attention to this disparity and decisively taken the position of defending the rights of animals. The purpose of this chapter is to critically analyze Linzey’s justification of animal theocentric rights, focusing on its consequences for issues of scope, function, and prioritization.

Linzey’s first book on the subject, Animal Rights: A Christian Assessment of Man’s Treatment of Animals (1976), was heavily inspired by the recent secular debate on the animal issue. In his later Christianity and the Rights of Animals (1987) and Animal Theology (1994), he re-formulates and elaborates his theory by more closely relating to and reinterpreting Christian doctrines. Especially in Animal Theology, he formalizes his views on how animal rights may be justified from a Christian perspective. The present analysis focuses on his writings in the last two books.

Linzey is obviously aware of the serious obstacles in the way of his task to reinterpret mainstream Christianity to be less of an anthropocentric religion. This becomes most apparent in how he often champions his position by arguing against the view of animals held by prominent theologians as Thomas Aquinas and Karl Barth. Just as I have chosen not to focus on how Regan develops his theory against perfectionism and utilitarianism, I will try to present the positive arguments or elaborations that Linzey makes for his position.

Linzey proposes an understanding of Christian doctrines that is compassionate to animals, as well as grants animals rights. He justifies his theory primarily by elaborating views and perspectives of certain Christian premises. It is, first and foremost, these elaborations that I
understand to be the arguments of his theory. Part of the function of these elaborations is surely to attract the (supposedly Christian) reader. Christian believers are addressed in order to give them incitements to use their faith thoughtfully in their relationship with nonhuman animals. Poetry quotes are probably used more often than quotes from theological literature. This makes the reader imagine the suggested notions, giving an aspect of Linzey’s writings that is not always possible to grasp in the present analysis categories.

Having said this, Linzey’s theology will be treated as an ethical theory comparable to the other theories analyzed in this book. The theory uses rights language to express moral ideas and should thus be comparable to other rights-based theories. This is not to say that his rather substantial theological interpretations and elaborations will be ignored. His theology will, however, be analysed and criticised with the help of the same categories and criteria used when working with the secular theories.

The Christian background

Linzey reinterprets Christian doctrines in order to show that, from a theocentric perspective, Christianity grants animals moral status to the degree that they should have rights. He emphasizes certain biblical themes and strains of Christian tradition, proposing an understanding of creation and Christology that is believed to show with what attitude Christians should relate to animals.

Theocentric Christian ethics

Linzey adheres to a theocentric understanding of Christendom and the ethics that derives from that. This means that he partially uses James Gustafson’s writings as a platform. Gustafson argues that theocentric ethics typically uses several points of reference, both religious and natural, for drawing prescriptive conclusions. The most significant point of reference is, however, the interpretation of God, or the view

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241 This quality of Linzey’s authorship is even more obvious in, for example, Animal Gospel (1998) and Animal Rites (1999). These books will not, though, be used in this analysis.

242 Gustafson, James, Ethics from a Theocentric Perspective: Ethics and Theology, Chicago: University of Chicago Press, 1984, 144.
of God.\textsuperscript{243} This is the most typical characteristic of theocentric ethics. It practically translates to the notion that there are occasions when an act is right, despite it apparently not adding to the good for specifically human beings.\textsuperscript{244} Gustafson also, however, lists several other characteristics of theocentric ethics.

A further characteristic is that the theocentrism results in a view of the world as a whole.\textsuperscript{245} Human beings are described as a part of various collectives, for example the human species. According to Gustafson, this does not contradict the morally quite relevant notion that human beings also have individual agency.\textsuperscript{246} Rather, it promotes a view of the human individual as interactional, forming relationships with other people as well as non-human entities.\textsuperscript{247} The collectives do not suppress human autonomy or agency, but make it possible to use capacities to realize the human nature to form relations. The involvement of the whole of the creation is also evident in Linzey’s theology.

Gustafson also contends that theocentrism results in the notion that moral values are objective.\textsuperscript{248} This idea is based on the view of the world as a whole. God created each part in relation to other parts, forming a whole. The relations, with in mind that they are creations of God, can be used to infer values. This gives Gustafson’s account of theocentric ethics a naturalist streak, intending an objective quality of inferred values. Linzey’s position is similar to the extent that he, too, has a ‘streak’ of naturalism. But, as will be discussed soon, this makes neither Linzey’s, nor Gustafson’s, theology scholastic.

It is also argued that theocentric ethics focuses on the common good. This, too, is a result of the underlying holism. Gustafson argues that the good of the whole that God would see as a whole is impossible to know for human beings. There are, however, smaller relational totalities which have common goods that human beings may know and adapt to. This may, for example, be the family, the state, or eco-

\begin{itemize}
\item \textsuperscript{243} Ibid. 4, 144.
\item \textsuperscript{245} Gustafson, \textit{Ethics from a Theocentric Perspective: Ethics and Theology}, 7f., 11f.
\item \textsuperscript{246} Ibid. 6.
\item \textsuperscript{247} Ibid. 12. Gustafson, \textit{Ethics from a Theocentric Perspective: Theology and Ethics}, 293.
\item \textsuperscript{248} Gustafson, \textit{Ethics from a Theocentric Perspective: Ethics and Theology}, 8.
\end{itemize}
systems. As part of this notion, Gustafson also maintains that the common good is prioritized over the individual good.\footnote{Ibid. 17ff.}

This seems to contradict using the mainly individualist rights language. The view of priorities could, however, be harmonized with rights language if understood without finding a dichotomy between the individual and the common, a notion that Gustafson supports.\footnote{Cf. Gustafson, \textit{Ethics from a Theocentric Perspective: Theology and Ethics}, 90ff. Gustafson challenges the dichotomy between the good for human beings and the good for God. God promotes the good for human beings (and others) and it is thus not sensible to make a dichotomy between the two goods. The common good of the God-viewed whole may take precedence, but rights protecting individual goods could still make sense if the mentioned dichotomy collapses.}

Still, another characteristic of theocentric ethics is argued to be denial of the personal self.\footnote{Gustafson, \textit{Ethics from a Theocentric Perspective: Ethics and Theology}, 21.} This could reasonably be a result of prioritizing the common good with a preserved dichotomy between individual and community. The reason for denying the personal self is, however, not because the individual is contemptible. The reason is that the good, from the view of God, the common good incomprehensible to human agents, sometimes calls for sacrificing individual goods. Even human beings would see this, if it were not for their lack of discernment.\footnote{Gustafson, \textit{Ethics from a Theocentric Perspective: Theology and Ethics}, 305f., 309.} It may still be the case, that the common good is to sacrifice the good for individuals for the good of other individuals, thus still not necessarily contradicting a usage of rights language.

The benign view of self-denial is related to the notion that piety is important for the right conduct—another notion that is characteristic of theocentric ethics. Devotion and sentiments should be exercised in order to foster good attitudes and dispositions towards God, human beings, and nature. Gustafson suggests that one such disposition is a readiness to sacrifice one’s personal interests for others, confirming the above-mentioned point about denial of the personal self.\footnote{Gustafson, \textit{Ethics from a Theocentric Perspective: Ethics and Theology}, 11.} Both the central notion of self-sacrifice and the general virtue-ethical stance are clearly visible in Linzey’s rationale.

A sixth characteristic of theocentric ethics concerns reason. Gustafson argues that reason has a channelling function. The rightness of natural inclinations as well as established institutions is considered and corrected, rather than counteracted, by way of reason. This is re-
lated to the view of moral values as objective. Morals, relying on reason, do not counteract nature, but rather select natural inclinations that express the right values.\textsuperscript{254}

Finally, theocentric ethics also includes the notion that there are genuine moral conflicts where resolution is not always possible, at least not without a tragedy occurring.\textsuperscript{255} Abortion is mentioned by Gustafson as an example of this.\textsuperscript{256} This means that theocentric ethics does not appear as a theory based on monolithic principles. The virtue-ethical stance can be seen through this notion. Linzey expresses this by arguing in a quite narrative manner.

All these characteristics of theocentric ethics are meant to follow from the notion that the creation is principally for God and that this means that moral matters should be appreciated from the perspective of God.\textsuperscript{257} Viewing moral issues from the perspective of God generally implies regarding the good for more beings than merely human beings.

It is quite clear, reading Linzey, that he used Gustafson as a source of theological inspiration. It is just as clear, however, that he also uses liberation theology, the lives and writings of saints, his own biblical interpretations, and other sources as inspiration when outlining a Christian case for animal rights. Still, the theocentric posture keeps emerging in his texts. This is especially evident in his view of Christian doctrines.

**Doctrine of creation**

In line with theocentric theology, Linzey insists that God is fundamentally benevolent to the creation. Linzey contends that God is still active in creating the world. This activity has even involved the self-sacrifice of the incarnated God, demonstrating the extent of the benevolence of God. From these assertions about God’s attitude towards the creation, Linzey concludes that if God is for the creation, then humankind should also be.\textsuperscript{258}

\textsuperscript{254} Ibid. 8f. 
\textsuperscript{255} Ibid. 19. 
\textsuperscript{256} Ibid. 21. 
\textsuperscript{258} Ibid. 24f.
Linzey’s reasoning involves relating to the pain and suffering of living beings. He firmly establishes his view of creation as ambiguous, loosely alluding to the problem of theodicy. According to Linzey, there is a biblical theme that relates the creation as, at least in the contemporary form, involving both malign and benign aspects.259 These aspects are dualistic and counteract each other. Still, both are ambiguously present in the creation. The benign aspects come about because of God and the malign aspects because of misguided humankind.

The benign aspects of the creation may be understood as generosity, value, and freedom. The generosity inherent in the creation appears in the Bible most fundamentally by way of God’s grace to create at all in the first place. God’s generosity, and thus the ideal of generosity of the creation are also shown by the self-sacrificing life of Christ. As is usual for Linzey, he also makes use of poetry and some more biblical quotes to elaborate on his point. This is based on the insight that God is, first of all, generous in relation to the creation. This is claimed to be true for both human and non-human beings.260

Value is a benign aspect of creation in that God, according to Linzey’s interpretation of the Bible, is the one not only to create, but also to decide the value of the creation. Linzey writes that to ‘affirm the blessedness of creation is to affirm an independent source of its worth’.261 Linzey concurs with the passage in *Wisdom of Solomon* (12:1) where it is concluded that God loves all life because the Holy Spirit inspires it. Linzey’s interpretation of the final message of Job is, albeit not straightforwardly, that God is the one ultimate power over creation.262

This means that God is the one who has the primary power to value the creation; God finds worth in what God creates, and the value of creation thus extends to more than merely the human species.263 The value of creation is understood to be inherent and irreducible.264 The case, according to Linzey, is neither that creation has independent value, nor that the value of the creation is dependent on human beings.

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261 Ibid. 8.
262 Ibid. 9.
The inherent value of creation is dependent, according to Linzey’s interpretations, but it is dependent on God.

The third benign aspect of the creation is freedom. As the immanence of the Holy Spirit grants life to the creation, Linzey reasons that the transcendent aspect of God adds an inherent feature of freedom to the creation. This freedom ‘enables the creature to be truly itself in relation to its nature’. The particular nature of human beings is understood to grant them moral responsibility, while the freedoms of other beings grant them other kinds of freedoms. By focusing on the transcendence of God, and supposing that the nature of God affects the structure of the creation, Linzey understands life’s movement, action and reproduction to be signs of the freedom that all living beings share. He puts forth the first creation story of the Bible to show that the goal of the creation, presumably from God’s perspective, is the ‘peaceful coexistence with God in a state of perfect freedom’. Linzey takes this even further when he, inspired by Barth, suggests that the natural law of both humans and non-humans is to be with God.

Altogether, Linzey’s claim is that freedom actually is a natural law shared by humans and non-humans. The natural law would correspond in an apparently analogical way to the transcendent aspect of God. In this particular meaning, ‘to be free’ corresponds to an inherent ability of all created, or at least all life, to be according to its true nature. Being in accordance with one’s true nature is also viewed as equal to being with God. Implicitly, Linzey considers that the creation, fallen as it is, is not truly free because it is not according to how God truly meant its nature to be. This is an opportune time to look at what Linzey calls the curse of creation.

The three malign aspects of the creation correspond antagonistically to the three benevolent aspects of creation just discussed. The aspect of (i) displeasure plays the antagonist of generosity; (ii) devalue is the opposite of value; and (iii) bondage is the opposite of freedom.

Displeasure refers to God’s partial disapproval of how the creation turned out. Linzey draws attention to the second creation story and interprets the antagonism between the woman and the serpent as an image of the disruption to the harmony of the original state of crea-

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265 Ibid. 10.
266 Ibid.
267 Ibid.
tion. This malign order, though, is viewed as more than a state of the human species. Just like Linzey’s interpretative elaborations of the benign aspects of God’s relation to the creation, his work on these malignant aspects attempts to widen the focus from the human species to the creation as a whole. According to Linzey, the Fall is a fall of human and non-human beings alike. Linzey, then, sees two important features that characterize God’s displeasure. First, the state of the creation is not, although it should be, what God intends it to be. Secondly, this disappointment involves all creation and not merely human beings.

To devalue is a human act. Linzey states that human freedoms can, and in fact are, wrongly used for violence. Freedom, apparently one of the benign aspects of creation, is misused by human beings to devalue the creation. Linzey refers to Genesis and the stories of Cain’s acts and the generally violent acts of humankind prior to the Flood. To devalue the creation is to treat it violently. He mentions exploitation and greed as contemporary examples of this violence of the fallen creation. Again, he points out that it is the entirety of creation that falls and suffers under this violence. Human beings, as the only species that is viewed as having a moral choice, are, nevertheless, said to be responsible for the Fall. The point is that the God-given inherent value of the creation is disregarded by the acts of the human species. The creation is exploited, profited by and otherwise treated as if it had an instrumental value only. The freedom of human beings—the allowed independence from God’s immediate power—is thus misused and turned from a benign aspect of creation into the basis for a curse. That Linzey also treats ‘bondage’ as a curse of creation indicates that he does not view the removal of freedom as a possible solution to the malign acts of humankind.

Bondage is meant as the opposite to freedom. Linzey uses Paul’s words in Romans 8:20–21, defining the bondage as mortality. This is the bondage that Christ’s sacrifice is viewed to have resolved. Freedom is viewed as coming about in the shape of an analogy of the transcendent aspect of God—simply put: freedom is God letting the creation be on its own. Bondage, on the other hand, is understood as too

\[\text{268 Ibid. 11.}\]
\[\text{269 Ibid. 12.}\]
close an attachment to the conditions of the fallen creation. Death and decay are viewed as such a condition.\textsuperscript{270}

Consistent with the rest of his eschatological interpretations, Linzey disputes the anthropocentric understandings of Christian doctrines and puts forth an understanding of Christ’s sacrifice as if it were for the creation as a whole. A potential is given by the sacrifice through which the creation may transcend its bondage to mortality. This transcendence is not understood by Linzey to necessarily involve departing from this world. Rather, transcending bondage by the fallen creation is equal to it becoming true to its actual, non-fallen nature.\textsuperscript{271}

Altogether, Linzey’s interpretations invoke certain common elements. Firstly, Linzey attempts to establish a theocentric stance for Christian doctrines by interpreting the Bible as if it contained at least traces of God’s will and not necessarily giving humankind moral priority. Secondly, the creation as a whole is said to have inherent value: to fall and to be saved. Thirdly, the falling and the saving of the creation are both inherent facets making creation ambiguous.\textsuperscript{272} This is what I understand Linzey to express as the blessings and the curses that constitute creation today. Fourthly, humankind’s role here, albeit we are not alone on the stage, is certainly viewed as extraordinary by Linzey in respect of our relatively considerable ability to consciously transcend our fallen nature. In other words, the typical feature of human species is not that we alone are of inherent value, but that we are morally responsible because of our considerable freedom. According to Linzey’s understanding of freedom, this means that humankind is exceptional at serving God. The question is: How should God be served? Much of the answer to that question lies in the Christology suggested by Linzey.

Christology

Linzey summarizes his Christology in five points. These points are relatively conventional as Christological categories, while the interpretations of the meaning of each category attempt to widen the Chris-

\textsuperscript{270} Ibid. 13f.
\textsuperscript{271} Ibid. 13.
\textsuperscript{272} Cf. Linzey, \textit{Animal Theology}, 81.
tological perspective. Linzey uses Barth as the point of reference—both to criticise and to follow.  

Firstly, he views Christ as a co-creator. In other words, he highlights the Gospel of John that suggests that Christ is Logos, which is among all created as well as what created it. It is the ubiquitous and dynamically creating qualities of Logos and their transference to the incarnation that are of importance to Linzey, as will be apparent below.

Secondly and directly related to the first point, Linzey views Christ as the incarnated God. He argues that although Barth was right in suggesting that the incarnation is God’s ‘Yes’ to human beings, he was mistaken to suppose that it was a ‘Yes’ to only human beings. If Christ is Logos and if Logos imbues creation, then the incarnation is aimed at the entire creation. Linzey concludes that the ‘Yes of God the Creator extends to all living, especially fleshly, beings’.

Thirdly, Linzey refers to Christ as the new covenant. The covenant of Noah is viewed as inclusive because it involves all life. The covenant in Christ, interpreted as above, is viewed to reinforce this inclusive perspective of Christianity. Inclusivity is thus in the fundamental relation between God and creation.

Fourthly, Christ is viewed as the reconciler of all things. This is, if not else, a reasonable inference from Linzey’s other perspectives on Christ. If Christ is Logos, if the qualities of Logos are transferred to the incarnation, and if Christ is to emphasize the covenant between creation and God, then it is reasonable to view Christ and especially Christ’s sacrifice and resurrection as the reconciliation and redemption of all created. Linzey singles out certain prominent theologians, including Barth, who, at least on certain occasions, have held the view of Christ as a universal, rather than anthropocentric, reconciler. Also, he mentions Ephesians, Colossians, and Romans as biblical support for this notion.

Finally, it is proposed that Christ is ‘our moral exemplar’. This is where Linzey’s Christology turns into a clearly moral point of view.

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273 Ibid. 7 ff., 69; Linzey, *Christianity and the Rights of Animals*, 34.
275 Ibid. 7ff., 69. Linzey, *Christianity and the Rights of Animals*, 34.
277 Ibid. 10, 70; Linzey, *Christianity and the Rights of Animals*, 34.
278 Linzey, *Animal Theology*, 70.
and may be used to answer the question posed above: How should God be served? God should be served by imitating Christ.

To serve God is to liberate the creation

Critical to the anthropocentrism of liberation theology, Linzey still treats this novel strain of Christianity as important when it comes to defining the moral character of God and Christ.279 The main moral trait of Christ is understood as the quality of condescension. Christ utilizes his power to make the cause of the powerless his cause to the extent that he descends and becomes one of them. Linzey understands, and this is especially apparent in his concurring references to liberation theology, the moral practice of condescension to show humility and sacrificial love, and care for the poor and oppressed.280

Another way for Linzey to answer the question about how to serve God is that human beings are to assist God in liberating the creation. This answer is rather more connected to Linzey’s view of the creation. The ambiguity of creation is merely a contemporary, factual state of affairs that should be overcome. To serve God is to move the creation towards the ideal state of affairs, where the qualities that Linzey refers to as ‘curses’ are shed. Only in that condition is creation to be understood as truly free, according to Linzey’s concept of freedom.281 Here, too, the moral aspects of Linzey’s theology most fundamentally find themselves in an emancipatory struggle defined in Christian terms.

The malign, fallen character of the creation not only makes us suffer, but it disturbs God as well. When the fallen creation suffers, God, according to Linzey, suffers too.282 On this point, there is a slight theological change in Linzey’s view. In Christianity and the Rights of Animals (1987), Linzey only holds that ‘Christ takes to himself all suffering and disorder … [my italics]’.283 In Animal Theology (1995), he instead claims ‘God suffers [my italics]’ and views ‘God as suffering presence in the world [my italics]’.284 Linzey notes that this change in view may seem like patripassianism, but sticks to his point and

279 Ibid. 62ff., 70ff.
280 Ibid. 70f.; Linzey, Christianity and the Rights of Animals, 28, 43.
282 Linzey, Animal Theology, 48ff., 57, 60.
283 Linzey, Christianity and the Rights of Animals, 61.
284 Linzey, Animal Theology, 49f.
chooses not to elaborate upon the exact way that God suffers along with the creation. Linzey employs the idea that God suffers when the creation suffers in order to make theological sense of the notion that suffering should be counteracted in order to serve God. Also, one may understand Linzey’s position regarding this question as an implication of his Christology. God’s suffering may then be understood to be a result of God condescending to the oppressed.

Linzey views adult human beings as custodians that are meant to be the natural high priests of creation. This is what makes humankind significantly different from other animals. When Christians want to cooperate with God and mimic Christ by liberating the creation, this involves counteracting suffering to the extent where we become part of the suffering itself.

Most importantly, in order to move the world towards its God-intended nature is to respect creation, value creation, and let it be. Linzey’s comprehension of respecting life is quite different from Regan’s understanding of respect. By respect, Linzey refers to the idea of reverence for life that Albert Schweitzer is known to have developed. According to Linzey, reverence for life is the proper prima facie moral attitude for, at least, Christians. This attitude should most fundamentally be one of character, while spiritual life, according to his thinking, inherently involves developing one’s character towards sensitivity and generosity. When reverence for life is developed, so is the focus on the benign parts of the creation. It is clear that Linzey here suggests a virtue-ethical stance for serving God. By developing life-revering virtues, Christians may enlighten at least their own persons of the grandness of creation. Possibly the virtues may be viewed as priming people so that they may see the creation’s potential.

The value of creation, as already mentioned, is understood as mainly relative to God’s will. Human moral agency, in light of this, should be used to imitate the divine appreciation of all life. The good Christian in this sense is exemplified by Francis of Assisi, Basil the Great, Chrysostom, and Isaac the Syrian. This is what Linzey’s suggested theocentricity leads to in respect of human moral agency.

285 Ibid. 50.
286 Ibid. 57.
287 Cf. ibid. 50; Linzey, Christianity and the Rights of Animals, 61.
288 Linzey, Animal Theology, 52f., 57.
289 Linzey, Christianity and the Rights of Animals, 14f.
290 Ibid. 9, 16f.
It might be objected to that this attitude to human moral agency disregards the free will; it might seem that all Linzey suggests is that we should attempt to confine our will by following the word of the Bible and copying the lives of certain historical people considered to be saints.

On the contrary, Linzey’s view of will is rather similar to a Kantian understanding. Will, according to my understanding of this kind of thinking, is not properly free if it is not given a framework to relate itself to. In the case of Kant, will is suggested to be framed by reason in order to be truly free. In the case of Linzey, human will needs to be framed by the will of God in order to be free in a morally meaningful sense. Human beings are suggested, on an occasion, to find enough inner strength to treat non-human beings well by way of the insight that all life is created by God. Such an inner strength may be the mechanism by which the will is freed. This interpretation of Linzey’s view of free will fits well with his view of freedom as the transcendence from natural malignities in order to live in a God-intended world.

Thirdly, letting the creation be, Linzey contends, is to settle for contemplating the benign aspects of the creation when doing more is impossible. This is, however, not so much a minimalist principle as it is a prescribed attitude towards creation. But what is so virtuous about being passive? There are two possibly virtuous functions of passivity of which Linzey writes.

First, passive observation may sometimes be necessary in order to leave the benign aspects of the creation intact. Linzey claims ‘creation can often only be itself if we surrender our hubris and meddling’. Possibly, Linzey is implying the fallen humanity’s limits of knowing God’s will. The less we know of God’s intentions for the creation, the more humble and passive we ought to be.

Secondly, contemplative passivity may make us perceive God in creation and with that we gain an insight into the meaning of the proper attitude towards creation. He believes the creation to be a possible window to knowledge about God. Passivity, then, is viewed as both a way of acquiring necessary knowledge in order to serve God,

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291 Ibid. 21.
292 Ibid. 18f.
293 Ibid. 19.
294 Ibid. 20.
as well as a state that the Christian should enter when unsure of God’s intentions. Christians should occasionally stop and ponder in order to know how they should continue.

All in all, the main task of the (Christian) moral agent is understood by Linzey as the development of a good, God-serving, and Christ-like character. This task is instrumental for liberating the creation by facilitating the shedding of what malign qualities it has acquired because of the fall. The malign qualities are what God did not intend. Knowledge of what God intends is viewed by Linzey as given through the Holy Spirit and acquirable by the Bible, the life of certain saints, as well as from the creation itself—although the Bible is viewed as the most important source.

A theocentric justification of animal rights

The justification of theocentric rights for animals should be understood with the theological background just outlined. It was argued in an earlier chapter that a theocentric justification is characterized by claims for objectivity, to the same extent as a natural justification. A theocentric justification is not supposed to refer to the subjective thoughts and opinions of anyone, but God. It could be argued that God is a subject and that theocentric justification is actually subjectivist. If, however, God were to have a subjective perspective, it would have an epistemic force comparable only to naturalist objective claims.

Also, it was previously suggested that theocentric justification is characterized by a thicker worldview than natural or contractarian justifications. The religious basis of theocentrism puts greater demands on the reader’s empathetic perception. The justification of animal rights should, in this case, be read as expressing spiritual connotations.

This is merely an overview of Linzey’s justification of animal rights. Certain bits of the justification are expanded when necessary for the reconstruction and/or analysis in the sections below on function, scope, and prioritization.

Linzey’s arguments for animal rights are often mixed with virtue-ethical elaborations of the role of human persons in creation. The arguments are attempts to provide good reasons for human persons to develop a certain character and attitude towards the rest of the crea-
tion. Linzey’s project is to provide good reasons not only to believe that animals have rights, but also to acquire a certain character. Although the former arguments will be focused on here, they are not really separable from the latter kind of arguments. Linzey views rights language as only describing part of a good Christian morality, and it must be supplemented with Christian and virtue-ethical concepts like generosity, mercy, and sacrifice.295

Linzey champions animal rights with a number of tools. The life of certain saints and the writings of certain theologians are used as arguments. Also allusions to secular narrations are used for emphasis. Still, his strongest arguments, considering the context, are the biblical reinterpretations. These reinterpretations are coincidentally the most provocative arguments, strongly departing from mainstream interpretations. Those two circumstances make it appropriate to focus on the biblical justification of Linzey’s claims.

The arguments for the notion that animals, as well as the rest of the creation, have inherent value can be reconstructed as interpretations and elaborations of three biblical covenants between God and the creation. The first covenant is the act of making the creation. The second covenant is the agreement with Noah after the Flood. The third covenant is the coming of Christ.

The covenant of creation is based on Linzey’s doctrine of creation. The Holy Spirit imbues everything, and God is thus viewed as valuing everything. Also, the first creation story repeatedly says that God sees that the creation is good.

This covenant mainly addresses the entirety of creation, in accordance with Linzey’s notions. It establishes an attitudinal foundation prescribing to treat everything as valuable. It means that the first option should always be to preserve and heal creation.

Furthermore, the covenant justifies a special standing for human and non-human animals. Linzey understands Genesis 1:20–28 to say that humans and certain non-humans share the blessings of God and the point in time of creation.296 Also, in Genesis 1:30, animals are written of as having a life force, i.e. a soul. Linzey’s most precise definition of the animal reflects this. He maintains that animals (with rights) are ‘[s]pirit-filled, breathing creatures, composed of flesh and

295 Ibid. 95.
296 Linzey, Animal Theology, 33f.; Linzey, Christianity and the Rights of Animals, 31.
blood’. This will be further discussed when analyzing the definition of the right holder.

The second covenant, the Noahic covenant, is entered after the Fall and the Flood and is described in Genesis 9. This covenant repeats and modifies the link between God and human and non-human animals, albeit not the pan-creational value.

Linzey understands the Noahic covenant as confirming that non-human and human animals are believed to have *nephesh*, which can be translated as ‘lifeblood’ or simply ‘life’ (implying a special kind of life). Linzey writes, ‘it is the Spirit which is the basis of all life’, theologically collecting the varieties of humans and certain non-humans under the same heading. Support for this claim is said to be found in Genesis 9:3–4, where certain non-human animals are bespoken of as having souls and therefore (given Linzey’s interpretation) forbidden to be killed.

Furthermore, Linzey interestingly exemplifies the great value of lifeblood by pointing out the animal sacrifices of the Old Testament. According to Linzey, to sacrifice an animal in order to please God not only shows that the life of the animal was viewed as ultimately belonging to God and was highly valued, but also that it was ‘assumed that the life of the individual animal continued beyond mortal death’. There would not be anything for God to accept from the sacrifice if the sacrificial animal was not assumed to have *nephesh* and thus a redeemable soul.

The third covenant is formed by the life of Christ. The aspect of the ubiquitous Logos is understood to recall the idea of valuing all of creation. This has already been mentioned.

Also, Linzey observes that Christ is a fleshly being. The incarnation of Christ is understood as a benevolent nod towards all fleshly beings. Flesh always means an inspired body in this context, which further refers to right-holding animals. This is Linzey’s way of under-

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297 Ibid. 69.
298 Ibid. 30, 41, 65, 79.
299 Ibid. 31.
301 Ibid. 41.
standing a reaffirmation of the case for animals in the New Testament.\textsuperscript{303}

Nevertheless, it is admitted that the role of Christ also points out the pre-eminence of human beings, as Christ is incarnated as specifically a human being. Human beings are viewed as closest to God, despite being responsible for the Fall, while animals are secondary and the creation as a whole has a tertiary role.\textsuperscript{304}

The three covenants affirm and reaffirm, according to Linzey’s understanding of them, the whole of creation as an intrinsically valuable entity. They also establish that non-human animals have an especially close relationship with God, albeit not quite as close as the relationship between human beings and God. Animals, human as well as non-human, are all created as beings consisting of inspired flesh, and as such hold a special place in creation.

This is based on a fundamental attitude that means to preserve and assist everything, rather than to choose destruction or utilization as a primary option. Linzey notes that God ‘cannot be fundamentally indifferent, negative or hostile to the creation’, but is supportive of it. If God is for creation, human beings should be for creation. It is the normative platform from which to understand Linzey’s thinking.\textsuperscript{305}

Linzey formulates a moral imperative from the view that moral agents prima facie owe the creation respect. The imperative states that the creation should be liberated from parasitism, meant both positively and negatively. The ethical nature of the imperative is most clearly explicated in a discussion on natural law, and how Linzey understands the moral imperative as real while not wishing to adhere to the scholastic understanding of natural law.\textsuperscript{306}

Linzey introduces the term ‘trans-natural moral imperative’ in order to describe his view of natural law and thus our most inherent duties.\textsuperscript{307} He emphasizes the difference between Creator and creation, reminding the reader that the fallenness of the creation makes factual nature morally ambivalent. Linzey only accepts the idea of a natural law as ‘discovered not in “the way things are” but in the sense of what should be’.\textsuperscript{308} Still, he apparently assumes that there are real values to

\textsuperscript{303} Ibid. 79f.
\textsuperscript{304} Ibid. 30f., 79f.
\textsuperscript{305} Linzey, \textit{Animal Theology}, 24f.
\textsuperscript{306} Cf. ibid. 90.
\textsuperscript{307} Ibid. 83.
\textsuperscript{308} Ibid. 82.
discover. This corresponds to his view of freedom, also referred to as a natural law, as transcending the is of creation but still referring to another, the godly is.

Linzey associates the imperative with a ‘pre-natural intuition’, meaning that moral agents can realize the idea of the imperative before both reason and fact.\textsuperscript{309} Instead, the imperative is revealed in Christ as Logos, claiming that ‘peace is better than violence and reconciliation is better than disintegration’.\textsuperscript{310} The imperative in question is thus a natural law in the sense that it adheres to value realism (as opposed to construed by reason), but it is not a law based on factual nature as such; hence, the term trans-natural moral imperative.

The other two covenants presumably concur with the same imperative. God’s act of creation, the act of inspiriting some with nephesh, and creating others in the image of God, all should be understood here to confirm the integrity of creation. The re-establishment of the relationship between animals and God, the Noahic covenant, clearly, as long as Linzey’s interpretation is accepted, promotes a fundamentally constructive and supportive relationship with living, fleshly beings.

Linzey uses rights language to specify the moral responsibility his theology implies we have towards animals.\textsuperscript{311} He refers to the rights he works with as theos-rights. Here, they are instead called theocentric rights, alluding to the underlying justification. He views rights language as a ‘plausible, consistent and desirable’ way of explicating what moral agents owe animals, also claiming that rights language is ‘not exclusive, comprehensive and essential’.\textsuperscript{312}

Linzey argues that putting rights in priority, rather than duties, is sensible within Christendom because of God’s generosity and love for the creation.\textsuperscript{313} God made the creation out of generosity, and only later laid down restrictive rules. Linzey contends that rights-based morals analogically reflect this order of giving and taking. First, God generously gives rights, and only then constitutes duties. If the opposite were true, only those that can sensibly have duties would have rights, which would lead to the problem of marginal cases as well as contradict the view of a God that loves and values all.\textsuperscript{314} Neither would it be

\textsuperscript{309} Ibid. 90.
\textsuperscript{310} Ibid.
\textsuperscript{311} Ibid. 24f.
\textsuperscript{312} Ibid. 27.
\textsuperscript{313} Cf. Linzey, Christianity and the Rights of Animals, 70f.
\textsuperscript{314} Cf. ibid. 73f.
clear that the rights stem from a spiritual status, not from an ability to have duties, which would circumvent the theocentricity.\textsuperscript{315}

Linzey summarizes the meaning of granting animals rights in three points. These points also reflect much of the justification of rights. First, he claims that the notion of animal rights means ‘that God as Creator has rights in his creation’.\textsuperscript{316} This expresses the idea just outlined. God made the creation with an inherent idea of rights, showing generosity in not only creating a world, but creating a world with rights.

Secondly, he claims that the notion of animal rights also reiterates the idea ‘that Spirit-filled, breathing creatures, composed of flesh and blood, are subjects of inherent value to God’.\textsuperscript{317} This directly relates to the three covenants that are understood to repeatedly affirm the value of animals. Rights are a suitable way of expressing and specifying this idea.

Thirdly, Linzey insists that the notion of animal rights means ‘that these animals can make an objective moral claim which is nothing less than God’s claim upon us’.\textsuperscript{318} This point should be understood in light of the first two points. God generously created a world with rights for inspired and fleshly beings. The rights acquire an objective quality because of their theocentric origin. Moral agents, named ‘us’ in the quote, should comply with the claims of animals as if they were claims from God (because that is what they really are).

The argument for granting animals rights is thus heavily dependent on accepting Linzey’s understanding of the three covenants and, by extension, Christian doctrines. This is also true for Linzey’s way of arguing for why animals have rights, while the inherent value of the rest of the creation is seemingly not enough for having rights.

Rights are reserved for animals because of their spiritual nature. Linzey argues that all inspired and fleshly beings have a common kind of soul that makes all those beings redeemable in the eyes of God.\textsuperscript{319} They all have reason to be hopeful before the mercy of God. This is also expressed by Linzey by remarking that all those beings are subjects responding to God.\textsuperscript{320} Inspired and fleshly beings are re-

\textsuperscript{315} Cf. ibid. 76f.
\textsuperscript{316} Ibid. 69.
\textsuperscript{317} Ibid.
\textsuperscript{318} Ibid.
\textsuperscript{319} Ibid. 30f., 36f.
\textsuperscript{320} Ibid. 81.
sponding subjects in the sense that their spiritual nature puts them within the window of God’s judgments, thus spiritually responding to those judgments. Human beings are responding subjects to God in yet another sense, which will be discussed below. Linzey believes these inspirted and fleshly beings to definitely be mammals, and possibly other creatures.\footnote{Ibid. 84.}

Linzey thus justifies animal rights by first building a case for the benevolent intentions of God, when creating the world. Next, he presents some reasons collected from Christian sources to affirm that God’s benevolence reaches out to the entirety of creation. Further, he identifies a special role for animals, arguing for their special spiritual status, and grants them rights.

The function of theocentric animal rights

The function of Linzey’s theocentric rights is relative to what needs to be protected by rights in order to shed the malign aspects of each animal’s life. The protection is meant to liberate the animal.

Many of the malign aspects of creation are constantly referred to as parasitism. Parasitism turns intrinsically valued beings into instruments for the benefit of human beings, and the instrumentalization also makes them suffer. Linzey claims that parasitism is an ‘act of the gravest faithlessness’.\footnote{Linzey, \textit{Animal Theology}, 57.} The harmful instrumentalization of non-human beings is undoubtedly a common and institutionalized habit in society; intensive meat production and animal experimentation are the most obvious examples.\footnote{Ibid. 57, 76ff., 114ff. Linzey, \textit{Christianity and the Rights of Animals}, 13, 20, 61.}

The protection that rights would offer would be reversed parasitism. It would mean suppressing the desire to harmfully instrumentalize other beings, especially other right holders. Instead, moral agents should view the creation from God’s perspective, and appreciate its value.

The protection has two aspects. First, the protection directly affects the opportunities of the right holders to emancipate their relationship with God, which is the same as realizing their God-intended nature (or trans-nature). To counteract parasitism in this sense means to grant
right holders the right to not be exploited. It could be understood as protection from being used against one’s wishes, or in a manner that would frustrate one’s needs and bodily health. The protection can, as always, be negotiated if there are good reasons. This will be further discussed below.

Second, avoiding parasitism offers the emancipation of the particular human relationship with God. It is founded on the God-intended nature of human beings to be the ministers of God in the emancipation of the creation. It is thus a human right to have opportunities to emancipate the creation. Linzey writes of ‘the right to serve’ in order to express this point. Parasitism counteracts such opportunities. Human beings thus have a right not to be forced into instrumentalizing the creation. This may seem to obscure the difference between duty and claim. This is not entirely true.

It is indeed the duty of moral agents, i.e. adult human beings, to liberate the creation. The moral agent that acts to liberate the creation also, however, realizes its God-intended nature, acting as a minister of God. All creatures under God have the right to realize their God-intended nature (to be liberated from the malignities of the Fall). The case is then that moral agents have the claim-right to perform their duty.

This is not an impossible right to have; neither does it decrease the difference between duty and claim. To perform one’s duty is a human good in this rationale, or at least a good for those human beings capable of being moral agents. To perform duties brings moral agents closer to God. The right to serve, then, protects a good, which would be expected from a right.

The dual benefits of counteracting parasitism reinforce each other. The emancipation of the relationship between God and human facilitates the emancipation of the relationship between God and non-human, which further fosters the emancipation of the relationship between God and human, which further rectifies the creation.

Theocentric rights, then, have the function of protecting animals from colonization and exploitation of human beings. The function may also, in the same general manner, be viewed as protecting animals from the abuse of power that parasitism represents, being the opposite of condescension.

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324 Linzey, Animal Theology, 38.
A more concrete formulation of the function of rights would be helpful in particular situations, especially rights conflicts. The inherent presence of parasitism in creation makes it problematic to use creation in itself as a basis for identifying true malignities.

It was mentioned above that Linzey calls the moral imperative to counteract parasitism trans-natural, meaning that it is an imperative transcending present nature. Even though Linzey clearly shares the value realism of natural-law thinking and even if he confirms the contact with those values by moral agents by referring to ‘intuition’, Linzey is quite consistent in his position against (scholastic) natural-law thinking. Creation is ultimately not to be trusted for moral matters—not because it is evil, but because it is ambiguous. His view of the significance of factual state of affairs for ethical reasoning follows his view that the telos of Christianity is to transcend the bondage to (some) factual circumstances and with that liberate creation. The tension of interest in this thinking is how Linzey rejects creation as a source of moral knowledge, but still needs to know what is morally relevant to protect in creation in order to liberate it. The question at hand, then, would be how the moral protection of rights may be specified in order to be effective and theocentric without being based too heavily on statements about the creation.

As do many other animal ethicists, Linzey discusses the biological capacity of animals to suffer as morally relevant. Like few other animal ethicists, Linzey’s theocentrism implies this biological state of affairs as morally relevant, primarily because it affects and concerns God. Animal suffering is a part of the present state of creation, and as such, given a morally ambiguous creation, it is not possible to directly conclude moral relevance from the phenomenon.325

The moral relevance of the suffering of animals must thus theocentrically be argued for by reference to God. A promising starting point is the aspect of Linzey’s view of God as suffering. Also, the notion of the condescension of Christ establishes a morally relevant connection between the divine and the creation.

The ubiquitous, godly Logos condescends to mere flesh, and the suffering and death that come with it. The fallen nature of human beings is usually understood to be mortality. To relieve human nature from its fallenness includes the granting of eternal life. In Linzey’s

thinking, this line of beliefs is expanded to include certain non-humans. As representatives of God, moral agents should, if not granting animals eternal life, at least grant them a long and flourishing life. Christ’s suffering, death, and resurrection, viewed as a starting point to relieve the creation from malignities like suffering and death, would set the example for humankind. This would also correspond well with Linzey’s doctrine of creation.

Dressed and constrained by rights language, this would translate into a function of theocentric rights as protection from suffering and also protection from death. Christ’s sacrifice is believed to provide a possibility for this. The function of theocentric rights is thus protection from suffering and death.

Such negative functions may further be translated into positive functions, although it would assume more specific knowledge about the (God-intended) nature of the right holders involved. For example, empirical data are needed about how various species of animals suffer. This is not, as far as I can see, contrary to Linzey’s view of creation as long as knowledge about God goes before knowledge about creation. The fleshly constitution of each right holder should be viewed through theological, rather than scientific, doctrines.

There is another suggestion early on in Linzey’s writings about how to obtain knowledge about the God-intended nature of other creatures. An intermission in the usual parasitism may be used to ponder God’s intentions. Positive knowledge about God’s intentions for fellow creatures may be easier to obtain by passive meditation. To withhold the desire to carelessly instrumentalize the surroundings is one way of starting that kind of passivity.

A respite in parasitism fosters a character with an improved relation to God. This also increases the chance of positively realizing what is theocentrically good for others. An improved relationship with God means that a better character has been cultivated by developing generosity and respect for life. Imitating Christ develops the relationship with God and improves character traits because they become more like God. A better character means that the person is more likely to do good because the person is good. Hence, a person who has a better relationship with God is better at doing good.

327 Cf. ibid. 18f.
A moral agent with a well-developed relationship with God may trust its own capacities to estimate positive knowledge about the theocentrically good. For others, the acts of persons having a well-developed relationship with God (i.e. saints) can work as leading examples.

Appropriate functions of rights can be identified this way, provided that the methods of acquiring knowledge work. Assessing the possibility of acquiring precise knowledge about God’s intentions for a particular right holder is outside the scope of this work.

