

The Ethics of Animal Liberation

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Abstract

This thesis addresses the moral permissibility of illegal acts of animal liberation in the form of civil disobedience, acts of rescue, and acts of sabotage. Animal liberation movements have been the subject of much media and political attention, with particular focus on use liberationist strategies of intimidation, vandalism, and harassment. Governments have mobilised state apparatus in surveillance, infiltration, and investigation, and have characterising radical activism as ‘terrorism’. The variety of illegal activities aimed at preventing harm to non-human animals, particularly those involving violence towards property or persons, have often been classified together under the term ‘animal liberation’ and assumed to be wrong. I argue that the assumption of wrongness is questionable because it fails to give significant weight to the justification for acts of animal liberation. I pose the question as to whether and what illegal practices of animal liberation are ethically justifiable. I begin by arguing that non-human animals are worthy of moral consideration for their own sake, because their sentience above a basic level, particularly their capacity to suffer, gives moral agents reasons to acknowledge and respect their goods. Following this, I defend the claim that liberal democratic states that fail to treat animals living within them with respect are unjust. This injustice provides a justification for civil disobedience on behalf of non-human animals. Following this, I argue that beings worthy of moral consideration are owed positive duties of aid and easy rescue and I extend third-party intervention theory to non-human animals under threat from humans. I explore the limits to the duties of aid and intervention, using principles drawn from those of humanitarian intervention to identify duty bearers, and I weigh those duties against duties to fellow citizens and the state.

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Introduction

This thesis examines the ethics of breaking the law in defence of non-human animals. My main aims are to outline and defend a deontological account of duties to non-human animals and to explore the implications of this for citizens' obligations within a liberal political community. In particular I specify which actions are permissible to take in defence of non-human animals and indeed if any of these acts are also obligatory rather than merely permissible. These questions are framed by the duties owed by citizens of liberal democratic states to obey the law and respect fellow citizens. The bulk of the thesis is carried out at the theoretical and ideal level, but my purpose is to develop an ethical framework for assessing the justifiability or rightness of illegal acts carried out by so-called animal-rights activists¹ and so a portion of this introduction is devoted to illustrating the relevance of the thesis to contemporary issues, laws and practices. The thesis is divided into two parts. Part I, comprising Chapters 1-3, develops the normative case for the respectful treatment of non-human animals in terms of both natural duties and duties of justice. Part II, comprising Chapters 4 and 5, explores the conflict between positive duties towards non-human animals and duties to obey the law in liberal democratic states. By applying concepts from political and moral theory to non-human animals, particularly those relating to justice and other-defence, I show that duties are owed to non-human animals by political communities, and also that individuals have positive duties to aid non-human animals in dire need, even if the fulfilment of those duties requires harming humans. Over the course of the

1 I use the term animal-rights activists advisedly because although that is how those who break the law in defence of animals are usually referred to by government and the media, and it is often how they identify themselves, the debate need not be conducted in terms of rights. Indeed, as I shall outline, this thesis will concentrate on duties and moral reasons rather than rights.

next few paragraphs I will summarise my central thesis by chapter.

In the United Kingdom, animal liberationists have carried out acts to rescue captive animals being used in scientific experiments, being bred for those purposes, and being battery farmed. The kinds of non-human animals that activists have concentrated on 'liberating' have tended to be creatures with relatively sophisticated mental and physiological characteristics; in Chapter 1, I draw out the salient features marking out these creatures and determine what makes them morally considerable for their own sakes. In the course of the chapter, I establish that there are deontological constraints in respect of non-human animals by building upon an account of respectful conduct towards them as creatures who, like humans, have a good of their own, the capacity to suffer, and possess a mutual vulnerability to each other. I supplement an appeal to the value and good of non-human animals with an argument for consistency in moral treatment between cognitively similar beings.

In Chapter 2, I provide an account of the duties owed by individuals as a matter of basic morality to those non-human animals identified in Chapter 1. Much of the debate is couched in terms of duties of respectful treatment. Respectful treatment involves taking account of the things that make a creature's life go well or ill for it and in treating a creature as an end in itself. Respect therefore entails negative duties forbidding action that interferes with that creature's good. In the course of the chapter I respond to claims that both species membership and personhood provide overriding reasons for putting the interests of humans above those of non-human animals. I argue that neither succeed in doing so because, amongst other things: a lack of personhood

implies neither a lack of moral standing nor of deontic protections; the linking of moral standing to species membership relies upon mistaken beliefs that membership of a particular species is inherently valuable and provides reasons for partiality, and; that it is wrong to make judgements about moral standing at the species-based rather than capacity-based category level. Additionally, I argue that greater moral standing does not imply that lesser beings can be used as the mere means to the ends of the morally superior beings because those lesser beings remain ends in themselves. From this, I go on to argue that a consistent and desirable account of positive duties towards others should include duties to aid non-human animals in dire need.