The function of rights at least includes protection against suffering and gratuitous death. Furthermore, it has been reconstructed from Linzey’s rationale that virtuous people can, with some assistance from empirical knowledge, acquire further knowledge about appropriate protections. The rigidity of such knowledge is relative to the possibility of acquiring knowledge about God’s intentions.

The right holder

Linzey views Genesis 1 as suggesting a moral community where there are ‘circles of greater or lesser intimacy with God’, implying various levels of inherent value.³²⁸ He defines the moral community by referring to the covenants made in Genesis, the incarnation of Christ, and various interpretations of those biblical events.³²⁹ The eschatological ponderings result in a view of the entirety of creation or at least all life as having inherent value. Still, he does not contend that all beings that fit into that broad or even limitless moral community have rights.

The reverence for life

The widest circle of Linzey’s understanding of the Christian moral community includes everything created. The reasoning for why the moral community extends beyond animals clarifies the basis for the moral community as a whole and, furthermore, underlines Linzey’s unifying but still hierarchical view of this community.

Linzey adheres to Schweitzer’s thinking, at least in respect of the attitude towards the inclusivity of the moral community. Schweitzer

³²⁸ Linzey, Animal Theology, 34; Linzey, Christianity and the Rights of Animals, 65.
³²⁹ Ibid. 30ff.
writes of the overall importance of revering life and Linzey calls this principle ‘comprehensive’, ‘universal’, and ‘limitless’.\textsuperscript{330} Schweitzer’s suggested principle of reverence for life, which includes all other ethical sub-principles, is valid for all variations of life and in all situations. Linzey is careful to point out that Schweitzer viewed unavoidable exceptions from this principle as valid,\textsuperscript{331} but the idea that he is most inspired by is the degree of inclusivity and the Christological implications.\textsuperscript{332}

Reverence for life actually has a limited scope. Non-living things are not included. Linzey’s overall theology, however, shows that he considers all creation to be worthy of some kind of moral concern. Schweitzer’s suggested virtue should be taken as an example of a deep and empathetic feeling for the created that Linzey promotes.

Linzey compares Schweitzer’s suggested inclusivity with Barth’s Christology. He agrees with Barth’s interpretation that the incarnation signals human dominion, but still concludes that ‘Barth’s theology too easily severs the connection between the Revealing Word and the cosmos in which that Word is revealed’.\textsuperscript{333} Linzey qualifies his criticism by pointing out that Christ is Logos and elaborates on Logos as a persona that inherently includes all creation in its activities. Logos fundamentally creates all; Christ, the incarnation of Logos, thus represents unification as well as reconciliation with all creation.\textsuperscript{334}

Discussing the incarnation, Linzey suggests that Ephesians 1:10 and Romans 8:22 provide ‘good grounds for affirming the incarnation as God’s “Yes” to materiality, to nature and to non-human species in particular’.\textsuperscript{335} Linzey agrees that the physical form of the incarnation, appearing as a human being, further indicates that the human being is extraordinary among animals. The body of Christ, however, also shows that materiality and spirituality, nature and culture, and human and non-human are brought together in a moral sense.\textsuperscript{336}

One may perceive Linzey’s ethical telos of re-establishing the God-intended creation through this interpretation of the incarnation. Originally, God made a covenant with the creation (especially the animals).

\textsuperscript{330} Linzey, \textit{Animal Theology}, 4f.
\textsuperscript{331} Ibid. 6; Linzey, \textit{Christianity and the Rights of Animals}, 15.
\textsuperscript{332} Linzey, \textit{Animal Theology}, 11.
\textsuperscript{333} Ibid.; cf. Linzey, \textit{Christianity and the Rights of Animals}, 34.
\textsuperscript{334} Linzey, \textit{Animal Theology}, 9 f.
\textsuperscript{335} Linzey, \textit{Christianity and the Rights of Animals}, 34.
\textsuperscript{336} Ibid. 34f.
The creation, however, fell from its God-intended place; non-humans were eaten and otherwise instrumentalized for the human good, anthropocentrically ripping away the intrinsically valuable from those who had come to be viewed as mere instruments. The bodily presence of Christ commences the healing of that rupture, reminding human-kind whom moral values are relative to.

**Animals in the moral community**

Human and non-human animals are said to share a ‘common life’. Non-human animals are viewed as special because of their eschatological similarity to human beings. The covenants that are traditionally regarded as being made between God and humanity, Linzey reinterprets to be between God and human and non-human animals. He expresses this by suggesting that animals, human or not, have the same kind of souls. To have a soul in this sense is the criterion for being granted theocentric rights. Inspired and fleshly beings thus constitute the definition of the right holder. Linzey considers this group to definitely consist of mammals, and possibly more beings.

Genesis is said to describe a covenant made with human and non-human animals, confirmed in the Gospels. The close relationship formed between humans and certain non-humans by creational similarities is viewed as proposing a common eschatology. This eschatological ‘common life’ consists of us all possibly being redeemed. Linzey’s understanding of Christian doctrines suggests that the Spirit inspires non-human animals in the same way as human beings.

By virtue of having redeemable life, non-human animals are granted a recorded value within the moral community. We, human and non-human animals, share life in that our death may be redeemed. Linzey notes ‘both humans and animals are therefore subject to the same hope and judgement, that is, both are blessed and cursed and therefore together are subjects of divine judgement and mercy’. He further elaborates on this, pointing out that ‘Spirit-filled individuals composed of flesh and blood has some correspondence with Tom

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337 Ibid. 31.
338 Ibid. 36ff.
339 Ibid. 84.
340 Ibid. 78ff.; Linzey, Animal Theology, 34ff.
341 Linzey, Christianity and the Rights of Animals, 30ff., 36ff.
342 Ibid. 31.
Regan’s [...] “subject-of-a-life-criterion”’. 343 This correspondence consists of what Linzey views ‘Spirit-filled individuals’, which are individuals with nephesh, as the right holders of his theory and that the avoidance of their suffering is important to the extent that they have rights. 344 Still, Linzey’s criteria for being a right holder are literally of another world as compared to Regan’s criteria.

Christologically, it is the typical fleshness of Spirit-filled individuals that underlines their moral importance. Even though turning Logos into Christ is a compliment to the entire creation, the fact that Logos turns into flesh—here referring to the theological basar and sarx—suggests a special invitation to fleshly beings, just as Christ in the form of a human being suggests humankind as even closer to God. Linzey further exemplifies several biblical passages, for example the Book of Isaiah 40:5 and 66:23, where ‘flesh’ is said to relate to God rather than ‘humankind’. 345 In his later writings, this flesh-defined criterion of being a right holder disappears and only nephesh is mentioned as the main criterion for holding rights.

The role of humankind

Humankind has a turf of its own within this moral community. Human beings are described as ‘psychosomatic entities infused with God’s Spirit and uniquely capable of responding to him’. 346 The main difference from how animals in general are defined is that human beings are expected to be capable to respond to God. On one occasion, right holders in general are referred to as subjects capable of responding to God. 347 This tension can be resolved by understanding the response to God by human beings as having a quality that the response to God by other beings does not have. This quality is what makes it possible for the response to God to contain such acts as self-sacrifice, condescension, and other Christ-like acts. This difference is important for how to understand later the prioritization approach of theocentric animal rights.

343 Ibid. 82.
344 Ibid. 81ff.
345 Ibid. 79f.
346 Ibid. 69.
347 Ibid. 81.
The human species is created in God’s image. At least, this is what is claimed. This circumstance is what grants human beings dominion over creation. This means human beings have an authority and thus moral responsibility over creation. Linzey contends that this responsibility is, in turn, the basis for a higher value of human beings. ‘Humans clearly have some preeminence over all other forms of life because of their divine-like responsibility’. Human dominion must, consistent with Linzey’s interpretation of the Genesis and the Gospels, be understood as (i) relative to God; (ii) only to be used to maintain God’s order; and (iii) more specifically only to be used to care for the creation. In practice, we are supposed to be ready to use our authority and moral agency in order to truly be an image of God, to be peaceful, and show self-sacrificing love towards the powerless and vulnerable. If this is not properly performed, human beings do not have a ‘special value’. ‘There can be no lordship without service and no service without lordship. Our special value in creation consists in being of special value to others’.

Human beings have a special value because of our moral agency with which we have the potential of acting as representatives of God and thus serving God. Furthermore, the usage of the term ‘preeminence’ in order to highlight a relative higher standing, suggests that the special value in question is meant to be an expression of worthiness or dignity, implying an inherent value. This is further supported by the fact that Linzey’s reasoning about the special value of humankind, at least on one occasion, is obviously meant as a rejoinder to Singer’s argument that there is no empirical difference between human beings and animals that would suggest that the former would have a greater inherent value (Linzey’s rejoinder may be summarized as ‘no, but there are spiritual differences’). So, Linzey holds that

348 Ibid. 25f.
349 Ibid.
350 Ibid. 30f.
351 Ibid. 25f., 28.
353 Linzey, Animal Theology, 31, 33.
354 Ibid. 33.
355 Cf. ibid. 30. Concerning the issue of human pre-eminence, Linzey agrees ‘with Singer that no such appeal can properly be sustained by appealing to merely factual difference, e.g. that humans are more clever, more powerful, more rational and so on’.
humankind has higher value because of our God-chosen role of being moral agents. Still, it is not completely clear what kind of higher value Linzey has in mind.

Against sentientism

Linzey defines the right holder by spiritual criteria. He defines the scope of rights and the entire moral community from God’s perspective. This is clearly different from the sentientist approach of most other pro-animal-thinkers. Linzey clearly believes that sentience matters morally in the sense that rights are supposed to protect from suffering, but the capability to suffer is not included in the definition of the scope of theocentric rights.

Sentience matters only in this rationale to the extent that it matters spiritually. To suffer is definitely spiritually important, considering the suffering of Christ. Suffering and its prerequisite of having sentience are, however, not relevant in themselves, but only as an expression of a spiritual matter. Linzey argues that right holders have self-consciousness, are capable of spiritual perception, and probably have a number of other sentient and cognitive capabilities, but he does so to show their value to God as subjects that can respond to God.356 The actual reason for having rights is that God values those beings that have rights, particularly expressed by God when creating them as inspired, fleshy beings that can be redeemed.

Linzey’s thinking is not completely contradictory to sentientism, but it is based on another foundation. The idea of animal redemption and animal souls belongs to one of his more provocative departures from mainstream Christian attitude towards animals.357 Linzey argues that Aquinas’ categorization of souls is mistaken partly because it lacks biblical foundation, but, more importantly, because it presupposes too great a distance between the Spirit and the physical world.358 Linzey claims that by continuing the already-established tradition of viewing rationality as granting spiritual status, Aquinas implies that ‘[i]ntelligent existence is real existence’.359 Linzey points out that non-

He continues: ‘Rather I want to stress that any decent theological insight must be grounded in God’.

356 Linzey, Christianity and the Rights of Animals, 81ff.
357 Ibid. 36f.
358 Ibid.
359 Ibid. 36.
human animals might very well be understood to have goal-directed activity and should then be reasonably called instrumentally rational and ‘intelligent’. He, however, chooses not to further contest how to interpret empirical observations. Instead, Linzey counters Aquinas’ view of a spiritual and doctrinal basis.

This approach, deeply embedded though it is within much popular Christianity, is desperately difficult to reconcile with the biblical notion of world-embracing redemption. For this reason alone it should be treated with some reserve, but more precisely it conflicts at heart with God the Creator. It leads inevitably, and has led historically, to the disparagement of materiality and in particular of the worth of non-human animals. If therefore the question is asked: Should we adopt animals as soul-bearers within this particular world-view? – the answer must be negative. We shall not serve animals well by trying to secure for them a place even within an enormously popular, but at heart deeply erroneous world-view. To my mind all claims for incorporeal soulfulness, human or animal, detract from God the Creator and have the danger of telescoping the work of the Spirit in creation into the fusing of individual souls.360

Linzey’s counterargument indicates the Christian notion that spirit and matter are closely intertwined and both appreciated by God. It is preferable for the case for non-human animals as well as doctrinally necessary that the Christian view of God and the world adapts to (Linzey’s interpretation of) the Bible rather than to continue to move towards Deism and even Gnosticism. As Creator, God is acting in the world through the Holy Spirit. Granting moral status, theocentrically being identical to a spiritual status, based on exclusively mental criteria would be to discount the immanent aspect of God.

Linzey challenges Aquinas’ view that rationality, intelligence, and other cognitive phenomena belong to a mentality that is separate from physicality. Also, it is suggested that while God created it all, the Spirit acts in it all. Given this, it would arbitrarily demarcate the theocentric perspective to say that God would cherish merely rationality. Such a reduction of the theocentric perspective may only be warranted, in this rationale, if there is proper support in the Bible or possibly some other source for insights about God.

Linzey sees non-reducing support in the Bible to raise animals above others. If the insistences that animals have personal souls are

360 Ibid. 37.
true, then that is, of course, a valid reason to consider them to have a special place in creation. This is in line with Linzey’s view of basing moral status on spiritual properties.

The special status of human beings might also be reconciled with Linzey’s charge against Aquinas. Human beings are granted a higher value because of their moral agency and are thus capable of being ministers of God. Linzey refers to cognitive criteria in order to justify the higher value of human beings, but he justifies the cognitive criteria with reference to God. The moral agency of human beings is more valuable to God than the capabilities of other beings; hence, the higher value of human beings. Still, the hierarchy of value still needs some closer attention.

Instrumental value or inherent value

Linzey is clear about disagreeing with Aquinas’ idea of spiritual status, and thus inherent value, due to rationality. He is also clear about any criteria being granted higher inherent value than the creation in general must have proper support from sources of knowledge about God.

There is a tension in Linzey’s thinking even if the above were accepted. The higher inherent value that human beings are said to have seems instrumental rather than inherent. Linzey states, for example, that his ‘view gives a high place to humans in nature; not because they are so worthy in themselves but because they are as no other species … capable of focusing the forces of life and death, of becoming vampires or vegetarians’. The ‘so’ in this quote makes it possible to say that Linzey would agree that human beings have some sort of inherent value, although the sentence must then be read with noted generosity. The quote, however, must be reasonably read as to say that the higher value of human beings is not a higher inherent value. Does Linzey then only refer to a higher instrumental value?

This reflects an important problem that Linzey faces. He should find a way of keeping the pre-eminent role of human beings within Christian doctrines. Still, he would like to increase the moral value of animals—even grant them rights. Linzey would like to depart from the

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361 Ibid. 27, 36.
362 Ibid. 36f.
363 Linzey, Animal Theology, 90.
kind of thinking where cognitive criteria are viewed as a basis for inherent value at the same time as he, in order not to completely depart from Christian tradition, needs some way of defining the relatively higher inherent value of humankind.

The creation has inherent value according to Linzey’s rationale. This means that the creation should be liberated (primarily from parasitism). General value theory thus suggests that everything that helps the creation to be liberated has instrumental value. This is not apparently so, however, in Linzey’s thinking.

The inherent value is said to be of three levels. The overall inherent value with which God originally blessed the creation still lingers as a potential that the incarnation of Christ starts to realize. The lifeblood that human and non-human animals have in common is believed to signify a higher inherent value due to the promise of eternal life, which is redemption, which is liberation. This higher status of animals is undoubtedly dependent on spiritual properties. Animals have souls that make them able to respond to God in some way. Their higher status is because of their personal relationship with God, without involving relationships with others.

It is argued that human beings, however, have an even higher value because their God-intended use of moral agency is not only part of their liberated character, but also helps to liberate the rest of the creation. Human beings are supposed to have authority over creation and use their moral agency in a certain way in the ideal state of affairs that God intended. The higher value of a human being is then argued by referring not only to its personal relationship with God, but also to its relationships with others. A human being has higher value because it is helpful to others. This makes a significant difference between the arguments for the higher value of animals and the even higher value of human beings.

Linzey claims that the liberated human being is more valuable to God than, for example, the liberated rabbit. The reason is that human beings, if they were to grow to be perfect moral agents, are more helpful to others. The degree, to which people are helpful to something, even when they are helpful to liberate creation, is a measurement of their usefulness. Linzey thus claims that usefulness is a basis for inherent value. Usually, though, usefulness is a basis for instrumental value.
Still, there is a way of understanding Linzey that would both accept the above concerns about the instrumental character of the special value of human beings, as well as meet the traditional Christian requirement of granting higher inherent value to human beings. Christ shows how moral agents should imitate God by caring for the less powerful. The helpfulness of human beings is thus an imitation of God. A rabbit is, too, useful in a number of ways. It is beautiful to look at, it has a useful role in the ecological nutritional chain, and its fur has been used as clothing. None of those usages, however, are imitations of the helpfulness of Christ. Moral agents can choose, on the other hand, to be helpful in a way that imitates Christ. This is the element that is especially valued by God. The notion of Imago Dei thus grants the usefulness of human beings, or at least moral agents, not only an instrumental value, but also an inherent value.

It could be argued, however, that the rabbit is also helpful in the sense that it cares for its kittens. This is a care for less powerful beings that is reminiscent of how Christ helped the poor. On the other hand, the rabbit does not condescend to its kittens, and it probably does not care for its kittens for reasons that are recognizably moral. Moral agents can assist the less powerful with a Christ-like intention and attitude, a personality that is fostered to be like Christ and serve God. Linzey’s virtue-ethical stance supports that this makes a significant difference between the helpfulness of the moral agent and the rabbit.

There is still another issue with the pre-eminence of human beings. The caring and loving God that Linzey writes about should care for those in most need. Moral agents have a higher value to God, it is argued, because they have certain powers (moral agency) that other beings do not have. God should thus care more for less powerful beings than human beings. To grant a higher inherent value to the less powerful would theoretically protect them more than more powerful beings. God should thus value less powerful beings more as an expression of care. Instead, however, Linzey argues that human beings theocentrically have higher value.

This argument could be met by separating care from value. It may be true that God cares more for the powerless than for the powerful, while also true that God values the powerful more than the powerless. This may be true if moral agents, being the more powerful, are viewed as channelling God’s care for the powerless. God’s care for the powerless would then justify the greater usefulness of moral agents (on the
condition that moral agents actually care for the powerless). Furthermore, the specific type of greater usefulness is, as was suggested above, associated with a higher inherent value. The notion of a higher inherent value for specifically human beings is not without tension in this rationale, and the question is whether it at all can be held consistently with the rest of Linzey’s rationale.

**Conflict resolution and theocentric animal rights**

Linzey elaborates on his rationale to suggest the abolition of animal vivisection, hunting, and other similar institutions.\(^{364}\) The question is: To what extent does his theology support such propositions? To suggest the abolition of animal vivisection is not only about following up the right of animals to protection from suffering and death, it is also about giving priority to upholding such rights at the possible expense of other right holders.

The theory of animal rights that Linzey develops is, in no way, less original regarding the prioritization issue. While equality and the expansion of the group that should be treated equally are central to many other animal ethicists, Linzey argues against the notion of equality: ‘The least among us should have the greater claim’.\(^{365}\) This standing is implicit in his theology, especially the Christology, and quite explicit in his elaborations of humankind’s role as the servant species. To be Christian, in the words of Linzey, involves being against equality for the benefit of the vulnerable ones.

On the other hand, Linzey does not seem to want to claim that the good for right holder A should be arbitrarily weighted against the good for right holder B, no matter whether A or B is human or non-human. As will be discussed below, Linzey’s opposition to equality is rather an opposition to an understanding of equality as relative to psychological states.

\(^{364}\) Ibid. 95ff., 114ff.; Linzey, *Christianity and the Rights of Animals*, 99ff., 129ff.

\(^{365}\) Ibid. 46.
Against equality

Linzey uses Singer’s utilitarian animal-ethics theory as a basis for his critique of what he refers to as the ‘Equality Paradigm’. Linzey argues that the paradigm suggests treating interests as equals rather than individuals, which turns out to favour human beings. Also, he contends that the paradigm fails to offer strong positive moral prescriptions. It aims to minimize suffering or destruction, rather than abolishing it.

Both points of Linzey’s critique of what he calls the Equality Paradigm are warranted, at least in respect of them being implications of the kind of equality that he argues against. Equality, both in the meaning that a preference utilitarian like Singer tends to use the word as well as in the sense that a deontological rights theorist like Regan uses the word, often comes down to an equal consideration of interests.

As Singer points out when discussing this rather common criticism of his position, articulating equality in terms of interests or preferences is only reductionist if one imagines those phenomena as separated from the individual. Otherwise, one may understand the focus on interests as a way of specifying in what morally relevant way equality between individuals should work in practice. Still, Linzey has a point. He argues that Singer, in the case of animal vivisection, is condemning the practice, although ethically defending its continuation. This, he states, is an effect of the Equality Paradigm.

For generosity

Instead, Linzey adopts quite another stance on animal vivisection. He proposes the ‘Generosity Paradigm’ as the better alternative to the Equality Paradigm. Based on his theology, he proposes a principle of generosity:

366 Linzey, Animal Theology, 28f., 39f.
367 Ibid. 39f.
368 Ibid.
369 Ibid.
372 Linzey, Animal Theology, 30ff.
… whenever we find ourselves in a position of power over those who are relatively powerless our moral obligation of generosity increases in proportion. If our power over animals confers upon us any rights, there is only one: the right to serve.373

This principle is obviously a result of Linzey’s justification of animal theocentric rights. The serving role of humankind and caring for the powerless are, as discussed, central to Linzey’s theology. To imitate Christ in this context is to be prepared to love one’s neighbour, including non-humans, to the extent of self-sacrifice.

Linzey correctly points out that following this principle ‘will cost human beings’.374 It should be added that it would not cost all kinds of human beings. The sacrificial aspect of Linzey’s theology is about condescension, meaning it is not human beings in general that are to be sacrificed. Rather, it is moral agents—human beings that are powerful in respect of being able to consciously choose to sacrifice themselves—that are expected to bear the cost of the generosity principle.

When specifying the benefits of the Generosity Paradigm in comparison to the Equality Paradigm, Linzey uses the case of animal vivisection.

[The Generosity Paradigm] resists the idea that we have the right to promote human welfare and happiness at the expense of other creatures. The idea that animals are simply here for human use or benefit is as morally grotesque as supposing that children are morally the property of their parents or may be used for parental benefit. Far from asking what minimal harm or suffering we can inflict upon animals for human use, the Generosity Paradigm insists that humans must bear for themselves whatever ills may flow from not experimenting upon animals rather than sanction a system of institutionalized abuse.375

Linzey obviously believes that allowing animal vivisection is morally the same as allowing similar violence to be committed against children and other vulnerable individuals. Formalized, this argument might be articulated as: if it is wrong for humankind to benefit from slavery or child labour, it is also wrong to benefit from animal vivisection.376

373 Ibid. 38.
374 Ibid. 44.
375 Ibid. 40.
376 Ibid.
The argument is surprisingly similar to Singer’s classical argument: if it is wrong to treat individuals differently due to their ethnicity or gender, it is also wrong to treat individuals differently because of their species.\textsuperscript{377} It is in this similarity in the view of Linzey and Singer that a clarification may be made on Linzey’s stance on equality. Linzey’s principle of generosity is a specific understanding of equality.

For generosity, because of equality

The problem Linzey sees with Singer’s (and implicitly Regan’s) understanding of equality may be articulated as a too-strict focus on psychological entities as morally relevant. Even though interests, understood to be psychologically represented by preferences, are viewed to be an inherent part of each right holder, Singer’s understanding of equality leads him to conceptually reduce the issue of prioritization to be about comparing inner states.

Linzey’s point is that comparisons of such terms tend to systematically bias the weighing towards giving arbitrary priority to adult human beings. Given Linzey’s theology, one may assume that the problem of using psychological entities in this manner is that it lacks proper theocentric justification. Singer does not explain the spiritual relevance of interests or preferences.

Linzey’s proposition is, instead, that adult human beings should voluntarily use their moral agency/power to forgo any profit or other gains in order to stop maltreating non-humans and other vulnerable beings. In order to serve God, shed what malignities the Fall has made, and be truly and freely human as God intended, adult human beings should voluntarily take what loss that befalls them and let the scale of the vulnerable ones be the heavier one. The question is: If equal consideration of interests is a conceptually possible understanding of equality, in what way is Linzey’s stance not just another understanding of equality?

Equal consideration of interests, which Linzey calls the ‘Equality Paradigm’, prescribes the similar treatment of two right holders if, and only if, the interests of those individuals are identical. If the interests of one right holder can be estimated as morally more important, those interests and thus the right holder that has them are prioritized.

\textsuperscript{377} Singer, ‘All Animals are Equal’, 215f.
It may be argued that different categories of interests have different significance for equality. Interests concerning not being harmed, it may be argued, weigh heavier than interests concerning recreation. Other kinds of categories are possible. Human interests, it may be argued, are morally more important than non-human interests.

Linzey’s first point of criticism mentioned above is, from this point of view, that the Equality Paradigm has miscategorised the interests to be equally considered. He disapproves of the notion that the category ‘interests of adult, healthy human beings’ should weigh heavier than the category ‘interests of nonhuman animals and children’.

His second point of criticism goes further than this. He feels it is warranted to claim that the equal consideration of interests leads to a prioritization approach where harm is minimized rather than removed. The gloomy process of weighing interests assumes that overriding someone’s interests is necessary; minimization is the only way out, it is believed.

Together, the two points of criticism suggest that the equal consideration of interests or, if such generalization is merited, any other psychological states tends to miscategorise interests in a way so that the harm done in prioritization cases, albeit minimized harm, is harm done to those of less cognitive capability.

Linzey tries to avoid this effect by introducing the Generosity Paradigm. The Generosity Paradigm avoids references to interests or other psychological states in order to avoid concluding that harm should be minimized, as opposed to removed. Harming the powerless is avoided by arguing against all kinds of harm.

This does not argue against equality as such. Rather, it alters what is equally considered in order to change the practical outcome of the notion of equality.

The Generosity Paradigm and the formal principle that comes with it seemingly make very different demands of healthy adult human beings (moral agents) as compared to non-human animals and children. Moral agents are said to have a right to serve and are urged to use their upper hand to condescend. Non-human animals and children, on the other hand, are said to have rights to protection from suffering and death. These are indeed different expectations and treatment of those groups.

The reason given by Linzey, though, as to why the expectations on healthy adult human beings and non-human animals are so different,
is one and the same. Moral agents need the right to serve and condescend because that is to realize their God-intended role and nature, while non-human animals and similarly other relatively vulnerable beings need protective rights in order to realize their God-intended nature.

Linzey’s rationale thus contains a notion of equality which is relative to what are God’s intentions. All right holders, be they human or non-human, should be equally considered in respect of what God intends with them. The rationale implies equal value between human beings and certain non-human animals because it suggests that both groups are to be considered equal in respect of their potential of realizing their God-intended nature.

This also produces a rational basis for treating right holders differently depending on their God-intended nature. Different right holders are in need of different goods in order to realize their particular God-intended nature. The required goods, apart from such goods that avoid suffering and death, are not possible to define by premeditation. They may, however, be assessed in particular situations by the moral agents that have developed a good Christian character.

In the case of human beings, at least adult human beings, the difference in treatment takes a special form. The higher inherent value of human beings grants them a preset priority in conflict situations. At the same time, moral agents are supposed to foster a generous character. The most generous thing to do in a conflict situation is to sacrifice a given priority for someone who needs it more. This would be an essential imitation of Christ’s sacrifice, albeit of a smaller magnitude. The higher value of moral agents thus comes with a price. The meaning of this will be further discussed in a subsequent chapter.

Summary

Linzey justifies animal rights by elaborating on a theocentric understanding of Christian doctrines. His main approach is to reinterpret the covenants made by God. He argues that the covenants are made between God and the creation as a whole, rather than only between God and humankind. In this, he also qualifies the moral status of animals as of greater importance than the rest of the creation. Also, he qualifies the moral status of human beings as even higher.
The first covenant is formed at the point of the creative act. In the first creation story, God brings the creation into existence and asserts that it is good. This is taken to be enough to justify granting the whole of creation an inherent value. Theocentrically, nothing in the creation must be violated arbitrarily. Still, human and non-human animals, as the story goes, are created the same day. There is a special relation between all animals. On that day, furthermore, the Holy Spirit imbues all animals, making them redeemable and of higher value than the rest of the creation.

The second covenant is renewed and slightly modified after the Fall and the Flood. Noah is the representative of the survivors. Linzey argues that the Noahic covenant includes all animals and works as a confirmation that all animals are indeed special from God’s perspective.

The covenant is eventually and eternally confirmed by the sacrifice of Christ. The three levels of value are present in this sacrifice. The aspect of the ubiquitous Logos shows the continuation between the entirety of creation and Christ. The fleshly and inspired being of Christ shows the continuation between all fleshly and inspired beings (i.e. animals) and Christ. The human form of Christ shows the special, God-like role of humankind.

A negative function of rights can be deduced from this. The notion that the whole of creation is of inherent value from God’s perspective makes any arbitrary violation of the creation a wrongful act. Any act that instrumentalizes the creation for the mere sake of humankind is an example of parasitism and wrongfulness. This is the right to freedom from human-defined utilization.

A positive function of rights is also suggested by Linzey. The creation is made by God, but also fallen. This means that the creation is morally ambiguous. Moral agents, healthy adult human beings, are expected to actively promote the benign aspects of the creation. This is taken to be the same as providing for the self-realization of the creation in accord with God’s intentions. A right to freedom in the presence of God is basic and may be particularized by, for example, a right to life without suffering.

Linzey’s theology reflects a moral community where there are three levels of differing inherent value. First, God views the entire creation as fundamentally good and valuable. Second, human and non-human animals are considered to have entered a special covenant with God.
Their very existences, created to consist of both spirit and flesh, are understood to be signs of this covenant and grant them a recorded moral value. It is these fleshly and inspired beings that are the principal right holders and constitute the scope of rights. Third, the Imago Dei doctrine and the view of humankind as the ministers of creation are used by Linzey to argue that humankind has an even-greater value.

In this rationale, the resolution approach to rights conflicts is based on a notion where equal treatment means to be treated equally in relation to God’s intentions. The value hierarchy may be conceived as giving priority to human beings. The higher inherent value of human beings, however, is based on their potentially Christ-like nature. Human beings are expected to be generous, condescending, and self-sacrificing. Like Christ, human beings are expected to sacrifice their promoted status for the sake of less powerful beings.
4. Contractarian Animal Rights

This chapter supplements the analysis of animal rights with a contractarian account. It is the last theory to be examined. The purpose of the chapter is to analyze an outline for a possible justification of contractarian animal rights, and to do so with the aim of identifying the scope, function, and resolution approaches to rights conflicts. The purpose is also to reconstruct segments of the contractarian rationale responding to the analytical categories.

The purpose is slightly differently formulated than for the other two analyses. The study object is not an elaborated theoretical account of animal rights like the former analyses have been. It has long been popular to claim that it is impossible to justify animal rights by a contractarian approach. The result has been a lack of such accounts.

There is, however, some previous work on justifying animal rights by contractarianism, but there is no single attempt that is comparable to the elaboration in Regan’s or Linzey’s works. Mark Rowlands, whose thinking is the focal point in this chapter, has provided some vital insights into the issue. In Animal Rights: A Philosophical Defence (1998), he assesses various forms for justifying animal rights and outlines how mainstream contractarianism can be transformed into supporting animal rights. His main point is that Rawls’s understanding of justice as fairness must include sentient nonhumans in order to be consistent.

Contractarianism and liberal thought

Contractarian (contractualist) thinking treats rights, justice, equality, and other moral concepts as given meaningful content by formal agreements between moral agents. The agreements tend to be viewed

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as geographically limited and meant to express the ideal arrangements of a particular kind of society. Morals are viewed as constructivist and pluralist, because the outcome of agreements may vary with cultural conceptions of justice, rights, and so forth. Rowlands adheres to this notion\textsuperscript{379} but he, nevertheless, also claims that ‘any plausible moral or political inquiry’ must hold that ‘as a matter of strict justice, each person is to be given their due’.\textsuperscript{380} An abstract principle of formal justice would then function as a minimal universal standard to evaluate culturally thick conceptions of justice. Contractarianism involves a combination of universal and pluralist traits.

Rowlands limits his argumentation to a liberal conception of justice and liberal democratic societies.\textsuperscript{381} He states that the main thrust of the argument focuses on ‘moral beliefs or intuitions that are pervasive and deeply entrenched’ in the dominant political ideology (of presumably today’s Western societies), namely liberalism.\textsuperscript{382}

The standing of liberal thought in Rowlands’s theory correlates with the standing of animal nature in Regan’s theory and that of Christendom in Linzey’s thinking. Rowlands argues that a consistent liberal understanding of justice would expand the scope of rights to certain non-humans. Regan asserts that the conscious nature of certain animals should grant them rights. Linzey argues that animals, viewed from a theocentric perspective, have God’s blessing in the form of rights. Linzey’s thinking may be tolerated under liberal dominion and Regan’s thinking may be called liberal in itself, while Rowlands uses (a contractarian understanding of) liberalism explicitly as a basis for his theory. Liberalism, and especially its understanding of justice, is the principal and ideological basis for animal rights in Rowlands’s theory. Liberalism is viewed as an implicit contract, at least in Western democratic societies, and any change in morals and politics stems from a change in the contract.

Another important difference from Regan and Linzey is that Rowlands is careful to point out that he is agnostic to the ontological status of moral values. Even if moral principles could be qualified as objectively true, Rowlands claims ‘they would be ineffectual in moral ar-

\textsuperscript{380} Ibid. 32.
\textsuperscript{381} Ibid. 36f.
\textsuperscript{382} Ibid. 37.
argument unless they were widely recognized as such’. 383 What is important to Rowlands, and to contractarian thought, is what people believe to be good, which is not necessarily what is good. 384

Furthermore, he differs from the other two authors in that he is coherentist, rather than foundationalist. His argumentation is heavily dependent on the procedure of reflective equilibrium. 385 Foundationalists believe that there are certain foundational beliefs upon which a theory should be built. In earlier chapters, it can be observed that foundational beliefs can be justified by intuitions or by spiritual insight.

Coherentists instead argue that it is sufficient and necessary that a theory has a correct resonance between the beliefs involved. Even coherentists, of course, have points of reference that have vital roles in supporting the theory. The most noticeable difference between foundationalists and coherentists is the presence of a tool that is meant to challenge, test, and possibly reform various key beliefs. The tool is traditionally a form of reflective equilibrium, but dialogue is also an option.

A similarity to Regan is that Rowlands’s thinking begins along established lines of thought, and he then argues that those thoughts should be extended to the animal issue. Linzey is not as clearly an extensionist, but rather makes a bricolage. Rowlands uses common heuristic devices to advance an essentially Rawlsian understanding of justice to include certain non-humans as holding rights. 386

Liberalism

By liberalism, Rowlands refers to ‘a set of presuppositions or sentiments that are, broadly speaking, universalist and neutral in character and which span the ideological divide between various particular democratic parties and thus provide the necessary framework for political debate and argument’. 387 Note the tension between pluralist and universalist claims. The definition limits its claims to democracies, but still maintains that it is universal and neutral.

383 Ibid.
384 Ibid. 36.
385 Ibid. 132ff.
386 Ibid. 135ff.
387 Ibid. 37.
Rowlands views liberalism as characterized by four important notions. First, there is an assumption of a universal quality of human beings that transcends any particular qualities of specific individuals. Second, it assumes a certain flexibility and susceptibility to the improvement of social institutions. These two points, he claims, are not unique to liberal thought.\(^{388}\)

What is distinctively unique to liberalism, according to Rowlands, is the combination of its insistence on prioritizing the individual over the collective, and its claim that all those individuals are to be counted equally.\(^{389}\) He sums up the individualism to be primarily expressed in that the good is best defined from the individual’s subjective perspective.

One of the fundamental tenets of liberalism is the idea that, whatever the ultimate nature of good and bad, right and wrong, and whatever the ultimate status of our knowledge of these things, an individual’s life typically goes better when it is led from, so to speak, the inside.\(^{390}\)

The consequence, Rowlands claims, of holding the subjective perspective in this high regard is to assert that moral pluralism is not only a state of fact, but that it is also benign. Not only is it the case, as is evidently clear, that the world includes different moral views, but to allow and support people in their personal choice of morals are fundamentally good. For pluralism to be taken to result from such supportPresumes that people’s subjective perspectives, or the part of those that may function as a morally meaningful foundation for personal morals, actually vary to the extent that their morals differ in a significant way. He is careful to point out that this does not necessarily entail moral relativism or moral nihilism; the ultimate status of moral concepts is not mentioned. Neither, he claims, does the individualism of liberal thought necessarily involve moral scepticism. There are no statements about the possibility of knowing moral guidelines.\(^{391}\)

Moral pluralism, as Rowlands understands it, seems to rather be a claim of a benign causality. It is in the nature of people’s lives to become better by being ruled by their subjective perspective. Therefore, we should let people be ruled by their subjective perspective and em-

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\(^{388}\) Ibid. 38.
\(^{389}\) Ibid. 38, 40.
\(^{390}\) Ibid. 39.
\(^{391}\) Ibid.
brace any pluralism that may arise. This may be taken as proposing moral anarchy, but it will be evident from Rowlands’s affinity for Rawlsian political philosophy that the proposed moral pluralism has its limits.

Rowlands opines that the egalitarian strain in liberal thought involves at least that ‘all individuals are to count equally’. It is quite likely that this is as far as the various liberal schools can agree on the meaning of egalitarianism. Rowlands characterizes a basic division in the understanding of equality to be between the utilitarian focus on the equal consideration of interests and the deontological focus on the equal consideration of rights. He addresses the understanding involving rights, further adhering to Dworkin’s suggestion that rights should be understood as trumps providing protection from the demands of the collective.

The liberal combination of individualism and egalitarianism leads to the notion that the right has priority over the good. This is another unique trait of liberalism, according to Rowlands.

Assigning equal moral status to individuals who have differing conceptions of the good means, among other things, respecting each person’s conception of the good in the sense of allowing each person to live, in so far as possible, according to the conception of the good they have, in fact, adopted. In the claim that the right is prior to the good, the good refers to each person’s conception of the good, and the right refers to the claim that these differing conceptions of the good, possessed by different individuals, be allowed, in so far as this is possible, to peacefully exist. A political system is right to the extent that it allows, in so far as this is possible, the peaceful co-existence of different conceptions of the good.

Liberal notions about right and good can hardly be clearer than this. Each individual may define its own good and pursue it—as far as possible. Each individual is entitled to acquire its conception of good equally respected by the institutions—as far as possible. The institutions are obliged to respect each individual’s definition of the good—as far as possible.

Rowlands admits that what liberals call right, may be viewed as involving an intrinsic good. ‘Liberals think that it is a good thing that

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392 Ibid. 40.
393 Ibid.
394 Ibid. 41.
distinct conceptions of the good should be allowed to co-exist in so far as this is possible’. The conceptions of goods for specific individuals are first-order conceptions of goods. The liberal conception of good refers to the relations between first-order conceptions of goods and is thus a second-order conception of good, or at least this is what Rowlands argues. One may furthermore conceive third-order conceptions of goods as procedures for determining second-order conceptions of goods, for example various understandings of reflective equilibrium. The difference is logical and the question is whether it ever could become more than that. Rowlands seems to believe that it can.

Liberalism does embody its own conception of the good, therefore. However, relative to the conceptions of the good between which it attempts to mediate, liberalism puts forward a meta-conception. And liberals often refer to this meta-conception of the good as the right. To say that the right is prior to the good, then, is to say that, for the purposes of constituting the basic political structures of society, what is important is not so much the particular conceptions of the good adopted by members of society, but the fact that these conceptions of the good be allowed to co-exist peacefully in so far as this is possible.

If Rowlands intends to make a coherent conclusion with this quote, he seems to presume that second-order conceptions of the good are not particular conceptions of good held by actual individuals. The logical difference between the first-order and second-order conceptions of goods expresses a linguistic situation and does not entail that one kind of conception is not held by actual individuals. Second-order conceptions of goods are as ‘particular’ as first-order conceptions of goods. Given this, the liberal promotion of certain second-order conceptions of goods means that liberal politics promotes particular conceptions of goods that are held by a limited group of people to be applied to the entire society. This would be an expression of the admitted universal feature of liberal thought. The logical status of liberal conceptions of goods as second-order conceptions, however, does make a difference to the theoretical consequences of promoting these goods, allowing a heterogeneous society. This would be an expression of the pluralist feature of liberal thought.

395 Ibid.
396 Ibid. 41f.
397 Ibid. 42.
Rowlands is quite often qualifying statements about tolerating first-order conceptions of goods by adding the phrase ‘as far as possible’. First-order conceptions of goods that are ‘possible’ to tolerate are determined by how exactly liberal second-order conceptions of goods are understood. The logical difference is that the conceptions are of different orders, but there are still particular values of a part of society that are argued to justifiably influence the values of the whole society. If the conceptions of goods of the influencing individuals were of the first order, the case would result in an ideal of a homogeneous society. In the liberal case, where the conception of goods is of the second order, the influence of those individuals holding liberal values results in an ideal of a heterogeneous society within certain limits. It is these limits that determine which first-order conceptions of goods are ‘possible’ to tolerate.

Even in pluralist, liberal societies there are certain basic values that all members of society are expected to uphold. The restrictions turn out to be outer limits of tolerable behaviour because the values are expressed in the form of second-order goods. The focus of liberals on making statements about the relations between different conceptions of goods rather than promoting a certain good—their concern that the right has priority over the good—gives them the conceptual possibility to introduce tolerance as a feature of a society. The tolerance is, however, innately limited by universal assertions.

Even if this view of the liberal society is common to all kinds of liberalism, contractarianism characteristically defines the limits of right conduct by a social contract.

Modern notions of the social contract

Throughout history, there have been many suggestions of how to view the social contract. They all have in common the view of the social contract as, at least, being an agreement of a formalization of the common rules of society, basically expressing justice. Another recurring element is that the need of a contract comes about in relation to a certain view of human nature. Furthermore, the contract is a way for individuals to voluntarily limit their liberties in order to gain other benefits, a procedure that is often made by a rational collective choice. The view of the contracting individuals also varies among authors, but
they are commonly held to be equal in some respect as well as self-interested to some extent.