In Chapter 3, I explore whether non-human animals should be included within the boundaries of liberal democratic justice, and examine how this might be achieved in theoretical terms. I argue that the traditional requirement for parties to justice to be of roughly equal physical and mental ability, and the reliance upon narrow notions of *reciprocity*, are unnecessary for a liberal conception of *justice*. Instead, I argue that non-human animals living within human political communities should be considered parties to the social contract both because they contribute to the production of shared benefits and hence should be understood as contributing to the cooperative scheme, and because of the demands of consistency in the way that we treat humans and non-humans who lack the capacities to be called full persons.

In Chapter 4, I examine the basis of political obligation and the duty to obey the law, arguing that our duty to obey the law is at best a qualified *pro tanto* duty which can be overcome if laws are either unjust or if reasons for obeying the law are defeated by

stronger reasons for aiding morally considerable beings in dire need. In the course of the chapter I consider the permissibility of violent and non-violent civil disobedience and set boundaries to disobedient action based upon the requirements of respect for others. Non-human animals demand special consideration in respect of civil disobedience because they are reliant upon human beings to protest injustice on their behalf. I explore this special status, and also highlight aspects of procedural unfairness in democratic practices that provide reasons for engaging in civil disobedience on behalf of non-human animals. During the chapter, I also consider whether practices, such as farming, should be considered a fair distribution of burdens to be born by non-human animals in return for the benefits they receive by coming into existence and living under human protection. I conclude that the opportunity for life is both insufficient and impermissible to be considered a benefit in such an argument.

In the final chapter, Chapter 5, I apply third-party intervention theory to the case of non-human animals in order to argue that moral agents have duties to aid non-human animals under threat from human beings. Furthermore, I argue that the duty to aid includes a permission to use violence in the course of rescue under certain conditions. These conditions include necessity, proportionality, and an assessment of the culpability of the attacker. In the chapter, I argue that non-human animals conform to the picture of the paradigmatic innocent victim in other-defence cases, and those who harm non-human animals in farming and scientific research should be considered culpable attackers liable to third-party defensive harms. I also consider the case for acts of sabotage aimed at preventing present and future harms to non-human animals.

I should say at this point that my thesis is not intended to provide 'proof' that duties are owed to non-human animals. Rather, it is my intention to show that an ethical position demanding strong duties² to non-human animals is compatible with a liberal morality at the foundational level. If the moral justification for liberal democracy is compatible with a demanding deontological account of what we owe to other animals, then it should be possible for moral agents to justify actions taken in defence of animals without having to rely upon external principles. My intention is to provide good reasons for the treatment of sentient, but non-rational, creatures as ends in themselves rather than as mere means to our ends. The case for this is developed throughout the thesis.

Within the literature on animal ethics, the debate about how we should treat non-human animals is often characterised as one between welfarists and abolitionists.³ Welfarist positions are those that tend to take the approach I will describe below as the *weighted utilitarian ethic*. That is; those adopting these positions accept that the interests of non-human animals count for something, but those interests, even very serious ones, can be overcome in order to benefit of humans. Because non-human animal interests count, steps must be taken to minimise suffering to the extent compatible with the production of benefits to humans. Practical concerns associated with welfarist positions tend to be about how to maintain the status quo in regards of the use of non-human animals, but in ways which reduce suffering or maximise well-being as much as the particular use allows.

2 Note that I use the terms duty and obligation interchangeably throughout the thesis.

3 cf. Gary L. Francione and Robert Garner, *The Animal Rights Debate: Abolition or Regulation?* (New York: Columbia University Press, 2010).

Contrasted with the welfarist stance is abolitionism. Abolitionist approaches to animal ethics, at the extreme end, say that we should cease using animals altogether, and that current systems of animal ownership, domestication, and use are incompatible with respectful treatment. Associated with this view the principle that non-human animals should be 'let be', i.e. that we have strong negative duties of non-interference to non-human animals.⁴

My own view, as I will argue, is that there are strong constraints, informed by the conditions necessary to the maintenance of their good, on what it is permissible to do to non-human animals. However, whilst I reject the welfarist view, I stop short of the strong abolitionist view in that I believe it is possible, as Donaldson and Kymlicka argue,⁵ for humans and non-human animals to live mutually beneficial and enriching lives together. Indeed, I believe that it is appropriate for non-human animals to bear some burdens of social co-operation, provided they are of the sort that, were they rational agents, they could and would have agreed to.⁶ This position might permit some forms of animal experimentation, particularly if the animals are unharmed by it and more so if they are also benefited, and it would, in theory, permit working animals (such as seeing dogs for the blind), and even perhaps small-scale egg production and the like. The ethical underpinnings of this position will be developed as the thesis progresses.

4 Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford and New York: Oxford University Press, 2011), 9.

5 Donaldson and Kymlicka, *Zoopolis: A Political Theory of Animal Rights* passim.

6 cf. Chapter 3, Section 2.

1 Animal liberation in the United Kingdom

The need for a theoretical account of how humans should relate to non-human animals in a liberal society is illustrated by the contradictory nature of UK law concerning animals and the continuing debate and conflict between proponents and opponents of the use of animals for human benefits. The conflict between animal-rights activists and farmers, scientists and businesses has often resulted in illegal acts and sometimes violent acts. Animal-rights activists concentrate their efforts on areas where they perceive there to be the highest levels of animal suffering: vivisection, battery farming, and fur farming.⁷ In the United Kingdom the Animals (Scientific Procedures) Act 1986 regulates scientific procedures likely to cause pain, suffering, distress, or lasting harm to any living vertebrate animal and one species of octopus.⁸ In 2009 over 3.6 million scientific procedures⁹ were reported under that act¹⁰ with only one third carried out under any form of anaesthesia.¹¹ Many of the procedures were carried out as a legal requirement, such as for toxicology purposes. Of the animals experimented upon 73%

7 Fur farming was banned in the United Kingdom under the The Fur Farming (Prohibition) Bill in 2000 after a sustained 15 year campaign by those opposed to it during which animal-rights activists broke into mink farms and released the animals into the wild (see “MPs Vote to Ban Fur Farms,” *BBC*, November 22, 2000, sec. UK Politics, http://news.bbc.co.uk/1/hi/uk_politics/1035944.stm). Although the practice of fur-farming was deemed unethical, the release of mink was criticised on ecological grounds after it had a negative effect on native water vole populations.

8 The Common Octopus, *Octopus vulgaris*, was added after it was decided that it possessed a sufficiently complex nervous system for it to be able to feel pain.

9 These figures do not include so-called 'wasted' animals: animals which are bred for their tissues and then killed, or animals killed because of failed genetic modifications. The number of procedures is greater than the number of animals used however since animals can be 're-used'.

10 Home Office, *Statistics of Scientific Procedures on Living Animals: Great Britain 2009* (London: The Stationary Office, 2010), 7.

11 *Ibid.*, 8.

were mice, 11% fish, 9% rats, 4% birds, 3% other mammals,¹² 1% other rodents, 1% reptiles and other amphibians, and less than half of one percent dogs, cats, and non-human primates¹³ (equivalent to approx 10,500).¹⁴ Under the provision 5 of the Act, experimentation is permissible for: the prevention, diagnosis and treatment of conditions affecting human, animal, or plant health; protecting the environment in the health or welfare interests of humans or other animals; advancement of knowledge in biological or behavioural sciences; training purposes; and breeding animals for scientific purposes. In order to carry out research on protected animals, a licence must be obtained from the Secretary of State. The practice of animal experimentation is extremely common: 70% of biomedical scientists recently surveyed by the journal *Nature* said that they conduct experiments on animals.¹⁵

The introduction of the 1822 Act to Prevent Cruel and Improper Treatment of Cattle made the United Kingdom the first country to introduce laws protecting animals.

There are numerous Acts of Parliament extending differing levels of legal protection to animals depending upon the place of those animals in society; such as pets, performing animals, experimental subjects, farm animals, game animals etc., and there are Acts regulating or forbidding certain activities relating to animals such as tail-docking, the

12 This category includes horses, pigs, goats, rabbits, ferrets, badgers, seals, foxes, bats, hares, shrews, cows, and sheep.

13 No Great Apes (chimpanzees, gorillas, humans, and orangutans) have been used since the act was implemented in 1987 (Home Office, *Statistics of Scientific Procedures on Living Animals: Great Britain* 2009, 13).

14 The figures are rounded up to the nearest 1000 or 100 procedures or animals or to two significant figures.

15 Daniel Cressey, "Battle Scars," *Nature* 470, no. 7335 (2011): 453. To put this in context, there are currently close to 23,000 biomedical scientists in the UK who are registered with their professional regulatory body, the Health Professionals Council.

sale of animals, hunting with dogs, cock-fighting etc.¹⁶ Almost all of the legislation is restricted to vertebrates other than humans. The legislative framework around non-human animals makes it clear that the suffering of non-human animals is a moral bad for the reason that it is bad for the animals themselves. This is evidenced by the fact that the criteria used for placing a non-human animal under the protection of the Animal Welfare Act is based upon whether the animal has a sufficiently developed nervous system to feel pain or suffer.¹⁷ Suffering and harm to animals are limited to a certain extent, but in all cases the interests of humans not only count as greater than those of non-human animals,¹⁸ but often completely override the most serious interests of animals. Efforts are required to be made to minimise suffering to as great an extent as the particular use of the animal will permit. The level of suffering and harm that is permissible to inflict is dependent upon what the animal is being used for and its place in society (thus is it permissible to cause a dog to suffer or to kill it for scientific purposes, but not for pleasure, and it is legal to breed dogs for use as scientific subjects or pets, but not for fur)¹⁹. Whilst suffering and harm is supposed to