Thomas Hobbes, often considered the father of the modern notion of the social contract, created a view of the contract in *Leviathan* (1651) as a way of protecting oneself from the violent, natural state of humankind. All human beings are said to be equal in their power to harm each other and free to do so in a (hypothetical) state of nature. The contractors are meant to enter a social contract and thus limit their natural freedoms out of fear of death. Hobbes views the foundation of the contract as a version of the golden rule: waive your right to kill me, and I waive my right to kill you. In this original rationale of the modern social contract, it is only reasonable to enter a contract if the personal security that is acquired is equal to or outweighs the personal loss of liberty. This means that each object included in the contract must restrain its liberties equally. Although Hobbes has been criticized and even disregarded because of his grim view of humankind, many traits of the Hobbesian contract prevail. Contractors are still said to be self-interested and the contract itself is viewed as fundamentally protective.

Kant outlined another kind of view of institutional law and the social contract in ‘On the Common Saying: “This May Be True in Theory, But It Does Not Apply in Practice”’ (1793). By this time, the society in which Hobbes was living and writing about was outdated and replaced by an increasingly liberal society. In line with Hobbes, Kant claims that society is originally founded on a contract, that there are no valid claims independent of this contract, that the contract transcends human nature, and that any restriction on autonomy is equally restricted among all individuals in a harmonious manner. Kant adds the liberal notion that each contractor must be free, equal, and independent.

The independence of citizens is understood as each citizen being able to form and develop a social contract (vote for laws) without coercion. Two profound insights in Kant’s writings on independence

399 Ibid. 188.
400 Ibid. 190.
can facilitate the subsequent discussion on Rowlands’s ponderings. First, Kant observes:

For all right depends on laws. But a public law which defines for everyone that which is permitted and prohibited by right, is the act of a public will, from which all right proceeds and which must not therefore itself be able to do an injustice to any one. And this requires no less than the will of the entire people (since all men decide for all men and each decides for himself). For only towards oneself can one never act unjustly.402

The quote includes many characteristics of the Kantian understanding of the social contract, but the overall point he makes is about the self-interest of the contractors. The self-interest of each contractor can, because they can independently make up their own minds about the law, be turned into a tool for justice. This is a remarkable change in the understanding of self-interest. In Hobbes’ thinking, the social contract is formed because of personal fear of harm and death. This is a good reason for a self-interested person to enter a contract. Kant’s point is that self-interest is restricted to only be used in formulating the social contract when the contractor is independent.

It must not be possible to force citizens to vote for a certain law by being in a position of dependence. Kant initiates a process to free the contractor from expectations of using the self-interest to benefit any particular person, including oneself. Instead, the citizen is a person who is able to freely—meaning ‘willingly governed by reason’ in this context—control his self-interest to work for the public good. Rawls later developed this idea and Rowlands makes extensive use of it, as will be discussed soon.

Kant’s second insight, relevant to the subsequent analysis, has been less discussed, although it concerns his definition of the contractor (i.e. the citizen) and its independence:

The independence (sibisufficientia) of a member of the commonwealth as a citizen, i.e. as a co-legislator, may be defined as follows. In the question of actual legislation, all who are free and equal under existing public laws may be considered equal, but not as regards the right to make these laws. Those who are not entitled to this right are nonetheless obliged, as members of the commonwealth, to comply

402 Ibid. 77.
with these laws, and they thus likewise enjoy their protection (not as citizens but as co-beneficiaries of this protection). \(^{403}\)

There is a distinction made between co-beneficiaries, which are all supposed to obey and be protected by the law, and the legislating citizens. In the way Kant further discusses citizens as owners of property and being their own masters, the difference between citizens and co-beneficiaries is clearly not the same as the difference between members of a democratic parliament and other members of society. Kant’s citizens are not elected, but become citizens because they have worked their way to independence. The co-beneficiaries are not voters who have willingly transferred their right to a representative, but they are beings that are members of society without fulfilling the social criteria of having a right to legislate. Kant thus makes a conceptual difference between those that formulate the contract and those to whom the contract is applied. The scope of the contract is wider than the scope of the contractors. The definition of a beneficiary of a social contract is more inclusive than the definition of a contractor. This distinction in the Kantian notion of the social contract was not heeded in Rawls’s theory, while Rowlands attempts to reinstall it.

The Rawlsian notion of the social contract

Rawls’s view of the social contract characteristically makes a point of forcing the contracting parties into a hypothetical ‘original position’ where knowledge of most personal properties is banned. A social contract is claimed to be justified by balancing conclusions made in the original position against common intuitions and a theory of good.

The original position is meant to correspond to the hypothetical state of nature of the earlier authors.\(^{404}\) In other words, it is a point of reference that does not define justice in itself, but is used to clarify what a social contract of justice may entail. It presents a choice that must be made. The Hobbesian hypothetical human nature presents a choice between a natural state of war with full and amoral freedoms, and an artificial state of peace with somewhat restricted freedoms. The Rawlsian original position presents a choice between various rational societal constitutions, including justice principles. Just as Hobbes used

\(^{403}\) Ibid.
the natural state of war to explicate the personal benefits gained by entering and upholding a social contract, Rawls uses the original position in order to explicate the entailments of a fair and rational social contract. The differences are many though, the most important one here is that the original position has a flexible design.

The original position is connected to an idea called ‘the veil of ignorance’.\textsuperscript{405} Saying that a certain conception of justice would be chosen in the original position is equivalent to saying that rational deliberation, satisfying certain conditions and restrictions, would reach a certain conclusion.\textsuperscript{406} In order for the contractor to make a rational choice between justice principles, Rawls contends that the reasoning needs to be restricted by a certain theoretical standard as well as a standardized view of society and its members.\textsuperscript{407} The veil of ignorance is a metaphor for these restrictions.

A completely ignorant rational agent could not be expected to deduce any justice principles at all. A rational agent, with full knowledge of personal properties, would conclude justice principles biased by an unfair egoism, or so it is presumed. The idea of the veil of ignorance is to make the agent reason about justice within a standardized set of knowledge, excluding much knowledge of personal properties. The veil of ignorance is a misleading metaphor in the sense that it signals that the original position would necessarily be about minimizing knowledge, while it is rather about making knowledge non-personal, morally relevant, and standardized.

The Kantian concept of the independent citizen can be recognized in this thinking. Rawls claims that the original position ‘is a state of affairs in which the parties are equally represented as moral persons and the outcome is not conditioned by arbitrary contingencies or the relative balance of social forces’.\textsuperscript{408} Kant wanted the legislating citizen to be socio-economically independent, at least in the sense that it had some property and was its own master in order to escape any coercion that would make the legislation arbitrarily beneficial to particular members of society. The original position has the same general purpose, namely to free the contractor of justice from arbitrary pressure.

\textsuperscript{405} Ibid. 136.
\textsuperscript{406} Ibid. 138.
\textsuperscript{407} For an extensive, maybe even exhaustive, list of Rawls’ view on these restrictions, see ibid. 146f.
\textsuperscript{408} Ibid. 120.
or qualifications, but formalizes the independence of the contractor to hypothetical restrictions of its knowledge.

The most important of these restrictions is said to be the ‘mutual disinterest, or individuals taking no interest in one another’s interests’. Each contractor should only care for their own life plan; neither assisting nor hindering others in their pursuit of the good. The idea is to make use of game theory without turning the self-interest into a tool for satisfying immediate egoistic wants and concerns. According to the standards of the veil of ignorance, each contractor is rationally self-interested, and not inclined to destroy the life plans of others because of the disinterest in their interests. It is this game-theoretical tension between self-interested and mutually disinterested contractors with standardized knowledge that is supposed to guarantee rationality.

The restrictions to thinking, those that the original position and the veil of ignorance symbolize, are viewed as inherently flexible. A flexible original position means a flexible social contract. Rawls is quite straightforward about what this means. ‘We want to define the original position so that we get the desired solution’. Self-evidently, the output of justice principles will be different depending on what kind of restrictions are reasonable to put on thinking in order to make the rational agent free from prejudice and petty egoistic concerns. Even though the veil of ignorance is supposed to discard arbitrary contingencies from the concluded justice principles, the original position is viewed as giving rise to principles that are, hopefully, relevantly contingent.

A difference between Rawls and earlier authors is the reliance on reflective equilibrium rather than on foundational assumptions. Reflective equilibrium is acquired, in this context, when the effects of applying the suggested justice principles correlate with considered judgments of particular individuals. The reflective equilibrium and the underlying coherentism concern epistemology. The original position concerns rationality. The reflective equilibrium is a kind of justificatory tool. The original position, however, is meant to be a heuristic tool that assists in explicating justice with as little bias as possible.

409 Ibid. 128.
410 Cf. ibid. 13f., 148.
411 Ibid. 141.
412 Ibid. 578f.
413 Ibid. 48.
The original position affects the content of the social contract while the reflective equilibrium justifies the contract.

A principle must prevail in considerations beyond their hypothetical treatment in the original position. The effects of applying the principle to institutions (and further practical consequences) must fit considered judgments, and the principle must also be coherent with a rational life plan based on human nature.\textsuperscript{414} When all three criteria have been fulfilled, a reflective equilibrium has been achieved which at least provisionally justifies the principle.\textsuperscript{415} The reflective equilibrium can be simplified to be ‘reached after a person has weighed various proposed conceptions and he has either revised his judgments to accord with one of them or held fast to his initial convictions (and the corresponding conception)’.\textsuperscript{416} The rationality of a life plan is actually predetermined by the original position, because its features are the prerequisites for being rational. It is thus trivial to say that there must be a correspondence between a ‘rational’ life plan and the original position. The rational minimal content of a life plan, according to Rawls, is an ambition for liberty, wealth, and self-respect.\textsuperscript{417}

The considered judgments are supposed to be based on intuitions striking a balance between principles regulating the ends of social policy. By observing or imagining the consequences for the social policy of a suggested principle, it can be said to what extent it corresponds to the intuitively good balance between ends. Any principle formed in the original position must correlate with those judgments and vice versa.\textsuperscript{418}

If there is a discrepancy between considered judgments and suggested justice principles, then anyone of the two phenomena may be changed. The justice principles may be changed by altering the features of the original position and the particular judgments may be changed by reconsidering them, maybe even in the light of the suggested justice principles. For expedience, Rawls limits the consideration of principle candidates to the traditions of utilitarianism, perfectionism, and intuitionism. In theory, however, the flexibility of the original position and subsequently the number of possible kinds of

\textsuperscript{414} Ibid. 579f.
\textsuperscript{415} Ibid. 46ff., 579f.
\textsuperscript{416} Ibid. 48.
\textsuperscript{417} Ibid. 396f.
\textsuperscript{418} Ibid. 34ff.
reflective equilibriums are only limited by the plausibility of particular judgments.419

Rawls’s notion of justice has been thoroughly discussed since *A Theory of Justice* was published. The original position has been particularly criticized. This compliments the idea and shows that it is worthwhile to consider. It also points to there being a number of problems with the notions represented by the original position. Not much of this criticism can be included here, but there is some quite relevant and recent criticism that directly concerns the animal issue.

Martha Nussbaum’s criticism of Rawls and the original position concerns the specific internal tensions of the original position. These tensions will, to a great extent, be used to make sense of the contractarian approach to justify animal rights. The criticism involves the conditions under which these theoretical tensions are claimed to arise.

Nussbaum argues that the social contract is motivated by Rawls’s reference to mutual advantage.420 Mutual advantage, however, is the result only if everybody protected by societal law is ‘originally’ roughly equal in powers and skills.421 Anyone who does not pose a threat to the contractors in the original position is not included in the social contract because there is no mutual advantage to include them. There is no (economical) advantage in cooperating with disabled people, animals or poor people. Nussbaum, instead, suggests that the social contract is a tool for reaching agreement, not a tool for gaining advantages.422

Nussbaum obviously directs her criticism at the Hobbesian remnants in Rawls’s thinking. Mutual advantage is a condition for a rational agreement given an egoistic rationale. This is not, however, the only rationale providing theoretical tensions in the original position.

There are also the Kantian notions of personhood and reciprocity. Nussbaum criticizes these notions because they presume that there is only one kind of dignity, and are based on a static view of human nature (human beings obviously do not always have personhood in the Kantian sense).423

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419 Ibid. 49f.
423 Ibid. 132f.
The criticism does not, however, directly concern another and more subtle aspect of the Kantian inspiration. The original position may be based on a false description of human beings, but its purpose is not to describe human beings. It is a heuristic device which is supposed to assist in the explication of the meaning of justice. It is supposed to provide theoretical tensions that transcend, rather than describe, human beings.

Nussbaum may still be right in that the nature of the contractors is wrongly described, and that the Hobbesian aspects in Rawls’s theory are unfortunate. That does not, however, mean that the original position cannot be used as a heuristic device for explicating justice, and even explicating justice benevolently to animals.

A contractarian justification of animal rights

The justification of animal rights by way of a contractarian approach is rarely attempted. Nevertheless, there are some attempts that have been pursued[^424], challenging the notion that the concepts used within contractarian thinking are not meant to be used on non-humans, or even any non-rational beings. They all somehow involve the Rawlsian approach to justice as fairness, although the discussion is here limited to those suggestions that have a more elaborate connection with Rawls’s account.

It has been suggested by Rowlands that the conception of justice as fairness would include non-humans if the contractors’ personal knowledge was further decreased. The features of the original position, as it was put forth by Rawls, are claimed to be arbitrarily speci- esist, but can and ought to be changed. The main claim of this approach is that the veil of ignorance must exclude personal knowledge of species membership and rational ability. It is practically necessary to be rational in order to formulate a social contract, but, as the argumentation goes, it is not necessary or even just to demand rationality from the beneficiaries of that contract.

Contractors and beneficiaries

Rowlands sets out to justify animal rights by using the conception of justice as fairness. The use of mainstream ideology is understood as a way to honour the contractarian and liberal attempt to form conceptions of justice that reflect what people indeed hold to be just.

Rowlands understands the social contract ‘as a means of clarifying and identifying the entailments of certain moral principles that are sufficiently fundamental to be regarded as constitutive of our moral point of view’. This correlates with how Rawls views the original position as a procedure to choose between traditional and other plausible justice principles and form them into a social contract.

Rowlands begins his line of argumentation by highlighting the common contention that it is conceptually impossible to include animals as right holders using contractarian thinking. He argues that this contention is wrong because it blurs the distinction between the ‘framers of the contract’ and the ‘recipients of the protection afforded by the contract’. He claims that this misconception arises from an outdated Hobbesian understanding of the social contract, where it was meant as an agreement to voluntarily restrain one’s freedoms if, and only if, some other, equally or more valuable good is obtained. It would not make sense to include any non-rational being in such a contract. Non-moral agents, Rowlands claims, are unable to properly conceptualize the idea of a contract and they thus cannot voluntarily restrain their freedoms and behaviour in order to add to the common good.

The Hobbesian understanding of the social contract, though, presumes that the contractors have full knowledge of their natural and social properties and are ready to use that knowledge to gain personal benefits. This is the exact idea that the tradition of liberal thought has gradually removed. The Hobbesian idea of a contract cannot be used to formulate justice principles for contemporary liberal democracies, given that many human members of those societies are not moral agents.

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425 Rowlands, Animal Rights, 126.
426 Ibid. 36f.
427 Ibid. 121.
428 Ibid. 123.
429 Ibid. 124f.
When the liberal thinkers developed models for a contracted society where the freedoms of all human beings are protected equally, they had to separate the notion of ‘the contractor’ from that of ‘the beneficiary’. This is readily seen in Kant’s distinction between the independently legislating citizen and the obedient beneficiary.

The distinction is less than obvious in Rawls’s thinking because he views the independence of the contractor to be acquired by quite other means than actual economical independence. Also, the development of the meaning of equality in society had made the Kantian meaning of being a citizen outdated by the time Rawls developed his theory. Still, the distinction between Kant’s ‘citizen’ and ‘beneficiary’ is the same as the distinction between Rawls’s ‘contracting agent in original position’ and ‘actual member of society outside original position’. The latter category is mostly implicit when Rawls writes, but it is undeniably a necessary category in order for the contract to be meaningful.

The difference between the two concepts is that ‘the contractor’ has the role of formulating the contract, while ‘the beneficiary’ has the role of being the recipient of responsibilities and entitlements that the contract entails. The Hobbesian concept of social contract holds that any individual who has one of these roles must also have the other. The liberal concept of social contract does not hold this—if it did, the idea of fundamental equality among humankind would be made conceptually impossible. Even if the inclusion of non-rational beings is not possible with the Hobbesian tradition, it is at least conceptually possible in the liberal tradition.

Intuitive equality and the social contract

With the distinction between contractor and beneficiary in mind, Rowlands turns to Rawls’s theory of justice. He presents the theory as essentially consisting of two main arguments that are refining each other by striving towards mutual consistency. Considered judgments or reflective intuitions of what justice entails are said to make the ‘intuitive equality argument’.

430 The ‘social contract argument’ is said to be made by the procedure and the outcome of the original position and

430 Ibid. 128f.
the veil of ignorance. Rowlands outlines the intuitive-equality argument by claiming that ‘if a property is undeserved in the sense that its possessor is not responsible for, or has done nothing to merit, its possession, then its possessor is not morally entitled to whatever benefits accrue from that possession’. The argument is understood as involving Rawls’s version of the principle of equality of opportunity. No one is entitled to improve one’s opportunities for self-realization from properties that are not earned, no matter whether those properties are social or natural. Race, class, and gender are commonly viewed as categories of such properties. Rowlands argues, as will be discussed soon, that rationality and species membership must be included as undeserved properties in order for the intuitive-equality argument to be consistent.

The intuitive-equality argument is given its name by Rowlands since it is based on ‘considered intuitions concerning justice’. The intuitions are not Mooreian discoveries of objectively existing values, considering the ontologically agnostic setting of the rationale. Rather, they seem to be based on either social phenomena, suggesting that what is common to believe is more right than what is uncommon to believe, or epistemic primitives, suggesting that there are certain things about morals that ‘we just know’ (but whose ontological status is considered unknown). The essential quality of the intuitions in question, no matter what their origin is, is that they are more flexible than if they were considered to correlate with objectively existing values. The precise content of the intuitive-equality argument is meant to be only temporarily fixed. Using reflective equilibrium it may be modified by the content of what Rowlands calls the social-contract argument.

The social-contract argument involves the original position and the veil of ignorance. It has already been mentioned that the original
position and the veil of ignorance are devices to facilitate the explication of the principles derived from justice as fairness. The idea is comprehensively put by Rowlands. ‘The cutter of the cake does not know which piece he will get, therefore he cuts the pieces fairly; the distributor of rights does not know where in the distributive scheme he will fit, therefore he distributes justly’.\(^{439}\) The tension between self-interest and lack of personal knowledge makes it rational to be disinterested in the interests of others, which all adds to the fairness of decisions made in the original position. The hypothetical status and heuristic function of the original position are carefully underlined by Rowlands and vital to his argument.\(^{440}\) He claims that the common argument that the original position and the veil of ignorance are assuming an absurd metaphysical view of the self as being ‘radically unencumbered’ is misinterpreting the devices as the expressions of a metaphysical theory.\(^{441}\) Rather, he asserts, according to Rawls’s contentions, the devices are to be understood as restricting reasoning about justice to certain limits.\(^{442}\)

The content of the justice principles concluded from the original position, as has been mentioned, depends on the predetermined design of the original position. The social-contract argument states that those justice principles that have been formulated while the reasoning is restricted by the devices in question are fair justice principles. To conclude justice principles to be considered to be fair, however, the devices need to be predetermined to produce the desired answers. The circularity of the argument is broken by the reflective equilibrium.\(^{443}\)

**Upsetting the status quo**

‘In deciding on the preferred description of the original position, we “work from both ends”’.\(^{444}\) Rowlands means that the restrictions expressed by the original position and the veil of ignorance must be consistent with the reflective intuitions of the intuitive-equality argument. The outcome of the social-contract argument may not quite fit the convictions supporting the intuitive-equality argument, which prompts

\(^{439}\) Ibid. 131.
\(^{440}\) Ibid. 136ff.
\(^{441}\) Ibid. 130.
\(^{444}\) Rowlands, *Animal Rights*, 133.
for either a change in the original position in order to alter the outcome of the social-contract argument, or a change in the convictions specifying the intuitive-equality argument, or both. A reflective equilibrium between the poles can be upset by arguing that either the intuitive convictions or the original position should be modified. Rowlands does both.445

Rowlands suggests that the original position entails that the contracting agent is supposed to imagine that the agent would not have a property that the agent indeed has. It is not necessary to imagine oneself as lacking any properties, but a fair formulation of justice principles needs to be done in this rationale by taking into account one by one social and natural properties that may arbitrarily affect the formulation of the justice principles. This may be understood as shredding the veil of ignorance into thinner, more manageable pieces.446

Rowlands refers to Bertrand Russell’s distinction between knowledge by description and knowledge by acquaintance447 and claims that it is enough to deal with the knowledge by description in the original position. The preferences of other beings, he claims, may be known by description at least to an extent where one may estimate what impact an excluding institutional arrangement would have on them.448

Having said so much, Rowlands returns to his claim that it is a mistake to believe that it is necessary to be a rational agent in order to be included by the scope of the contract. First, he argues that the intuitive-equality argument means that rationality is an arbitrary natural property that cannot be allowed to affect the outcome of justice principles. The ability to be rational is as undeserved, according to Rowlands, as any other property that one is not responsible for having. ‘Therefore, to restrict the beneficiaries of the protection afforded by the contract to rational agents would be to contravene the intuitive equality argument’.449 Rowlands’s argument may be viewed as explicitly making intuitions that support animal rights the dominant ones—presuming that those who have strong intuitions about excluding non-rational beings simply have not considered their judgments properly. This is, however, not the strongest understanding of his argument.

446 Rowlands, Animal Rights, 136f.
448 Rowlands, Animal Rights, 137f.
449 Ibid. 140.
Rawls only approves of judgments that have been considered under due calm and unthreatening circumstances, which he understands to be ‘conditions favorable to the exercise of the sense of justice’.\textsuperscript{450} Although he admits that many judgments, even after proper consideration, can vary among contexts,\textsuperscript{451} some of them are claimed to be ‘provisional fixed points’.\textsuperscript{452} ‘For example, we are confident that religious intolerance and racial discrimination are unjust’.\textsuperscript{453} The provisionally fixed judgments of not discriminating on the basis of arbitrary social and natural properties are what constitute the intuitive-equality argument of Rowlands’s thinking.

Considered judgments acquire justificatory force only if they are held in consensus. Rawls claims that justification is about convincing others of one’s own view, departing from something that is mutually recognized. Although the justificatory process thus involves making coherent conclusions from certain fixed judgments, it is the fact that those judgments are indeed established by a consensus that makes it a justification.\textsuperscript{454}

This demand for consensus is what poses a problem for Rawls’s view that contractors must be rational. Also, it is as detrimental to his brief contentions that non-humans are excluded from, or at least not necessarily included in, the scope of justice.\textsuperscript{455}

Judgments that non-humans must be excluded from the scope of justice are evidently not the consensus view. Neither, of course, is it the consensus view that non-humans ought to be included in the scope of justice. Rowlands’s point can, however, be understood as a claim that if there is no consensus species membership and rationality would be relevant limits of the scope of justice, and if there is a consensus that natural and social properties are generally arbitrary to use as limitations of the scope of justice, then species membership and rationality must be treated as arbitrary.

If the intuitive-equality argument is modified with respect to the property of rationality, then the features of the original position need

\textsuperscript{450} Rawls, \textit{A Theory of Justice}, 47.
\textsuperscript{451} Ibid. 580.
\textsuperscript{452} Ibid. 20.
\textsuperscript{453} Ibid. 19.
\textsuperscript{454} Ibid. 580f; cf. Kant, ‘On the Common Saying’, 79. Kant claims that if a majority of votes is to be accepted as legislative, the procedure must first be ‘accepted unanimously’.
\textsuperscript{455} Rawls, \textit{A Theory of Justice}, 504f., 512.
to be correspondingly modified in order to reach the reflective equilib-rium. The knowledge of oneself as a rational agent, as well as human being, should be among those properties that the agent takes into ac-
count by imagining itself as being without—at least to the extent where it is possible to estimate whether there are any morally relevant preferences that are ruled out by excluding non-rational beings.456

A similar point has been made by Donald VanDeVeer in the an-
thology *Ethics and Animals* (1983), arguing that the function of the original position is to ‘preclude its participants from choosing principles arbitrarily favoring themselves’.457 To presume that the beneficiaries must be human would be to favour oneself as a moral agent and species membership must thus be disregarded as arbitrary.458 Van-
DeVeer develops his thoughts within a utilitarian rationale, which makes them less relevant for this analysis.

Beings without rationality and non-human beings can both be in-
cluded in a neo-Kantian social contract, if Rowlands’s and Van-
DeVeer’s claims are right. It is arbitrary to let species membership and rationality limit justice. Such properties are natural and undeserved.

Considered judgments disavow the moral relevance of such prop-
erties. In order to reach a reflective equilibrium, the original position
must be revised to produce more inclusive justice principles whose practical consequences are consistent with such judgments.

Rowlands, nevertheless, contends that the scope of the social con-
tract is limited. ‘According to the contractarian position, the limits of moral consideration are determined by what, from the perspective of the original position, one could rationally worry about being’.459 The outer limits of the scope of justice are defined by sentience and that rights are to protect all who have preferences.460

The claim that sentience, more precisely the ability to have prefer-
ences, is necessary to have rights is to significantly narrow the definition of the right holder. Rowlands’s reasoning here is not explicitly about justifying rights, but to limit the consequences of his reinterpretation of justice as fairness.

The allusion to sentience, however, can be said to have some im-
portance in the justification. Rowlands presents the reflective equilib-

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458 Ibid.
460 Cf. ibid. 145.
rium as being bipolar, while Rawls, at least on some occasions, writes of the reflective equilibrium as being tripolar. The third pole is a thin theory of good based on the nature of the contract beneficiary. As was mentioned, Rawls views this kind of theory of good as predetermined by the original position and its role in the reflective equilibrium mostly lacks noticeable force.

If, however, the original position had a thin theory of good that disregards or contradicts the nature of the contract beneficiaries, then this third, often-disregarded pole would present absolute resistance. There is no sense in formulating contractarian justice principles based on a theory of good that disregards or even contradicts the nature of the contract beneficiaries.

While Rawls considers the thin theory of the good to be founded on human nature, a contractarian animal-rights justification, like Rowlands’s, would hold that the thin theory of good should be founded on the nature of sentient beings; hence, the justificatory role of sentience.

According to Rowlands, it is possible for the justification of contractarian animal rights to be based on Rawlsian thinking if the features of the original position are reflected upon in light of non-speciesist, particular, considered judgments, and with the nature of sentient beings in mind. The speciesist reflective equilibrium would change into a sentientist reflective equilibrium.

The function of contractarian animal rights

Liberal thought includes the notion that the right is prioritized over the good. As was outlined above, Rowlands understands this to mean that the right conduct is to pursue one’s good while limited by tolerating other individuals’ pursuit of their good. Tolerance would work as a second-order good, protecting as well as limiting the opportunity for the individual to achieve its personal aims.

Rowlands does not employ any extensive theory of good or elaborate on how Rawls’s theory of good can be used in the animal issue. He does, however, make it clear that having preferences is a morally important aspect of the right holder. Preferences, as an expression of sentience, would then be the main goods in his rationale.

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461 Cf. ibid. 145, 159.
Rowlands considers preferences in much the same way as Regan does. A preference is ‘a desire that a particular alternative or situation should obtain as opposed to others’. In order to desire something, one must also have the relevant beliefs. With the interplay between beliefs about the surroundings and desires, the desires can be satisfied by manipulating the surroundings. The surroundings are thus the instrument for satisfying one’s desires, while the desires constitute moral relevance.

More precisely, Rowlands describes preferences as propositional attitudes. He outlines mental states to be either sensations or propositional attitudes. Sensations include bodily feelings like pains and tickles, as well as perceptual or quasi-perceptual experiences like hearing music or watching television. Sensations are understood to be necessarily conscious, and subjectively experienced and interpreted. Propositional attitudes, on the other hand, are understood to be necessarily potentially conscious and are dispositional states; they are expressed by behaviour. They are also understood to be characterized by a ‘that’-clause and include cognitive, conative, and affective states. Sensations and propositional attitudes, the latter preferably in the form of desires and beliefs, are both believed to be necessary to have in order to be included in the social contract. While Rowlands believes that it is uncontroversial to hold that certain non-human animals have sensations, he feels it necessary to present a line of arguments in support of certain non-humans having propositional attitudes.

Rowlands views Donald Davidson’s and Stephen Stich’s argument against non-human beliefs as the strongest possible argument and uses it as a starting point. Rowlands understands their main claim to be that non-humans cannot have beliefs because it is impossible to determine the content of those beliefs. This corresponds to how Regan understands Stich’s argument, discussed in Chapter 2. The argument is essentially made that the content of a belief consists of its relations to other beliefs. A belief must be a part of an entire system of beliefs in order to be a proper belief.

Non-humans, according to this line of thinking, lack the capability to conceptualize and hold most of the beliefs that humans hold (beliefs

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462 Ibid. 160.
463 Ibid.
464 Ibid. 159f.
465 Ibid. 165.
466 Ibid. 162f.
Rowlands’s counterargument is made by using Quine’s distinction between transparent and opaque attributions of belief. Observing a dog chewing a bone, a human observer cannot say anything about the content of the internal (and therefore opaque) modes of representation of the dog’s beliefs. The observer can, though, know something about what the belief refers to (the bone); the procedure Quine calls the transparent attribution of belief. The dog’s beliefs thus acquire identifiable content.\textsuperscript{468}

The content of beliefs is claimed to consist of a mode of representation and an intentional object. The mode of representation stands for the intentional object of the belief. The intentional object is the thing that the belief is about. Even though knowledge about the mode of representation may be unattainable considering non-humans, the intentional object may be known.\textsuperscript{469}

The mode of representation is understood to be an internal, mental state of affairs of each being holding beliefs. Such an internal state is understood by Rowlands to be very hard to attain knowledge about.\textsuperscript{470}

Some knowledge, like the knowledge of the existence of the mode of representation, is possible, according to Rowlands, by ways similar to those Regan (and Stich) suggests. Evolutionary development, according to Rowlands, suggests that the beliefs of non-human animals do have modes of representations.\textsuperscript{471} Given that beliefs are expressed by dispositional states, the intentional object should reasonably be some kind of behaviour. In other words, the intentional object is external to the holder of the belief and thus readily observable and knowable. Rowlands claims that Davidson’s and Stich’s argument applies only to the mode of representation of a belief.\textsuperscript{472} Some of the

\textsuperscript{468} Rowlands, \textit{Animal Rights}, 172ff.
\textsuperscript{469} Ibid. 169f.
\textsuperscript{470} Ibid. 173, 177.
\textsuperscript{471} Ibid. 182.
\textsuperscript{472} Ibid. 174.
content of the beliefs, namely the intentional object, of non-humans may, therefore, surely be known.

This line of reasoning is provided to justify the notion that animals have preferences. Rowlands does not further elaborate on the meaning that the good for animals is preferences. Further meaning can, however, be reconstructed by following Rowlands’s lead and investigating the possibilities and limitations of applying a Rawlsian theory of good to the animal issue.

Rational goodness for animals

Rawls elaborates on a theory of good for moral persons. He does not consider non-humans to be persons, but the mechanisms of his suggested rationale can be applied beyond the human species.

Rawls outlines a theory of good where rationality plays vital and multiple roles. Goods are anything that is rational to want in order to fulfil a rational plan of life. Primary goods for human beings are repeatedly said to be self-respect, as well as liberty and wealth. A plan of life, basically referring to a person’s long-term interests and aims, is said to be rationally held by a person if it is consistent with principles of rational choice, and it is, furthermore, chosen by that person with deliberative rationality. The idea is that the principles of rational choice produce a number of plans of life, and that a person must, therefore, choose one of them.

The principles of rational choice include demands for efficiency, inclusiveness, and probability. A plan of life that involves more efficient means to achieve the aims, includes more desired aims as well as aims that are more likely to be realized, is more rational to choose than a plan of life that has fewer of those qualities. A rational choice is, in the most general sense, quite simply an economical choice.

Deliberative rationality is to take relevant facts and consequences into the consideration of plans of life, and choose the plan that would ‘best realize [...] more fundamental desires’. In essence, it is to act in a manner that is not regretted, and to behave as one would as one person over time. This, especially the latter part, is considered to be

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474 Ibid. 408.
475 Ibid. 411f.
476 Ibid. 417.
part of what it means to have self-respect. Rawls calls it a ‘principle of responsibility to self’ and highlights its support from the original position.\textsuperscript{477} From a position where almost all you know about yourself is that you are self-interested and disinterested in others’ plans of life, it is evident that that position also entails a responsibility to self. Deliberative rationality is very consistent with the rationality of the original position; it is indeed hard to see any other difference between the two rationalities than that the deliberative rationality is slightly more specific and particular. Otherwise, it is still the game-theoretical tensions that advance them similarly.\textsuperscript{478}

Interestingly, Rawls points out that this thin theory of goodness as rationality is not enough as a theory of good for human beings. The theory basically just states that it is good to act or function in a manner that conserves energy and keeps to the facts, rather than not. Goodness as rationality is too general and abstract to suggest anything specifically about humankind, or any other actual being for that matter.\textsuperscript{479}

Although the notion of deliberative rationality and the principles of rational choice rely upon concepts of considerable complexity, we still cannot derive from the definition of rational plans alone what sorts of ends these plans are likely to encourage. In order to draw conclusions about these ends, it is necessary to take note of certain general facts.

First of all, there are the broad features of human desires and needs, their relative urgency and cycles of recurrence, and their phases of development as affected by physiological and other circumstances. Second, plans must fit the requirements of human capacities and abilities, their trends of maturation and growth, and how they are best trained and educated for this and that purpose. Moreover, I shall postulate a basic principle of motivation which I shall refer to as the Aristotelian Principle. Finally, the general facts of social interdependency must be reckoned with. The basic structure of society is bound to encourage and support certain kinds of plans more than others by rewarding its members for contributing to the common good in ways consistent with justice.\textsuperscript{480}

The outline of a view of humankind is presented in order to expand the theory of good. It includes the biological features of being a human, as well as the importance of social life and education. The Aris-\textsuperscript{477} Ibid. 423.
\textsuperscript{478} Ibid. 422f.
\textsuperscript{479} Ibid. 424.
\textsuperscript{480} Ibid. 424f.
tolelian principle is an idea that human beings are happier when they can use their capacities and abilities in more complex ways. A higher complexity of capacities is suggested to have the potential of satisfying more desires, which would motivate people to pursue a plan of life which correlates with the principles of rational choice. A human being, indeed driven by the Aristotelian principle, would pursue any plan of life that could satisfy most aims as efficient and likely as possible—given that the aims were mainly desires for exercising and improving one’s capacities.481

The Aristotelian principle is an outline of a moral psychology that would explain why it is reasonable to believe that goodness as rationality is applicable. It does not have any role in the justification of justice principles.

The quote above is a platform for developing a full theory of good for humankind. The thin theory of goodness as rationality is meant to be put into the original position. The principles of rational choice and deliberative rationality are obviously quite impersonal and general and should quite neatly fit the requirements of the original position. The original position can then be used, together with the outlined anthropology above, in order to elaborate on a full theory of good for human beings.482

It is admitted that the thin theory of good is too general to exclude any being at all. The full theory of good is said to be possible to develop only with some general notions of the nature of human beings in mind. The question is what it is that is so human about Rawls’s suggestion for such general notions. He clearly must qualify many phenomena as ‘human’, implying that not even he sees them as uniquely or characteristically human.

If the Aristotelian principle is indeed Aristotelian, it is per se not limited to humankind. It is quite explicitly said to be ‘relative to the individual and therefore to his natural assets and particular situation’.483

Finally, social interdependency is certainly not uniquely human. Even if social interdependency warrants a restraint on the conduct of members of society, the methods to do this may be different. Moral agents may be expected to restrain themselves, while others, human or

481 Ibid. 426f.
482 Ibid. 435.
483 Ibid. 441.
not, can be rightfully restrained by external means. This last point may be further underlined by discussing how Rawls applies the theory of good to moral persons.

Discussing the relation between goodness as rationality and moral persons, Rawls suggests that it is rational to expect a moral person to be virtuous enough to want to act on basic principles of right. He claims that a good person is anyone who complies better with the moral conclusions made in the original position than some other person.484

Given that a moral person is characterized as a being whose capacities include moral agency, it seems reasonable and even self-evident that such a being is good at functioning as a moral agent if the moral agency is used to a higher degree and within the restrictions concluded from the original position.

Furthermore, however, Rawls notes that ‘it is also true that it is rational for each person to act on the principles of justice only on the assumption that for the most part these principles are recognized and similarly acted upon by others [my italics]’.485 If ‘act’ here means ‘positively do or perform’, the statement belongs to a Hobbesian rationale rather than within the liberal rationale that Rawls normally conjoins. This is ad hoc. Nor is it possible, from the original position, to support such an attitude towards non-persons.

What is rational to demand of moral persons in the original position is that justice principles are upheld. It is also rational to expect that those beings who are moral persons will indeed act upon those principles when necessary. Also, for practical reasons, moral persons are expected to construct institutions that uphold justice. If the original position were indeed to be loaded with all relevant facts, it is, however, not rational for moral persons to expect that all members of society, human or not, can act on justice principles.

Human infants, at least, must be included in society in order for it to be a future society. It is not rational to demand that they personally should act upon justice.

It is, however, rational to use necessary restraints on non-persons in order to uphold justice. Even if the moral agency of moral persons is needed to uphold justice, that specific capacity is not the reason why they are included in the scope of the contract. As will be further elabo-

484 Ibid. 436 f.
485 Ibid. 436.
rated upon in the next section, moral persons are included because they are self-interested—something that more beings than persons can be expected to be.

Even if Rawls’s reasoning about the relation between the theory of good and the role of moral persons is sometimes arbitrarily excluding non-rational humans and non-humans, it is possible to extend his general approach to goodness to the animal issue. As has been mentioned, the thin theory of good is general enough to even include inanimate and lifeless things. Furthermore, the only reason why the above-quoted view of humans does not include anything else than human is the presence of the adjective ‘human’. To exclude anything or anyone simply because it is not human is arbitrarily speciesist; at least that is what the presently pursued rationale presumes.

If ‘human’ is removed from the earlier-quoted passage, and if a Hobbesian understanding of social interdependency is excluded, then the view of humankind rather turns into a view of a vaguely limited group of generally capable biological beings with a social life. The good for these kinds of beings is to pursue their plans of life, whose rationality is determined by the extent they are economical, true to facts, and realize the innate capacities of the beings. The removal of the Hobbesian aspect would cohere with Nussbaum’s criticism mentioned above, but to retreat to a minimalist understanding of the good and to preserve the main rationale of Rawls are not in line with her thoughts.

Self-respect is said to be the most important primary good for moral persons because it assists the realization of rational plans of life in a most fundamental way. For a moral person, self-respect includes ‘his secure conviction that his conception of his good, his plan of life, is worth carrying out’. 486 Self-respect is also said to imply ‘confidence in one’s ability, so far as it is within one’s power, to fulfill one’s intentions’. 487

The function of self-respect is not only a prerequisite for a rational self-realization, but also strengthens the connection between goodness as rationality and the Aristotelian principle. The notion of self-respect underlines that the fulfilment of plans of life and the exercise and development of one’s capacities are meant to go together. This does not entail that all moral persons are meant to pursue a specific kind of

486 Ibid. 440.
487 Ibid.
rational ends with a precise and universal ideal of perfection in mind. Instead, Rawls argues that in order to secure self-respect it ‘suffices that for each person there is some association (one or more) to which he belongs and within which the activities that are rational for him are publicly affirmed by others’. 488

In order for a particular plan of life to be realized, self-respect needs to be developed in a social context that supports that specific kind of plan of life. The rationality of a plan of life is relative to the nature of the person, and so are the capacities that must be exercised and developed, and so is thus the social setting where respect for the proper activities of the self is supported.

Even if the full concept of self-respect is too closely associated with the ability to actually understand one’s own moral worth for being extendable to the animal issue, 489 much of its functional content can very well be used for more than people. The function to underline the connection between exercising capacities in a supportive social setting and realizing a rational plan of life relative to one’s nature and fundamental desires can readily be applied to animals.

Actually, when Rawls briefly reflects upon the relation between the Aristotelian principle and goodness as rationality, he reveals how flexible the theory of good indeed is. He supports a hypothetical being’s choice to develop his capacity to count blades of grass. He states that ‘if we allow that his nature is to enjoy this activity and not to enjoy any other, and that there is no feasible way to alter his condition, then surely a rational plan for him will center around this activity’. 490 Rawls views the example as hypothetical because he assumes such a person does not exist. Although this may be true, a being, not a moral person, may exist that enjoys the counting of blades of grass as much as that hypothetical person. The question is then: If such a being can be included in Rawls’s theory of good, why would a being not be included that prefers to eat the grass rather than to count it?

488 Ibid. 441.
489 Cf. ibid. 440f.
490 Ibid. 432f.
The right holder

The revision of the definition of the right holder is an insignia for pro-animal-rights theories. This reformation, as has been shown in earlier chapters, gives rise to ingrained notions about the identity of the right holder. Theoretical tools and narrative excursions can help loosen traditional notions. The contractarian approach has no less a need of such tools.

The neo-Rawlsian approach outlined by Rowlands suggests that the anthropocentric status quo of the reflective equilibrium can be disturbed by considering the speciesist assumptions a bit more carefully. He claims that the most basic and commonly held intuitions are those that say that natural and social properties are prima facie irrelevant for the formulation of justice principles. Intuitions that contradict these more basic intuitions should be branded irrational and be ignored. Intuitions that suggest species membership or rational ability as relevant for justice principles are not commonly shared and thus overridden by the first group of intuitions.

This approach is obviously quite different from the other authors’ approaches. There is no analogy made between human and non-human animals in order to show relevant similarities in their biological and psychological constitution. Nor are there religious, eschatological elaborations of the common, spiritual ancestry of human and non-human animals.

Rather, there is an analogy made between reasoning about justice for human persons and reasoning about justice for other beings. The analogy suggests that the same conditions should apply in both cases because there is no relevant difference between speciesist and, for example, racist qualifications of justice.

This method to reform thoughts about justice, it could be argued, does not belong in a Rawls-inspired theory. The reformation of the right holder should be based on the original position, or at least on any of the other points of reference in a reflective equilibrium. If, however, the reflective equilibrium has reached an anthropocentric status quo, external means are necessary to upset the balance.