16 Acts and regulations include the Animal Welfare Act 2006, The Performing Animals (Regulation) Act 1925, The Pet Animals Act 1951 (amended 1983), Cock fighting Act 1952, Abandonment of Animals Act 1960, Animal Boarding Establishments Act 1963, Riding Establishments Act 1964 and 1970, The Breeding of Dogs Act 1973, The Dangerous Wild Animals Act 1976, The Zoo Licensing Act 1981, The Breeding of Dogs Act 1991, The Breeding and Sale of Dogs (Welfare) Act 1999, Farriers (Registration) Act 1975 and the Farriers (Registration) (Amendment) Act 1977, Protection Against Cruel Tethering Act 1988, the Welfare of Farmed Animals (England) Regulations 2007.

17 "Animal Welfare Act 2006," Text, n.d., pt. 4, <http://www.legislation.gov.uk/ukpga/2006/45/section/1>.

18 I assume, in line with Joel Feinberg, that beings with conative lives have interests that spring from these conative lives (cf. Joel Feinberg, "The Rights of Animals and Unborn Generations," in *Philosophical Issues in Human Rights: Theories and Applications*, ed. Patricia Werhane, A. R. Gini, and David Ozar (New York: Random House, 1986), 168.

19 Regulation (EC) No 1523/2007 of the European Parliament and of the Council of the 11 December

be minimised, it is very clearly also permitted. Thus, 67% of animal experiments in the UK are carried out without pain relief, and whilst members of the European Union have agreed to phase out battery cages for farmed chickens by 2012, there remain millions of factory farmed animals (including chickens, pigs, cows, and even dogs), reared in cramped and unpleasant conditions.²⁰ In essence, the use of animals in the United Kingdom is governed by utilitarian principles in which animal interests count, but human interests are weighted heavily against them or override them. Thus, the legislative framework demands that account be taken of the well-being of non-human animals, but the degree to which the good of the animal must be respected depends upon the benefits to humans to be gained from doing so. Thus, acting cruelly towards a dog to gain pleasure is forbidden, but causing it to suffer in the name of scientific research is permissible. This treatment of animals in comparison to humans was characterised by Nozick as: 'utilitarianism for animals, Kantianism for people'²¹. Even given these facts, the UK has one of the strongest animal welfare regimes in the world (although it is also one of the largest testers on animals). Similar principles are embedded within many other legal corpora and codes of practice including, but not limited to, European Union Directive 86/609 which regulates animal experimentation across EU member states, the Australian Animal Welfare Strategy, The Animal Welfare Act in the United States, and Law for the Humane Treatment and Management of

2007.

20 Note that the secrecy surrounding animal experimentation makes obtaining meaningful statistics very difficult. As a result it is unclear how many of the 67% of procedures carried out without pain relief are in fact painful, and neither is it the case that all procedures are experiments since breeding is counted as a procedure. Nevertheless, the figures we do have do provide some picture of how the industry conducts itself.

21 Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 39.

Animals in Japan.

The concern that inconsistencies in treatment between humans and non-human animals is morally wrong has provoked some citizens to engage in practices of animal liberation. These practices take a number of forms. At one end of the scale, there are personal ethical decisions such as vegetarianism and veganism, other ethical purchasing decisions such as the consumption of free-range animal products, and ethical boycotts. These we might classify as negative acts of animal liberation. At the other end of the scale are positive acts, that is, acts that are more than mere abstinence such as direct action, protest, animal rescue, vandalism, harassment, and terrorism. The threat from some of these activities has resulted in vigorous police action and the extension of state power in an effort both to curb and to prevent interference with animal experimentation. In 2005, the Serious and Organised Crime and Police Act was introduced into the UK, which allowed the imposition of harsher punishments on those who intimidate individuals and companies involved with animal testing. In the survey mentioned above, carried out by Nature, almost 80% of biomedical scientists surveyed agreed or strongly agreed that 'Animal-rights activists present a real threat to essential biomedical research'²².

Thus, while the state has adopted a strongly human-weighted utilitarian ethic towards non-human animals, it is opposed by those who believe that non-human animals have a much higher moral status than is reflected by the way animals are regarded in legislation. Higher status for non-human animals is justified on utilitarian,

22 Cressey, "Battle Scars," 453.

deontological, contractualist, feminist/care-ethics, ecological, and virtue based grounds. In the following chapters I touch upon all of these justifications, but I concentrate principally upon deontological (including contractualist) defences of non-human animals to show that citizens of liberal states have duties to extend the realm of justice to include certain non-human animals, and that moral agents have basic moral duties to aid non-human animals in dire need.

Part I

It is possible to construct an argument justifying animal liberation in a liberal state and on behalf of non-human animals along three broad lines. One is to show that civil disobedience is merited by some form of injustice, such as systemic legitimised cruelty to non-human animals. A second is to demonstrate that the institutions of justice and democracy give insufficient heed to the interests of citizens who believe that non-human animals should be treated better. And a third is to argue that civil disobedience is permitted because a citizen who believes that non-human animals are being wronged is required to act by the demands of their conscience. In this part of the thesis, over the course of the next three chapters, I will show that certain non-human animals have sufficient moral standing to be protected by deontological constraints forbidding their use by humans in ways which contravene the animals' goods. The duties owed to animals present a reason for engaging in positive acts of animal liberation of the sorts I describe in Part II, and in line with the first kind of justification for liberation listed above. In Part II of the thesis I also address the second strand of justifications, whilst I touch upon strand three in the Epilogue. For now, I focus Part I on developing the normative grounding for positive acts taken in defence of non-human animals.

1 Respect for animals

I begin this chapter by making the case that persons have moral duties to non-human animals. The claim that positive duties of defence are owed to non-human animals, which I will defend in later chapters, depends in the first instance upon the prior position that we have do moral duties of some sort. The reasons for holding that we have basic duties to certain non-human animals rest upon two main facts about them: 1) that they have a good of their own and lives that can go well or ill for them, and 2), that they can suffer. The first of these facts serves to show that they can be harmed, and the second to differentiate them from plants and very primitive creatures of whom it makes little intuitive sense to think of as entities that we can wrong (and which, in any case are not the subjects of this thesis). The chapter will begin by providing some specific detail about the kinds of creatures that are the concern of this thesis, drawing heavily on classifications of sentient beings developed by Tom Regan in his separation of living creatures into *moral agents* and two types of *moral patients* (Section 1). As the chapter progresses my reasons for paying particular concern to these kinds of creatures will be drawn out. Having established the broad objects of my concern I move on to look at how and why we should value and respect non-human animals on account of their good, and why that grounds any potential moral duties we have.

The concept of respect plays an important part in my argument and involves proscribing certain ways of treating its object. I take it that respectful treatment means not dismissing a being's needs out of hand. And it means acknowledging that their moral standing places duties upon us to pay heed to the things that make up their

good. Respect requires us to recognise the interests which comprise or further a being's good, and it requires us to act justly and without arbitrary discrimination. Respect then is a mode of conduct,¹ an acknowledgement of value, and an according of something's due. Thus, I use the term *respect* to describe a way of relating to an object that is more than a mere thing. These kinds of objects provide us with reasons to act in ways that account for their interests or value. This then is a stipulation of what respectful treatment means with regard to beings with a good of their own. In this chapter I argue that non-human animals are owed respectful treatment in this way and I outline some grounds for this respect. Clearly the correct respectful conduct towards an object will differ depending on the nature of the object, as will the reasons for that conduct; respecting a beautiful landscape or painting will be conceptualised in quite a different way than I have described as appropriate for the kinds of beings this thesis is concerned with. I say more on this issue as the chapter progresses, but I also devote some space to tackle directly what constitutes life going well for a creature (Section 2). After exploring how best to respect the good of non-human animals I briefly return to the question of animal suffering and why suffering in particular provides additional reasons for respecting non-human animals in different ways than we might respect plants, landscapes or paintings (Section 3). This section builds upon the previous arguments about respect and ties the two facts listed at the start of this introduction (that animals have a good of their own and that they can suffer) together. Finally, I touch upon the shared vulnerability of humans and other animals as a further possible reason for treating non-human animals as more than a mere means to our own ends

1 Respect is also an emotion – one has feelings of respect toward something. However, my concern is with the correct attitudes, practices and objects of respect in terms of non-human animals and so the emotional content of respect is of minimal importance to my arguments.

(Section 5).

1 Moral patients and moral agents

Before getting into arguments about why duties are owed to non-human animals I want to clarify which non-human animals I am concerned about. Since this thesis is about the ethics of animal liberation, and specifically about illegal acts performed in support of an animal liberationist agenda, it makes sense to focus on the kinds of non-human animals that animal rights activists in turn concentrate their efforts on.

However, it is my aim not just to reflect upon existing practices, but also to present a normative case for which actions are justifiable or obligatory. For this reason, I use existing practice as a focus around which to explore and test intuitions and considered convictions, but do not seek to limit theorisation to those acts or justifications that exist in the non-ideal world.

We rarely encounter news stories about animal rights activists breaking into research labs to free fruit flies, snails or flatworms. By and large these kinds of creature do not tend to be the focus of moral debate about the acceptability of animal experimentation. Rather, organisations like the Animal Liberation Front and the Animal Liberation Brigade concentrate their efforts on rescuing and defending more complex creatures (though that is not to say that they do not accord simpler creatures any moral standing, quite the reverse in fact)². There are good reasons, which accord well with

² “Pain In Animals”, n.d.,

<http://www.animalliberationfront.com/Philosophy/Morality/Biology/PainInAnimals.htm>; “FAQs Insects, Plants”, n.d.,

<http://www.animalliberationfront.com/Philosophy/Morality/Biology/InsectAR.htm>.

our intuitions, to think that creatures such as mosquitoes or flatworms should have less moral standing than birds, mammals and perhaps some fish. We certainly would not include beings such as bacteria or yeast in our commonsense moral considerations. It is unlikely that these sorts of beings can feel pain, never mind suffer. These attributes – pain and suffering – identify two possible entry points into an examination of a key question: How do we determine in abstract, theoretical terms the creatures with which we should be concerned?