The reflective equilibrium can be in the status quo while also containing irrational convictions. The original position guarantees rationality because it keeps arguments within certain limits. Those limits, though, must be rationally selected if the original position is to be rational. The limits cannot be selected within the original position
because there is no original position without those restrictions. An alternative is to choose the restrictions of the original position by way of particular considered judgments. But one of the main reasons why we cannot use those judgments directly in order to justify (universal) justice is that they are contingent on particular personal experiences and situations. The original position is meant to shed most of those contingencies. The other alternative is to let the life plan, or rather its implied thin theory of good, inspire the restrictions of the original position. The same problem comes about here. The thin theory of good that is supposed to be a universal guideline for a rational life plan (at least for humans) is supposed to be *rational* in order to be valid. The kind of rationality that is valid within this rationale is the rationality of the original position, which is what would be suggested to be defined by the rational life plan.

It is thus possible for irrational convictions to thrive within the most stable reflective equilibrium. The more ingrained the irrational conviction is, the more embedded it becomes in considered judgments and theories of goods, and the harder it is to identify the arbitrariness of the conviction in the original position.

Rawls admits the problem of defining the original position in a fair way, but he views the reflective equilibrium as improving the chances of the justice principles being fairer. The other poles of the equilibrium are biased by knowledge of personal properties and, therefore, potentially irrational. The risk of inherent and irrational convictions is less of a problem for Rawls because he arranges the original position by way of traditional justice conceptions (utilitarianism, perfectionism, and his own neo-Kantian position). He compares traditional notions of justice, rather than challenging the traditional anthropocentrism in all those notions. He does not use the original position to challenge deeply ingrained traditional convictions. The original position was never meant to be scrutinized for irrational convictions that, furthermore, are traditional.

Hence, external means, for example analogies, are necessary in order to upset the anthropocentric equilibrium in the Rawlsian rationale. This is due to the lack of reflective leverage in the ultimately closed system within which the reflective equilibrium works.

Rowlands’s approach to challenging the definition of the right holder assumes that there is a consensus confirming the prima facie

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491 Cf. ibid. 35f.
irrelevance of social and natural properties. This assumption is rea-
sonable as long as it is considered strictly within the intuitionist liberal
tradition, which he explicitly intends to do.\footnote{Rowlands, \textit{Animal Rights}, 36f.}

The assumption is commonly promoted from the liberal context as
if it were a universally viable notion. Why would people other than
liberals accept this? The only actual consensus on this notion is within
the liberal community. It lies in the definition of liberalism to hold this
notion. Outside this admittedly rather large and, in some parts of the
world, dominant group, there is no consensus on which status social
positions and natural abilities should have when defining the social
constitution. Even if the world’s population would all humble them-
selves to accept intuitionist reasoning, which they surely would not,
there would be no consensus on the issue at hand.

Rowlands’s approach may, still, very well be taken to be rational in
liberal democracies. Also, even if non-liberals would not accept the
fundamental notions (presented as intuitions or not) of liberal thought,
they may still see a glimmer of rationality within Rowlands’s sugges-
tion. This is because Rowlands’s attempts to expand the scope of jus-
tice as fairness are very consistent with the internal, game-theoretical
mechanisms of the original position. Even though there is an inherent
uncertainty in estimating whether the restrictions that make the origi-
nal position are relevant or not, it is quite certain that the original posi-
tion and the social contract in general are based on game-theoretical
assumptions. The contractors are supposed to be self-interested and
mutually disinterested in order to keep the game-theoretical tension.
This circumstance can be used to strengthen Rowlands’s claim beyond
the issue of common intuitions.

Sentience and the original position

Rowlands argues that the properties of sentience and holding prefer-
ences are important because they mean that the right holders care for
themselves.\footnote{Ibid. 159.} This can be associated with his interpretation of the
original position, where impersonal self-interest fuels rationality, mak-
ing it relevant to use as a moral device. The self in question would
then be a sentient self, which would make sentience have a rational

\textit{Animal Rights}, 36f.

\footnote{Ibid. 159.}
role in the limitation of the scope of rights (in contrast to species membership and rational ability).

Rowlands’s argument may be understood as simply stating that sentience is a natural property that agents would know they have in the original position and grant themselves benefits because of this particular knowledge. Such an interpretation, though, would make sentience seem an arbitrary limit of the definition of the right holder.

Another interpretation of the role of sentience in this rationale is that sentience is a theoretically necessary limitation of the definition of the right holder. This would make sentience a rational scope-defining property. The significance of right holders having self-interest in this rationale invites this latter interpretation.

Contracting agents that would formulate the usual kind of anthropocentric justice principles, using species membership and rational ability as scope-defining properties, would be driven by their self-interest into formulating a contract arbitrarily benefiting rational human beings. The conclusion would be flawed because species membership and rationality would be arbitrary limitations, not having anything else than the identity of the contractors to support them.

Sentience is a property as undeserved as species membership and rational ability. This means that even if sentience is a property that the contracting agents know they indeed have, it should be imagined to be a property that is only potentially held by them. Rationality, species membership, and sentience are all similar in being undeserved natural properties and thus also in how they ought to be treated by agents in the original position.

Sentience, however, is relevantly different, according to the present rationale, in how it affects the beneficiaries of the contract. The knowledge that one may not be rational in the society the contract reflects means that one may not be capable of being a moral agent. The lack of rationality does not reveal anything per se about the status of being a right holder, given the functional and conceptual difference between being a formulator of a social contract and being the beneficiary of that contract.

Analogically, the knowledge that one may not be human in the society that is contracted upon means that one may not belong to a group that is as characteristically disparate as it is characteristically bipedal beings with great language skills. Although such beings may have certain needs and preferences that are unique for that group and, there-
fore, need a unique design of the moral protection that justice principles may give, the property of belonging to that group should not affect the inclusion of other beings. Also, even if it were the case that the mere fact of belonging to the human species would be a reason good enough in itself to be included in the scope of justice, it would not per se exclude anyone else.

Sentience does matter regarding the inclusion as a beneficiary of the social contract, given Rowlands’s contentions. The knowledge that one may not be sentient in the society that is contracted upon means that one may be a being that does not have preferences, a being that cannot consciously care for itself. The self-interest of the contractor, and which the contractor must have in order for the original position to work, would then make the social contract rationally exclude non-sentient beings from the scope of rights. To become a sentient being in a society where sentient beings may suffer because of the constitution of the society is a worry for the contractor. To become a non-sentient being is not an issue because such beings do not have preferences and cannot suffer.

Rowlands’s reasoning can thus be extended to suggest that it is consistent and conceptually possible to expand the scope of justice as fairness beyond the human species without being counter-intuitive. It also states that the original position and the veil of ignorance are better suited to support a sentientist scope of justice than a speciesist scope of justice, no matter what common considered judgments suggest. To go even further, the original position is not only possible and suitable for, but also predetermined to include sentient beings.

The conclusion is, given Rowlands’s rationale and some reconstruction, that sentience would rationally affect how the contract turns out, even if the contractors imagine themselves to only potentially hold sentience. Sentience is a rational limitation of the definition of the right holder, albeit an undeserved and natural property.

This is, however, only true for a particular understanding of the self. The absolute minimal properties for being rationally included by self-interested contractors are a self, the capability of having interests, and the condition that the self is the object of at least some interests. It is assumed in this rationale, on top of those minimal criteria, that the self-interest at hand must be an interest held by a conscious individual with preferences.
The self-interested beneficiary

The goods of this rationale are anything that satisfies rational preferences—preferences that are part of a rational plan of life. Preferences are defined as being subjectively and consciously held desires. It is thus not surprising that it is argued that the right holder is a sentient being, a being with a conscious and subjective perspective. The criterion for being included, furthermore, promotes the liberal view of the self, i.e. being primarily an individual self with a subjectivity whose choices are dependent on inner states rather than external states.

The right holder is defined in terms of the aspects of the self that the rational contractor is allowed to know about itself. It is allowed to know that the self has self-referential interests, but no further knowledge that would give the interests personal meaning. The contractor must know that the self is supposed to worry about itself.

Furthermore, the mutual disinterest assumed in the original position separates the self from other selves. The interests of the self must not target the life plans of others, severing the only possible moral relation with others in such a minimized theoretical environment. Parents must not know about their care for their children’s life plans, although they can know about appreciating their children as a way of realizing their own life plan. Employers must not know about compassionately hoping for the good health of their employees, but they can know about their interest in using the skills of their employees to increase profit. Other selves can only be included as instruments in the perspective of the rational contractor. The contractor must know that the self is morally alone.

The self-interested beneficiary must thus minimally be alone and worried, and the institutions should be constituted to reflect this. In addition to this, the actual beneficiaries may indeed have numerous benevolent interests in the plans of other lives. The minimal description of the right holder stems from a theoretical construct, and the full, thick description of each beneficiary must be given after proceeding through that construct. This rationale permits the assessment of goods for each sentient right holder to indeed live a richer and more benevolently relational life than the inclusive theoretical mechanism reveals, but the alone and worried liberal self still underlies the forming of the scope of rights.
Conflict resolution and contractarian animal rights

Rowlands is quite clear on how he views equality to be one of the cornerstones of liberalism and thus his own neo-Rawlsian rationale. The strong notion of equality in this rationale makes the notion of resolving rights conflicts especially peculiar. Rowlands does not discuss the issue of rights conflicts or how to resolve them. It might be the case that he would not concur with the notion of resolving rights conflicts at all. Instead, he might argue that rights language is only an explicatory and diagnostic tool for moral problems, not a tool for resolving such problems.

Still, an attempt will be made to reconstruct a conflict-resolution approach from Rowlands’s thinking. This means that Rawls’s thinking on weighing principles, which is the approach that Rowlands obviously would have, will be mainly drawn upon. The result may still not be a principle to resolve rights conflicts with preserved equality, but it will give some substance to evaluate in the subsequent chapter.

The understanding of rights conflicts uses the features of the definition of the right holder, the function of rights, and the justificatory approach. Help with reconstructing the approach to rights conflicts can thus be found in the analysis above.

First, the definition of the right holder, and rights conflicts, only includes beings capable of self-interest. Second, the relevant interests in conflict can only be such interests that are rational to hold for beings (capable of self-interest) according to their nature. Third, and more fundamentally, any conclusion made about how to resolve rights conflicts within this rationale must be made with reasoning kept within the limitations of the original position. The first and second points, as discussed above, express conclusions defined by the original position.

The scope of rights is more restricting than the group of beings that can have a good according to the notion of goodness as rationality. The group of beings that fit the goodness as rationality is much larger than the group of beings that match the criteria of having rights. This means that there are many beings whose goods are morally relevant to a certain extent, but it is only the goods of self-interested beings that matter to the extent that they are more important than the goods of the collective. It is the latter group that is relevant to this discussion.
The difference principle in the animal case

Rowlands does not give any indication about which precise impact the suggested modification of the original position would have on weighing principles. Rawls, on the other hand, outlines how to deal with conflicts between principles. They are, however, originally meant to be applied to moral persons.

Rawls suggests that intuitions may be used to prioritize, but only when proper restrictions have been made. The role of intuitions can be limited by, firstly, principles of the weight of other principles, all concluded from the original position. Secondly, a premeditated lexical order of principles may counteract intuitions. Thirdly, imagining oneself evaluate the situation from a certain social position, preferably the least advantaged may also refine and select valid intuitions.

The points that refine intuitive prioritizations can be reformulated to be more directly applicable to rights conflicts. Goods, for example lives, can be weighed by intuition if the intuitions are first refined and selected in relation to (i) principles of weighing considered goods from the original position; (ii) lexical order of goods; and (iii) an evaluation of the situation from the position of the least advantaged.494

When considering life–life conflicts, as will be done when evaluating these theories, some of these points become self-defeating. It is not sensible to premeditate a general lexical order between life and life, although there may be a priority order in particular situations. The second point is thus not helpful in this rationale. A possible way of making lexical order between some sorts of lives will be discussed in the concluding chapter. In this rationale, there is only one kind of life in question, namely sentient life.

The first and third option can be used to, at least, approach rights conflicts, although it tends to adjoin them. Weighing principles that correlate with the demands of the original position also correlates with a weighing principle beneficial to the least advantaged. The rationale of the original position assumes a contractor that worries about being the least advantaged in the constituted society. The contractor should thus constitute weighing principles that benefit the least advantaged.

This combination of the first and third option to refine intuitions is very much in line with the difference principle, which Rawls suggests as a justice principle. The difference principle states that the ideal

494 Rawls, A Theory of Justice, 41ff.

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change in the societal structure is a change that results in a society where the ones with least goods have more goods than if society had changed in any other possible way.

To consider the difference principle as a weighing principle would surely preserve the spirit of Rawlsian thinking in this rationale. The difference principle is a distribution principle, but it could be used as a weighing principle if the good to be distributed is a priority.

The possibility of changing perspective assumed by the difference principle poses a greater challenge when non-human beings are concerned. A change in perspective when discussing the animal issue is relevant in more ways than only the socio-economical. There are also various phylogenetic perspectives. The empathy with the perspective of another species may be considered impossible. Even if it is considered possible, the extent of meaningful substance of such empathy may be questioned.

Rowlands’s reasoning about preferences, however, supports the possibility of empathy with non-human perspectives. It was outlined above that he argues that human observers can know some content of animal beliefs, namely the intentional object. If the content of the beliefs can be partly known, then the content of preferences can be partly known. The least advantaged can be identified in this rationale, even if they are non-human, based on the knowledge of their preferences and the assessment of their satisfaction.

It might be suggested, despite the possibility of substantial empathy with non-human perspectives, that the number of lost capacities or the higher complexity of capacities makes the death of a human being necessarily a greater loss than the death of a non-human. The empathy would make it possible to include preferred capacities and their internal relations. The observation would probably be that human beings, or at least healthy adult human beings, use more capacities in more complex ways than non-human beings. The conclusion would be that the loss of a human life is clearly worse than the loss of a non-human life.

The conclusion would, however, not take fully into account the subjectivity of the good life. The good life is explicated as a successful plan of life. To be successful, the plan of life should satisfy the preferences of the right holder. Preferences are subjective, albeit partly externally identifiable (by their intentional objects). The comparison between the good lives of two right holders has to be made also by
shifting the subjective perspective. The life of a mouse cannot, honestly, be said to be prima facie less important to the mouse, than the life of a human being to a human being. The prima facie case must be that each life of a right holder is equally important for that right holder. This does not contradict the greater complexity of more intense experiences of human beings, but it relativizes those properties as particularly human.

The weighing procedure should not measure which right holder is most human, but who should be prioritized because of just reasons. Even if it were true that human beings have a greater potential or a greater complexity of their capacities than other beings, it would only be true for human beings. It is *not* so that if A is x and B is y, then B always ought to be x. That only makes sense if A is presumed to be the norm. People are generally much better at walking on their hind legs than non-humans are, just as theologians are generally better at interpreting texts than scientists. That does not make any of the group ‘better at being a moral object’—having a higher moral value. Even if both scientists and theologians might believe that they are better than the other, it is actually the case that scientists are better at science and theologians are better at theology.

Turning to the capacities that are usually referred to as complex and particular to humanity—capacities making art, morals, and invention possible—it must be held that they are not comparable to the particularities of other species. The moral weight of human beings is not discounted because we lack spotted fur and the ability to run as fast as a car. The moral weight of leopards is not discounted because they lack bipedality and the ability to make and understand the value of graffiti. The moral weight of the mentally challenged, infants, coma patients, etc., can be added to this analogy. This is because of the underlying notion that natural and social properties do not matter in cases of justice, unless special circumstances apply. If it is still claimed that B ought to have x (while B is obviously having y and cannot have anything else than y or at least not x), then it must also be explained or argued why incommensurables must be compared, or the impossible done.

The empathy with non-human perspectives thus does not make it impossible to apply the difference principle, or its analogical weighing principle, to an expanded scope of rights. The possibility of applying
the principle does not mean that human beings are necessarily prioritized or that the weighing of lives is straightforward.

It may be argued that the application of the difference principle is impossible for more practical reasons. VanDeVeer has argued that the difference principle cannot be used on non-humans because it would become too demanding, the costs would be too high.\footnote{VanDeVeer, ‘Interspecific Justice and Animal Slaughter’, 154.} It has been mentioned that VanDeVeer outlines a similar approach to remodelling the original position as Rowlands does, but with a utilitarian stance.

VanDeVeer suggests an alternative method to weigh lives that he believes is less costly. Animals, he notes, should not be made to live lives where they would be better off dead.\footnote{Ibid. 155f.} Put in terms of preferences, animals should not be treated in a way so that it would be rational for them to gain suicidal preferences.

This is an interesting alternative whose outcome surely would be confirmed by the difference principle. It would be a good alternative to fall back on, if the difference principle does not work. VanDeVeer’s contentions, however, about the impossible costs of the difference principle are based on a weak foundation. He assumes that the difference principle requires that the satisfaction of all animals be increased to a satisfaction as ‘high’ as the satisfaction of human beings.

\[\text{… it would be clear that the range of satisfactions obtainable by certain sentient creatures (e.g., rabbits, chickens, or pigs) is radically limited by the genetic lottery. Hence, there would be severe limits on possible attempts at having social arrangements that would increase the level of satisfaction for certain creatures above a certain point (a rather low one from the standpoint of a typical member of Homo sapiens; perhaps, an even lower one from an angelic viewpoint).}\footnote{Ibid. 154.}

VanDeVeer probably correctly believes that non-humans are by nature different from humans in respect of their ability to experience satisfaction. If porcine satisfaction is to be counted, he assumes that it must be included by the same standards as human satisfaction. This makes the difference principle basically impossible to use. To increase the level of satisfaction of a non-human to the level of human satisfaction sim-
ply puts too much strain on the institutions. It would, for example, mean a far-reaching and very costly genetic transformation of pigs.

It has already been argued that this kind of comparison is arbitrary. The limits VanDeVeer writes about, as well as the usage of ‘low’, are all relative to a human standard. The human standard is not relevant to estimate something subjective and alien as satisfaction among non-humans. The comparison between the subjectivity of humans and non-humans must be made along an axis defined by the good life, not the good life for humans. It is not relevant for the comparison of what a human mind in the body of a pig would think about the satisfaction of the pig.

An assessment of the difference between the beliefs of a pig and those of a human being can be formed by studying the things that the beliefs of the pig include as intentional objects. Rolling around or grubbing in mud expresses substantial beliefs, albeit partly opaque to others, that are generally different from the beliefs of human beings. Is it really associated with impossible costs to let the pig roll in the mud?

The difference principle is not necessarily overly costly to implement for non-humans and humans as long as the human standard is removed from comparisons between human and non-human. It may be the case that certain preferences of pigs and other non-humans are too costly to satisfy. It may also be the case that there is a need for principles to sort the relevant preferences from the irrelevant ones. There is no immediate reason, nevertheless, to doubt the applicability of the difference principle to the expanded definition of the right holder. The difference principle is not demanding conformity of experiencing satisfaction, only that the worst-off, whatever it is to be worst-off for the ones who are worst-off, are having as good lives as possible.

It has already been outlined that goods within this rationale are anything that assists an individual to fulfil its rational plan of life. Rowlands may be understood as postulating that this plan of life is expressible in preferences. A rational plan of life for a specific individual is relative to the nature of that individual. A main good, for example, is to live in a social setting that is supportive for the plan of life.

The above reasoning for the widest possible scope of justice suggests that the only commonality among all those individuals, whose plans of life one should care about, is that they are all self-interested. Species membership and rationality may be important for estimating the plans of life of various included objects of justice, but those attrib-
utes are not defining the scope. A healthy adult human being surely needs partly other goods to fulfill his or her plan of life than an elk to fulfill her or his plan of life. Although both beings need a supportive social setting, the specifications of the two settings must be different in order to be truly supportive.

The difference principle as applied to such a scope would mean to strive for a society where the poorest beings capable of self-interest would have most goods, as compared to other potential societies. The goods, in order to be rationally counted as goods, are relative to each specific individual. Goods are as general or as particular as the nature of various self-interested beings.

The species border is strongly argued here to clarify my point, but this thinking can also be applied to subgroups transcending the species border (the young, the elderly, the sick, the healthy, and so on). In this liberal tradition, the characteristics of the individual are treated with priority over the characteristics of any group the individual rightly or wrongly is said to belong to.

The difference principle then states that we should turn the institutions into a society where the elk can pursue an elk-like plan of life, the pig can pursue a pig-like plan of life, and so on—and do so in a way so that the beings that have most trouble fulfilling their particular plan of life will at least have as little trouble as possible.

This is not overly demanding if flexibility of the institutions is presumed. In order to pursue a liberal democracy, civil servants do not have to ask each and every human member of society what particular plan of life it has or what goods it needs. It is ‘only’ necessary to institutionalize possibilities to make informed choices about what plan of life to develop and how to fulfil it. Included in such institutions, there ought surely to be procedures for handling cases which differ from the norm and where the standard procedures fail.

The general approach need not be different when non-humans are included. The kind of phenomena that are supportive of the plan of life of an elk are partly different from those that are supportive of a human plan of life. A human (in contemporary liberal democracies) needs to be in a society with a school system, healthy employment policies, social security and more. An elk needs to be in a society where the existence of a healthy temperate forest is guaranteed.

It is demanding not to pollute that forest only if society (including the private sector) fails to have standard procedures for minimizing
the creation of pollution and providing proper treatment of it. But then the structure of society clearly needs to change to a system—preferably to a structure where it is more demanding to pollute the forest than it is not to do it. At least, this is an important aspect of the consequences, if the difference principle were applied to a society that includes non-humans.

There is no clear way based on this to know how to weigh lives. Priority in life–life conflicts is clearly a precious good for both human and non-human animals, while the lack of such a good would prevent all other goods.

The difference principle would prescribe a constitution where those who have least of the good of priority are given as much priority as possible. This reasonably means that conflicts should be avoided. To have least priority in a life–life conflict means death. The difference principle would prescribe that the dead should be as little dead as possible. The only sensible meaning of that is to avoid conflicts altogether.

This, however, would beg the question: the first option should always be to avoid life–life conflicts. Virtuous people do not need a theory to realize that. But how should persistent rights conflicts be approached?

The application of the difference principle as a weighing principle may be as far as this rationale can go to answer that question, assuming that the reconstruction of the neo-Rawlsian approach has been fair. But it does not seem to be a satisfactory answer. This will be further discussed and evaluated in the next chapter.

Summary

Rowlands’s approach to animal rights treats the consistency of the liberal contractarian rationale as the overall reason for including animals as right holders. The liberal ideology is considered to have a unique kind of individualism and equality. Each and every individual has equal value, and natural and social properties of the individual are not allowed to arbitrarily affect this. As long as it is theoretically rational to include someone in the definition of the right holder, it is indeed mandatory to do so.
Rowlands is inspired by Rawls’s theory of justice. This means that the justification is performed as a reflective equilibrium between the original position and certain intuitions.

The original position is an approach to thinking created by game-theoretical tensions. A group of contractors are imagined to be self-interested, but still disinterested in the interests of the other contractors. Also, they must not know their personal properties. The aim of the contractors is to formulate a constitution of the society, a social contract. Thinking like one of the contractors is considered to produce rational prescriptions for that society. Prescriptions formulated from the original position are considered to be justified if they harmonize with certain intuitions.

The intuitions in question state that references to natural and social properties, or other undeserved properties, are not fair in prescriptions aiming at justice. This means, according to Rowlands, that references to species membership or rational ability are not fair to make when formulating justice principles. He, further, argues that this is also concluded from the original position, harmonizing the two poles and suggesting a reflective equilibrium.

The function of rights is apparently suggested by Rowlands to protect preferences. A more elaborate theory of good was reconstructed by following Rowlands’s example and taking inspiration from Rawls. It was argued that the Rawlsian notion of goodness as (economical) rationality is readily applicable to non-humans. It was also asserted that the thicker notion of the good life that Rawls outlines is, at least at a functional level, applicable to some non-humans. The general idea of the full and reconstructed theory of good is that each individual right holder’s rational plan of life is to be determined from the perspective of the particular right holder. The plan of life and its rationality are relative to the extent the plan of life is economical, true to facts, and realizes the innate capacities of the right holders. All right holders are entitled to opportunities for realizing their particular plan of life. The particular rights of each right holder are thus highly dependent on the nature of the individual. They, however, probably include, besides entitlements to fulfil basic needs, such a function as an entitlement to a supportive social setting. The reconstruction of an elaborate theory of good can still be viewed as confirming Rowlands’s view that the good for animals can be expressed as preferences.
Rowlands suggests that sentience, the ability to have preferences, defines the right holder. This was argued to mean that the self-interest of the contractor in the original position is the only natural property that is rational to transfer to the beneficiary of the contract, i.e. the right holder. The property of self-interest defines the right holder. Self-interest in this context was argued to mean a self-referential interest held by a being that is, at the very least, alone and worried. This would reflect the liberal individualism, although not the full liberal view of each right holder.

Rowlands does not suggest a resolution approach to a rights conflict. A reconstruction of such an approach, again drawing on Rawls, was attempted. The difference principle was argued to be applicable as a weighing principle to the expanded scope of rights. The result was that the difference principle can be used to avoid conflicts, while it is still unclear to what extent this rationale can be used to resolve rights conflicts.
The three analyzed theories have been shown to contain some standard kinds of theoretical accounts, but with a new content. Pro-animal-rights theories obviously use rights language, and mostly in a somewhat regular manner, but the rights language is oriented by a novel theoretical web. Each theory contains a justification, a notion of the good, and an account of the right holder itself. These are all necessary and regular parts of a full rights-based moral theory. A justification of animal rights, a notion of the good for animals, and an account of the animal right holder itself do, however, bring new content to old forms. The attempt to extend the usage of a traditional moral language and widen the scope of traditional moral theories makes at least the secular theories fit into the category of extensionist pro-animal-theories. The analyzed theories have more, and more important, commonalities and differences than this.

In this chapter, the three analyzed theories are compared and evaluated. The comparison is brief and straightforwardly performed in line with the analytical categories of justification and function of rights, and the definition of the right holder. Similarities and differences are clarified, with an aim to finding aspects that help the theories to fulfil their purpose. The purpose of pro-animal-rights theories is to change the view of who has rights to a more animal-friendly view.

Next, the theories are put through a hypothetical application. This is done in order to prepare for the evaluation, and performed in light of the identified relevant differences and similarities between the theories. The hypothetical application is an intermediate step between comparison and evaluation that explicates some implicit problems underlying the theories. The hypothetical application is a control mechanism that is meant to make the evaluation focus on relevant problems. It is, for example, not clear at all why it would be relevant to criticize the fact that certain pro-animal-theories are extensionist. Extensionist theories utilize well-trodden theoretical paths to make
new conclusions. This should not be a problem as long as the theories perform their function to change the view of the animal.

The evaluation is performed based on the hypothetical application, and done in light of the identified differences and similarities between the theories. The hypothetical application produces an outcome that explicates possible practical consequences of theoretical problems. The differences between the theories are reflected in these possible practical consequences. Applying evaluative criteria to the differences produces advantages and disadvantages with each theory. An evaluation thus becomes possible.

Comparisons

The three theories are compared along the axes of the justification of rights, the function of rights, and the definition of the right holder. A quite brief recap of the theories in question is given to begin with. The descriptive results of the prior analyses are also summarized for comparison in Table 1.

Regan’s justificatory approach is a version of the natural-rights approach. He argues by way of analogies, considered moral reactions and beliefs, and references to animal consciousness. The conclusion is that there are good reasons to presume that some nonhuman beings can be harmed in relevant ways. Rights language is used to express a protection of beings that can be harmed in the special way that Regan defines harm. Rights conflicts are resolved by principles that make use of the concept of harm and the notion that beings can be harmed to differing degrees.

Linzey justifies animal rights by way of a theocentric approach. He argues using references to Christian doctrines, the Bible, the lives of saints, and some narrative sources. He concludes that there are good Christian reasons to believe that some non-human beings have a soul, and a God-intended nature that should be supported and protected. Rights language is used to express the strength of this protection and how the relationship between an inspired being and God is more important than other relationships between God and the creation. Rights conflicts should be dealt with by voluntary condescension and the sacrifice of the more powerful moral agents.
Rowlands uses a modified Rawlsian contractarianism to justify animal rights. References to theoretical mechanisms underlying a rational social contract are used to formulate arguments for the position. Rowlands concludes that it is rational to include certain non-human beings in the scope of rights as long as they have some degree of self-interest. The good of self-interested beings can be expressed as a rational plan of life, and should be protected by rights. Rights conflicts can be resolved with the help of intuitions, weighing-principles or empathy with the least advantaged. The focus, though, is on preventing rights conflicts by institutional constitution.

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Table 1: **Summary of the analysis outcome.** The columns represent the analysis categories and the rows each theory. The suggested rights-conflict approach should be understood as applied after the number of conflicts has been minimized by institutional rearrangements.
Justification of rights

The three theories all include a justification of animal rights. Moral justification is about providing good reasons for believing that we should perform certain acts. Moral justification is an attempt to change our beliefs, or change the status of beliefs that we happen to already have. A justification makes certain beliefs, and the acts that the beliefs give rise to, acquire a certain quality. Theoretical rigidity or rationality is a good enough name for this quality, although reasonableness or warrant may also do.

The proper function of a pro-animal-rights theory is to rationally change the view of animals to the benefit of animals. The justificatory reasoning fuels this change. The particular strategies to provide the fuel are different among the theories in question, but the justification of them all provides arguments to change the view of animals to a more rational one.

The justificatory lines of argumentation always start in a point of reference beyond the raw human perspective, and use that point of reference as a lever to reach a more just outlook. The arguments for changing one’s view of animals, as has been shown in the previous analyses, originate in a collection of beliefs that concern other beliefs than the spontaneous ones. The justificatory arguments assume an external collection of beliefs that force the reader to think anew. We have seen such a collection of beliefs based on a new scientific explanatory model for animal behaviour, reformed theocentric Christian doctrines, as well as on a purely rationalistic reasoning. It takes an effort to understand, and more to appreciate, all these collections of beliefs. The effort involves the empathetic thinking of a foreign rationale. This is what changes the raw, spontaneous perspective into another, and, hopefully, more rational, point of view.

In the case of Regan’s theory, animal rights are given a rational basis by a natural justification. This would mainly involve the justification of an objective and basic rights principle.

The justification is made from a point of departure that involves the establishment of an alternative psychological model for explaining animal behaviour. The actual justificatory arguments are mainly made by references to considered moral beliefs in combination with analogies. There is also an evaluative theoretical apparatus that is meant to warrant drawn conclusions, especially by way of the harm principle.
The point of view that is supposed to refine the raw and spontaneous thoughts on animals is a way of understanding nature. The rights principle in question, the respect principle, may be understood as acquiring the objective quality by being justified by a view of objective animal nature. The evaluative apparatus warrants the theoretical quality of the arguments and conclusions. The overarching approach is, however, to invite the reader to understand animal nature as objectively expressing moral qualities. In this rationale, to realize that a properly understood objective animal nature expresses moral qualities is also to realize why the respect principle is objective. An account of animal nature is thus used to establish a point of reference that may or may not refine the raw thoughts about the moral status of animals.

Linzey justifies animal rights theocentrically. This involves providing good reasons for why we would believe that animals have rights, viewed from God’s perspective.

The justification takes its starting point from a mixture of Christian traditions and convictions and notions about God. The arguments are formulated in the form of references to and interpretations of narrative and biblical sources, acts of saints, and some traditional habits. There are also some arguments about proper Christian doctrines.

God’s dominance gives the justification a special character. The justification only makes sense, and can only be spoken of, when including a perspective of a creative and somehow intelligent being that is beyond rights language and human morals itself. The dominant perspective is moved as far away from potential human distortion as it possibly can. God is trusted as the source of justice, and the mission of the human moral agent is to understand what God prescribes, preferably by looking to Christendom, and then assist divinity. The extensive use of the ministering role of humans maintains trust in humankind, at least the healthy adult ones, as potentially good and subordinate agents for the creation, as well as potentially right interpreters of the meaning of God’s perspective, but not as ultimate moral authorities. The theocentric perspective is used to refine the anthropocentric perspective.

Rowlands uses a contractarian justification. The argument to grant animals rights then comes in the form of a rational agreement between contractors. The rights principle is considered to be rational and inter-subjective.
The justification comes from a tradition of how to understand the conclusions of a rational agreement, and thus how to understand ‘pure’ rationality in itself. The arguments make a reformation of the traditional understanding of a rational agreement. A main argument for the inclusion of animals in the scope of a rational agreement is based on the conceptual difference between contractors and beneficiaries.

The original position is a path away from the spontaneous human perspective. It represents restrictions on references to one’s natural or social properties in arguments about justice. References to such properties are degraded to subjective whims and prejudices and are deemed irrelevant and irrational. In order to say something relevant about justice and entitlements, something rational, it is necessary to think beyond any personal view of oneself and according to the so-called circumstances of justice. The reflexive equilibrium reduces the ‘purity’ of the rationality of the original position by considerations of the nature of the right holder as well as particular judgments. Still, those factors are controlling and correcting mechanisms of the rationality of the original position. The spontaneous thoughts of the contractor, the moral agent in a contracting situation, are mainly meant to be refined by the attempt to think in accordance with the circumstances of justice underlying the original position.

The justification of all authors begins with considerations that go beyond spontaneous views of animals and their moral status. Arguments are provided from a specific point of view for why animals should have rights. These arguments have been shown in previous analyses to imply or even explicate which properties are relevant to hold in order to be a right holder, properties that point to the inclusion of certain animals. The properties form a view of the animal right holder from the non-spontaneous point of view, thereby suggesting thought-through notions about the animal. Identifying those properties also makes it possible to conclude which protective function animal rights should have.

Function of rights
The function of rights means a protection of the right holder in relevant respects. The function of rights is channelled by a theory of good or, inversely, a description of relevant vulnerabilities of the right
holder. The function, to be efficient, must be aimed at properties of the right holder that need to be protected.

Rights entail obligations to provide goods that are relevant in respect of the particular individual. The kind and amount of goods, and the degree of concern shown for the desires or needs of the right holder, are all subjugated to the relevance to the particularities of the right holder. The function of rights makes the good life, at least a minimal version of the good life, possible for the right holder. In order for the function to work properly, there needs to be a line drawn between relevant and irrelevant goods. All three theories offer ways to both take the individuality and the relevance of the protection into account.

The particularities of the individual right holder can be taken into account by identifying aspects of its nature that are relevant to the good. All three authors do this, but with differing approaches.

Regan does this in light of his psychological model of animal behaviour. Preferences express the animals’ needs. The needs of animals are to be able to act in accordance with the dispositions that the preferences express. Opportunities for natural behaviour may be said to realize the good life.

Linzey writes of creation containing both God-intended aspects as well as fallen aspects. The good life for the animals means to realize the God-intended aspects of their nature. This would be the same as to emancipate their relationship with God.

The theory of good for animals that was reconstructed from Rowlands’s and Rawls’s thinking also contains references to animal nature. They are, however, minimal and refer to efficiency and mutual disinterest as an underlying aspect of the good life. The greater substance of the good life is left to be defined by the particularity of each animal. This would grant a strong role to autonomy and preferences as expressions of the good life.

Each theory thus contains references to the nature of each right holder as a way of estimating the good for that right holder. While outlining the considerations of the particular natures of right holders, however, it also becomes apparent that each account of the good for animals contains general claims on the good for animals.

Regan suggests that the good for animals means generally providing for their needs; the needs are expressed by preferences. Linzey takes the view that it is generally the case that the good for animals are
God-intended aspects. The theory of good reconstructed from Rowlands’s and Rawls’s thinking assumes that efficiency and mutual disinterest are general parts of rational goods, as well as autonomy and preferences.

It is practically impossible for a theory to give a precise description of the vulnerabilities of each right holder. A generalizing language is necessary and thus allowable when elaborating the function of rights. Generalizations may also be fair because there are properties of vulnerability that are actually shared among all right holders. It is still, however, the particular right holder that is addressed.

Problems may occur if generalizations about the good for animals are intended as factual descriptions of all animals, without such facts being true. Then, arbitrary expectations of how the particularities of the right holder should be are predefined in the theory of good. The result is that goods are thought to be provided, which are not really good for the animal in question. The function of rights is thus distorted into providing the right holder with something that is not good.

This also means that a symptom of a distorted function of rights is that the granted rights are the reasons why the right holder is provided with something that is not good for the right holder. The risk of such cases of failed provision of goods can be estimated by a hypothetical application of the theories, which is soon to be performed.

The right holder

The part of each theory that defines the right holder assists the function of rights by pointing out which beings are to be protected. The scope is defined by a commonality of all right holders. Particular knowledge about each potential right holder, or methods to acquire such knowledge, is not necessary within these specific parts of the theories. There is no need to look at individual beings to any further extent than identifying whether they have the general prerequisite of being a right holder. The common elements represent something in our existences, going beyond species identity, that binds us together to the extent that we can call ourselves right holders.

The difference between defining the function of rights and defining the right holder is noteworthy. The right holder should be defined by the minimal property that constitutes something that all right holders must have in order for the function of rights to be relevant to them.
For the function of rights to be relevant to a being, that being must have interests so strong that they, at least prima facie, outweigh the interests of the collective. The function of rights should be fuelled by a fuller profile of each right holder in order to provide relevant and efficient protection.

Clarifying the scope of rights allows a focus on the right holder as a being among existentially similar beings. This is a point in the theories where the differences in existential beliefs become clearer. The difference between Regan, Linzey, and Rowlands is then possible to put in terms of differing basic beliefs about our existences. By extension, this also involves beliefs about the origin of our existences, the end of them, and what makes them extraordinary.

Regan uses the term subject-of-a-life to describe the right holder. The criteria describe an active, autonomous, capable, and conscious being that can experience the difference between a good and a bad life. The togetherness of such beings is evolutionary, biological and mental, or simply natural in a scientific sense. The life of the right holder, as everything else, begins and ends as science describes it.

The principal right holder in Linzey’s theology is the being whose body is constituted by flesh in the theological sense, and is inspired by the Holy Spirit. The existential character of the commonness is more directly expressed here than in the other two rationales. The togetherness of right holders is spiritual. Beginnings and ends are explained in Christian terms, albeit a particular interpretation of the doctrines.

Rowlands’s modification of the Rawlsian rationale suggests that the right holder, the animal, is best described as a self-interested contract beneficiary. The interests of a being become relevant to the extent that they should be protected by rights when that being is capable of having an interest about itself. The togetherness of right holders is an abstract, game-theoretical one. The beginning of the right holder is in the game-theoretical tensions between self-interested beings, and the right holder ends where the application of theory ends.

Each theory offers an account of what to see, generally, when looking at the body of the right holder. There is a Darwinist evolutionary eschatology based on science paradigms vis-à-vis a narratively interpretative eschatology based on the Christian story of creation, a certain Christology, and more. Also, there is a rationalistic theory that
does not make direct statements about the body, apart from the fact that it is supposed to be interested in itself.

Generalizations within the definition of the right holder are necessary and called for. The right holder could be defined by the particularity of each right holder, but then the very particularity of all right holders would be treated as the common point of existence that binds them together—it would still be about togetherness. If the function of rights would treat generalizations as if they were prioritized, then, as mentioned, the protection is aimed at expectations of conformity, rather than particular right holders. To properly use generalizations and particularizations in pro-animal-rights theories supports the propriety of the function of the rights those theories would defend.

The resolution approaches to rights conflicts

A conflict of rights takes place within the scope of rights and between various functions of rights. The prior analyses have also suggested that a conflict of rights has two underlying kinds of symmetries affecting the practical outcome.

First, there is the issue of moral symmetry, i.e. equal moral value. Second, there is the issue of practical symmetry, i.e. equal significance of rights. It is often pointed out that equal treatment is comparable treatment rather than identical treatment. This will soon be exemplified by discussing the practice of animal experimentation within biomedical research. Moral equality has been shown repeatedly to mean equal treatment in respect of fulfilling certain criteria. With these two symmetries in mind, equal treatment is the meaning of moral equality affected by the relative significance of rights.

Equality is a value, but it is also a basic structural element in a theory. The factors affecting the practical symmetry, sometimes turning it into an asymmetry, are based on such a structural element. Equality is preserved and made a tool for prioritization by associating it with properties of the right holders. The question ‘Who should we prioritize?’ can only be fairly answered by first answering the question ‘What properties P are relevant to compare when deciding upon the asymmetrical treatment of any two right holders?’ To be compared with others, according to one’s properties, P is to be treated equal to them. If the properties P are justified to be morally relevant properties to compare, then equal treatment is indeed an example of the meaning
of moral equality, even though P by definition creates a tendency to give the upper hand to a certain kind of right holder. The property of having the quality of P allows a place among equals (i.e. a place within the scope of rights), while having a greater quantity of P allows a tendency to be prioritized.

The three approaches to responding to rights conflicts are significantly different from each other. Regan presents priority rules. He is helpful and wants to provide rules to assist our judgments. Linzey instead shows trust in the judgments and voluntary acts of good people. People can be trusted to make right judgments as long as they develop their relationship with God. In the contractarian rationale, priority rules may be applied sometimes, but seemingly not on life-life conflicts. A rights conflict is an unfortunate event and must sometimes be dealt with by practical, and maybe unfortunate, methods.

The rights-conflict approach also reflects existential differences between the theories. Regan’s priority rules are based on harm that, to a certain extent, can be observed by all involved. It is the harm involving the concrete, biological body that is at stake. Regan relates to the present state of the world and even bases his intuitions on the present natures of creatures. The body is all about anatomy and physiology, behaviour about desires and beliefs. Recurring references to the principle of parsimony and scientific findings about animals suggest a positivist worldview that strives to perceive the world minimally. People are trusted enough to formulate and understand moral rules—it is moral agents that formulate rules with the help of their intuitions about nature. Moral agents, however, are not trusted enough to do so in particular situations where such rules are needed. There, their rationality might be blinded by the intensity of reality.

Linzey elaborates on a way for people to develop virtues, which in a conflict situation is, hopefully, developed enough to make the person choose self-sacrifice when necessary. Flesh is not viewed to be all about anatomy and physiology. Behaviour is not viewed to be all about desires and beliefs. Flesh is a kind of existence created by the Father, inspirted by the Holy Spirit, and delivered by Christ that entails an especially close relationship with God in accordance with the Bible, the lives of saints, and a particular strain of Christian tradition. Behaviour is constituted by a good character which should be developed in order to emancipate oneself and the creation. It presumes a thick and well-developed perception, awash with excessive meaning.
and non-empirical, non-falsifiable statements. There is no well-controlled preparation of theoretical priority rules to be applied to a practice in an attempt to control even that. Instead, the Christian moral agent is trusted to prepare itself throughout life to make the necessary decisions in a rights-conflict situation.