Tom Regan approaches this issue by first classifying animals into two groups: *moral agents* and *moral patients*. Moral agents are autonomous and culpable beings capable of making good or bad moral choices. *Moral agents* are thus bearers of moral duties. In contrast, *moral patients* are conscious, sentient beings that possess beliefs, desires, memory, self awareness and so forth, but which 'lack the prerequisites that would enable them to control their behaviour in ways that would make them morally accountable for what they do'³. Referring back to the previous paragraph, Regan separates *moral patients* into two types: (a) and (b). Category (a) moral patients includes beings capable of experiencing pleasure and pain but lacking the mental abilities which would make them 'experiencing subjects-of-a-life'.⁴ Beings which are subjects-of-a-life, but which lack moral agency fall into category (b). Regan writes:

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

3 Tom Regan, *The Case for Animal Rights*, 2nd ed. (Berkeley and Los Angeles: University of California Press, 2004), 154.

4 Ibid.

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, logically independently of their utility for others and logically independently of their being the object of anyone else's interests.⁵

Those non-human animals that can be classed as category (b) moral patients (henceforth referred to simply as *moral patients*), and which this thesis concerns itself with, are beings with relatively sophisticated mental lives and specific physiological faculties, particularly the ability to experience pain and emotions - the sorts of beings that Joel Feinberg identifies as having interests of a morally relevant sort.⁶ Feinberg draws the moral distinction between mere things and beings worthy of having rights on whether they can have interests and thus a welfare or good of their own. Whilst my concern is not, at this stage with the possession of (moral) rights, Feinberg's attribution of them to non-human animals on grounds of interests marks out that the creatures he considers worthy of holding rights are owed direct moral consideration for their own sakes. The possession of interests is, for Feinberg, a function of a conative life; the presence of 'conscious wishes, desires, and hopes; ... urges and impulses;...unconscious drives, aims, goals; ... latent tendencies, directions of growth, and natural fulfillments'⁷. Having interests marks out whether a being can have a good of its own. In particular '[m]any of the higher animals at least have appetites, conative

5 Ibid., 243.

6 Feinberg, "The Rights of Animals and Unborn Generations," 168.

7 Ibid., 168. Note that the claim here is not that a particular non-human animal is able to reflect upon whether its life is going well or ill for it, but rather that the ideal observer would be able to make that judgement from the outside.

urges, and rudimentary purposes, the integrated satisfaction of which constitutes their welfare or good⁸. Creatures like dolphins hunt fish because they desire them, and they experience satisfaction upon catching and eating them. Dolphins will also engage in sexual activities purely for the pleasure of doing so,⁹ play games,¹⁰ and display high levels of intelligence. Any pet owner will attest to their companion cat or dog having an emotional life and displaying goal-directed behaviour. It will always be difficult to pin down precisely what kind of creatures are worthy of direct moral concern and to what degree -there are epistemic hurdles to overcome in knowing what the mental capacities of various beings are.¹¹ And, the boundaries of moral considerability are neither exact nor clearly defined. But, I think that Feinberg and Regan between them capture the essence of creatures which we should have most concern for. Having set out the scope of my enquiry I should reiterate that I do not intend to dwell, save in the very broadest terms, on which specific species of animal fit the criteria above. That kind of question is best left to experts in the science of animal cognition. My aim is to provide a theoretical basis for evaluating and informing practical action.

2 A life worth living: the good of animals

I have several times used phrases such as 'a life that can go well or ill' or 'the good of an animal' in my introduction. What do I mean by these terms? This section is concerned with what makes a life good for a non-human animal (as measured by the degree to

⁸ Ibid.

⁹ Thomas I. White, *In Defense of Dolphins: The New Moral Frontier* (Wiley-Blackwell, 2007), 148–149.

¹⁰ Maddalena Bearzi and Craig Britton Stanford, *Beautiful Minds: The Parallel Lives of Great Apes and Dolphins* (Cambridge, Massachusetts & London, England: Harvard University Press, 2008), 29–30.

¹¹ Regan does specify that he thinks at least mammals above the age of one meet his criteria (Regan, *The Case for Animal Rights*, 246.).

which its good is realised), and has particular relevance to the importance of an animal's nature and flourishing. For a utilitarian, whether an animal's life goes well or ill is determined by a calculation of its overall happiness minus the level of suffering it endures (or, for preference utilitarians such as Peter Singer, by how much it succeeds in satisfying its preferences)¹². Or, according to a biological fitness account, whether an animal flourishes is indicated by its success as measured in terms of the survival and reproduction of its genetic code. Still further, some environmental ethicists or conservationists might measure flourishing in terms of species or group survival. For example, Jennifer Everett speaks of how animal flourishing is 'enabled by wild predation'¹³. But it would seem strange indeed to speak of individual animals as flourishing by being killed unless animal lives are not considered as separable from their species and/or are replaceable. For example, Roger Scruton posits that only human beings are non-replaceable. All other animals, he argues, lack a morally significant individuality and this means that the loss of one is compensated for by the birth of another.¹⁴ These views do not accord well with a deontological account of the respectful treatment of animals. Take the following example.

In many places parrots are kept in small cages as domestic pets. These parrots rarely fly, and if they do it is only within the confines of the room in which their cage is stored. Most of their lives are lived within a space measuring only around three and a half cubic feet. Nevertheless, it is possible that these birds can live happy and

12 Peter Singer, "Possible Preferences," in *Preferences*, ed. Christoph Fehige and Ulla Wessels (Berlin: Walter de Gruyter, 1998), 383–398.

13 Jennifer Everett, "Environmental Ethics, Animal Welfarism, and the Problem of Predation: A Bambi Lover's Respect For Nature," *Ethics & the Environment* 6, no. 1 (2001): 47.

14 Roger Scruton, *Animal Rights and Wrongs* (London: Continuum, 2006), 40–43.

contented lives – they do not need to worry about predators, they are kept warm and well fed, and no doubt enjoy the company of their loving owners. For a utilitarian, such a life could well be judged a good one. On the other hand, a parrot living in the wild might be able to fly free and live 'as nature intended' but at the same time would be far more vulnerable to disease, starvation, and predation. I think that most people would instinctively regard living wild as preferable for a parrot than living caged. But the risk of painful death and short life in the case of the wild parrot shows that determining what is the good of an animal is not straightforward. Many cats and dogs clearly lead good lives in which they engage in the sorts of activities that they would in the wild, and arguably live better lives than they would in such circumstances. So in broad terms we can speak of an animal's good in terms of the things that are good from its perspective – what Christine Korsgaard calls its 'natural good'¹⁵. Korsgaard endorses a teleological account of an animal's good, writing:

An entity...is matter organized so as to do something, to serve some purpose or function. In one familiar sense of the term “good,” any entity in this sense has a good: its natural good is whatever enables it to function at all and to function well... [A]n animal has the capacity to experience and pursue what is naturally good or bad for it...[I]n general, although not infallibly, an animal experiences the satisfaction of its needs and the things that will satisfy them as desirable or pleasant, and assaults on its being as undesirable or unpleasant. These experiences are the basis of its

15 The difference between 'living as nature intended' and a being's 'natural good' is the difference between the life that an animal experiences when it is situated in the habitat it is adapted for, and the pursuit and satisfaction of the desires and/or preferences that derive from its evolutionary makeup. The difference is subtle, but it is possible to have one without the other.

incentives, making its own good the end of its actions. In that sense, an animal is an organic system to whom its own good matters, an organic system that welcomes, desires, enjoys, and pursues its good. We could even say that an animal is an organic system that matters to itself, for it pursues its own good for its own sake.¹⁶

This definition is useful, but it fails to draw out and illustrate the differences between the examples of the caged bird, wild bird, and pet cat. Paul Taylor's definition of is more helpful:

We can think of the good of an individual non-human organism as consisting in the full development of its biological powers. Its good is realised to the extent that it is strong and healthy. It possesses whatever capacities it needs for successfully coping with its environment and so preserving its existence throughout the various states of the normal life cycle of its species.¹⁷

This sort of definition seems to capture the essentials of what we intuitively and reflectively think of as what is the good of an animal, and it does not rule the lives of certain kinds of companion animals as bad. However, we would probably wish to add, drawing on Korsgaard, that the good of an animal also consists in it being contented and not suffering. Scanlon also identifies these two different ways to understand the good of a creature. One is the sense in which a being's good corresponds with its

16 Christine Korsgaard, "Fellow Creatures: Kantian Ethics and Our Duties to Animals.," *Tanner Lectures on Human Values*, no. 24 (2004): 29–30.