The contractarian stance takes equality so seriously it may end in amoralism or an alternative moral language when equality is unavoidably challenged. The moral rationale works a priori, before any empirical observations are useful and beyond particular religious doctrines. The self-interested body that is at stake is not concrete in the moment of the moral work, when the original position is used to conclude proper principles. It is a self rather than a body, an idea to be used to construe justice. No perception is necessary at all to conclude a rights principle; it is an internal cognitive matter, a theoretical mechanism. The reflective equilibrium brings the cognized rights principle into the light of the empirical world in order to test it, but it still originates in the flow of cognition. Society may be very definitely shaped according to such a principle, but it can only reach as far as the constituted institutions can. Rights conflicts that cannot be avoided by institutionalized prevention are per definition outside the reach of institutions. This rationale cannot grasp such rights conflicts and thus leaves the conflict to be dealt with by either amoral or alternative moral methods.

Hypothetical application of the theories

Rights conflicts were previously outlined as conflicting networks of Hohfeldian relations. The conflicting relational networks were suggested as changing in wave-like forms over time, as a result of institutional changes that resolve some, but not all, particular conflicts. It was also promised that there would be a methodological reduction of such conflicts. The principal rights conflict to eventually be used as an evaluative example is a pair of conflicting claim–duty relations, specifically concerning the right to life.

Principles to resolve rights conflicts have been outlined as either maximizing or non-maximizing principles. There is also the alternative to not resolving rights conflicts, using rights language in a more restricted manner. Rights would then be a diagnostic tool for moral
(and legal) conflicts, but they would not be possible to use to express the notion that there are situations where rights have varying significances.

Conflicts between rights to life will be used to hypothetically apply the theories in order to prepare an evaluation of the theories. Life–life conflicts are framed by the example of animal experimentation within biomedical research. The intention is not to say that animal experimentation is an absolute necessity to provide advanced health care. The intention is to frame a discussion on application by an institutionalized habit that includes weighing the life of a non-human being against the life of a human being.

Natural rights for animals and life–life conflicts

Regan develops a substantial approach to resolve rights conflicts. The maximizing miniride principle states that as few rights as possible should be overridden, given that the harm done to each involved individual right holder is equally serious. The non-maximizing worse-off principle applies to situations where the harm done to individual right holders differs. The principle claims that overriding rights should result in the least individual harm that must be inflicted. There are also special considerations that limit the scope of applying these principles. Such considerations include special agreements, taking voluntary risks, culpability, and close social relations.

Regan states an explicit view of life–life conflict between human and non-human right holders. He uses an example of a lifeboat for four individuals. There are five right holders that need the lifeboat. Four of the right holders are human beings, while the fifth right holder is a dog. Which four right holders ought to get into the lifeboat and which one may, for good reasons, be left behind? Regan contends that it is ‘our initial belief’ that the dog should be left in the water, and uses his rights theory with its standard prioritization approach to evaluate that initial belief.498

Say that any right holder that would be left in the water would eventually drown. According to Regan, death is a severe harm because it prevents all opportunities for satisfaction. The dog is argued to have fewer opportunities for satisfaction than any of the shipwrecked people to begin with. Death is a milder harm for the dog than it is for any

of the human right holders. By making use of the worse-off principle, Regan thus concludes that it is the dog that ought to be left in the water.499

He further points out that his reasoning also implies that the number of dogs that would be left to drown does not matter. The miniride principle is not applicable here. Be it an infinite number of drowning canine right holders, it is still right to let them drown in order to save the human right holder. The initial belief of leaving the dog behind is thus, according to Regan’s thinking, approved.500

To ever choose not to kill the dog, if that decision instead kills a human, would not only be against certain considered beliefs, it would be unequal and disrespectful. Regan argues that this outcome is not because the theory is speciesist.501 The canine right holder and the human right holders are obviously treated on equal terms in respect of them being harmed. It just happens to be the case that canine nature inherently offers less opportunity for satisfaction than human nature does. The main difference between how Regan treats the dog in the lifeboat example and how an explicitly speciesist theory would treat it is that Regan acknowledges the dog’s presence as a moral issue. Benign practical outcomes of taking non-humans into consideration may be clearer in less extreme cases.

Consider the case of animal experimentation instead. Regan claims that his theory means a general ban on the harmful experimentation on animals above the age of one.502 Biomedical research should be performed by alternative methods, for example using cell cultures and possibly young fetuses.503 Regan does not present any direct moral reasons for the wrongfulness of experimenting on animals between the age of a young fetus and a one-year-old. Rather, he claims that such experiments risk fostering a destructive attitude towards animals.504 Regan also suggests that some learning could be done by treating animals rather than experimenting on them.505

Regan argues using an altered version of the lifeboat example. This time the boat is large enough for all right holders. There is, however, a

499 Ibid. 324.
500 Ibid. 324f.
501 Ibid. 325.
502 Ibid. 397.
503 Ibid. 388, 391f.
504 Ibid. 391.
505 Ibid. 387.
human right holder with a degenerative neural disease. The disease can be treated, but the medicine must first be tested for toxicity. Regan argues that the dog should not be sacrificed because it would be treating it as if it were an instrument.\textsuperscript{506} The dog would have nothing to gain and all to lose. It could be argued, in addition, that laboratory animals, in contrast to human volunteers, do not and cannot choose to be treated as an instrument.

Regan’s claim that his theory would mean a complete ban on harmful animal experiments is, nevertheless, not actually consistent with his account of conflict-resolution approaches. He obviously does not view rights as absolute, given that he even develops an approach to resolve rights conflicts. Rights are then viewed to be possible to override. The worse-off principle states that rights can be overridden if it is done in order to avoid worse individual harm. Regan also claims that the death of a dog is a milder harm than the death of a human being. This must reasonably also mean that Regan should hold that the death of a human being in need of medical treatment is a worse harm than the death of a laboratory animal.

In the first version of the lifeboat example, Regan concludes that it would be right to sacrifice a million dogs for saving the lives of the human right holders. In the second version of the lifeboat example, Regan concludes that it would be wrong to sacrifice even one dog for the sake of treating a degenerative neural disease. The change in his conclusions makes sense if the disease in question is not lethal, albeit detrimental to the life quality. If, however, the disease were lethal, it must be concluded that the dog, and any number of additional dogs or other beings with inherently less opportunity for satisfaction than a human being afflicted with the disease, should be sacrificed if it can save the human being.

To be afflicted with a disease is an accident as much as it is to find oneself at risk of drowning in the middle of the sea. To leave the dog to drown is as much a conscious and moral choice as it is to use the dog in an experiment. The dog is as much an instrument for saving the lives of human beings in both cases. The only relevant difference between the two examples is that, in the second case, the dog becomes part of a problem it was not involved in to begin with. All five right holders were at risk of drowning in the first case, while only one is at risk in the second case.

\textsuperscript{506} Ibid. 385.
Regan’s point may then be that a right not to become involved in the problems of others is possible to deduce from the right to respectful treatment. Such a right seems fair in this case, given that the involvement in the problems of others is obviously harmful. This does not mean, though, that such a deduced right is absolute. Such a right, like any other right, would be weighed against the rights of others. The human right holder with the degenerative neural disease has a right to life, also deduced from the right to respectful treatment, and it is far from self-evident that a right not to become involved in the problems of others would have more significance than a right to life. Even the second version of the lifeboat example is a genuine rights conflict, and the weighing procedure must be performed.

Regan’s theory, if it is consistently applied, does not ban all harmful animal experiments, not even using adult animals. The theory, though, calls for a serious consideration and systematic and fair weighing of rights before performing the experiments.

Regan’s conflict-resolution approach would suggest that animal vivisection must be dismissed if the harm done to animals is worse than the harm that people would be left to experience if the animal experiments were not performed. Say that there would be no mild analgesics with which to treat relatively mild headaches. Regan’s worse-off principle would suggest saving the non-human animals and leaving people with their headaches. The animal experiments involved in developing those mild analgesics would mean the death of many animals, which is obviously a worse harm than the pain of a mild headache.

This reasoning uses the worse-off principle as the main principle to follow within the practice of animal experimentation. The miniride principle may have a role in some experiments, but it is associated with the problem of, for example, saying how badly harmed a human being should be in order for that harm to be comparable to the death of a non-human animal. The miniride principle is thus probably not applicable to the case of animal experimentation. This means that the number of involved animals, human and non-human, in experimentation is of no moral significance. What matters is the difference in individual harm between the different parts. This theory thus suggests a non-maximizing approach to life–life conflicts.

Relevant harm in such a weighing is, firstly, the harm inflicted upon the laboratory animal as a result of the experiment and, sec-
ondly, the harm that the human patient will suffer if no treatment is provided. The limit where killing non-human animals for the good of human beings is no longer permissible is defined by specifying cases where the harm to the animals being experimented upon is worse than the harm indirectly inflicted on people potentially cured by doing those experiments. As long as the ratio between the harm inflicted upon the laboratory animal and the harm avoided because the harm is caused is less than one, causing the harm is right (no matter to what extent it may be tragic).

So far, it has been assumed that the laboratory animal is a non-human animal, and the patient is a human patient. This is, however, no necessity, according to Regan’s theory (without necessarily adhering to his thoughts on applying his theory). Being a theory that questions speciesism, it should be possible to switch the roles between species when applying the theory. There are some interesting conclusions that can be drawn from trying to do so.

Imagine the first version of the lifeboat example again. There were four human right holders and one canine right holder. The dog, or a million dogs, would be left to drown according to Regan’s prioritization approach. Even the second version of the lifeboat example would have this outcome, especially if that degenerative neural disease were fatal. Also, it was pointed out that the non-speciesism of the theory in question may justify experimenting on certain human beings in order to develop treatment for the ailments of certain non-human animals.

Now, imagine a third version of the lifeboat example. Here, the species membership of those who represent laboratory animals is changed to human. There are four healthy adult human beings on a well-equipped, very large lifeboat. There is also a class of happily unsuspecting human school children.

One of the adult human beings falls fatally ill and the only cure is to drink very large amounts of human blood. Such a treatment would restore the ill person to normal. The eyes of the other three healthy adult human beings fall on the children. Should we kill the children in order to cure the ill person?

Although Regan’s own application of his theory does not say or imply this, the theory in itself actually may point to draining the blood from the children. It would be right to sacrifice the children if the children have less opportunity for satisfaction, i.e. less able to be
harmed by death, than the adult human being who fell ill. Such a condition is both possible and probable to fulfil.

The criteria for being a right holder/subject-of-a-life refer to certain physical and psychological properties. Those properties are necessary in order to be able to experience harm at all. They are properties that can harm a being in Regan’s sense. Anyone who has those properties should be considered a right holder. It is assumed in the example that the children have these properties and are thus right holders.

Opportunities for satisfaction are obviously the key property when weighing rights to life against each other according to Regan’s rationale. The level of opportunity for satisfaction is dependent on all kinds of capacities and abilities, not only those that make someone a right holder. It is necessary to have a narrow spectrum of capacities in order to be able to experience harm at all and thus be included as a right holder. It is necessary to have a wide spectrum of capacities in order to be greatly harmed by death.

It is then quite possible to claim that the children on the lifeboat should be sacrificed because they have less opportunity for satisfaction. All that must be done in order to do this is to show that they have less wide a spectrum of capacities with which to satisfy their preferences. It seems reasonable to claim that the capacities of children fit such a description. It could be argued that the children will develop a wider spectrum of capacities and that killing them would frustrate that future opportunity for satisfaction. Say, then, that the children are permanently and incurably disabled in such a way that their spectrum of capacities to satisfy their preferences will never be as broad as the spectrum of such capacities of an average human being. The children’s blood should then be drained for the ill person to drink, according to this rationale.

Furthermore, it is theoretically possible to conclude that the children should be sacrificed in order to provide medical treatment to non-human animals. The children, it could be argued, should be used as laboratory animals for developing a treatment for scrapie, a degenerative disease affecting the central nervous system of sheep. It just needs to be shown that the children used are permanently disabled to the extent that their opportunities for satisfaction are constantly fewer than the opportunities for satisfaction of a healthy adult sheep (that may develop scrapie). This usage of Regan’s thinking is surely not
intended by him and may be provocative, but it is a logically possible outcome of applying the theory.

There is a second interesting hypothetical consequence of applying Regan’s theory. The application of the theory is not completely unaffected by the species membership of the right holders involved. The logical possibility of sacrificing human beings for the sake of non-human beings signals a quite low relevance of the species membership. Species membership still has some relevance in this theory, though.

The anthropomorphic tendencies taken from analogies between human and non-human beings, with the psychology of human beings as a point of departure, affect the position of the limit where it is admissible to perform harmful and even lethal experiments on those less capable of having opportunities for satisfaction.

Consider the third version of the lifeboat again. It does not matter for the outcome of the weighing of rights whether the children were sheep, hens or of any other species. Members of other species than the human species inherently have a less developed capacity of having opportunities for satisfaction, or so it is presumed. Maybe the sense of tragedy and disgust would decrease by changing species, but not the practical outcome of weighing rights. Regan’s theory is not speciesist in this manner.

It does matter for the outcome, however, whether the adult counterparts are human or not. The outcome may change if the ill adult human person were an ill adult cow instead. It is not assumed that adult cows have more opportunity for satisfaction than a disabled child. The probability of not being obliged to kill the children would increase even more if the counterpart were an ill adult hen, although it still also depends on to what degree the children are incapable of having opportunities for satisfaction.

As long as there is a human being that is ill, there is no doubt whether to sacrifice permanently, severely disabled children, healthy adult mice, cows or members of any other species in order to cure the human being. Human beings, average adult human beings, are assumed to have the most opportunity for satisfaction and thus assumed to be most seriously harmed by death. This always prioritizes them when weighing rights. It is impossible for any right holder to trump the significance of the rights of the ill human right holder, at least as long as it is not a permanently, severely disabled human right holder.
Regan argues, in the first version of the lifeboat example, that human beings inherently have more opportunities for satisfaction than do other animals. This makes sense to argue within his rationale only because the rationale is based on an analogy between the psychology of human beings and certain non-human animals. There is a human psychological profile transferred by analogy to evolutionary and behaviourally similar non-human beings. This psychological profile is then used to define relevant harm. Relevant harm is then used to weigh rights to life. The originally human psychological profile is present throughout the theoretical accounts, but reemerges more clearly in connection with the resolution outcomes of rights conflicts. There is a tendency to prioritize average adult human beings.

Regan’s theory includes a system of resolving rights conflicts that is applicable to conflicts of rights to life. Animal experimentation may or may not be a suitable example of such conflicts. The theory suggests that some animal experimentation is admissible and even required even if the experiments were harmful, provided that they are really necessary.

The application of the theory in question has two logical possibilities that will be discussed further during the evaluation. First, it is logically possible to conclude obligations to sacrifice the lives of permanently, severely disabled human beings as, for example, laboratory animals. Second, it is not logically possible to conclude obligations to sacrifice the lives of average adult human beings for others.

Theocentric rights for animals and life–life conflicts

Linzey’s thinking offers more resistance against analyzing the approach to resolving rights conflicts than Regan’s theory. The view of rights conflicts and their resolution is less explicit and less substantial. Linzey’s elaborations on the role of humankind and his view of animals, however, still make it possible to analyze the hypothetical resolution of a life–life conflict, as exemplified by animal vivisection. It is clear from Linzey’s thinking that he does not consider any kind of maximizing approach to rights conflicts.

Linzey suggests that moral agents should relate to animals by way of a Generosity Paradigm. Generosity means a readiness to sacrifice oneself in order to save beings in a more vulnerable position. This clearly affects how Linzey’s thinking would resolve a rights conflict.
The notion of parasitism is also a guideline for determining which rights to override. Human instrumentalization of the creation is a basic wrong that must be rectified. If the rights of someone are at risk of being overridden because the right holder has been instrumentalized, then that circumstance is a reason for why the rights should not be overridden.

This rationale has a virtue-ethical stance on ethical theory. The case is, then, not about giving precise and universal rules to how to resolve conflicts of rights. Rather, it is about reforming society into a society that promotes the refinement of character.

The application of Linzey’s theory would mean encouraging generosity, condescension to weaker beings, and willingness for self-sacrifice. The idea would be that moral agents with such character can identify unavoidable conflicts and resolve them by letting their own rights be violated.

It is beyond a general description to say what this means in terms of actual cases. The virtue-ethical stance puts trust in the particular decisions made by the virtuous moral agent in the actual situation. The little practical meaning that can be predicted is about the character of the moral agent, and about the institutions that would encourage such a character. Nevertheless, it is still very much beyond the scope of this project to be able to pinpoint the precise kind of institutions that encourage generosity and self-sacrifice.

Various Christian churches have supported institutions encouraging or attempting to encourage the kind of character mentioned. The same can be said of a number of other well-organized, large-scale political and spiritual movements. Still, for moral agents to be encouraged to develop a generous, condescending personality (without turning into a moral elite that views itself as also condescending to other moral agents), there need to be larger reformations in society than merely increasing the number of Christian believers, other religions or, say, socialists.

The present economical system, for example, rewards self-interest and even ideologically presumes people to be, first and foremost, self-interested. To what extent can we keep the dominance of the present global economical system, while still pursuing Linzey’s ideal society? What would the necessary economical reforms do to the rest of society? The discussion here will only concern the institution of animal
experimentation, although the practical consequences, if Linzey’s theory were applied, go far beyond this discussion.

Consider a case where the purpose of animal experiments would be to develop another analgesic for mild headaches. The outcome of Linzey’s theory in this case correlates with the outcome of Regan’s theory. Regan’s worse-off principle would forbid such experiments, as would Linzey’s approach. While Regan’s thinking would suggest weighing harm done, Linzey’s strategy is quite different.

Linzey is explicitly for legislation against animal vivisection, but adds that he is adverse to the idea that laws would be enough.\textsuperscript{507} He believes, and his theology supports that notion, that animal vivisection is problematic because it involves parasitism—it instrumentalizes animals for the good of humankind.\textsuperscript{508} Linzey’s account says much about the role of humankind, but little about non-human beings. This is understandable given Linzey’s virtue-ethical stance, which presupposes a clear and elaborated view of humankind.

Linzey qualifies his standing further by stating that institutionalized animal vivisection is always wrong, while the ‘individual use of animals sometimes prompted by necessity’ is not necessarily wrong.\textsuperscript{509} The relevant difference, according to Linzey, is the intention.\textsuperscript{510} The institutionalization of animal experimentation signals a view of non-human animals as merely tools for human ends.\textsuperscript{511} Animal experimentation is thus viewed as wrong if performed because of parasitic intentions.

Animal experimentation should also be avoided because of the Generosity Paradigm. The situation of an animal experiment represents an extreme power imbalance. A caged, small, and sooner-or-later anaesthetised non-human is exposed to the will and actions of a cleverer human being trained at keeping the non-human under control.

According to the Generosity Paradigm, a human being in such a situation should condescend and ‘serve’. To serve the creation, in this case including a particular animal, could mean that the experimenter should enter its God-intended nature by assisting the animal to realize its God-intended nature. Such assistance could simply mean releasing the laboratory animal, or providing for it in a well-adapted but artifi-

\textsuperscript{507} Linzey, \textit{Animal Theology}, 111f.
\textsuperscript{508} Ibid. 107ff.
\textsuperscript{509} Ibid. 109f.
\textsuperscript{510} Ibid. 109.
\textsuperscript{511} Ibid.
cial environment. It could, however, also mean something else. It is not completely clear what would be the God-intended nature of various laboratory animals.

The former analysis of Linzey’s thinking accepted that there are some theological reasons to believe that treating animals in a God-intended manner at least does not include killing them or making them suffer. This gives a helpful, but far from complete picture of how animals should be treated. Writers who are less suspicious of using what Linzey calls ‘the creation’ as a source of appreciating moral action can, and often do, leave it to science to determine what is good for an animal. Linzey cannot choose this option because his perspective implies that science, at best, describes what the creation is, not what it ought to be.

The proposed ban on killing animals or making them suffer does correlate well with a prima facie ban on animal experimentation. It does not, however, correlate as clearly with a complete ban on animal experimentation, presuming that animal experimentation is indeed necessary in order to further health care.

Consider another kind of case of animal experimentation. Say that the purpose of a series of animal experiments was to find a cure for malaria and that there were good reasons to expect that the experiments would add significantly to achieve that purpose. Also, assume that there are no alternative methods to do the research, or any reason to believe that alternative methods could be developed.

Malaria is just one of many diseases that not only tends to affect typical groups of vulnerable people (children in socio-economically deprived families and countries), but also make this group even more vulnerable. Malaria victims, especially children, are overcome for days or weeks with high fever, often unable to perform the simplest feats, and are close to death and sometimes actually pass away.

The choice at hand is then between two quite vulnerable groups of beings. Should the animal experiments be performed in a well-planned manner with a clear purpose of developing a malaria vaccine, or should one rather save the animals and leave the children to suffer and/or die?

The notion of parasitism can assist in the weighing of rights by identifying a relevant difference. The institution of animal experiments is an example of parasitism because it instrumentalizes animals
for the human good. Malaria victims cannot be said to be instrumentalized per se.

Malaria is a natural evil, at least from the perspective of the malaria-infected people. It is not an evil intended by moral agents. No one has invented malaria in order to make money, cure other diseases or increase the welfare for themselves or someone else.\footnote{It might be argued that this statement is false, or at least problematic. Certain theories of medical history suggest the rise of malaria, influenza, and many other diseases among human beings to correlate with the establishment of the farm-based society where people started to live closer to animals. This kind of society, as compared to the hunter-gatherer society, increases people’s exposure to animal-borne diseases (including malaria). If farm-based societies are viewed to be for the benefit of humankind at the expense of someone else, Linzey’s theory would suggest that malaria victims ought to be viewed as effects of parasitism. Such an argument makes a fair point about the consequences of civilization. On the other hand, it may be viewed as a sign of strong argumentation if it is necessary to revert to primitivist arguments in order to point out a weakness.} This makes the case stronger for overriding the rights of the ill children. Parasitism in all its forms ought to be eliminated in order to re-establish God’s kingdom.

It is not self-evident that the children should be sacrificed. Natural evils, like malaria, are the fallen aspect of the creation; maladies that should be counteracted. Moral agents should develop their character even by facing natural evils. But would it not be more detrimental to the virtuous character to actively instrumentalize right holders than to passively leave natural evils to have their effect? The answer is, again, not self-evident, but the children are clearly in danger of having their rights overridden.

Linzey admits that the Generosity Paradigm will ‘cost human beings’.\footnote{Linzey, \textit{Animal Theology}, 44.} This may be mistaken to further the case to override the rights of the children. The quote, however, does not refer to human children. Linzey includes both children and non-human animals as typically vulnerable beings.\footnote{Ibid. 36f., 40.} Also, the servants of creation are reasonably healthy adult human beings because of the demand for moral agency. Linzey should then mean that the Generosity Paradigm will cost healthy adult human beings, not children.

Should we then sacrifice the malaria victims or the animals? The Generosity Paradigm points to identifying asymmetrical power relations. This example is given in a way where both the children and the
laboratory animals are equally exposed to the powers of the moral agents. There is no relevant difference between the level of exposure of a malaria-stricken child and a laboratory animal. Nor do laboratory animals or malaria-stricken children have any presupposed asymmetric power relations, entailing that one of the groups should condescend (and sacrifice itself for) the other. All involved power relations, though, are strongly asymmetrical with the moral agents making the choice.

This would mean that the moral agents, with their hopefully developed graciousness, see that they are actually the ones with power over both children and non-human animals, and that they are at risk of using their power parasitically. No matter whether the moral agents were laboratory technicians or politicians, making the choice at a societal level, they should realize using their good virtue that the choice should not be made. Instead, the outcome of weighing laboratory animals against victimized children should be that moral agents ought to condescend and volunteer for medical experiments.

It is not necessarily the technicians, or the politicians, who should volunteer. The generosity could be systematized as a volunteer programme, analogous to the blood donation programmes. Any arrangement would be acceptable as long as the idea was that independent moral agents volunteer as experimentees in order to condescend asymmetrical power relations both to laboratory animals and to patients in need.

Contractarian rights for animals and life–life conflicts
The resolution approach to a rights conflict that was reconstructed from Rowlands’s thinking is based on the difference principle and the underlying neo-Rawlsian rationale. The hypothetical application is, of course, no less a reconstruction than the conflict-resolution approach, and it will thus not be possible to use Rowlands’s writings in this procedure like the other authors’ texts were used. Also, in contrast to the approaches of both Regan and Linzey, this approach may conclude that some rights conflicts are dilemmas that cannot be solved within the limits of rights language.

The difference principle applied to the animal issue retains its maximin character, while changing the notion of who it is to be applied to. A right choice, for example in the case of a rights conflict, is
a choice that forms and strengthens a society where the elk can pursue an elk-like plan of life, the pig can pursue a pig-like plan of life, and so on—and do so in a manner so that the beings that have most trouble fulfilling their particular plan of life have as little trouble as possible. This is a non-maximizing approach to rights conflicts. The number of rights or right holders is irrelevant.

Intuitions are allowed to assist in making the choice overriding one set of rights, but only under certain restrictions. Relevant intuitions should conform to principles of weighing goods, lexical orders of goods, and an evaluation of the situation from the perspective of the least advantaged.

First, consider the case of animal experiments being done in order to develop some new brand of a slightly more efficient, mild analgesic. The question that the difference principle begs in this case is: Is it right to have a societal structure that supports the situation where people’s plans of life are left to be potentially slightly restricted because of the lack of a slightly more efficient pill for mild pains and aches even if it means to terminally violate the plans of life of non-humans? Or is it right to instead support an institutional arrangement that does not support this even if it would leave people to use presently existing analgesics or do something about the cause of the pain or even persevere? The answer to the question is obvious enough to be trivial, but the rationale behind it, summed up as the difference principle, is efficient even for more complex matters.

The principle makes the choice to be between completely violating the plan of life of non-humans or to affect human plans of life in some hardly detectable way. It thus clarifies the conflict as really being a non-conflict. To violate a plan of life is to hinder the development of the complexity of capacities that the used non-humans could have. It is to refuse these beings the goods, the support they need to be themselves and to be better at being themselves. This is being weighed against a hardly detectable delay of realizing a hardly detectable part of the potential of a human person with a mild, temporary headache. The case for the human person does not have any relevant weight at all.

The difference principle can also identify and explicate conflicts. Consider a case where, with the best factual background, it is decided that a malaria vaccine must be tested on non-humans in order to check for both efficiency and side-effects. Even if decisions of this kind are
constantly and flagrantly taken, the non-speciesist application of the difference principle may identify it as a conflict. The human being with malaria, say that it is dying of a lethal strain of malaria, loses all its opportunities to fulfil a plan of life. The non-humans used in the experiments will do the same, assuming that they are given the usual lethal post-experiment treatment. In this respect, the two deaths will weigh equally.

Regan’s and Linzey’s resolution approaches to rights conflicts can also identify rights conflicts, and thus assist in making a distinction between genuine conflicts and non-conflicts. The reconstructed neo-Rawlsian approach to rights conflicts is not more elaborate in this way than the other approaches. It is, however, more important to point out this function of the approach in this instance because it is used more intentionally. The actual solving of a rights conflict is secondary and may even be deemed impossible.

The plans of life of the person with malaria and the non-human used in a lethal experiment involve the realization of their capacities. The point of the malaria-vaccine example is to force this rationale into taking a practical stand. Either the human plan of life is frustrated, or the non-human plan of life is frustrated. This involves the frustration of capacity potentials.

It is, however, the frustration of potentials from the perspective of the particular individual with the capacities or the potential for them that is relevant. Is it worse for a human being to lose its plan of life from the perspective of that human being, or is it worse for a mouse to lose its plan of life from a murine perspective? Should people strive for an institutional arrangement that bans this kind of animal experiment or should rather the present institutional arrangement be kept?

The difference principle and the rationale supporting it assist in formalizing the conflict further. If people chose to test the vaccine on non-humans and thus preserve the institutions and make the utilized non-humans the worst off, would they be ‘more worst off’ than the human malaria victims if people were to choose to ban such animal experiments?

The difference principle not only helps to make the questions reflect the conflict more precisely, but it also reveals an important aspect of this kind of conflict, namely that it is insolvable. It is not the case that the elimination of a murine plan of life, from a murine perspective, weighs less or more than the human one does from a human per-
spective. At least, the lack of information and method of retrieving such information should make us presume that such elimination matters equally to both groups. One must not take sides in such a sensitive matter without enough information. The usefulness of the difference principle lies in that it effectively states that life–life conflicts are something that must be avoided.

If the societal structure supports the notion and habit that it is necessary to systematically eliminate the plans of life of some beings in order to guarantee the continuation of the plans of life of other beings, then the society must be reformed. Such a structure presents a moral wrong because it forces us all into a ‘we-or-them’ mentality that cannot be morally solved. Basically, it makes people violate the lives of the less powerful because of a lack of education and habit of seeing the alternatives. The benign society, instead, promotes alternative choices that disrupt the war-like, we-or-them rationale. Animal experimentation may be allowed, but not at the expense of lives.

The meaning of avoiding life–life conflicts could be understood differently. Human influence over medical experiments is complete. Such procedures are a human invention and people have the potential to make them stop. The prevalence of malaria and other diseases is not directly because of human acts. If malaria and other diseases are not due to human acts, then people can avoid life–life conflicts by stopping terminal diseases. People can avoid life–life conflicts that human beings would be responsible for through active acts by no longer doing animal experimentation. This would, however, arbitrarily exclude the relevance of passive acts.

Another option is to look closer at alternative methods. Malaria is an especially suitable example of this. Today, malaria is taken to be a tropical disease. Originally, though, malaria was prevalent throughout Europe. It was only during the last century that Italy had malaria under control. The eradication of malaria was not due to any pharmaceutical treatment or any large-scale vaccination programme. Malaria cases decreased as the socio-economies of European countries increased. Malaria is a social problem as much as a physiological one. Like any other social problem, malaria can be treated with fair socio-economical intervention. A societal structure that would promote such

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515 This is true enough if various conspiracy theories are excluded, as well as the view that the Neolithic revolution would be avoidable.
a solution of the malaria problem before allowing animal experiments is a better society, according to the present rationale, than a society that would reverse the priority.

This approach may not be true for all diseases. There are lethal and congenital diseases that apparently do not have any social cause. Various heart failures and metabolic disorders belong to this category, but also the well-known condition of cystic fibrosis. Avoiding life–life conflicts by alternative methods in these cases would mean turning to alternative biochemical, molecular, and cell-biological methods as well as non-lethal animal experimentation. This also means that the degree to which life–life conflicts can be avoided in these cases depends on technical expertise and the willingness to develop alternative methods.

The rationale of the difference principle and goodness as rationality explicate life–life conflicts as an insolvable problem more strongly than the other rationales. This approach to such conflicts does not, like Regan, argue that deaths may be of differing levels of harm. Neither does it, like Linzey, contend that certain roles involve self-sacrifice. Instead, it is more persistent in holding that life–life conflicts must be avoided at all costs. Although this may seem quite impractical, the benefit is that the theoretical pressure on avoiding life–life conflicts increases. There is no good, devised way out of this kind of conflict.

No matter to what extent we can find alternatives to the systematized, technical killing of non-humans in order to save humans for a better life, the rationale of justice of fairness suggests or can be used to suggest that forcing people into making that kind of choice is simply wrong because there is no good solution—it simply turns into an issue of who has the greatest power.

The fact that biomedical researchers and sponsors of biomedical research today are trained to uphold a system where valid, obvious life–life conflicts are blatantly ignored as non-existent becomes even more disturbing and wrong with the fact that there is no large-scale institutional attempt at finding alternatives. The amount of money that goes to developing alternative biomedical methods is basically nil when compared to the total investments of biomedical research. To prevent diseases non-pharmaceutical methods are used, but obviously not efficient enough. This rationale can explicate that the continuation of animal experiments and other examples of life–life conflicts promotes
a society where power, oppression, and dominance are the only tools to be used in order to resolve conflicts.

Nevertheless, surely there is still a need for approaching rights conflicts rationally. There is always a limit to the costs that can be invested in preventing rights conflicts. Also, changes in institutions may cause as many conflicts as they may resolve, or prevent.\textsuperscript{516} Furthermore, even if life–life conflicts could be entirely prevented, which they most probably cannot, there would be numerous other conflicts, albeit with less absolute outcomes.

The neo-Rawlsian rationale offers some tools for approaching persistent rights conflicts. Intuitions are allowed to be used under the mentioned circumstances. It was suggested in the previous analysis of the neo-Rawlsian conflict approach that restrictions of lexical orders do not apply to life–life conflicts as there can be no hierarchy between the same good. Also, taking the perspective of the least advantaged is not helpful in life–life conflicts. Being killed is similarly bad for each individual, from the perspective of each individual.

The only thing that would restrict, and thus also assist, an intuitive resolution of a rights conflict is then rational weighing principles. There may be several principles of weighing that can be concluded from the original position.

The good in question is, nevertheless, life from the perspective of the living being. It is hard to see which weighing principle would manage to create a hierarchy between different lives and still keep to the impartial rationality of the original position. No matter which gen- ial theoretical device that may be construed as a weighing principle, the issue at hand still comes down to forming an objective hierarchy of life.

No references to reason or other typically human capability may be made because of the non-speciesist character the theory should have. No references to the higher intensity of experiences or satisfaction or other subjective phenomena may be made because the principle should take each individual perspective as being its own absolute. It is quite unclear what could make a life less worth another life if the perspective is shifting properly.

Intuitions might then have to be used in life–life conflicts without any qualifications or refinements. This, however, is not allowed in this

rationale. There must be some sort of rational guideline with which to refine intuitions.

The conclusion is then to accept that the reconstructed neo-Rawlsian approach to rights conflicts cannot assist in life–life conflicts. The rationale approves of people’s intuitive response to such conflicts, but seemingly fails to offer a way to refine or restrict intuitions. To leave life–life conflicts between human and non-human beings to be determined by raw human intuitions is not enough in order to secure justice in the outcome of such conflicts.

Another conclusion is more implied. The refusal to resolve life–life conflicts by this rationale can also be understood as an invitation to use alternative moral languages or amoral approaches (tossing a coin) to resolve persistent conflicts. Rights language would then only describe part of the moral sphere, and the usage of rights language ends at the point of persistent rights conflicts.

<table>
<thead>
<tr>
<th>Biomedical trials involving animals for curing mild health problems</th>
<th>Biomedical trials involving animals for curing lethal diseases</th>
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<tbody>
<tr>
<td><strong>Tom Regan</strong></td>
<td>Wrong under any circumstances</td>
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<tr>
<td><strong>Andrew Linzey</strong></td>
<td>Wrong under any circumstances</td>
</tr>
<tr>
<td><strong>Neo-Rawlsian</strong></td>
<td>Wrong under any circumstances</td>
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Table 2: **Summary of the results from applying the theories to a conflict of right to life.** Animal experimentation is used as an example. The conditions are, realistic or not, that the life–life conflict cannot be prevented or avoided.

The differences between the hypothetical outcomes can be traced back to the theoretical backgrounds and justificatory approaches. This is probably most clear regarding how the view of the nature of the right holder affects both justification and the hypothetical outcome of the theory.
Regan promotes the notion that there is something both general and relevant in the nature of all right holders. This comes through when applying the theory as a sliding scale of the ability of having harm inflicted to which all right holders are compared. The arguments by analogy for a certain kind of animal nature, starting with the nature of adult human beings, furthermore, make that sliding scale give priority to adult human beings.

Linzey elaborates on a view where the nature of the right holder is understood in spiritual and specifically Christian terms. Christian doctrines are used to show that there is a significant difference between the spiritual role of adult human beings and other beings. Adult human beings are supposed to be the servants of the creation, developing the virtue of generosity and self-sacrifice. This makes the priority to be given to vulnerable beings.

Rowlands argues for a neo-Rawlsian justification of animal rights. The abstract approach to justification leaves the nature of the right holder with minimal general content, and with a great focus on the particularity of each right holder. In conflict situations, this makes the resolution of the conflict hard or impossible, especially when the conflicting goods are of the same kind.

There is nothing surprising about the association between background beliefs, justification, and the outcome of the hypothetical application. Such an association is assumed in the methodological features of the analysis. The assumption is based on the notion that a theory should be applicable, for example, to moral conflicts in order to be a good theory.

A rights-based theory defending animal rights is expected to do more than only be applicable. The outcome of a hypothetical application, hopefully reflecting the relevant elements of a real application, should show a proper usage of rights-based theories. There is thus an evaluative intention with the hypothetical application.

Evaluating the theories and their functions

The accounts and approaches of each theorist have their differences, and some common points. The differences reflect the pros and cons of the theories, at least to the extent that the differences are evaluated.
The evaluative apparatus has been previously described. The evaluative criteria are intersubjectivity, applicability, and proper function. Intersubjectivity means in this case intersubjectively understandable and challengeable arguments. Applicability means that the theories should be possible to apply to a typical society that accepts rights language as a basic. Proper function is meant to make the aim of the applicability criterion more precise. Each criterion is necessary, but not sufficient, for the evaluation.

The degree of intersubjectivity has been implicitly tested by performing the former analyses. The very possibility of performing the analyses of the theories suggests that they are mainly intersubjective, understandable, and challengeable. Exceptions are noted below.

Applicability has also been tested implicitly throughout the analyses that prepared for the hypothetical application, and explicitly by the hypothetical applications. The hypothetical outcomes raised concerns about the applicability of all theories. Proper function is supposed to assist in pinpointing these concerns.

Proper function has not been tested implicitly in the former analyses, although it has left some traces in the terminology. The criterion of proper function is the focal point of the evaluation in question, making a distinction between a right and wrong outcome.

A proper function of x is for x to perform well enough in the environment in which x has been designed to function. A rights-based theory should perform well enough in the ‘environment’ of a democratic society in order to function properly.

This means, among other things, that the theory should suggest rights that consistently protect the goods of exposed beings. A reason for this, for those to whom the intuitive force is not enough, is that rights holders are meant to be equals. The inequality in physical and social powers would be counteracted by granting exposed beings, i.e. beings with less physical and social powers, extra moral powers.

Furthermore, the moral force of a functional flaw, and thus the reasonableness of the criterion of proper function, can be imagined by considering the practical meaning that a flawed function would result in. The seriousness of a flawed protective function is that it is equivalent to arbitrarily, unjustly, irrelevantly ripping apart the body of someone unable to defend itself. The experiences of doing wrong when arbitrarily violating the body of someone who cannot defend itself also justify this evaluation approach.
The language used here may be mechanistic and thus unable to express the full depth and extent of the body-to-body relations that are involved in the application of these theories. The functionalist approach may be minimalist and may sometimes peel off a bit too many metaphysical complications. The purpose is, however, to see if the theories can at least do their most important task, namely to justly protect the integrity of the bodies of exposed right holders. If they cannot even function properly, then further theoretical problems are pointless discussing, given that the discussion is not about how to restore the function.

The aim of the hypothetical application was to prepare an evaluation of the theories. Not all outcomes are discussed or evaluated. Each theory may have intuitively quite reasonable and fair outcomes in most everyday cases. The selected outcomes are problematic aspects that are suitable to discuss when the aim is to test the theories. These outcomes of the hypothetical application of theories are summarized in Table 2.

The natural-rights approach

The outcome of Regan’s theory reflects the fact that, with life–life conflicts, the theory prioritizes right holders presumably more able to be harmed by death. The theory had two possible outcomes that raised some concerns. It was logically possible to sacrifice disabled children for the sake of more capable beings, while it was not logically possible to sacrifice adult human beings for the sake of anyone. These two outcomes are also explications of two main problems with Regan’s thinking. Both problems have to do with the analogies that underlie the justification of rights. The problems result from the analogies originating in a psychological profile at which average adult human beings excel. This is anthropomorphism, but anthropomorphism that is conveyed by references to the most capable.

Unsophisticated speciesism states that human beings, because they are human, have absolute inherent moral value in relation to other species. A sophisticated, notably Kantian, kind of speciesism contends that a capability (for example moral agency) claimed to be essentially human is a foundation for a uniquely human inherent moral value. Justificatory attempts of such speciesisms are characterized by complete anthropomorphism of moral concepts. Human goods are as-
sumed or argued to be all the goods there can be. Right acts towards human beings are assumed or argued to be all the right acts there can be. The granting of inherent value exclusively to human beings is then quite expected. There is no terminology to grant other beings than human beings any kind of moral value.

In contrast, Regan has a sophisticated terminology to grant inherent value to more beings than just human beings. The anthropomorphism is surely not intended, and it does not result in any of the mentioned speciesisms. It is doubtful whether Regan’s theory at all can be said to have speciesist tendencies.

If it is a kind of speciesism, it is a quite subtle speciesism. It is present with an increased significance of characteristically, but not uniquely human capacities, namely the capacities of having a well-developed autonomy, being able to develop and pursue a large number of preferences, as well as being able to take great satisfaction in such activity.

This subtle would-be speciesism differs from more common speciesisms in at least three ways. Firstly, the pre-eminence of human beings is not explicitly made. Actually, it is probably not at all intended. Secondly, the pre-eminence of human beings is not based on the notion of inherent value, but on practical priority. All subjects-of-a-life are equal, but certain human beings are always in priority in conflict situations. Thirdly, not all human beings are pre-eminent. Only adult human beings are permanently prioritized, although this is because of their human descent. There are thus some relevant differences between this lingering speciesism and the other speciesisms.

Still, there is a point in the theoretical account, a point that is important for the application of the theory, where speciesist expectations appear. The first version of the lifeboat example is a tool to explain an intuition that says that a dog should be sacrificed for the sake of a human being. The reason for the example is to explain the reason-ability of the intuition in question by using Regan’s theory as opposed to deferring to the most speciesist explanation. The human being in the raw intuition is qualified as a normal adult, but there are no further qualifications. Regan never seems to consider whether the intuition may be completely mistaken.

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It could be argued, however, that the reason why adult human beings are in priority is not because of their species membership, but only because of their well-developed ability to have harm inflicted by death. This is indeed argued by Regan. Then the reference to species would only be a short cut for an underlying reference to the ability to have harm inflicted by death.

This objection, however, would assume that Regan’s notion of harm is independent of the property of species membership. This can be shown to be wrong by returning to the anthropomorphic tendencies of the analogy-based justification.

Anthropomorphism is the tendency to grant human character to non-human beings. Anthropomorphism, as was earlier pointed out, results from analogies made between human psychology and the psychology of other beings. Those analogies are confirmed by further analogies, for example between the wrong in harming moral agents and the wrong in harming all subjects-of-a-life. The analogies are channels through which a human standard of harm has been transferred to all right holders.

The justification in this rationale is made to use natural properties as a lever to see beyond our species identity. Consciousness and the ability to have preferences are such natural properties. Consciousness, however, is the natural property where moral agents (average adult human beings) excel over other beings. To associate consciousness and preferences with harm to the degree that the ability to have harm inflicted is understood to require consciousness and the ability to have preferences, and to use harm as a key concept in an analogy that extends the scope of rights to non-moral agents, is to create an expectation for those non-moral agents to be like healthy adult human beings in respect of having a well-developed consciousness and ability to have preferences.

The moral relevance of avoiding ‘harm’ is self-evident or, as Regan expresses it, intuitively given. The term is basically synonymous with physical evil.\textsuperscript{519} If the justification were fuelled by unqualified ‘harm’, then the definition of the right holder would be extended to anything that could be inflicted by some kind of physical evil. The protective function would be kept flexible to focus on each right holder’s particular vulnerabilities to evil treatment.

In Regan’s thinking, the justification contains a qualified harm. Relevant harm is about frustrated preferences, implying consciousness. The analogies extend the qualification to the protective function which thus acquires tendencies to protect expectations of having preferences, rather than the right holders themselves. The consequence is the absolute priority, in practical situations, of normal adult human beings.

The term speciesism may thus be used for this tendency of Regan’s theory, albeit it is not a traditional speciesism. The intuitions suggesting priority of the lives of normal adult human beings underlying the lifeboat example are indeed explained by reference to the notion of harm of death. The notion of harm is, however, defined anthropomorphically by references to a characteristically, but not uniquely, human psychology.

The fact that a pro-animal-rights theory has underlying speciesist expectations for animals is a noteworthy flaw because such theories are supposed to negate speciesist prejudices. Even though putting species membership (or any other natural property) as a condition for being a right holder is quite allowable in naturalist rationales, as long as good reasons to do so are provided, doing so in a pro-animal-rights theory is surprising considering the purpose of such a theory.

The anthropomorphic expectations are not, however, self-evidently a flaw in the perspective of the evaluative criteria. Intersubjectivity, applicability, and proper function are not necessarily contradicting anthropomorphism, or speciesism for that matter.

Regan does provide clearly understandable reasons, mainly arguments by analogy, for his claims about the nature of the right holder. This is enough to meet the present requirement for intersubjectivity. The claims made about the animal nature may or may not be true, but there are understandable reasons given for the claims and that is enough for this particular study.

The applicability, however, is flawed. The anthropomorphic expectations suggest a view of the right holder that does not correlate very well with the actual beings that are supposed to be granted rights. More animals than human animals are included in Regan’s rationale, but are, within the same reasoning, reminded that their lives are less significant. The result is that the theory is actually applied to another kind of being than the non-human animals that are supposed to be protected. The theory is applied to a kind of being that should be hu-
man, but is not human—a kind of being that is hard to imagine even existing.

This flaw could, of course, be argued to only be relevant for certain unconvincing assumptions. For example, the reasonableness of the great focus on respecting the particularity of each right-holding animal may be as hard to show intersubjectively as the opposite.

It could also be argued that the interpretation of the theory is mistaken in the sense that a high degree of consciousness and ability to have preferences is relevant for reasons that disregard species membership. The particularities of non-human animals have less significance because of the more significant evil of more intense dissatisfaction. Pointing at the arguments using analogy only suggests a possible mechanism for creating anthropomorphic expectations. It does not show that this is actually what has happened in Regan’s line of argumentation.

Anthropomorphic expectations do not constitute a problem in themselves in terms of proper function. Regan’s pro-animal-rights theory justifies animal rights and equal inherent value for all animals, provided that his arguments and underlying rationale are acceptable. The view of animals is thus changed to a view where animals have rights. Granting absolute (practical) priority to normal adult human beings is not necessarily contradicting a function to protect the vulnerable ones against powerful, potential aggressors. There is, however, a clear association, in Regan’s thinking, between granting absolute priority to normal adult human beings and a disruption of the proper function of the theory.

The biased concept of harm significantly impedes, in more than one way, the function of rights. The outcome of the hypothetical application also suggested that disabled human children should be sacrificed for more capable beings. This was argued to be because permanently, seriously disabled human children may fit the minimal profile of a subject-of-a-life, thus being granted rights, while not having any more ability than just that for opportunities for satisfaction. Such children
would constantly not be prioritized, no matter whether their rights to life would be weighed against dogs or against average adult human beings.

The children would not be constantly neglected because of their species membership, but because they are not capable of having very many opportunities for satisfaction. This hypothetical outcome is thus not because of some speciesism. It is, however, because of the same reason that speciesist expectations creep into the view of animals. The analogies are not only starting in the psychology of human beings, but in their ‘normal’ psychology. There are further analogies starting in the nature of moral agents. Moral agents are typically human beings, but they are, furthermore, adult and average in the sense that they are healthy.

The dominance of the perspective of the average adult human being thus not only introduces some surprising elements of speciesism, occurring by hypothetical application. It also introduces a bias towards giving priority to the most capable. This tendency is more explicitly formulated than the speciesist expectations. The worse-off principle quantifies harm and makes it commensurable among individuals, even crossing species borders. Simultaneously and implicitly, the ability to have harm inflicted is quantified and made commensurable. The practical effect is that right holders are ordered by the number of opportunities for satisfaction.

The hierarchy is not one of inherent value, but one of practical priority. It is thus not the kind of perfectionism that Regan argues against, which would make a hierarchy of inherent value. A hierarchy of practical priority is not necessarily a problem. On the contrary, the point of making such a priority is to assist the resolution of rights conflicts while respecting the value of equality. Regan’s suggestion of a basis for such a hierarchy does not, however, correlate very well with the proper function of a rights-based theory.

The function is to constantly protect the more capable at the expense of the less capable. The rights of the more capable beings acquire a higher significance in situations where the rights to life conflict. Capabilities are powers to perform something. This means that the function of rights in Regan’s theory systematically protects the more powerful at the expense of the less powerful.

This is diametrically opposed to the proper function of a rights-based theory. It was shown in the hypothetical application that such
The theocentric approach

Linzey promotes religious doctrines in order to provide a tool for people to develop their character and emancipate their relationship with God. Generosity, condescension, and self-sacrifice are key values. These values practically translate into an expectation that moral agents should volunteer as experimentees when hypothetically applied to the example of animal experimentation. Adult human beings are asked to volunteer as experimentees today as well. The application of Linzey’s thinking would, however, ask them to volunteer as experimentees instead of non-human animals. This would expose the human experimentees to higher risks of harm and death.

There are some immediate political problems with Linzey’s theology and especially the hypothetical, practical outcome in question. Not only will it be hard to find enough support in a secularized liberal democracy for the idea of systematizing martyrdom, it also contradicts the principles of liberal democracy. An institution of martyrdom must be said to violate the idea of a secular state and freedom of religion.

Furthermore, the number of unfalsifiable statements with significant factual claims contained in Linzey’s theology is a major problem if they are to be used to argue for a generally applicable conduct throughout a democracy. Rights language is supposed to be applied generally. Factual statements that are unable to be generally confirmed cannot be generally accepted, questioned or even talked about in a meaningful sense. This is not proper as a basis for democratic institutions, given the dialogical and public character of democratic decisions. Legislation would be impossible without transforming society into something similar to a theocracy.

Linzey does not show how rights language would or even could be applied to the kind of theocentric societal structure that is implied in

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520 If someone were to sacrifice one’s life in order to develop a malaria treatment and use Linzey’s theology as an explanation, the sacrifice could very well be understood as a sacrifice for their faith.
his thinking. It is quite questionable that rights are meaningful expressions of justice in such a society. This conclusion, however, assumes that Linzey has in mind to explicitly establish positive animal rights in the legal institutions.

An alternative, which may be the form that Linzey has in mind, could be to promote positive animal rights as conventional rights, and only arguing to legislate the negative rights. Legislation would then follow some minimal notion of liberal and democratic tradition, allowing people to volunteer as experimentees. There would be no legislation on the positive aspects of the rights, for example a government agency of martyrdom. A church could then act as an institution to realize the positive aspects of theocentric animal rights. Such an arrangement may be possible to realize, but there would also be some worries.

Biomedical experiments would then be performed on a certain kind of Christian, but not on people from other religions or who are nonreligious. The Church of Martyrdom would surely be joined, given that membership is voluntary, by a special kind of people, people with great empathy and a lack of self-preservation. Such association between experimentees and a strongly demarcated class of citizen would be created because of the lack of general legislation of the positive aspects, and it could easily be generated without assuming any misconduct of the church or infiltration of people with questionable interests in medicine or pharmacy. It is not necessarily the case that the created class of citizen would be characterized by an exposition when faced with the overwhelming powers of others. But, considering the commercial interests that underlie much pharmaceutical development or the strong but possibly misguided goodwill underlying non-commercial biomedical research, there are certainly good reasons to worry that the Church of Martyrdom would add to a dysfunction of the protection of right holders.

These worries are no more than worries, though. Linzey’s suggestion for how to reform the relationship with animals may be arranged in a manner that would be efficient and fair for all involved, albeit he does not discuss the characteristics of such an arrangement. There are no problems that completely invalidate the function of Linzey’s theory, given that its application is properly restricted. There are, however, yet more definite problems with the function of the suggested rights.
In contrast to Regan’s theory, Linzey’s rationale clearly attempts to protect the more vulnerable beings rather than the more capable ones. The sacrifice that volunteering moral agents are expected to make is out of a concern for laboratory animals as a powerless and vulnerable group of beings. The function of rights thus seems to be proper.

The problem with Linzey’s thinking can, though, be identified by looking at the view of adult human beings. There is much effort to construe a new view of moral agents and their role in creation. This reformation of the view of the role of moral agents includes the notion that adult human beings, moral agents, are always supposed to be the ones who should condescend; they are always supposed to be the most powerful beings in relation to amoral agents (certain non-human animals and children). Linzey thus suggests a fixed and general notion of the role of healthy adult human beings.

Healthy adult human beings clearly have the upper hand considering the power of moral agency and general cognition. This gives moral agents the power to constitute the institutions to, for example, give animals rights, and to take them away. Clearly, this is a power advantage that can never be taken over by amoral agents as long as organized society exists.

Rights conflicts are, however, particular situations within the constituted society. Excellent cognitive or moral skills are not always enough to be the most powerful part in a particular life–life conflict. A non-human, right-holding counterpart could surpass a healthy adult human in a number of other abilities, for example involving speed and strength. The particular conflict situation could be within the geographic area which is under the jurisdiction of legal institutions, but outside that of the police force or other agents that are supposed to uphold the laws.

Imagine a situation where legal institutions have been constituted that grant animal rights according to Linzey’s theory. An adult human being takes a walk in the forest in this imagined society. The person suddenly finds himself between a bear cub and the mother bear. The mother bear instinctively attacks the human being, believing that it would protect her cub. They both run towards a nearby road. A car stops in the road and a hunter with a rifle steps out of the car and aims at the bear, and shoots. If Linzey’s view of moral agents were to be realized in this particular situation, the Generosity Paradigm would say that the hunted person should throw himself in front of the bear in
order to stop the bullet. Clearly, this would mean that the hunted person acts based on a seriously wrongful assessment of the power relations in the situation at hand.

The hunter should actually be viewed as a person who would be trying to uphold the rights of the vulnerable one, not the rights of the most powerful one. The hunted person should be saved. The bear, given that this would be a society constituted by animal rights, should be anaesthetized if the bullet can be surgically removed and the wound closed without exorbitant costs, or otherwise killed as soon as possible if necessary. The bear would be an unfortunate victim of interspecies miscommunication. The bear cub should be given due care if it loses its mother.

The idea that adult human beings always should condescend as a result of the Generosity Paradigm is applicable with regard to the practice of animal experimentation and other human-controlled practices involving animals. The Generosity Paradigm expresses an idea of protecting the vulnerable ones, correlating with the proper function of rights-based theories.

If, however, the Generosity Paradigm is supposed to be applied generally, it must not be combined with stereotyping expectations of the relationship between human and non-human beings. The function of rights needs more flexibility to adapt to each particular conflict situation to really be protective of specifically the vulnerable ones in all situations. By firmly expecting all healthy adult human beings to always be the most powerful ones, these humans would be robbed of their rightful protection when actually faced with more powerful non-humans. Strictly speaking, they would not be allowed to defend themselves in a violent manner against any non-humans, and nor against human marginal cases. The function of human rights is thus distorted in Linzey’s theory.

While Regan treats healthy adult human beings as a normality that should be especially well protected because of their excellent cognitive and other psychological powers (increasing their harm of death), Linzey regards healthy adult human beings as beings whose protection tends not to be present in conflict situations because of their cognitive powers. The basic problem is similar for both theories. There are expectations associated with the various roles in the human–non-human relation that distort the functions of rights.
The expectations in Linzey’s rationale disturb the applicability in the same way as Regan’s rationale does. The applicability is disrupted because the theory is supposed to be applied to, among other beings, a kind of human being that is always the most powerful party in any relationship with children or non-human animals. It is quite dubious that such human beings actually exist and it is impossible that all adult human beings fit that description and the applicability of the theory is thus constricted.

In contrast to Regan’s theory, Linzey’s rationale also has some issues with intersubjectivity. This has already been mentioned and concerns the possibility of having a dialogue among equals about the arguments for a certain interpretation of religious doctrines.

The function of rights tends to protect certain unfair expectations on the right holders rather than the actual right holders. The unfair expectations in Regan’s case are introduced by analogies as expectations on all right holders to be a little like ‘normal’ adult human beings. In Linzey’s case, unfair expectations are introduced by creating a view of adult human beings as the always-powerful ministers of creation, a notion inherited from Christian tradition. Mistaken beliefs about the universal character of the human–non-human relation counteract the successfully universal protection by rights.

Linzey’s theology is not suitable for general and political application. Neither is it, however, necessarily dysfunctional for those Christian believers who feel attracted to Linzey’s thinking. It is an example of what may be needed privately by people who would live in a society where treatment of non-humans is strongly restricted, namely a meaningful system of beliefs to build personal relationships with animals. Viewed as such, Linzey might be better off avoiding rights language altogether and the general political aspirations it implies and elaborating further on the virtue-ethical stance.

The contractarian approach

The contractarian approach that has been reconstructed generally adopts Rawls’s work on how the institutions should be constituted. More focus is put on preventing conflicts, rather than resolving them. Persistent rights conflicts are left to amoral or alternative moral methods, provided that raw intuitions should not be used to resolve conflicts.
The justification of rights, working by way of game-theoretical tensions, places many expectations on the contractors of society. They are not, however, expectations that are meant to be applied generally to all right holders, but exclusively to moral agents in the contracting situation (original position). This may still be problematic.

The original position and the veil of ignorance could be argued to be theoretical constructs of which it is impossible for any real contractor to think. The constructs could also be criticized for, no matter whether they can be used or not, being unsuitable as a model for a rationality that would govern the constitution of a society. There has been a significant amount of criticisms along, for example, those lines aimed at the Rawlsian rationale. Those criticisms may very well also affect the suggested neo-Rawlsian rationale. There is no space here to detail such criticisms. Many criticisms of naturalist and theocentric justificatory approaches have been omitted in order to promote an evaluation of the outcome of hypothetical application. The same choice of focus is made for the contractarian justificatory approaches.

The proper function of this contractarian theory would, of course, be restricted if the basic mechanisms of the justification or the rest of the theoretical account, attempting to change the view of animals, would not be accepted or shown to be reasonably flawed. The same can be said about the naturalist, theocentric or any other justificatory approach. Accepting that the original position can be made sense of by viewing it as an expression of game-theoretical tensions, from which arises a certain notion of rationality, the neo-Rawlsian rationale provides a pro-animal-rights theory that may function properly enough.

The contractarian rationale, including this neo-Rawlsian rationale, inherently includes a concern for intersubjectivity. The social contract is supposed to be a rational agreement. The rationality is supposed to be created in a tension between self-interested subjects. This is no guarantee that the resulting rationale will be communicable between all real subjects that could be contractors, while the idea is actually rather abstract and calls for some philosophical training, but the idea is at least communicable for all subjects given the proper opportunities.

The game-theoretical interpretation of Rowlands’s neo-Rawlsian suggestion does not assume beliefs in anything fantastic. The idea that contractors can really and completely standardize their personal knowledge in line with the original position may be a rather fantastic expectation. The idea that the original position is a metaphor for a
certain kind of game-theoretical rationality does not include any fantastic beliefs, albeit certain abstract mechanisms. Game theory can be discussed among equals. There is no problem with intersubjectivity here, as in the case of Linzey’s theocentric thinking.

It may be the case that the game-theoretical tensions do not assist in concluding anything that is truly right, but the issue of truth will, again, be avoided. The intersubjectivity of the contractarian rationale is sufficiently intact.

The applicability, though, still seems to have problems. The outcome of the hypothetical application was that this rationale cannot resolve life–life conflicts. The rationale is applicable in a democratic society in the sense that it is intersubjectively understandable and expressible, and that it is thus also possible to challenge. This is a basic criterion for a rights-based theory to be applicable to democratic legal institutions. The failure to provide more guidelines than merely raw intuitions to resolve rights conflicts could be viewed as a failure of applicability. This theory does not seem to answer how to resolve a conflict between rights while also respecting equality.

The failure could also, however, be viewed as a persistency in respecting rights and their implied equality among right holders. The notion of equality includes the perspective of each right holder. When weighing rights to life within this rationale, the significance of rights must be said to be equal from the perspective of each self-interested right holder. The theory then fails to provide tools for resolving rights conflicts with good reasons.

This does not affect the intersubjectivity of the theory. Neither does it forbid all kinds of applicability. The theory can still be applied as, for example, a diagnostic tool for moral problems. It may be the case, however, that the function of rights is affected by the failure to resolve a rights conflict.

If a conflict between rights only can be resolved by raw intuitions, a method that hardly can be called moral, then the protection enjoyed by the right holder involved may be decreased or increased without knowing whether the change is arbitrary or rational. The protection of each right holder may be strong as long as there are no conflicts, but in connection with rights conflicts the strength of the protection is suddenly relative to the whim of raw intuitions. Other moral languages may be asked to resolve the conflict in more rational ways, but that may also mean that the value of equality, or some other value that
should be preserved, may not be present. A rights-based theory that cannot resolve rights conflicts is a problem, any way you look at it.

Surveying the expectations placed on right holders, the neo-Rawlsian rationale has some advantages over the other two. All right holders are supposed to be self-interested and economically rational. Economical rationality, here, means the habit of reaching one’s goal with as little investment as possible. The goal as well as the means and possibility of reaching it are relative to the nature of the right holder. Self-interest is per se also oriented towards the particularity of each right holder. One may suspect that expectations placed on right holders to be economically rational and self-interested would alter the protective function by anthropomorphic definitions of the good for animals.

Self-interest places on the right holder the expectation to take care of oneself. This is hardly an unfair expectation. The notion of the self could be unfair. It could be laden with moralizing expectations, e.g. having a certain kind of sex life, or that a happy self is a married self with two kids, a dog, a Volvo, a house, and a well-paid position with good career opportunities. Self-interest could then become hi-jacked for protecting a stereotype. Self-interest per se, however, is not a danger to the particularity of the right holder, not as long as the view of the self is kept flexible.

The generality of economical rationality is in its adaptable and procedural nature. This may be compared to Regan’s substantial concept of harm, which includes demands to be able to have preferences and be and live according to a normality of physiology and behaviour. It could also be compared to Linzey’s static expectation that all moral agents are always most powerful. Economical rationality only requires reaching one’s goal as efficiently as possible. Unlike Regan’s view of goods, it does not state anything substantial about the goals or about the methods of reaching them. Also, a general expectation to be economically rational adapts to the particular circumstances and lacks the stasis of Linzey’s view of the role of moral agents.

A hunting wolf pack that spots an elk will cooperate in the way which most efficiently results in the consumption of meat. This is good, for the wolves anyway. The elk, in turn, will rationally avoid being killed—which is good for the elk.

Analogically, many single-cell organisms have a repeating pattern of locating nutrition. Typically, they first move around in random
patterns and then temporarily move upwards a nutrition gradient, and then move around once again in random patterns. This is not as efficient a way of reaching the source of nutrition as consciously moving towards it would be, but it is as efficient as the nature of such a single-cell creature would allow it to be. Such efficiency is good for such a single-cell creature and it is not reasonable, in this rationale, to say that a bacterium is less good at acquiring nutrition than a human being or a wolf just because it cannot consciously move towards the source of nutrition. Economical rationality is a procedure that is equally good for all life, but good in relation to each life-form’s nature.

A more substantial claim of the good for life, adding particular properties to the notion of good, would not be possible to generalize without placing arbitrary expectations on many right holders. It is possible to say that economical rationality is a good procedure for all life, and simultaneously claim that the economically rational motion of the bacterium is as good for the bacterium as an economically rational behaviour is good for the elk or the wolf. Human beings can be added to this comparison with as much consistency.

It is not, however, possible to say that Regan’s concept of harm can be transferred between species and type of life forms without prejudicing the intensity of the good for different species. The argumentation for the moral status of non-moral agents makes non-moral agents right holders on the basis that they are similar to moral agents. In line with the same rationale, Regan is quite explicit about normal adult human beings taking harm, at least the harm of death, more intensely. All attempts at comparing the good for various individuals from the perspective of the particular individuals involved are a normatively closed matter. The human perspective is always the standard.

Linzey, in a similar manner, makes the relation between moral agents and right holding, amoral agents less flexible. It is not the good of animals that is less flexible, but the role of moral agents. Still, the protection of right holders is likewise made less flexible by stereotypical expectations.

In the reconstruction of Rowlands’s thinking and his neo-Rawlsian rationale, there is no substantial human standard of the good, and the view of the role of the moral agent (contractor) is not an issue. The activities of moral agents, the formulation of the contract, are separate from the activities regulated by the contract. Economical rationality and self-interest channel the function of rights. This makes the recon-
structured contractarian approach fair for the particular natures of all right holders, and adds to making the function of rights proper.

The advantage of the contractarian approach is then mainly because of the notion of goodness as rationality. This makes the function of rights properly protect each particular right holder in each particular situation.

The particularity and noted flexibility of the protection are, however, also what hampers the rationale during rights conflicts. The protection assumes the perspective of each right-holding self when estimating the strength of each right, resulting in the equal strength of all rights protecting the same kind of goods (life, for example). The problem of applying this rationale as a way of resolving a rights conflict then arises because of the extent to which the rights guard the particularity of each right holder. The problems of applying the other theories come about from various arbitrary expectations on all or some right holders, distorting the function of rights. This difference in reason between the problems arising when hypothetically applying the theories further underlines the advantage of the neo-Rawlsian rationale.

The flaw in Regan’s theory is part of the basic justificatory approach. Analogies are his most convincing arguments, but they also focus expectations on all right holders to be like normal adult human beings. To change Regan’s theory to a theory with a notion of good that does not have the problems in question would be to make an entirely new theory with a new line of argumentation.

The flaw in Linzey’s theory is also deeply seated in the approach of the justification of the moral status of animals. The static role of moral agents is associated with an interpretation of Christian doctrines, especially the notion of Imago Dei. To remake Linzey’s theology to be more functional according to rights language would mean to reinterpret basic notions about the role of human beings in creation, possibly contradicting Christian notions of the pre-eminence of human beings. This would also change some of the foundations of Linzey’s thinking, more or less making a new theory.

The problem of the neo-Rawlsian rationale is that the function of rights clings too tightly to the particularity of each right holder. Although this is not really a flaw, it may very well turn into a flaw if no alternative moral rationale is available to resolve the conflict with preserved democratic values (for example liberty and equality). This makes it worthwhile to consider whether there would be some way of
using the neo-Rawlsian rationale for resolving rights conflicts. It is not necessary to make a complete restoration of the theory in order to do this. Rather, the theory can be kept mostly intact, while attempting to identify a fair property with which right holders may be compared and rights weighed. The next chapter includes an account of which property that would be.

Summary of the evaluation
A life–life conflict is about one actual being morally meeting another actual being in a problematic manner. The meeting is between existentially related beings with competing relevant goods of their own particular concern. The events following such a meeting must be rationally performed in order to approach the situation justly. The rights work for the exposed individual and anything that arbitrarily disturbs such a function is functionally irrational; it diverges from the proper purpose of thinking on rights.

Regan’s natural theory of animal rights shows functional flaws. The function of rights with regard to hypothetical application is practically asymmetrical to protecting the most capable, especially those who excel in characteristically human capacities. Those beings are protected at the expense of less capable right holders. This is contradictory to the proper function of rights-based theories, where exposed beings are supposed to be protected against threats.

Linzey’s theocentric account of animal rights also has some functional flaws. The function of rights turned out to be asymmetrical to never protecting the lives of adult human beings in life–life conflicts. This was argued to be an arbitrary distortion of the proper function of a rights-based theory. There are occasions when adult human beings are less powerful than non-human animals. It should then be within their rights to protect themselves and be protected. Linzey’s kind of animal rights deny such self-defence and thus prevent the protection of the vulnerable ones.

Rowlands’s contractarian and neo-Rawlsian theory of animal rights, including the reconstruction, also had some problems regarding the hypothetical application. The theory lacks, or rather refuses to make use of, any resolution approach to rights conflicts. This risks becoming a problem for the proper protection of the right holders in-
volved. The only surely available tools to resolve the conflict are raw intuitions, and they should not be used according to the rationale at hand. Alternative moral languages may be used, but there is then no guarantee that the values of rights language are preserved.

The function of contractarian rights is not, however, actually improper. It risks becoming improper if there are no rational guidelines given for dealing with persistent rights conflicts. In the next chapter, the possibilities of giving such guidelines will be discussed. The challenge will be to find a property that all right holders have, that is morally relevant, that is commensurable, and that can be fairly quantified, and which higher quantity also reasonably grants a higher moral significance of the rights in question. Such a property can be used to weigh rights against each other and resolve rights conflicts.

The property would be that of the right holder. It would thus not necessarily be associated with the contractarian account. The reason for applying the neo-Rawlsian approach to justification and the theoretical background is that the other two accounts were shown to be in need of serious revision in order to be used. The neo-Rawlsian approach does suggest a mainly proper function of the theory, albeit there are the said problems.
6. Animals and Persistent Rights Conflicts

- The inadequacies of human awareness become the inadequacies of life’s reality. Perfection is possible for only those without consciousness, or perhaps endowed with infinite consciousness. In other words, for dolls and for gods. […]

- Actually, there’s one more mode of existence commensurate with dolls and deities.

- Animals?

- Shelley’s skylarks are suffused with a profound, instinctive joy. Joy we humans, driven by self-consciousness, can never know. For those of us who lust after knowledge, it is a condition more elusive than godhood.


Percy Bysshe Shelley’s *Ode to a Skylark* (1820) is a well-known example of how animals have been mystified on occasions. Animal particularities are striking not only in how well they harmonize with the environment, their usefulness, and their aesthetic qualities, but also how harshly they contrast with each other. The contrast between human and non-human particularities has caused some writers to conclude that non-human particularities make them impossible to understand or talk about. Stich and Davidson have previously been used to exemplify philosophers who mystify the psychology of the animal.

In social ethics and its applied areas—politics and law—the mystification of non-humans does not seem helpful. It may be argued that the mystification and the often co-associated glorification of the non-human are a poetic exaggeration that is contradicted by empirical evi-
dence. Also, if applied to animal ethics, it may be argued that mystification will probably cause more harm than good as it makes it impossible to know, or at least talk about, the good for the animal. In order for it to be possible to reason about animals in general, they need to have knowable (and general) properties. We must define us if we are to think of us. Both these arguments can be accepted, while also learning something from taking animal particularities as seriously as, for example, Shelley did.

In the previous chapter, it was argued that an overly substantial definition of the commonness of all animals has led to anthropomorphism and overly static roles in moral relations. This was detrimental to the proper function of rights-based theories, distorting the function of rights to protect the expectations rather than the actual goods of the right holders.

Problematic as it may be, animals still need to be generalized, presuming general properties, if they are to be granted rights. The right holder must be defined by something morally relevant that is common to all beings holding rights.

Also, there must be a general property among all right holders that states there is something being good in itself for them. The particular good for each right holder may, however, vary individually.

Also it was argued in the previous chapter that there should be a property to help weigh rights. Otherwise, the weighing of rights must be left to raw intuitions or amoral methods which may threaten the proper function of rights-based theories. This property must also be held generally by all right holders.

The purpose of this chapter is to outline some definitions of general properties that may construct a pro-animal-rights theory which correlates with the proper function of a rights-based theory. There is no space or time here, however, to offer complete and justified theoretical accounts of all the necessary aspects of constructing an animal-rights theory. Instead, there will be a focus on making some progress towards finding a solution to the specific problem that was identified in the previous chapter.
The problem of persistent rights conflicts

The neo-Rawlsian rationale was deemed to be the better one out of the three investigated rationales. The reason was that the problem with the neo-Rawlsian rationale was that it protected the right holders too strongly, while the problem with the other two rationales was that they protected the right holders too weakly. The neo-Rawlsian rationale’s protection of each particular right holder was governed by a quite strong notion of equality. The comparison of the significance of life included a change in perspective. It was the subjective weight of the life of each right holder involved that was weighed, which, of course, hinders the comparison. The primary option, the option before any further arguments are formulated, should be to believe that the life of a mouse is as important for the mouse than the life of a human being is important for the human being, especially considering the value of equality underlying rights language.

The ideal of equality is strong in the neo-Rawlsian rationale to the extent that it forces the conflict to abandon the very language upholding the importance of equality. There is then a very high and definite risk that the proper function of rights-based theories is distorted. If a strong respect for equality results in the loss of both equality and the function of rights, then there is surely a problem with the notion of equality. There are three alternative ways to approach this problem.

First, a moral theory may be used where equality is not an ideal. It could, for example, be a classical Aristotelian virtue-ethical theory. Turning to such a theory for assistance in resolving rights conflicts would, however, also eliminate the characteristic function of rights.

Care ethics is another example of ethical thinking that is not based on the value of equality. As opposed to classical Aristotelian thinking, care ethics is not perfectionist. Care ethics expresses an idea of caring for individuals. This should include a protection of individuals, although not necessarily protection of liberties and opportunities. Care ethics might be an alternative moral language with which to resolve persisting conflicts. The development of care ethics was, however, performed in resistance to rights-based theories. An investigation of the possibilities to make the two rationales co-operative would be a major undertaking. There is no space to do that here.

A second way to approach the problem at hand is to use chance. A coin could, for example, be flipped in order to make practical headway. Such resolution of the conflict would respect some notion of
equality, using equally random treatment of all right holders involved. It has even been argued that there are circumstances where resolving conflicts by using chance is a better expression of justice than deliberately weighing the claims.\textsuperscript{521} Tossing a coin would at least equally distribute the chance of acquiring priority, although the good of priority and the goods that the claims in conflict protect would be unevenly distributed as a result.\textsuperscript{522} Weighing equal claims, in contrast, involves overriding the losing claims completely.\textsuperscript{523}

To approach rights conflicts with chance does not necessarily mean to toss a coin or throw a dice. Regarding animals, it could also mean to leave the conflict to be solved by ecological means.

Leaving the issue to be decided by ecological relations would, with the same thinking, distribute the chance of surviving in an ecological system equally. Ecological relations are amoral in the sense that they are not dependent on positive actions of moral agents. It can still, though, be a moral act to perform the negative act of leaving the ecological relations to resolve conflicts. If the costs of morally and actively resolving or avoiding rights conflicts in nature were too high, which it surely would be if wild animals were granted rights, then passively distributing the chance of surviving in a suitable ecological system can very well be the option closest to the demands of justice. There will be a lot of overridden and violated rights in an ecological system, but at least the chances of survival are distributed evenly in relation to the nature of each individual.

The meaning of even distribution, here, is controversial. Surely, it is not a meaning of equality that should be universalized. To choose not to police nature, however, can be viewed as an unfortunately necessary expression of justice where such policing would be too costly. The approach could, then, be accepted as a valid priority method under certain circumstances. If the conflict is largely independent of the acts of moral agents, and if the conflict resolution were too costly, then a valid option may very well be to leave the conflict to ecological means. This would be applicable to some, but not all ecological relations.

Moral agents have not caused the wolf to have a taste for elks, but moral agents have in many countries regulated the number of wolves

\textsuperscript{521} Broome, ‘Fairness’, 87–101.
\textsuperscript{522} Ibid. 94, 97f.
\textsuperscript{523} Ibid. 94.
and elks. The case with rights conflicts among ecological relations cannot thus be completely devoid of human responsibility. However, this issue will be avoided now for the sake of focusing on conflict resolution in the example of biomedical animal experiments.

The relationship between the research technician and the laboratory animal is a totally artificial and, furthermore, strongly institutionalized one. The relationship is shaped by legislation, and its existence is dependent on ingrained societal habits of biomedical research. Costs of performing animal experiments and upholding the bureaucracy are high, and abolishing animal experiments should thus not be associated with impossible costs. In this kind of relationship, there is an evident and irrefutable moral responsibility that can be acted upon. Passivity is not an appropriate way to face the conflicts within animal experimentation. Alternative moral languages could work if they retained the proper protection of the right holders involved. Rights language could, however, also be insisted upon, and the rights-based theory reformed. This would be a third option for solving the problem of persistent rights conflicts.

The third option means that the rights-based theory in question could be modified to resolve rights conflicts internally. This would maintain a morally substantial idea of equality as well as avoid the risk of any amoral or alternative moral methods distorting the function of rights. Such a solution also, as the case has been for the other two rationales, risks turning the rights-based theory in question into acquiring a distorted function.

To modify the contractarian rationale into a rationale that can weigh rights to life is to add a property with which the lives of right holders can be weighed morally. This property must fulfil certain criteria in order to not repeat the unfortunate consequences of Regan’s and Linzey’s theories. Any property that is supposed to weigh the lives of right holders should:

1) be held by each right holder;
2) be morally relevant;
3) be observable;
4) be commensurable between right holders;
5) be quantifiable;
6) reasonably grant increased moral significance with higher quantity;
7) actually be possessed in varying quantities by the various right holders involved in as many situations as possible;
8) not be trumped by another property that fulfils the above criteria to a greater extent.

The first criterion is self-evident. The significance of each life of the right holder must be estimated in particular situations. Weighing the life of a right holder by looking at properties not directly possessed by the right holder is arbitrary. There is the risk of distorting the proper function of rights-based theories if properties other than those held by the right holders involved are used to weigh the significance of a life.

The second criterion is also straightforward. There may be many properties possessed by all right holders. Their physical constitution surely fits the atom model and a number of other physical and chemical models. The property to use when weighing lives must, however, be relevant to weighing lives in a morally relevant sense. The degree of moral relevance of a certain property is a question for argumentation, i.e. justification.

The third criterion is not controversial per se. The exact understanding, however, of which aspects of an animal are observable, is controversial. The hard-line behaviourist would observe the physical movement of animals while refusing to admit that the movements also inherently express intention. The criterion can, however, be accepted without resolving that controversy. The property to weigh lives should be observable. This would also make it possible to assure that the first criterion is fulfilled.

The fourth criterion states that the property should contain a common measure with which to compare right holders who have the property. The property possessed by two right holders is commensurable when it is possible to make ordinal comparisons of the two right holders in light of the property in question. In other words, commensurability means the possibility to assess one right holder to be ‘first’ and another ‘second’. An observable and morally relevant property of all right holders can be a property that does not make sense to compare between right holders. It was something like this that the property of being alive turned into in accordance with the neo-Rawlsian rationale. Commensurability of the property between right holders implies that the comparisons can be made without arbitrary assumptions about similarities between right holders.
The fifth, sixth, and seventh criteria are unfortunate necessities. They make weighing lives possible, albeit they have a crass bluntness to them. The property in question must be possible to quantify. Also, if the quantification produces various amounts of that property, then this should be a reasonable basis for a higher moral significance of the life of the right holder. The seventh criterion is a practical attempt to avoid the situation where the first six criteria are fulfilled, but where a prioritization is still not possible.

The eighth criterion is a logical warrant. This does not mean that there cannot be several weighing properties that cooperate in a weighing mechanism. If, however, a seemingly suitable weighing property were trumped by another and even more suitable weighing property, and if the trumping property is incompatible with the trumped property, then the trumped property is not a suitable weighing property. This criterion is as important, but it is impossible to know whether it is fulfilled. There is no space in this chapter to further consider this criterion.

Prioritization methods assume, then, some kind of property that is observable and can be used in order to identify what it is about certain right holders that would give them moral priority in a particular situation. The identification of such a property is necessary in order for rights-based theory to handle prioritization problems by internal means.

The problem at hand, then, is to find such a property in order to provide a bridge of commensurability between right holders in conflict, without letting that commensurability be a channel for stereotypical, anthropomorphic or otherwise arbitrary expectations, or in any other way distort the proper function of a rights-based theory. Is there any property that can be used to identify what it is about right holders in conflict that would give their lives priority without distorting the function of rights? This problem can be called the problem of persistent rights conflicts. There is a candidate for this property, which will be discussed after some preliminary remarks.

A demystification of the animal

A mystified being is impossible to know anything about. It is impossible to know whether it is oppressed or not, whether it suffers or not, or
whether it is harmed or not. For the function of rights to make sense at all, the protected right holder must not be mystified.

At the very least, the right holder must have the property of being able to communicate his or her good to moral agents. This is a minimal requirement for the function of rights to be possible to channel in an efficient manner. The communication does not need to be with words or sounds. It is a requirement to hold rights in a meaningful manner, but not necessarily a criterion for holding rights. The latter kind of criterion may define a wider or a narrower scope of rights than the number of beings who can communicate their good to moral agents.

The possibility of communication with animals has been shown in various ways. Chimpanzees have been taught to communicate rather precise notions to human beings and they show obvious signs of understanding spoken language. But it is not necessary to use artificial means in order to communicate from non-humans to humans. There are efficient animal-welfare monitoring tools that use people’s skill of perceiving the health and mood of non-human beings. Also, anyone who has looked after a non-human animal knows that it is possible to communicate with non-human animals, and that this is necessary in order to successfully take care of an animal.

Human and non-human animals that cannot express themselves with a full-blown language still manage to communicate certain needs and wants. Their bodies are obvious communications of needs for such things as nutrition and warmth. The body as such can also communicate wants. Jab a horse with a needle, whilst standing behind it, and it will tell you that it wants you to stop. Both Regan and Rowlands have argued that parts of animal beliefs are knowable, namely the intentional objects. In the case of a mistreated horse that kicks its antagonist, the kicking leg and the chest of the antagonist are the intentional objects. Beliefs, including wants, are communicated by observing how the horse physically relates to those objects.

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Alasdair MacIntyre makes a similar point when calling animals pre-linguistic rather than non-linguistic.\textsuperscript{526} He argues that human and certain non-human beings form beliefs using the same type of perception and crude distinctions.\textsuperscript{527} He refers to distinctions that can be made by physiological interactions with the surroundings, like the distinction that can be made between a hot and cold plate.\textsuperscript{528} Both groups form prelinguistic beliefs by perception and such distinctions. The difference is that human beings can use language to further refine and determine beliefs. The similarities in belief-forming processes mean that human beings can understand communications from certain non-human animals, albeit it is easier when the non-human animals are trained to communicate with human beings.\textsuperscript{529}

Without these channels of knowledge about the physiological and psychological states of non-humans, the notion of the good for someone not being a healthy human being would be arbitrary, or at least completely dependent on a-priori reasoning.

The ability to communicate goods is not necessarily accompanied with the ability to communicate a substantial definition of goods. It could be argued that non-human animals may communicate that something is good for them, but not which good it would be. Such an argument could easily be contradicted by references to scientific knowledge about the needs of human and non-human animals alike. There is, however, a danger with such a counter-argument.

There are, as we have seen in the previous analyses, pretentious claims about the possibilities of acquiring substantial knowledge of the good for non-humans. With such pretentions, as we have seen, also comes the risk of generalizing an overly thick notion of the good for animals. The use of scientific explanatory models, or spiritual insights, is never safeguarded against anthropomorphic, static and stereotypical expectations on right holders.

Medical science makes generalizations with the help of biostatistics about the nature of human beings that medical practitioners need to constantly adapt to individual patients. Treatments and diagnostic procedures work differently for those they are intended, and sometimes not at all. Statistical means are descriptions of stereotypes, and

\textsuperscript{527} Ibid. 40.
\textsuperscript{528} Ibid. 37f.
\textsuperscript{529} Cf. ibid. 31f.
only coincidentally of real people. Imagine the degree of adaptation to particular cases, the width of the confidence interval that would be necessary for proclaimed ‘general’ facts of the common nature of both humans and non-humans.

Surely, healthy physiological functions, for example a beating heart, are part of the good life for animals. It is just as certain, however, that a good life also includes moments when we must strain our bodies to an unhealthy extent, or relax and eat an artery-busting meal in order to achieve certain good aims. This is for sure; at least as long as we do not expect everyone to stereotypically live a certain kind of health-oriented life. Non-human animals and human marginal cases may not as ingeniously invent new luxurious aspects of the good life, but the good for them can very well go beyond a well-functioning physiology. To freely move in the natural habitat is a good that simultaneously can be quite detrimental to the health and even life of an animal.

There is also ecological science, describing and prescribing ecological goods for animals. Here, also, statistics are used to create generalizations that should only be used as helpful points of reference, and never as moulds for theories of the good life. Proper ecological functions are surely part of the good life, but the scientific description of ecological patterns is not the whole of a good life.

The property of communicating goods assumes that there is a good to communicate, but it does not assume that the good must be generally predefined. Scientific models and generalized observations can offer significant assistance when interpreting the goods communicated by a particular animal, but such models and generalizations should not be taken to be definitions of the good. The scientific study of the animal has certainly helped to demystify the animal, but the scientific method should keep its role to primarily describe factual circumstances, not prescribe moral acts.530

Say, then, that there are good reasons to believe that many animals can communicate what is good for them to moral agents. Also, assume that the communicated good may be substantially defined by interpreting the communication by scientific knowledge, albeit there is an inherent risk of forgetting to take into account that such knowledge is

530 Please note that no dichotomy between the descriptive quality and the normative quality is intended. Both the description and the prescription are normative, but the norms are of different kinds and have different usages.
based on generalizing data management. What would this say about those animals that have this property? What would be the logical consequences of admitting that methods to screen animal welfare actually work?

As soon as an animal communicates that it needs or relevantly desires a good, and moral agents choose to perceive the communication for what it is, a moral relation is also established. If someone is perceived to have a good, it must also be possible for that being to be subjected to evil, or at least a lack of good. As soon as moral agents are exposed to this kind of knowledge, they are also responsible for any act that would bring about good or evil for the animal.

Non-human animals are not mystical. There are certain things that are good for non-human animals and it is possible to know what it is. This would not necessarily grant animals rights, but it would establish animals as objects for moral responsibility. It would also raise the question whether non-human animals have rights or not.

**Proper function and justification**

The notion of proper function has been used as a focal point for the evaluation of theories. Here, it will be used as a focal point for suggesting a way to add positive epistemic status, theoretical rigidity, to the notion of animal rights.

Plantinga uses proper function, first and foremost, to discuss warrant being separate from both justification and the evaluative usage. His project, though, is to show positive epistemic status for Christian beliefs. Such theoretical rigidity is also the aim of evaluative criteria to check, as well as for the justificatory line of argumentation to show. Justification is, according to Plantinga, unsuitable for his own project because it is too easy to justify Christian beliefs, as opposed to them being warranted.531

Here, the proper function of rights-based theories will be used as an argument in order to add theoretical rigidity to the notion that the scope of rights should be expanded to include non-human beings. This

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531 Plantinga, *Warranted Christian Belief*, 93. Plantinga’s point is that a deranged person can be said to justifiably believe anything. To show that Christian beliefs are justified is then easy. To show that they can have positive epistemic status for a sane person is harder.
is to use proper function as an argument in a justification of that notion.

Properness implies normativity. A proper function correlates with a certain norm, while an improper function differs from such a norm. There can be different kinds of norm.

The extensive discussion of the concept of function within philosophy of biology could be taken to mean that the normativity in question can be medically defined. Plantinga’s focus on properly functioning cognition may be taken to confirm this. Properly functioning cognition would then be the same as healthy cognition. The proper function of a rights-based theory would then be the function that a person with a healthy cognition would conclude is a proper function. Clearly, this would not be a satisfactory definition of proper function in the sense it is used here.

Sane people can most probably genuinely disagree on the correct notion of rights, justice, equality, and other relevant concepts underlying and affecting rights-based theories. This would result in a genuine pluralism of those notions. The pluralism could, for example, be the result of differences in traditions and cultural expressions, alternative theoretical approaches, or the ignorance or stupidity of a subset of people. Such factors could affect the cognition of quite sane and healthy people, and make them disagree over the notion of justice. Healthy cognitive functions are most probably necessary in order to construe a properly functioning rights-based theory, but the criterion is too unspecific to be helpful.

Also, medical normalities are based on statistics. Biostatistics may be a normative discipline, but it is meant to be used to describe physiological and anatomical conditions. The normativity of biostatistics is not meant to be applied to moral issues. Even if proper function may refer to a ‘naturally meant’ function in some sense, medicine is not the right discipline to explicate the full meaning of such natural properness.

An alternative would be to view the properness of a moral function to be decided by abstract, theoretical mechanisms for what ought to be considered normal. ‘Proper’ would mean ‘supported by right theoretical mechanisms’, ‘rational’, or ‘reasonable’. Cognitive functions and the function of rights-based theories would be proper to the extent that they correlate with the suggested standards of a certain rationale. This
approach has some strong advantages, especially with its ability to transcend natural circumstances like, for example, medical facts.

Another alternative would be to orient the properness to be more directly related to moral concerns. Practical, then, would not refer to the practicalities of a healthy cognition, but the practicalities of right acts. ‘Proper’ would then mean ‘with right practical outcome’, which could also be called ‘rational’ or ‘reasonable’ by some accounts. Functions would be proper to the extent they produce a correct practical outcome.

Associating abstract theoretical mechanisms with properness is attractive, and there are promising tools that can be found there. The contractarian rationale was shown in the last chapter to have the potential to include animals based on fair conditions. The game-theoretical tensions of this rationale will indeed be used to assist in the following reasoning.

Regarding the third alternative, however, theoretical mechanisms cannot be said to be the most important aspect of properness to aim for. The integrity of theoretical mechanisms can never be morally more important than the integrity of actual beings. Theory as well as a healthy cognition can, on the other hand, be excellent tools for providing proper functions to protect actual beings. A proper function of a moral theory must, however, primarily aim to devise guidelines for practical acts. Using rights language, this would mean that the guidelines should canalize protection of the individual integrity.

Taken together, the present use of proper function employs practical outcome as the decisive moral point of reference. Moral theory, the modelling of rightness, is used to explicate a structured outline that attempts to provide predetermined guidelines for acting, aimed at the right practical outcome. Moral theory may provide a justification (a theoretical rigidity) for the practical outcome that is claimed to be right, while considering the practical outcome of a theory tests the theory’s intuitive quality. Healthy cognition and its opposite as well as cultural and other factors that affect cognition are taken to be necessities for concluding any valid prescriptions at all, and very insufficient moral points of reference.
The proper environment of a rights-based theory

It has been argued that the proper function of a rights-based theory includes protection from oppression. The practical outcome of any rights-based theory should be the protection from oppression in order for the theory to express a proper function.

This also implies that rights have been designed, literally or metaphorically, for a certain environment. The environment in which this kind of function is proper is an environment where there is, at least, oppression of someone who should not be oppressed. This implies that the environment in question is characterized, among other things, by relationships between beings of various strong powers, and where at least some of the more powerful beings take advantage of this in order to oppress at least some of the less powerful beings.

This environment sounds very much like any collection of human beings, but also like many power relations among animals in general and possibly more beings. These kinds of power relations are spontaneously formed and prima facie morally arbitrary.

It may seem that this would contradict the Humean circumstances of justice that Rawls adheres to. It would then diverge from the theoretical conditions of the neo-Rawlsian rationale that will be partly used to argue for a new definition of the right holder. This is a problem whose detailed discussion must be postponed. Here, only a brief explanation will be given as to why this vision of the proper environment of rights-based theories does not necessarily contradict Humean circumstances of justice.

David Hume suggested that justice can only be applied to relations where all involved are powerful enough to offer some resistance to the powers of other subjects of justice.\textsuperscript{532} Otherwise, according to Hume, there is no benefit in establishing just relations. Rawls understands Hume to say that all subjects of justice should be roughly similar.\textsuperscript{533} Neither Hume’s contention, nor Rawls’s interpretation, contradicts that the proper environment of rights-based theories should contain asymmetrical power relations from which arbitrary advantages are sometimes gained. Instead, they state that there is a point where the asymmetry between powers is too great for justice to be applicable.


\textsuperscript{533} Rawls, \textit{A Theory of Justice}, 126f.
There are also reasons for more closely investigating Hume’s assumption that justice must be beneficial and to whom it must be beneficial, especially in light of Rawls’s Kantian inspiration. Such an investigation would surely repeat some of the contentions about the difference between the role of the formulators of justice and the beneficiaries of justice that was discussed in Chapter 4. This investigation will not, however, be done here.\footnote{An elaborate criticism of the assumption that the social contract must be based on mutual advantage can be found in Martha C. Nussbaum’s \textit{Frontiers of Justice} (2006).}

Say that the function of rights-based theories is designed to work in an environment with asymmetrical powers that are sometimes misused. The function of rights-based theories would then be to sophisticate spontaneously formed asymmetrical power relations by providing moral and legal and maybe other powers to counteract or at least reform the power relations. It is possible, but not necessarily the case, that such moral powers would only be artificial. A situation may be imagined where moral powers are part of natural relations, and naturally foster asymmetrical power relations. The function of rights-based theories would be to strengthen and explicate natural moral and legal powers. The function of artificial moral and legal powers would be to reform the natural and spontaneous power relations. The existence of such artificial powers would assume the existence of social and legal institutions.

Making power relations sophisticated does not necessarily mean to make them symmetrical. Nor does it necessarily mean that human beings must not benefit from using powers on, and potentially against, other beings. Rather, making power relations sophisticated could mean structuring the usage of powers and asymmetrical power relations in a just manner. This is not about not using powers on others, only using the powers in consistence with a properly functioning rights-based theory.

All things and beings that we use powers (skills) on may not be at risk of being oppressed in any real sense. There may be a property or properties that distinguish beings that are possible to oppress from other beings or things.

The rest of this chapter will develop and discuss a hypothesis about which properties they would be. This discussion will also provide some arguments for why these properties would be morally relevant. These arguments are formulated with, first and foremost, in mind that
the proper function of a rights-based theory would be to protect individual integrity. The suggestion is further, but also secondarily, supported by showing how it would fit game-theoretical tensions.

The property of being exposed

The problem, as defined at the beginning of this chapter, originated from the failure of the neo-Rawlsian rationale to resolve rights conflicts. A strong notion of the value of equality made it impossible to weigh lives, but this also risked defeating the idea of equality. The problem was finding a property with which the lives of right holders could be compared and weighed, without that property distorting equality. It was pointed out that there was an obvious candidate for this property.

The property of being at risk of being exposed to more powerful and potentially harming agents obviously takes the property function of rights into account, given that such a function is to protect exposed beings facing a more powerful aggressor. This property is a property of the right holder, but in relation to a counterpart. The property can be divided into three parts: the risk of the right holder’s exposure, the more powerful and potentially aggressive counterpart, and the asymmetrical relation in between the right holder and the counterpart. This property will be called the ‘exposure property’ for short, only implying that there are two parties involved in an asymmetrical power relation.

Any property, except the exposure property, will sooner or later identify a right holder as seemingly rightfully prioritized, although some other right holder is actually more exposed. It may be believed that a certain natural property is associated with being exposed—women, Negro Africans, children, and cute animals may be such beings that have properties that are prejudicially associated with necessarily always being exposed. Sooner or later, our prejudicial simplifications will catch up and rights conflicts resolved by any property, except the property of being exposed, will end with an arbitrary and unfair prioritization of the rights of someone not exposed at the expense of someone exposed.

The exposure property correlates, without doubt, quite well with the suggested aspect of the proper function of a rights-based theory.
This does not, however, make it practically possible to use as the property to weigh the lives of conflicting right holders. Discussing the exposure property in light of the criteria for a suitable weighing property can assist in estimating the relevance of the exposure property as a tool to solve the problem of persistent rights conflicts.

The first criterion was that each right holder should possess the property. The exposure property fulfils this property by definition. If the suggested aspect of the proper function of a rights-based theory is accepted, then all right holders must also have the exposure property in order for the proper function of a rights-based theory to be meaningful to them. All right holders may not always be exposed to the arbitrary powers of others, but all right holders are definitely at risk of finding themselves in situations where they are exposed to the arbitrary powers of others.

The second criterion is that the property should be morally relevant. This criterion too is fulfilled by reference to the exposure property correlating with the proper function of a rights-based theory. If the proper function of a rights-based theory includes a protection of exposed beings from the arbitrary powers of others, then the property of being exposed to the arbitrary powers of others must have moral relevance.

The third criterion is that the property in question should be observable. It is less evident that this criterion is fulfilled in comparison to the first two criteria. The arbitrary powers of the counterparts may be observed as acts. To act out arbitrary powers is, however, not always a sign of oppression. Bursting out in loud song may be oppressive if it would stop someone from practicing the right to free speech (and be heard), but it is obviously not always oppressive to arbitrarily burst out in song. To observe the exposure property also assumes that the exposure of the exposed being can be observed. This will soon be further discussed.

The fourth criterion is that the property should be commensurable among right holders. Does the exposure property of one right holder have a common measure with the exposure property of another right holder? Asymmetrical power relations are commensurable. Powers, in the sense that the word is used here, are the same as abilities. There are a number of abilities that can be used in order to provide oneself with arbitrary advantages in relation to someone else. Asymmetrical power relations arise because right holders vary in talents and trained
abilities. Here, like with the issue of observability, the status of exposure per se is not clear. The discussion below considers the issue of commensurability.

The three last criteria concerned various aspects of the quantifiability of the property in question. There is nothing surprising about the notion that powers can be quantified and that it is most often the case that someone has more powers than someone else. The notion of asymmetrical power relations would be meaningless without assuming the quantifiability of powers. But, again, the status of exposure per se in relation to these criteria is not clear. Is exposure quantifiable? This, too, must be answered by a lengthier discussion.

The exposure property fulfils some criteria for a suitable weighing property, while its status in relation to the other criteria is unclear. The main issue is whether exposure, the state of the right holder, is identifiable and quantifiable.

The weighing property should be observable in order to be assured that the property is really possessed by all right holders involved, rather than based on the prejudices of the nature of right holders. It has been shown that such prejudices distort the function of rights. Exposure, of course, is not a tangible quality. Exposure needs to be made observable by associating the property with tangible qualities that can be readily observed. Still, the independence of the exposure property from properties that are prejudicially premeditated is an important condition for the fairness of the theory.

If the exposure property can be associated with observable properties without distorting the proper function of rights, then the question of quantifiability may be considered. Readily observable, tangible qualities are usually possible to quantify. The outcome of various quantifications of observable aspects of the exposure property would also give some leads as to whether the associations with observable properties have been fair enough. Striking the balance between making exposure observable and avoiding prejudicial premeditations would then optimally involve testing the suggested weighing property.

The property of self-preservation

An educational starting point for striking such a balance is anthropomorphism, a problem that had affected Regan’s theory of animal rights. For human beings, anthropomorphism means to look upon
themselves and then upon a non-human being, and expect to see many human characteristics present in that being. Anthropomorphism can also be combined with the view that a lack of human characteristics in the non-human being is a failure of that being which can be repaired. Anthropomorphism is a mistake by treating others as mirrors, rather than particular beings in their own right.

The neo-Rawlsian approach to arguing for animal rights apparently avoided the anthropomorphic trap by using self-interest and game theory to establish moral relations. The rationality of this approach includes an individual protection that closely surrounds each right holder, making it harder for arbitrary expectations to flow between the view of particular kinds of right holders.

The neo-Rawlsian mechanisms, or the game-theoretical part of the neo-Rawlsian mechanisms, may not be the only theoretical mechanisms that support the proper function of rights-based theories. There may very well be more sympathetic metaphors for just thinking than one that views people as competitors. They are, however, well-known mechanisms that are generally acknowledged as indeed fuelling a theory of justice. And the useful part of the metaphor is not the part about competition; it is the part about looking at oneself and seeing the particularities, and, next, looking at another and seeing a relation open to other particularities.

The neo-Rawlsian rationale, as suggested by Rowlands, however, also has certain arbitrary expectations about the right holders. Those expectations did not distort the proper functions that were evaluated, at least not in conflicts, and were thus not necessary to explicate at the point of evaluation. Here, a fine balance is attempted and this balance is easier to strike if those expectations are scrutinized.

In the neo-Rawlsian rationale presented earlier, the game-theoretical tension was fuelled specifically by self-interest, a necessary property in order to be rationally included as a right holder by contractors in the original position. Rowlands’s philosophical discussion on animal minds points to the self in question being expected to be a self with a mind, a self with a subjective perspective. The self-interest in question is an individual’s somewhat conscious interest in the good for oneself.

This, however, is only one potential understanding of self-interest. It is not even an understanding of self-interest that is consistent with the criterion of not using personal knowledge.
This understanding of self-interest only makes sense as long as the perspective is that of a contractor who presumes that the subjective perspective of the good for a right holder is of primary moral relevance, as opposed to an objective assessment of the good for the right holder. The point of the original position is that no personal properties must count in issues of justice. The property of having a subjective perspective is personal and the contractors seemingly presume that goods relevant for justice must be directed towards a subjective, individual self. This is arbitrary. The conclusion that self-interest is necessary in order to be a right holder is correct in some sense, but not necessarily in the sense that the self must be a subjective self. The issue of whether the subjective perspective counts or not must be postponed until after the right holder is defined.

The function of self-interest in the modified original position is to maintain the game-theoretical tension between the contractors. Rational self-interest is double-headed. It is both about interest in oneself as well as a disinterest in others. The idea is that both heads of rational self-interest create a tension when the contractors assume stances at odds with each other. The self-interest draws them towards cooperation beneficial to the self, while the rational disinterest makes them not rob others of their benefits of the cooperation. The result is mutually beneficial cooperation.

The mechanism of the modified original position is at risk of collapsing without the personal knowledge of having a subjective perspective, at least to the extent that self-interest is understood to assume a subjective perspective. The specific notion of self-interest that assumes that the self has a subjective perspective must be replaced by a notion that creates a tension among the contractors, while not presuming any personal knowledge. Self-interest could be moulded into such a notion.

Self-interest does not need to refer to a conscious interest, or any other notion involving a subjective perspective. Self-interest could refer to, and be expressed by, self-preserving behaviour. Such self-preservation could be explained by a conscious interest, motivated by a conscious desire, and channelled by certain conscious beliefs. Self-preservation tendencies can, however, also be explained by acting out genetical programming without thought or sentiment. Even life without consciousness preserves itself, or it would not exist.
Self, in the latter sense, would be the living body, the entity whose physiology and anatomy are physically separated from the environment (although not functionally separated). Interest, in the latter sense, may be viewed to be a theoretical consequence of the existence of an entity that has a good of its own. As long as there is something that can be said to benefit such an entity, i.e. provide for its existence, then the entity has a good of its own.\textsuperscript{535}

The game-theoretical tensions could be upheld by this non-conscious kind of self-interest, or self-preservation. The dual character is present in this kind of self-interest too.

Self-preservation behaviour, conscious or not, expresses a quality that would work towards a certain kind of beneficial cooperation. Not all non-conscious and self-preservation beings have a symbiotic relation to others, but all such beings we know of are part of a network of ecological relations. Even if such an ecological network is not always beneficial to each and every self-preservation individual being, the ecological network is necessary for the existence of each individual. The beneficial cooperation resulting from the tension created by non-conscious and self-preservation beings can thus be expressed as co-existence. The benefits for some of the beings in question go much further than only existence, while others only acquire a brief span of life from this cooperation. However short an existence of a life may be, the very existence of that life is evidence of the benefits that it has acquired from being a part of the ecological network. Hence, the ecological network of relations is a kind of beneficial cooperation based on the self-preservation behaviour of all those involved who provide the common good of existence.

If self-preservation behaviour is correctly viewed as an expression of self-interest, then tensions between the self-preservation behaviours of all individual life within an ecological network may be viewed as an analogy of the theoretical tensions in a game. It then makes sense to talk of non-conscious self-interest as part of game-theoretical tensions.

The non-conscious self-interested being is sure to have a genuine disinterest in the interests of others. A snail is obviously preserving itself. In its own way, lettuce is also preserving itself. The expectation that a snail would eat lettuce in the society to be constituted in the

original position would not, however, be any reason to suspect that the snail would be interested in the interests of the lettuce. The snail eats the lettuce in order to preserve itself, not out of an interest in the interests of the lettuce.

This does not mean that the game-theoretical tensions should be maintained exclusively by a notion of non-conscious self-interest. Rather, the point is that the game-theoretical rationality can be upheld without assuming that the self-interest in question is a conscious and subjectively held self-interest. An agnostic attitude towards the role of the subjective perspective when defining the good at the time of defining the right holder prepares the way for including all self-preserving beings as right holders, rather than only those self-preserving beings who also happen to be self-conscious.

Non-conscious self-preservation would not be a replacement, but an alternative understanding of self-interest in the original position. The original position needs to be loaded with some ability of appreciating goods in order for the game-theoretical tensions to be preserved. The ability should not be a personal ability of any particular contractor, but a general idea of an ability that the contractors may have in the society to be constituted. The contractors need to know that there are beneficial goods waiting for them in the society to be constituted and that the goods are more beneficial to all right holders by cooperation. The ability of goods to be beneficial must not be presumed to be dependent on the expectation that the right holders are self-conscious subjects, while that would include arbitrary, personal knowledge of the contractors.

The consequence is that the property of self-interest, understood in a broad sense and expressed by self-preservation, is a necessary and sufficient property to possess in order to be a right holder according to this modified (and re-modified) rationality of the original position.

Self-preservation is a good in the sense that it is good to be able to appreciate or use goods. Self-preservation is the only common good where arbitrary expectations on others are not present. The need to have a common good, a common point of reference, discussion, and departure is then satisfied. Still, the integrity of the particularity of each individual, at least each right holder, is secured. This is a basic mechanism that defines the good for a right holder, without putting arbitrary expectations on the right holder.
Once this mechanism is established, however, there may be rational expectations that restrict the right holders. The law is usually a collection of such expectations. The links with rational self-interest and the original position are obvious. Rationally self-interested beings reasoning under the restrictions of the original position should reasonably conclude that the realization of one’s particularity should be common law. Also, certain restricting and rational expectations on the behaviour of right holders need to be formulated—based on mutual disinterest, meaning mutually not being interested in disturbing others’ interests. The guiding good all along is self-preservation.

Restrictions aside, to define a common good as self-preservation has a strongly expansive effect on the scope of rights. The snail’s retraction of its eyes upon touch is a sign of a physiological reaction. Nevertheless, it is also a sign of self-preservation, albeit non-conscious self-preservation. To withdraw the eyes is an efficient way to preserve the function of the eyes. Darwinist evolutionary theory could be used as an explanatory model for the rationality in question. The snail, as a representative of its species, retracts its eyes in order to preserve physiological functions needed to sustain its existence long enough to propagate its genes. Those beings that most efficiently, i.e. most rationally, preserve their necessary physiological functions produce offspring and add to the stable existence of the species. The long-term result is that life manifests economical (means-end) rationality in the behaviour of individuals, conscious or not. In Darwin’s view, those individuals are only interesting as representatives of species and as agents to preserve and develop the species. Once economical rationality is established as a principle of life, however, it is present in each individual in itself. It is not necessary to focus on the development of species in order to appreciate and make use of the preservative motions of life.

Self-preservation offers something to look for when faced with a particular choice situation. The property of being exposed, or to be the object of oppression, is, nevertheless, the key property that is relevantly associated with the title of right holder. Signs of self-preservation seem to be relevant expressions of a common good for all right holders. If, however, it turns out that such a basis for a common theory of good distorts the proper function of rights-based theories, then it must be revised and the proper function maintained.
For example, a theorist could attempt to develop a rights-based theory by suggesting that the good of self-preservation should be provided to the powerful by consumption of the weak. It may be argued that the usage of ecological relations to show that rational conclusions should not be affected by the personal knowledge of being a subject influences the notion of justice in an even more substantial way.

This would, firstly, be a theoretical mistake. The analogy between tensions between self-preserving beings in an ecological system and tensions in a game is made to show that contractors should rationally include certain non-conscious beings in the social contract. It is contended that the facts of ecological relations affect rational conclusions. Justice is, by extension, affected by the same facts, but only by way of rational treatment of the facts. The mistaken theorist in question would imitate raw ecological facts, or rather a specific selection of ecological relations (excluding symbiosis, for example) in order to constitute justice.

Secondly, and relating to the outcome, the mistaken theorist would contradict the proper function of a rights-based theory. This can be more directly perceived from the flawed model of rights-based morals, and it is morally a more serious problem than the theoretical mistake. The contradiction to the proper function of a rights-based theory makes the theory wrong, no matter the extent to which the theoretical mistakes can be rectified.

There are certainly more examples of theories based on the property of self-preservation that contradict the proper function of a rights-based theory. Self-preservation, however, can be used to identify morally relevant aspects of beings that should be treated as right holders to the extent that it can be used in a theory which supports the proper function of rights-based theories. If there, indeed, is such a theory, then it would be rational to define the right holders as self-preservation beings.

The broad understanding of self-interest creates an equally broad definition of the right holder. If Darwinist evolution theory is a decent guideline, then all life should have some kind of self-preservation behavioural patterns. The theory in question would then be a biocentric rights-based theory with significantly more generous scope than the regular pro-animal-rights theory.

If all life attempts to efficiently preserve itself, then moral agents are obliged to assist these beings. The nature of the assistance, how-
ever, is relative to the nature of the beings in question. The inclusion of a being as a right holder is not automatically giving that being an unreasonably natured or absolutely strong protection by way of rights.

The link between self-preservation and exposure

The self-preservative ambition has links with the property of being exposed to a powerful aggressor. Self-preservation is a common point of every right holder’s good life. Rights should protect the good life of right holders. To be exposed in relation to a powerful aggressor is to be in a position that calls for the protection by rights. The link can be made more specific.

To be exposed to a more powerful and potentially harmful counterpart is to be at risk of oppression. Iris Marion Young has detailed some vital aspects of oppression. According to Young, oppression is expressed by exploitation, marginalization, powerlessness, cultural imperialism, and violence.

To exploit is to unfairly benefit from someone else’s work; typically, a social group benefits from the labour of another social group. If non-humans are recognized as social groups in society, there are plenty of examples of exploitation. Laboratory animals and broiler chickens are clear examples of how non-human animal bodies are made to work for our benefit without proper compensation.

To marginalize is to expel a social cohort from useful participation in social life, either by necessity or by choice. This is about making all members of society useful. It is not immediately clear that this aspect of oppression is applicable to the role of non-human animals today. People are quite happy putting non-human animals to use, although the usefulness in social life is limited. We appreciate the usefulness of nutritional value of animal meat more than the usefulness of the aesthetic value of a live and free animal. Marginalization of non-human animals is probably about reducing the scope of their possible usages, rather than not using them.

To be powerless is to not be able to be creative, make judgments, or use other abilities that presume autonomy and personal initiative. It


\[^{537}\text{Ibid. 53.}\]

\[^{538}\text{Ibid. 56f.}\]
is to be someone else’s puppet. The common way of establishing hu-
man–non-human relationships is to secure the relative powerlessness
of the non-human. Leashes, cages, and stables are artefacts of power-
lessness. The powerlessness of laboratory animals in the presence of a
laboratory technician is extreme. Both physical and chemical means
are used to further suppress the already-weaker powers of the labora-
tory animal.

The mechanism of cultural imperialism brands social groups that
do not match the expectations of the dominant culture as stereotypical,
and makes the actual individuals identified as belonging to that group
invisible.539 This is an aspect of oppression that is underlying much of
the former evaluation. There are no obvious examples of the mecha-
nism per se in animal practices. The subtlety of cultural imperialism
and stereotyping makes it more commonly explicit in theories (and
certainly not exclusively animal-rights theories), cartoons, and other
cultural expressions. Its consequences, as has been argued, can be
readily seen in animal practices.

Violence as oppression is systematic violence against a particular
social group, where the violence is socially accepted, and may even be
viewed as justified.540 It can be physical or verbal, and is recognized
by how few systematic attempts are made to stop it. Meat production
and biomedical animal experimentation are obvious examples of prac-
tices where animals are systematically subjected to deadly violence
that is, furthermore, viewed as fully justified. Opponents of those
practices are ridiculed as dreamers or feared as terrorists.

All these aspects of oppression presume that the oppressed, the ex-
posed, have some kind of self-preservative sense. In order to be rele-
vantly exploited, a being must be harmed by the exploitation. To
benefit from the work of a machine without giving the machine proper
compensation is not oppression. It is, however, exploitative and op-
pressive to extract a liver from somebody because it harms a body
without any possibility of proper compensation (which would be an
artificial liver).

In order to be marginalized, in order for a being’s usages to be re-
duced, the being must be violated by the reduction. A self-preservative
being uses an array of capabilities in order to identify and achieve
personal aims. A reduction in the usages that non-human animals may

539 Ibid. 58f.
540 Ibid. 61f.
have for human beings is a failure to not only see all their capabilities, but also to appreciate the full bloom of self-preservative ambitions of non-human animals. Marginalization of beings without self-preservation is morally trivial because the reduction in the nature of those things is trivial.

To associate the powerlessness of someone with oppression is to say that it is in the interest of the being in question to use its powers, and to use them in their own particular way. It is in the interest of every self-preservative being to be able to use its capabilities to achieve its aims. To cage an animal, to keep it on a leash against its will, or stop it from using its capabilities in order to pursue its personal aims, is to make a self-preservative being powerless, which is also oppression and a violation of its rights.

The stereotyping motions of cultural imperialism clearly presume a self-preservative object in order to be oppressive. To be generalized with others and forced into heavily connoted categories where the real particularities of the being in question are suppressed from public recognition are only a moral problem if the being in question is self-preservation. Each individual toaster certainly has its particularities, patterns of manufacturing faults and wears are different, but forgetting about those particularities is trivial and toasters can be generalized and stereotyped without oppression. A failure to recognize a self-preservative being is a failure to take its life patterns and vulnerability into account in decisions.

Finally, violence against something or someone who does not have any trace of self-preservation can hardly be said to be violence at all. Relevant violence is the systematic and harmful interruption of a self-preservation being pursuing its aims, the systematic and harming prevention of the activities of a self-preservative being, and simply the systematic and arbitrary physical or verbal beating of a self-preservative being. If laboratory animals and certain farm animals are indeed self-preservative beings, then the systematic violence that they are exposed to is indeed an aspect of oppression.

To be exposed to a potential aggressive and more powerful counterpart, understood as a case of potential oppression, thus presumes self-preservation of the exposed ones in order to be morally relevant.
The inclusion of all life

The inclusion of all life in a theory of good that underlies a rights-based theory may seem overly generous. The practical consequences of treating snails as equals may be perceived to have overwhelming costs. The point in having a very thin common theory of good is to meet the reality of particular individuals. It is the vulnerability and exposure of being alive among others that are the basic existential commonness. From this, it can be concluded that, in times of exposure, it is commonly good with protection by rights. The content of the particular good for each right holder is immensely thicker than the common good, but the substance of particular goods can, by definition, not be expressed in a general theory of good.

The inclusion of all living individuals as right holders is undoubtedly a pretentious aim. It may be argued that the costs are too high. Surely, there are also worries that rights language is watered down by granting all living individuals rights. Such worries may be met by suggesting a theory for a narrower scope of beings, for example those beings that are consciously self-preservative. The costs of granting rights are kept down by not granting rights to too many, and rights language keeps at least much of its good repute by keeping it exclusive.

There is, however, an approach to keeping down the costs, while also pursuing the more inclusive rationale of rights suggested here. The content of rights, the specific protection that rights grant, may be adapted to each right holder. To have rights is to be within the scope of rights, to be part of the existence that is based on rights. In this case, that means to be of an existence that can be exposed. All right holders are the same and equal in this existential respect. The meaning of having rights, the protection that each right holder enjoys, and the effect that protection has on their life, however, are personal and particular for each right holder.

People may have an array of political, social, cultural, and other rights. A right-holding snail, on the other hand, may, for example, have the right to exercise its biological and ecological functions without arbitrary interruptions or hindrances from moral agents. This could be specified to include the right to not be stepped on intentionally without good reason. Human moral agents could then, still, have a right to the opportunity to exercise their biological and ecological functions.
A person taking a walk in the forest would risk stepping on a snail. Taking a walk in the forest could then be viewed as a rights conflict, where the life of the snail is weighed against some human recreation. Any prima facie lexical order of goods would put life before recreation, meaning that the walk in the forest would be wrong because of the risk of killing a snail.

If, however, the purpose of the walk is self-preservation and a genuine disinterest in the well-being of the snail, actually stepping on a snail would not be intentionally destructive or arbitrary. The exercising of a right would give good reason for taking the risk of stepping on snails. The walk in the forest would become even less problematic if the snail were to lack any right to life. A right to exercising biological and ecological functions is not necessarily possible to specify to the right to life. To die is part of being alive and thus part of biological and ecological functions. Isolating individuals for fear of the harm they may cause each other entails, if anything, the immense costs that threaten to thwart the moral project of granting rights.

There is actually at least one good reason for why snails do not necessarily have the right to life. Note the difference between the snail’s right to exercise its functions and a human being’s right to the opportunity to exercise its functions. The difference is introduced in order to suggest a relevant difference between snails and humans.

Autonomy is most often part of the particular nature of human individuals, while that can hardly be said about snails. Indeed, if any species-specific behavioural pattern should be said to belong to human beings, it is the extent we depend on making delicate, informed, and reflected choices. Of course, this ability is not possessed by all members of *Homo sapiens*. Still, it is quite in order to approximate human rights to include rights that allow us to use autonomy, as long as the general approximation is rectified to be particular and precise at the time of application.

The life of snails, on the other hand, is not different if we protect an opportunity for them to perform their functions, or simply their functions. It is meaningless to provide choice-rights for snails. The choice to realize functions is never made by the snail, but rather depends on external factors, such as the location of food and mates, the topography, the climate, or, for that matter, the sole of a shoe coming crashing down.
There should not be any difference between the moral relevance of that shoe whether it is attached to the hoof of a horse minding its business whilst grazing, unaware of the snail to be crushed, or it is attached to a foot of an equally unaware and disinterested human being. The killing of the snail is unfortunate and interrupts its functions, but it is also amoral as the killing is not intended or even known before it is too late.

The unwitting killing of snails is different from the unknowing killing of beings that can be granted choice-rights (many of those are human beings). This is not because human beings are more morally valuable in any way, but it is because beings to which it is meaningful to grant choice-rights are relevantly different from snails. The possibility of granting rights to snails is then also dependent on the reasonableness of interest-rights (welfare rights). A case will not be made for interest-rights here, although it should be noted that to argue against the possibility of interest-rights is also to argue against the possibility of granting rights to, for example, seriously demented people and very young children.

A healthy adult human being is a typical being with a well-developed autonomy and that is thus typically justified to have choice-rights. It makes sense to understand the right to life of a healthy adult human being as a right to choose to live or die. The life of such a human is strongly characterized by choices and by powers to manipulate and use environmental factors in order to pursue those choices. To accidentally kill that human being would be to violate his or her right to choose whether to die or not, but it would also be to end his or her life by means that are radically different from the kind of life he or she was pursuing, namely the means of accidence rather than reflected choice.

A snail performs its functions without choice; its pattern of life is affected by environmental factors and determinate the physiological factors of the snail in question. Its rights concern these functions. If it has a right to life, it is a right not associated with any choice. Rather, it is a right concerning an individual living in determined relations to physiological and environmental factors. Its entire life and suitably its rights are characterized by the slow and rhythmic convulsions of its body moving through vegetation and over rocks, changing direction depending on chemical attractants or repellents, mechanical obstructions and channels without the choice of not doing so. If it has a will,
it is a will of the environment and a will of physiology expressed in
the behavioural patterns of the snail. To be accidentally trampled and
killed by mechanical circumstances accord with the rest of its life.

In short, the accidental death of a healthy adult human being mili-
tates against its particular kind of life, while the accidental death of a
snail works in accordance with its particular kind of life. It is unfortu-
nate for the life of a snail to be swept away by mechanical forces be-
yond its grasp, but it is certainly not surprising.

The suggested specifications of some of the moral considerations
that come with granting rights to snails are surely in need of revision
and elaboration. The point, however, is that snails and even more sim-
ple life can be given rights without immense costs or impossible rights
conflicts if the content of the function of rights is adapted to each right
holder. We must not expect all life to have the same right as human
beings and other mammals may have; some life may not even have the
right to life.

In order to avoid arbitrary specifications of the function of rights of
particular right holders, there must be some common point to base
those considerations on. The protection of those oppressed has already
been mentioned as a fixed starting point. More than that, however, it
must be said that a basic protection is also the protection it means to
not be arbitrarily hindered while using one’s capabilities. In other
words, good arguments for the act must be given whenever moral
agents intentionally act towards a right holder in a harmful manner.
Moral agents may compete by throwing rocks the longest, but a petty
competition like that would not be a good reason to throw snails in-
stead.

The particular goods of individual right holders may be decided,
starting from those two points. Preserve the protection of the poten-
tially oppressed ones, which happen to be living and self-preservative
beings, and see to it that the protection must never be withdrawn
without good reason. Largely unsubstantiated common rules of par-
ticularizing the good are recommendable, but some speculation about
further guidelines to identify particular goods would make the idea of
particularization more applicable.
Identifying particular goods

To identify particular goods and to weigh them are part of the consideration in particular choice situations. In such considerations, there is surely more help to be obtained than merely the hint of looking for expressions of self-preservation (signalling potential exposure) or the analysis of good reasons to override rights. Knowledge about (statistically) normal physiology and the behaviour of various species surely helps as long as they are taken as guiding points rather than moulds in which to fit the right holder.

To leave an animal to pursue its ecological role is probably the most trustworthy method to identify goods for that animal. To simply not hinder an animal from finding its right habitat and pursuing its goods is probably the sum of what human moral agents owe most animals in most situations. No human knowledge about the good for non-human animals is necessary for the animals to identify their own good.

If animal rights were implemented, however, there will surely be rights conflicts that involve non-human animals. The goods for laboratory animals and farm animals immediately clash with the goods of patients and hungry people. The goods for various wild animals may clash with the goods for farmers.

It is relevant, then, to ponder the possibilities of gaining knowledge about the good for animals, and preferably more specific knowledge than only that the self-preservation of the parties involved should be respected. In conflicts between the rights of laboratory or farm animals and human rights, it would be necessary to actively and intentionally weigh human goods against the goods of those animals, and do so with the best estimation possible about the involved goods. How can human beings, then, actively perceive the good for animals, and do so without anthropomorphism?

Perceiving the good for animals

The question can be made quite metaphysical and cause lengthy discussions on possible, albeit not probable, beliefs about the human–non-human relation. Keeping this outline as an outline, I would bluntly claim that human moral agents are ‘designed’, either by natu-
ral evolution or by some other, possibly divine, means,$^{541}$ to live and act on Earth, in the ecological systems of Earth, as an integral part of those ecological systems. The prima facie case is, thus, that human moral agents should have senses that match the particulars of these ecological systems that are relevant for pursuing a life. Indeed, to claim that the senses of human moral agents would not be tuned to sense the relevant aspects of this world, but instead another world—for example a world of ideas or of angels—would make quite unpar-simonious presumptions (for example that the laws of Darwinist natural selection and evolution would not affect human beings, that *Homo sapiens* would have been planted here by aliens, or that God would have created the bodies of human beings for life somewhere else than where God actually put us). The case could, of course, be that human beings can perceive both the material world of ecological relations as well as other worlds.

The results of Françoise Wemelsfelder’s work provide some scientific basis for the claim that people can perceive morally relevant aspects of animals in particular situations. Wemelsfelder has, in collaboration with various co-authors, provided empirical and confirmed results showing that human agents can assess various moods of certain farm animals.$^{542}$

Humans were asked to watch videos of non-human animals and assess their mood. Some groups of human observers were not trained to or experienced in ‘reading’ animals, while other groups consisted of farmers and veterinarians.$^{543}$ Qualitative assessments of individual

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$^{541}$ Cf. Buller, David J., ‘Etiological Theories of Function: A Geographical Survey’, *Biology and Philosophy*, vol. 13 (1998), 512f., 523. Buller’s argument may be understood to be in support of an etiological theory that is not conceptually bound to explain evolution by Darwinist evolution theory over an etiological theory that is bound to do that.


$^{543}$ Wemelsfelder and Lawrence, ‘Qualitative Assessment of Animal Behaviour As an On-Farm Welfare Monitoring Tool’, 21–5.
animals were made by human observers in and outside a natural environment, as well as of animals in a group. The assessments were based on the experimentees’ spontaneous associations in order to avoid the bias possibly added by predetermined lists of descriptors. This produced terms like ‘irritable’ and ‘playful’ to describe the behaviour of pigs and some other farm animals.

There was a highly significant correlation between how different human observers described the various moods of the animals, even between the different groups of observers. Also, there are some results, unfortunately still unpublished, showing that there is reason to believe that the described mood also had physiological correlations in the observed animals. Furthermore, the resulting lists of descriptors (based on the spontaneous descriptions) have been shown to be usable and even helpful in practice by experienced veterinary inspectors.

The philosophically striking part of Wemelsfelder’s work is that it has provided empirical evidence that we can trust people’s perception of non-human animal sentiments. The weakest link in her research is the correlation between the perceptions of animal moods and physiological states, as the results still await publication. Still, Wemelsfelder et al. have provided good reasons to believe that non-human animal behaviour is a kind of body language understandable to human beings.

The observation that moral agents can successfully read pigs can be used to make analogical conclusions about the possibility of reading life-forms less similar to moral agents than pigs. Such analogies are made with more certainty by relying on empirical knowledge about the life-form in question, both medical knowledge and other empirical evidence.

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547 Wemelsfelder, ‘How Animals Communicate Quality of Life’, 29.
548 Wemelsfelder, Francoise, ‘The Reliability of Qualitative Behaviour Assessment in On-Farm Conditions (Abstract)’, Third International Workshop on the Assessment of Animal Welfare at Farm and Group Level (2005), University of Natural Resources and Life Sciences: Vienna, Austria, 18.
knowledge. The analogies would be, importantly, about the possibility of perceiving, or somehow identifying, the state of the life-form in question, and deducing the goods for that particular life-form. The analogies must not be based on expected similarities between the particular self-preservative beings, apart from the similarity of having identifiable goods. More restrictions surely apply to making these kinds of analogies.

One of the aims of Wemelsfelder’s work is to show the usefulness and helpfulness of treating animals as wholes.\textsuperscript{549} Perceiving various qualities in animal moods, rather than measuring quantities of physiological marker molecules, is supposed to say more about the state of the animal than can be fitted into the healthy–unhealthy dichotomy. The usage of biomedical data about the healthy goods for various life-forms should be open to adaptations to the particular case.

This means that it is possible to leave much of the conflict-resolution process to be made in particular situations, especially when it comes to mammals. The resolution of rights conflicts does not have to be premeditated in detail. The involved moral agents should be able to understand a great deal about the good for animals in the particular conflict situation, given that the good for animals can be deduced from what they feel like in various situations.

Knowing the good for animals is not sufficient for resolving conflicts between rights, but it is a necessary knowledge. Such knowledge must be combined with an approach to weighing goods in order to resolve conflicts. Also, there must be a way of quantifying the deduced goods.

Capabilities as goods

The issue whether exposure can be observed and quantified still awaits an in-depth discussion. The argument so far has been that self-preservation is an identifiable property possessed by beings that can be relevantly oppressed, thus beings that can be relevantly protected by rights. It has also been argued that the good of at least certain self-preservative beings may be assessed by moral agents, although there are right holders, according to the present definition, whose goods cannot be assessed with such certainty. A more specific guideline for assessing the goods of self-preservative beings will now be outlined.

\textsuperscript{549} Wemelsfelder, ‘How Animals Communicate Quality of Life’, 27f.
The dominant notions of the good life, looking at mainstream liberal and economical thinking, put much focus on autonomy and the view of human beings as, first and foremost, individual ‘subjects’. Implicitly, then, human subjects are said to be surrounded by ‘objects’. Two competing understandings of the good life follow from this. Either the good life is subjectively or objectively defined.

The dichotomy in question would contradict some conclusions of, for example, Regan, who argues that certain non-human animals are subjects in the sense that they have preference autonomy. Still, the traditional notions of the good life are useful as a starting point for defining some possible identifiable aspects of the good for animals. Also, the traditional notions of the good life have, as mentioned in Chapter 1, been transformed into a scheme of animal goods, based on the same distinction between subjective and objective.550

A focus on the satisfaction of desires and preferences puts great trust in the ability of individuals to define their own good from their subjective perspective. Desires are appreciated in ethics for their prudential character, inherently safeguarding the well-being of the individual. The insatiability, flexibility, and short-term nature of raw desires, however, make them less suitable for moral theory. Liberal ideology, however, has characteristically developed devices that are meant to mould desires into morally relevant phenomena. These rationales are developed to separate relevant preferences from petty wants. James Griffin refines the paradigm of personal desire by suggesting that only ‘informed desires’ are morally relevant.551 Informed desires are meant to point to a rational and well-informed preference for a state of the world that advances one’s plan of life.

The competing view is to prioritize the fulfilment of basic needs over the satisfaction of desires.552 Basic needs are meant to express objectively defined and universal necessities. Such theoretical status signals a scientific warrant of rigidity. Garrett Thomson argues that needs are necessary to fulfil in order to avoid harm, which makes them of more fundamental importance than desires.553 The concept of

needs does not, theoretically, have any of the impulsiveness of desires and therefore seems like a firm basis from which to separate relevant preferences from wants for luxury. Len Doyal and Ian Gough discuss the philosophical work on needs, while also taking into account various sociological criticism of the needs paradigm.554 They present an array of critiques that charge the concept of needs with always or often being used to describe subjectively construed, albeit well-established, preferences.

The two schools of defining the good life are also reflected in notions of when needs and/or desires are supposed to be satisfied. It was outlined in an earlier chapter that Rawls argues that justice demands that ‘primary goods’ are distributed fairly in order to give people opportunities to fulfil their rational plan of life. Others, the welfarists, argue that it is rather the subjectively experienced consequences of such distribution that are of most importance to the good life. Also, there are those, notably Amartya Sen and Martha C. Nussbaum, who contend that capabilities and actual functionings are what matter the most.555

G. A. Cohen describes these three ways of fulfilling someone’s desires and needs as a causal scheme.556 The emergence of primary goods leads to the realization of capabilities, which, in turn, produce welfare. Primary goods that are rational to prefer are meant to be decided in a position simulating impersonal self-interest, a kind of objectivity.557 Welfare is viewed as coming about by satisfying desires and is thus ultimately subjective. Capabilities, in this scheme, are something that is not solely subjective or solely objective.

A capability is the opportunity to carry out certain functionings.558 The capabilities approach includes the situation of actual beings in a

quite concrete manner. The approach portrays the good life as a life where one is able to change one’s situation, to experience what it is to be capable of something, and to form one’s life by choice and action.

The choice of the subject is central, but the capabilities have limited scopes. A capability for social interaction may be deemed morally relevant, while a capability for a shopping spree may be questioned as relevant per se. While the manner of limiting the scope of the relevant capabilities may suggest a universal and objective approach, the strong standing of the active and choosing subject also adds subjective elements.

Capabilities and non-human beings

Nussbaum has elaborated on the relation between the animal issue and the capabilities approach. She argues that animals have a dignity and that the dignity is upheld by capabilities.559 Dignity is, according to Nussbaum, a varying property, relative to the species in question, and based on a personhood that arises from a view of ourselves as needy, vulnerable, temporal animal beings.560 This view of dignity reflects Nussbaum’s Aristotelian basis and is quite similar to the notion of flourishing (eudaimonia).

Nussbaum uses capabilities to formulate an objective list of goods.561 The list is founded on a list of basic human capabilities, and is meant to be adapted to various non-human species.562 The idea is that the dignity of each species is realized by a list of capabilities that are generalized according to a certain species norm.563

The suggested use of a species norm is not necessarily contradictory to the evaluative analysis of the previous chapter. This is true to the extent that the species norm is used as a practical guideline for providing a rough estimate of a probable good life for a certain right holder. As soon as the species norm is used as a form into which to push an imagined essence of a particular right holder, the species norm is inevitably on its way to sooner or later distorting the proper function of rights-based theories.

559 Nussbaum, Frontiers of Justice, 161f., 326f.
560 Ibid. 159f.
561 Ibid. 392ff.
562 Ibid. 392.
563 Ibid. 179ff., 362f., 365.
Nussbaum’s theory of animal entitlements deserves more attention and a more detailed outline than given here. The theory cannot be given such treatment at this point. Nevertheless, her theory is noted because of some basic insights that it has. The capabilities approach was originally developed to measure opulence and poverty among human beings. Nussbaum shows that it can be used for non-human animals and to describe the good for animals.

A capability is the opportunity to carry out certain functionings. This is intended as a concrete way to measure the good for a certain being. The capability to combine political life includes, among other things, the opportunity to make the actual movements necessary to get oneself to the polling station. Economical, environmental, physiological, and other obstacles to performing those movements must be removed if the capability is to be realized. Minimally, it is the opportunity to move a limb through space, the lack of hindrances to do so, that is the expression of a capability.

There should, then, not be anything prima facie arbitrary in talking about non-human beings having capabilities. Nussbaum’s particular understanding of the capabilities approach entails a certain neo-Aristotelian and neo-Marxist rationale. But there is no need to accept or argue for her entire rationale in order to accept the reasonableness of applying the concept of capabilities to animals. Capabilities are defined by the degrees of actual freedoms of a certain individual, without a necessary reference to species membership.

Even the snail must have a certain degree of freedom for it to move across a lawn. Freedom is then an environmental freedom, lack of physical obstacles, or lethal or paralyzing chemicals. Freedom is not an opportunity to make an autonomous choice. It could be suggested in a similar manner that it makes sense to talk of capabilities of primordial animals (protozoa) and other single-cell organisms, and even trees and plants. The tree does not have the capability to grow without the environmental freedom to acquire water, minerals, sunlight, and the physical space to expand. A malaria parasite, a protozoan, does not have the capability to survive if it does not circulate interchangeably in a mosquito or other suitable vector and a hen, mouse, human being or other suitable host.

The understanding of capabilities and the meaning of opportunity change depending on whether the capable being in question has an autonomous kind of existence or not. The complete lack of any auton-
omy, not even preference autonomy, changes the meaning of protecting capabilities, but it does not necessarily remove such protection. The relevance of associating capabilities with satisfying preferences and desires, or solely fulfilling basic needs, is relative to the particularity of the right holder in question. If self-preservation has the moral role as it has been argued that it has, if a certain being is self-preservation, and if that self-preservation can reasonably be explicated as the exercising of certain relevant capabilities, then the exercising of relevant capabilities should be prima facie protected. This is true no matter whether the capabilities are consciously and autonomously exercised or not.

Capabilities are assessable and quantifiable

It is possible to talk of a capability to live. Such a capability serves as a good example for this discussion. The capability to live is a basic condition to satisfy desires and fulfil needs. Formulating the function of rights as including a protection of the capability to life expresses an idea that can easily be associated with self-preservation.

Imagine an elk walking in a forest, nibbling bark and grazing, bathing, wallowing, playing, and occasionally bugling. This would be normal behaviour for most elks. It would be the everyday life of an average healthy elk. A right to have the capability to life protected would, for the average elk, mean having the opportunities to these kinds of activities protected.

The protected aspects of the elk would be quite observable, if such a right were granted. It is the limbs of the elk moving freely through space that are protected. The opportunity to reach the grass or the bark, the opening and closing of the mouth and other movements, and exercising the capability to live would be prima facie protected. So is the opportunity to bathe, wallow, play, and bugle. All these opportunities are conspicuously assessable by very observable circumstances: Is there a fence to hinder the elk? Is there grass to eat? Is there enough water for bathing?

Furthermore, the capabilities are as obviously quantifiable. To bathe, the elk must get itself to a large enough body of water. A very

564 Cf. ibid. 393.
long distance to the body of water would mean that the elk would have less capability to bathe. The level of the capability to graze is relative to the distance to proper plants that are not poisoned, burnt or otherwise would contradict the self-preservation of the elk. These kinds of capabilities are also relative to such factors as physical obstacles between bodies of water or pastures, and the physiological and anatomical potential of the elk to move. Distances, medical health, and the number of obstructions are all quantifiable. Conversely, the capabilities are quantifiable.

The average elk has the capability to live by exercising a number of self-preservative behavioural patterns. The walking is a movement to a safer area, an area with more food, an area with mates, and so on. The eating is obviously self-preservative. Bugling may have any number of social functions, including attracting or warning mates. In a social setting, that would support life. The bathing, wallowing, and playing may not be necessary for physiological survival. Nevertheless, while it is so common among elks, such behaviour may be viewed as preserving the life of an average adult elk. Life would then be in the wider, non-physiological, and more narrative sense.

By extension, both oppression and exposure are identifiable as lack of capabilities, albeit such a lack is not a sufficient criterion for oppression and exposure. Arbitrarily putting up a fence around a forest would hinder an aspect of the capability to live. Arbitrarily poisoning the grass or turning the water in the lakes into acid would also violate the capability to live of most or all elks. These would be intersubjectively assessable and quantifiable arbitrary actions. The actions would also be examples of oppression of the animals in question. The oppressive actions would also, and to an equal extent, be concrete proof of the exposure of those elks. If they were not exposed, it would not be possible to violate their life.

Capabilities are commensurable

The commensurability of capabilities can be deduced from the reasoning about their quantifiability. Capabilities are a kind of objective liberties. If the capable being has a subjective perspective, a consciousness with desires and wants, then the list of suitable capabilities can be adapted to be liberties that support such a subjective being. The capabilities, though, remain objective, meaning external to the subjec-
tive perspective. Capabilities always contain practical opportunities to exercise functionings.

The question of commensurability is then a question whether a right holder’s liberty to act to preserve itself and another right holder’s liberty to do the same have, or lack, a common measure. The protected capabilities of any self-preservative being are relative to the nature of that being. This means that the lists of protected capabilities are different among most or all right holders. It is not as clear, however, why they would be incommensurable.

Certain microbes propel their movements with a flagellum. The capability to move is important for those microbes as a way to, for example, provide themselves with nutrition. The flagellum needs to have the space in which to move and the biochemical conditions to work in order for the capability to move to be realized. The same thing can be said about the muscular convulsions of the snail, the moving leg of an elk or of a human being. The capability to move presumes the proper protrusions with which to move and the right environmental conditions.

The worldview of a microbe, propelling itself around, is surely not commensurable with the worldview of a walking elk. It actually seems quite impossible to imagine what the worldview of a microbe would be, or to say to what extent the term worldview is misused when applied to a microbe. It is easier to imagine how the worldview of an elk would be, especially if imagining oneself having preference autonomy, while also exercising the various behaviours mentioned above.

Still, it is linguistically easy to express and imagine both an elk’s leg moving through the water of a lake, and the moving of a flagellum through liquid, and to talk about and imagine those two movements as being similar in some respects. They are both concrete matter, part of a living body, moving through some liquid. The concrete aspects of the movements constitute a common measure with which the movements can be compared and, if appropriate, ordinally compared.

The comparison between the flagellum and an elk’s leg may, once the basic and concrete similarity and commensurability have been established, be further complicated. The consciousness and preference autonomy of an elk may be added to the picture. The elk’s moving leg is then granted an intention, a plan for the future. This would surely make hindering the movement of the elk’s leg morally more relevant than hindering the movement of the flagellum. Nevertheless, the
movements certainly seem commensurable, and so are the two capabilities to move. The higher moral relevance of one of the capabilities is another issue.

This is not meant as an ultimate argumentation for the reasonableness of assuming that all morally relevant capabilities of self-preservation beings are commensurable. It is, rather, another part of an outline of a prima facie approach to justifying and explicating the meaning of animal rights. There may be plenty of good arguments showing a number of incommensurable capabilities, but it is reasonable to assume the commensurability of capabilities before those arguments are formulated. The reason is the concrete character of capabilities.

The function of rights

This chapter began by clarifying the problem of persistent rights conflicts. A need was identified for a property with which to compare right holders without disrupting the proper function of rights-based theories. Criteria for a suitable property were formulated. The attempt to expand the scope of rights is justified to the extent that it preserves the proper function of a rights-based theory. It has been argued, albeit the line of argumentation certainly can be made more detailed, that the property of exposure can be used to redefine the right holder. This property fulfills a number of the formulated criteria, although it is unclear to what extent it can be made (intersubjectively) observable, quantifiable, and commensurable. The exposure property was then associated with the property of self-preservation. Self-preservation has now, in turn, been associated with capabilities. Capabilities are observable, quantifiable, and commensurable goods for all self-preservation beings.

This can be compared to the functions of rights that Regan suggested, and that were reconstructed from Rowlands’s thinking. Regan proposed that rights protect primarily the objective well-being of the right holders, while the role of preferences had less significance. The reconstructed contractarian account instead granted more significance to subjective goods, focusing on preferences directed towards the self.

The present account instead suggests that the function of rights is to protect capabilities, or practical opportunities. The scheme of animal goods presented in Chapter 1 would categorize the capabilities ap-
proach in the goods section as natural living. Other categories of animal goods—satisfied preferences, happiness, and health—can also be included under the heading of capabilities, although this depends on the particularities of each right holder.

Protecting capabilities would be right to the extent that it is fulfilling the proper function of a rights-based theory. The rights would then be implemented with constant reminders about the protection of the exposed ones, which would be the intention of the rules. The protection of capabilities would only be an instrument to fulfil the proper function of a rights-based theory.

Resolving persistent rights conflicts

A successful resolution of a rights conflict provides a rule which prioritizes the upholding of one of the conflicting rights, while also preserving the meaning of equality. The theoretical outline provided so far argues that the meaning of justice is to protect self-preservative beings from arbitrarily having their capabilities hindered or otherwise violated by more powerful counterparts. The meaning of equality would then mean the equal treatment of all self-preservative beings in respect of protecting their capabilities.

An important distinction to keep in mind is the nature of the property that defines the right holder and the nature of the weighing property that is used to resolve rights conflicts. The former kind of property may or may not be quantifiable. In any case, the quantity does not matter for the status of the right holder. Right holders are equally included as long as they have the relevant property. Not having the relevant property means being subjected to devaluing. It does not necessarily mean to lose all moral value, but it means to not have the same inherent value as right holders.

The latter kind of property, in contrast, must be quantifiable in order to fulfil its function. Varying significances of rights must be decided in order for a rights conflict to be resolved. The least significant right should be overridden. This can mean that less quantity of the weighing property means less significance, but the conclusion of this discussion will show that it does not necessarily mean this.

The practical difference between being granted less inherent value and being granted less significance may be less evident from the
above distinction. Lacking inherent value means having less moral relevance for existential reasons. The basic constitution of the less valued thing or being suggests its lesser moral relevance. To have less significance of rights, however, means having less moral relevance in a particular situation, and in respect of one particular aspect. In most situations, this means a quite temporary effect. In life–life conflicts, the effect is permanent. The reason for having the right to life overridden is, however, not dependent on the kind of existence of the right holder, but on morally relevant situational circumstances.

Self-preservation is, here, suggested to be the former kind of property, defining the right holder. As such, more self-preservation, for example expressed by having more relevant capabilities or being able to combine the use of relevant capabilities in more complex ways, does not matter for the status of the inherent value of right holders. That value is equal for all right holders.

The latter kind of property is, here, constituted by capabilities. Capabilities have been argued to be quantifiable and also fit the criteria for a suitable weighing property. This makes capabilities appropriate to use when weighing rights.

Simultaneously, however, capabilities are argued to be an identifiable property that signals self-preservation. Capabilities also, then, have a role as a marker for identifying right holders. The distinction between the two roles for capabilities is still important to uphold.

The outlined justification for an appropriate definition of the right holder involves self-preservation, not capabilities as such. The capabilities are approximations of how self-preservation is expressed. Those approximations can be re-evaluated while insisting on the status of the property of self-preservation. Also, capabilities can be questioned as expressions of self-preservation without necessarily questioning their usage in weighing rights.

For example, it could be contended that the expression of self-preservation is better described as primarily behaviour that satisfies desires. This explanatory model for the expression of self-preservation could still be combined with using capabilities to weigh rights. The expressions of satisfying desires may be argued, for example, to be practically incommensurable. The common measure would be desires which, as inner states, would be impossible to detect and thus compare. Capabilities would then be a practical solution when weighing rights. The claim is not made that such a model would be preferable.
The point is that there is a distinction between defining the right holder and weighing rights, albeit some of the properties involved have multiple roles in this particular model.

The neo-Rawlsian rationale has a conflict-resolution approach that can be reconstructed to contain a prioritizing algorithm based on the difference principle. The constitution that provides the best situation for the worst-off group of citizens should be prioritized from any set of potential societal constitutions. The best society, given the theory outlined here, is the society where there is most realization of the capabilities of those whose capabilities are least realized. The difference principle, however, prioritizes among potential societies, and by that prevents conflicts. The principle is not suitable to prioritize among rights in a particular conflict situation.

In earlier chapters, it was pointed out that the neo-Rawlsian rationale has the option of using refined intuitions to resolve rights conflicts. The intuitions would then be refined by rational weighing principles, lexical orders, or assessing the conflict from the position of the worst-off right holder involved in the conflict. The problem was that neither of these refinement tools was applicable to a life–life conflict, at least not in the reconstructed neo-Rawlsian rationale that was previously analyzed. The rationale forced any comparison between lives to be made based on the subjective perspective of the living being in question. Any attempt to resolve a life–life conflict thus stalled. The advantage of the account above is that it provides reason to re-evaluate the usefulness of these refinement tools.

A life–life conflict, following the outline in this chapter, can be explicated in terms of capabilities. To kill someone for the sake of saving another life is to completely hinder the capabilities of a being in order to support the capabilities of another being. Also, and especially considering animal experimentation, sacrificing someone for the sake of someone else may have detrimental, long-term effects on the capabilities of the sacrificed being. A life–life conflict would also take those effects into consideration.

Capabilities are objective in the sense that they are realized by altering concrete, intersubjectively observable circumstances. A capability to develop a social life is realized by, for example, building a pub, youth centre, disco, or church and establishing bus routes from residential areas to those buildings.
This means that the life–life conflict is not completely subjugated to flitting between various subjective perspectives. Comparisons can be made by an objective common measure. Capabilities are exercised by beings that may be subjects having some kind of subjective perspective. The list of appropriate capabilities should adapt to such subjects, but the capabilities in themselves are still objective. To live a good life includes living a life with the material conditions to exercise, at least, basic capabilities.

Granting rights to a snail, or a plant, or a fungus, or other beings without an apparent subjective perspective does not then have to oblige anyone to sacrifice human lives for the sake of mushrooms. An attempt has already been made to describe biological death by unintended events as a smooth continuation of the narrative life of a snail. The lack of subjective perspective makes a being entirely dependent on environmental events; its life is actually no more than responses to such events by genetic predetermination. It makes sense to protect such a being from intentional and arbitrary harm, formulating the protection as a right to not be intentionally and arbitrarily hindered while exercising its capabilities.

Granting rights to mammals and other beings that apparently have a subjective perspective would grant protection of their respective capabilities being deduced from their respective natures. To die in an accident, from unintentional and arbitrary events, is a very tragic and abrupt end to the life of a subject. Death radically differs from the rest of the life of the subject, where autonomous choices (albeit not always enlightened by reason) are a defining characteristic. To die by choice, by freely sacrificing oneself or choosing to end life, is, on the other hand, more in line with the rest of the life of an autonomous being, and thus less tragic. Other kinds of death may be more or less in line with the nature of the dying right holder, making the death more or less tragic and contradictory to the narrative life. To die of old age may be viewed as a smooth continuation of the narrative life because aging is at least as inherent a part of life as autonomy is for a subject.

To live a life according to its nature, right-holding subjects must be granted another kind of right to life than right-holding non-subjects. The right to life includes protection from unintended and arbitrary events with a lethal outcome, claiming to constitute society so that the risk of such events is minimized. Making balconies without railings
illegal can be a step towards such a society, as could promoting putting up fences along heavily trafficked roads.

The various rights to life of various categories of right holders (categorized by their particularities, not by their moral value) imply that the lives of those right holders are qualitatively different from each other. The lives are thus divided up into different categories of goods. This could, but does not necessarily mean, that there is a lexical order of lives. It could also mean that, even if there are qualitatively different kinds of lives, the order of the significance of those kinds of lives must be determined in each situation, for example by rational principles or by imagination and empathy.

By identifying other relevant differences between the natures of right holders, the lexical or situational orders could acquire greater resolution. Identifying such differences is associated with a risk of distorting the proper function of a rights-based theory if, for example, anthropomorphism and anthropocentrism upset the reasoning. The difference between self-preservative beings with a subjective perspective and autonomy and self-preservative beings whose kind of existence lacks such characteristics seems to be certain enough to deem as a relevant difference.

This does not show, however, that this rationale can resolve conflicts that the neo-Rawlsian rationale cannot. The neo-Rawlsian rationale does not include non-subjects as right holders and does not thus control the lives of those beings in relation to other right holders. To show that this rationale can resolve conflicts that the neo-Rawlsian rationale cannot, a weighing principle, lexical order or other method of weighing should be presented that differentiates between various kinds of subjectively lived lives. Also, that difference must not distort the proper function of rights-based theories.

The capabilities approach and animal experiments

Consider the example of animal experimentation again. It has been repeatedly shown that animal experiments for developing mild analgesics and other pharmaceutical products that are already available on the market and that are meant to cure mild health problems are wrong according to the three analyzed pro-animal-rights theories. The case is not different with this rationale.
Laboratory animals conduct their lives where their capabilities are quite restricted. For the laboratory animal, the experiment affects its whole life of opportunities to exercise its functionings. It is trapped in a plastic cage containing some sawdust, food, and often some mates. It survives and is often in quite good physiological health until the time of the experiment, but there is no more than that to its life.

A person with a headache (not referring to migraine) is not at all or only slightly robbed of some relevant capabilities, and only for a short time. Also, an ordinary headache is curable by behavioural adaptations (for example drinking enough water, or relaxing).

Using laboratory animals to develop irrelevant pharmaceuticals is wrong, even when considering this rationale. But the problem of persistent rights conflicts refers to animal experiments (and other animal usages) with a morally significant purpose.

Is there any morally relevant difference between the life of a laboratory animal and that of a human person who suffers from a lethal but potentially curable disease? The difference must be expressed as capabilities, if this account is supposed to be useful for persistent life–life conflicts between autonomous subjects. Does the laboratory animal exercise its capabilities, or fail to exercise its capabilities, in ways that would produce a relevant difference from how the ill person employs or fails to employ its capabilities? This is about more than only death; it concerns the entire life span of each right holder.

The terminally ill person can have as wide-ranging capabilities as the society, the bodily limitations, and the disease allow him or her to have, until the point of death. The relevant limitation considered here is the limitations caused by the disease, as that is the limitation that can be removed by performing animal experiments.

The life of a laboratory animal could, but rarely does, vary. Usually, there is very limited space to move, exclusively preserving the physiological health of the animal. The capabilities approach to assess the life of such an animal would picture a life completely robbed of many capabilities, while other capabilities would exist but be depraved. The animal, like the terminally ill person, will also die not of age or by choice, but by unfortunate circumstances.

Weighing the life of the laboratory animal against that of the terminally ill person does not have a clear resolution, considering these life situations. Both lives can, and often do, signify much-reduced capa-
bilities as well as dying unwillingly. Sometimes, but not always, vital animal experiments are right to perform in order to save lives.

It could be argued that it is wrong to perform animal experiments in order to find a cure for or a prevention of many lethal diseases, considering today’s conditions for laboratory animals. For example, Alzheimer’s disease and Parkinson’s disease are eventually lethal and almost always affecting elderly people who have so far lived a good life with many and highly realized capabilities. To violate entire lives of potential capabilities of laboratory animals in order to provide cures for or preventions of those diseases may very well be wrong according to this rationale, given today’s conditions for those animals. I shall avoid giving a definite answer here, as the conflict needs a more precise factual background than given here in order to be reliably assessed.

The situation of laboratory animals, however, could be improved, albeit at a cost. Their living conditions could be more similar to those of well-kept zoos, for example by improving the training of the staff and their long-term relationship with the animals, and increasing the effort to copy the natural habitat or find good replacements. Nussbaum offers a list of some further improvements for laboratory animals, including palliative care for animals that have contracted a terminal illness.\footnote{Nussbaum, \textit{Frontiers of Justice}, 404.} There are plenty of other suggestions about how to improve the life of a captive animal. The goal would not have to be to offer each animal a perfectly ecological life, but it should be to offer each animal the opportunities to exercise their basic functionings to a large enough extent. The exact list of capabilities and to what level those capabilities should be realized in order to be realized enough are a question to be investigated by ethological and other empirical research as well as, and more importantly, assessed by the trained animal caretaker in particular situations. In any case, the realization of enough capabilities for each laboratory animal will have a high cost, especially start-up costs.

Investing heavily in the welfare of laboratory animals might change the case for patients with Alzheimer’s or Parkinson’s disease. The laboratory animals may be given a pre-experiment life with highly realized capabilities, a life comparably good to that of the patients before they developed the disease.
The experiments could then be done in a way that does not violate the capabilities of the animal more than, for example, the two mentioned illnesses would hinder the capabilities of the ill people. Again, however, critical assessments should be made by trained people in particular conflict situations, and any institutional policies should be formulated to allow for this.

The weighing approach admittedly has similarities to Regan’s approach to compare satisfied preferences and opportunities to satisfy preferences between the right holders in conflict. The case here, however, has not been argued with the kind of analogies that Regan uses between human beings and non-human beings. Regan uses a common measure for the compared rights that turned out to contain anthropomorphic elements, a common measure that arbitrarily gave priority to human and human-like beings, and also to more capable beings.

This approach, on the other hand, was elaborated with the help of the notion of proper function and a kind of neo-Rawlsian rationale. There is an underlying proper function of a rights-based theory, which works as an obstacle to taking advantage of asymmetrical power relations. The neo-Rawlsian rationale simultaneously works towards refining and minimizing the basic property for rationally entering cooperation with others. I admit that the common usage of both these notions has been greatly stretched.

The result was another common measure, with which to compare right holders, than Regan’s suggestion. A laboratory mouse is treated as a mouse, not a failed or incomplete human being.

Nor does the approach make the mistake of stereotyping human persons, as Linzey’s approach tends to do. The human patient is treated in a manner that reflects the exposure of that human being, as opposed to using Linzey’s approach to treat such a human being as relatively powerful.

Weighing the good of life for a mouse and the good of life for a human being is performed by assessing the murine capabilities of the mouse against the human capabilities of the human. The common measure involves the particular list of capabilities possessed by each right holder in a conflict, but is not reducible to such lists.

The property of having capabilities is an absolute baseline in relation to which comparisons of the right holders are made possible, while the particular list of capabilities of a particular being is a relative baseline in relation to which particular good for the right holder in
question is assessed. The weighing is performed between the ratio between the actual realization of murine capabilities and the minimal acceptable realization of murine capabilities and the ratio between the actual realization of human capabilities and the minimal acceptable realization of human capabilities. A ratio of 0.4 means less good for the mouse than a ratio of 0.5, while a ratio of 1 means equal amount of goods for both parts. A ratio of 0 means death for the mouse. The definition of the minimal acceptable realization of capabilities should adapt to particular mice or humans, and only secondarily to standard values for the species. The commensurability of human and murine capabilities is not based on a human standard of which capabilities are relevant to have, but on the property of having capabilities at all.\textsuperscript{567}

For a utilitarian, the mouse may be sacrificed in order to save a human life if the human good (relative ratio of realized capabilities), taken as human, outweighs the murine good, taken as murine. For rationales that aim to respect rights rather than maximize goods this is not a necessary conclusion. There are, however, other uses for fair quantifications and comparisons of goods in rights-based rationales.

This approach does not provide any easy or neatly packaged solutions to persistent rights conflicts. It does not provide very substantial notions of the good, at least not without empirical data, and especially not without the trained assessment of a human perceiver. It does, however, provide part of an instrument to resolve persistent rights conflicts without abandoning rights language.

This weighing procedure, loosely outlined as it is, still has an obvious problem. The example used so far conforms to the contemporary habit of viewing the laboratory animal as a non-human being and the patient as a human being. The weighing procedure in itself, however, does not recommend any particular identity of the groups to be weighed. It works only as a scale, without defining the content of each weighing pan. The weighing procedure should be supplemented with a way to prescribe the definition of who is to be weighed, for example who is to be used in biomedical experiments and for the sake of whom.

\textsuperscript{567} A further elaboration of this statement would depart from Nussbaum’s approach to adapt the list of human capabilities to various nonhuman species. Cf. ibid. 392f.
Defining the experimentee

All rationales that challenge the human–non-human dividing line encounter the problem of who to use for harmful or demeaning tasks that are necessary to perform. To what extent would people be harmed for the sake of human beings as well as for non-human beings? Might the weighing of lives according to this rationale ever conclude, as in the case of both Regan’s and Linzey’s rationales, that there are occasions where we should perform experiments on human beings instead of, and for the sake of, non-human beings?

For example, consider the suggestion that medical experiments should be performed on children with severe mental disabilities in order to save other beings with a higher potential of realizing more capabilities. This case would be similar to a possible outcome of Regan’s rationale.

There is no reason to perform such experiments when following the present rationale. First of all, stating that the children have disabilities is contradictory to this rationale. The children may have a biological nature which makes them have less potential of realizing certain capabilities that many people are used to children having. The ‘disabled’ children may need other kinds of assistance, possibly more assistance, than ‘normal’ children in order to realize their capabilities. The statistically less common kind of children may be as good at being capable in their own way as any other children are good at being capable in theirs, given that they acquire the right support.

In respect of being capable creatures, the children are the same. The common measure, with which they should be treated equally because of their equal value, is the property of having capabilities. Both groups of children are as much capable beings as the other. They both have the property of having capabilities as much as the other. It thus does not make sense to say that they should be treated unequally, for example that children with Down syndrome should systematically be sacrificed in biomedical experiments for the sake of saving the lives of children without the syndrome.

The weighing procedure treats the groups of children equally as capable beings, while also appreciating the differences in particular capabilities. The distinction is a way of expressing the notion that the inherent values of each particular child are equal, while the kind of particular goods and their level of minimal acceptable realization vary.
The weighing procedure, thus, does not suggest that severely mentally disabled children, nor any other human marginal case, should be forced to undergo biomedical experiments. It actually does not prescribe any particular definition of the experimentee. The suggested weighing procedure indicates that anyone who has capabilities can be the experimentee, without saying who should be the experimentee. How then should the experimentee be identified?

This is a fair question. The selection of subjects to use for experiments would risk becoming a practical issue, without guarantees that equality or justice would be considered. It could, for example, be argued that the experiments should be performed on any group of beings that provide the most useful results for developing medicine for human beings, and to whom a long-term welfare can be provided prior to the experiments as cheaply as possible. The outcome could be to still perform experiments on non-human animals, but it could also prove to be cheaper to perform them on, for example, elderly people whose long-term welfare should be cared for anyway. Both options would mean sacrificing exposed beings for the sake of more powerful beings. This is a significant problem with this rationale that should be overcome before it can be applied.

The weighing procedure is quite relativistic. Particularities are compared by construing ratios of capabilities. Equality between beings with disparate natures is preserved by relativization. There is no absolute property singling out who the experimentees should be or who the patients can be. The lack of a device for selecting experimentees arises out of this relativization.

If the problem of identifying an appropriate group of experimentees depends on relativization, then an absolute point of reference may solve the problem. The proper function of a rights-based theory has repeatedly been mentioned as an absolute that any pro-animal-rights theory should realize. This entire chapter is indeed an attempt at explicating an outline of the meaning of the proper function of a rights-based theory.

It must then be the case, according to this rationale, that the experimentees should be those whose usage as experimentees does not contradict the proper function of a rights-based theory. The experimentees must not be experimentees because they are exposed to a more powerful counterpart. If the proper function of a rights-based theory can be explicated as it has been in this chapter, then this means
that the experiments must not be performed on beings that have a lack of practical opportunities to exercise their particular functionings or can involuntarily acquire a lack of such opportunities because of their relationship with a more powerful counterpart. The practical opportunity to choose whether to be an experimentee or not has a critical significance in this.

Voluntarity is an honour word in defining the group of experimentees because capabilities are a kind of liberty. The capabilities approach is not about necessarily avoiding bodily harm or pain, but about providing the opportunities to do so. Providing the opportunity to volunteer as an experimentee would be to provide a capability. It would not be to prevent or violate a capability.

Only a specific kind of being can sensibly volunteer as an experimentee. The volunteer must be able to conceptualize the idea of a medical experiment and have a degree of medical knowledge in order to understand the risks of volunteering. I will not go into the details of the debate over informed consent. Safe to say, the volunteer should be someone adult and human with some medical training in order to be able to make such a choice. Furthermore, the volunteer, in order to really be a volunteer, should be healthy enough to make that kind of decision.

Also, the social, legal, cultural, and material setting must favour a choice as free as possible from potentially manipulating asymmetrical power relations. For example, there must be no significant financial reimbursement for volunteering, no social pressure to volunteer, and no cultural or legal construing of a ‘class’ of volunteers. The material setting must be constituted by technology that minimizes the risks of volunteering, making it practically possible to acquire true volunteers.

This conclusion is practically similar to the outcome of Linzey’s thinking. There are some important differences, though. The justification for this practical outcome avoids using factual statements that cannot be intersubjectively verified. The notion of game-theoretical tensions is not based on factual statements at all, but on an idea. The notion of a proper function of a rights-based theory does have some realist connotations (not to be discussed here), but the use of proper function was argued to be appropriate as a way of upholding the equality implied by rights language.

Another important difference is that not all adult human beings are assumed to be essentially suitable as experiment volunteers. It is not
argued that it is necessary for the essence of the responsibility of moral agents to contain self-sacrifice. The outcome that adult human beings in a certain legal, social, and cultural setting are supposed to be volunteers is dependent on the idea that rights-based theories are supposed to protect the exposed ones. The subjects for biomedical experiments must thus be beings that use their practical powers to choose to volunteer for such experiments. Suitable volunteers turn out to be certain human beings not because of a stereotyping idea about the human essence, but because certain human beings fulfil the necessary criteria for being an experimentee without being oppressed.

It can then be argued that human volunteers are suitable to put in one of the scales of the suggested weighing apparatus. The volunteers can, at least as a logical possibility, volunteer their life to biomedicine. They can also volunteer for less terminal experiments.

Who should then be in the other weighing pan? Which kind of right holders can the human volunteers reasonably sacrifice themselves for? If the qualitative distinction between subjectively lived life and other life is correct, then it must be right holders with some kind of subjective life. There is no reason, however, to believe that there should be only human patients that are weighed against the volunteers.

If there were enough human experimentees to acquire statistically significant results for an experiment that would relevantly add, by a certain chain of events, to preserve a non-human life, then it would be acceptable that the experimentee volunteers. Of course, this is more of a logical possibility. Under the conditions mentioned above, there may never be enough volunteers to perform such experiments. For similar reasons, there may never be enough volunteers that would sacrifice their lives for other human beings. It may then very well be the case that the weighing procedure is never used to weigh lives.

Still, there is a logical possibility to do so. If the weighing approach would be used to weigh lives, then the lives of all right holders with a subjective perspective are prima facie equally significant. The goodness ratio of a dead subject is zero, no matter who the subject is. It would be equally significant for all the beings involved to keep the goodness ratio above zero.

The volunteering act by human experimentees would not change this, but it would create a possibility to make practical headway despite the equal significance of the weighed lives. The volunteering act
would not be a way of altering the significance of any life, but a way to magnanimously ignore the status quo.

If the human volunteers, in contrast, would sacrifice their lives for the sake of anything less than the life of another right-holding subject, then the weighing approach would show that the volunteers have made a mistake. It would be irrational to give priority to a goodness ratio above zero when a goodness-ratio of zero (death) is in the other weighing pan. This weighing approach does not allow volunteers to volunteer for anything. Volunteering acts are only rational when faced with a status quo of significances.

It is clear, then, that the weighing approach does not resolve life–life conflicts by granting differing significances to different lives. Instead, rights conflicts are resolved by voluntarity that circumvents the actual weighing.

An addition to this conclusion may make it slightly more acceptable. If the situation were to arise where a society performs medical experiments in a way that human beings actually do volunteer under the conditions mentioned, then it would be unclear why the experiments must be performed on specifically the volunteers. The reason why the human beings would be sane and have some medical knowledge is that they would understand the consequences of volunteering. Practical circumstances may, however, make such volunteering useless, for example because the volunteers would be too few. Then, it would be acceptable to use non-human animals in those experiments. The conclusion may then be understood to mean that medical experiments must only be performed on self-preservative beings with a subjective perspective if the experiments are performed in a way that rational human beings would volunteer as experimentees, if the practical circumstances allowed for such volunteering. The consent of the would-be human volunteers would be a justification for the experiments performed on non-human animals.

This understanding can be supported from a kind of original position. The contractors do not know their species membership, but do know that some members of the constituted society are in need of health care. The rules to be contracted upon concern the conditions under which to perform in vivo experiments. The contractors should be interested in the development of health care, if they were not to know their own health status in the constituted society. A practical consequence of developing health care, as far as is known today, is in
vivo experiments. At the same time, the contractors should, not knowing their species membership, be quite restrictive about performing in vivo experiments on non-human beings. The only experiments that would be justified are those which would not cause more harm than the contractors could (sane and well-informed about the risks) rationally volunteer for.

There would be a tension between the self-preservation of wanting health care and the self-preservation of not being harmed by medical experiments. The rational solution would be to strike a balance between the risk of the harm of not receiving health care and the risk of being harmed in medical experiments.

Voluntarity and informed consent would constitute this balance. The voluntarity must, however, result in useful experiments. If the number of volunteers would be too small, then it would be better to perform the experiments in a more useful way, for example using well-treated laboratory animals. The experiment protocols must then surely change, but the aspects that would make rational and well-informed human persons volunteer must not be altered.

It is the case that the implementation of this rationale for animal rights suggests the use of human volunteers as experimentees, or to use the hypothetical informed consent of rational persons to identify justified experiments on non-human beings. Many life–life conflicts may be left to be resolved by the lottery of ecological relations, but the artificiality of animal experimentation requires a conscious and responsible act of prioritization. It turns out that this conscious and responsible act should be to consider volunteering as an experimentee. Equally important, the case would also involve acts that would help create societal conditions where such voluntarity, or hypothetical voluntarity, is possible without violating the proper function of rights-based theories.

Summary

The reasoning in this chapter has been based on a modified, and re-modified, Rawlsian idea of rationality. Also, it has been based on the notion that there is a proper function of rights-based theories. An outline for an applicable pro-animal-rights theory has been construed using those two justificatory tools.
It has been argued that society should be constituted as if self-preservation individuals in general have rights. It was claimed that the good for many animal right holders can be directly perceived in particular situations by human persons. This gives a good reason to trust the assessments of the moral agent in particular morally charged situations, including rights conflicts. Assistance to the moral agent can, however, be provided by theoretical accounts of the good as well as suggestions for weighing procedures. It has also been suggested that the good for self-preservative beings can and should be expressed as ‘capabilities’.

One of the main reasons for using capabilities is that they offer a way of making the lives of disparate right holders commensurable. The objective aspect of capabilities establishes a common measure for all right holders. This makes it possible to weigh rights to life.

Still, lives cannot and should not be weighed in relation to another standard than the particular list of capabilities of each particular right holder. This makes the weighing of lives an issue of weighing relative ratios between potentially realized capabilities and actually realized capabilities. The relativity of the weighing procedure is meant to avoid stereotyping standards, but it also fails to identify a group of suitable subjects on which to perform medical experiments.

This group could, however, be identified by returning to the underlying idea of the theoretical outline in question, namely the proper function of a rights-based theory. The proper function of rights-based theories was earlier argued to include the protection of beings exposed to a more powerful and potentially aggressive counterpart. Biomedical experiments must primarily be performed only on beings that can use their powers to volunteer as experimentees, rather than on beings that can be forced into being experimentees because they are the losing party in an asymmetrical power relation. Suitable volunteers were further identified as informed adult human beings in a certain social, legal, cultural, and material setting that promotes a choice free from manipulation by the powers of others. The second-best option is to use the hypothetical consent of well-informed and rational volunteers to justify performing the experiments on non-human beings.

The purposes of this project were to analyze and evaluate pro-animal-rights theories as well as to investigate the possibilities of avoiding the identified problems of the theories. The account about pro-animal-rights theories given in this project should be viewed as an
attempt to make the theories reach a hypothetical outcome, without being delayed by weighing every significant pro- and contra-argument, or considering non-deontological alternatives. The conclusion is the result of one test, among many other possible tests. This particular test, however, indicates that a fair understanding of the notion of animal rights implies the notion of rights to all life. It is only possible to grant animal rights by granting rights to all life forms. The test, both by way of the evaluated theories as well as by way of the suggested rationale for biocentric rights, also indicates quite strongly that many of today’s biomedical experiments are morally wrong.

The experiences of performing animal experiments which I began this book with have not been examined in the previous analyses and constructs. Animal-rights theories work primarily at an institutional level. The experiences of killing animals were acquired within an institution. Animal-rights theories may thus be able to handle at least parts of those experiences.

According to one of the theories, the killing could have been wrong because it violated the animals’ preferences and needs to an unnecessary extent. Alternatively, it could have been wrong because it disrupted both my and the animals’ relationship with God. It could also have been wrong because it contradicted a rational treatment of the laboratory animals. Or it could have been wrong because I was taking advantage of an asymmetrical power relation.

These are explanations for why the killing was wrong. The explanations do not, however, provide any answer for why I perceived the experiments as I did. The wrongness is just a theoretical consequence of those situations. The experiences are made somehow reasonable by demonstrating the wrongness of the experienced acts, but the content of the experiences is largely untouched by the rights-based theories.

Frustrating as this may be, animal-rights theories enable one conclusion to be made about those experiences. If these theories are right about the status of non-human animals, the eeriness of killing animals has a moral quality. The experiences are not all sentimental, but also actually arise from discerning something moral from the experiment situation. Animal-rights theories may have a limited usage for explaining the eeriness of killing animals, but at least they remind people that there are more qualities at stake in such killing than what can be described with empirical methods.
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