17 Paul T. Taylor, "The Ethics of Respect for Nature," in *Environmental Ethics: An Anthology*, ed. Andrew Light and Rolston III Holmes (Malden, MA: Blackwell, 2003), 75.

ability to function well and live as the kind of being it is. However, Scanlon points out that we would not necessarily be able to find even *prima facie* moral objections to all cases of interfering with species typical living (he uses painless contraception to control population as an example). The second sense is tied up with experiential harms such as pain and distress which are bad for non-human animals independently of the creature's natural functioning.¹⁸ This is similar to Nussbaum's extension of her capabilities approach to include non-human animals. Nussbaum argues that 'animals are entitled to a wide range of capabilities to function'¹⁹ which depend upon the characteristics of the animal's species. The core of these is made up of life, bodily health, bodily integrity, senses, imagination and thought, emotions, practical reason, affiliation, other species (the entitlement to live harmoniously alongside plants and other animals), play, and control over one's environment. Different animals will have different entitlements from this list dependent upon whether they form part of their natural flourishing or not.²⁰ When I use the term *flourishing* or I discuss an animal's good I will be drawing on the senses expressed above and taking a life that goes well for an animal to mean one in which it is contented, free from unnecessary suffering or harm, and able to develop and enjoy the normal powers of its species. However, I do not mean that interfering with the normal species life of a non-human animal is in all circumstances harmful or bad for that creature.

18 Tom Scanlon, *What We Owe to Each Other* (Cambridge, Mass.: The Belknap Press of Harvard University Press, 1998), 182–183.

19 Martha Nussbaum, *Frontiers of Justice* (London: The Belknap Press of Harvard University Press, 2006), 392.

20 Ibid., 392–401.

3 Suffering in humans and other animals

*The question is not, Can they reason? nor, Can they talk? but, Can they suffer?*²¹

It is commonly and plausibly held that suffering is something that moral agents are obligated to prevent, alleviate, act to minimise, and refrain from causing in others: both in humans and in other animals. Suffering provides us with categorical reasons for action. It seems axiomatic to me that an animal cannot flourish if its life is one filled with suffering. However, as we will see in the proceeding section, there are those who believe that animal suffering does not obligate us (rather our obligations to prevent, or refrain from causing, animal suffering are indirect duties to other humans). Others contend that animals cannot suffer and so there is no moral question to answer. I reject these views. In what follows I explore the question of whether animals can suffer at all, and if so whether animal suffering is different in kind from human suffering. I conclude that they can suffer and that their suffering is not different in kind from human suffering. Later on, in the next section, I return to this topic and look at whether animal suffering should obligate us. I argue that it does. Obviously, this latter question hinges on the the conclusions in this section, so I now turn to making the case that animals can indeed suffer.

Peter Singer has written:

Nonhuman animals can suffer. To deny this, one must now refute not just the

²¹ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (London: Printed for W. Pickering, 1823).

common sense of dog owners but the increasing body of empirical evidence, both physiological and behavioural.²²

Debates about suffering can sometimes turn out to be debates about how suffering is defined, and whether the concept applies to this creature or that depend upon that definition. For this reason I begin by developing a conceptualisation of suffering – one which is applicable to many, but not all, kinds of non-human animals. In general terms suffering is a catch-all concept that encompasses the unwanted negative content of a range of unpleasant emotions, feelings and sensations such as: fear, anguish, despair, hunger, loss, confusion, humiliation, misery etc. But, *suffering*, can be distinguished from at least two related concepts – *pain* and *harm*. *Pain* can be defined as two-part concept: first, a physiological response to a noxious stimulus (nociception), and second, the phenomenological content of that unpleasant sensation. As I will touch on later, the physiological part can be present without the phenomenological, particularly in the case of lower order non-human animals such as molluscs or insects. *Harm* can be defined as the non-consensual wronging of a sentient being, or a setting back or thwarting of its interests.²³ Thus, one can experience pain without suffering or being harmed. For example, concerning pain, if I pay to have my ear pierced the momentary pain of piercing is unlikely to lead to suffering on my part. And, concerning harm, I might forget to return the five pounds I borrowed from you without any suffering or pain occurring to you as a result (particularly if you forgot as well). Similarly, whilst

22 Singer in Edward Erwin, Sidney Gendin, and Lowell Kleiman, eds., *Ethical Issues in Scientific Research: An Anthology* (New York and London: Garland, 1994), 233.

23 cf. Joel Feinberg, *The Moral Limits of the Criminal Law Volume 1: Harm to Others* (New York: Oxford University Press, 1987), 32–36.

pain can cause suffering, one can also suffer without experiencing pain (I could terrify you with threats). However, an agent that suffers is also harmed; harm encompasses suffering but is not limited by it. Additionally, suffering is caused by both direct and indirect harms:²⁴ if I harm something dear to you then I can cause you to suffer as a result. David DeGrazia and Andrew Rowan argue that any pain or distress must be more than at a minimal level for suffering to result²⁵ and they further differentiate suffering from pain by illustrating that '[u]nlike pain, however, suffering is *not a sensation* and is *not locatable* in particular body parts'²⁶. Thus, suffering is caused by more than minimal levels of unwanted negative sensations or feelings (these might be sustained and/or intense sensations or feelings). The experience of suffering, in this respect, appears quite similar to the mental state of distress, which is an inability to cope with, or adapt to, negative feelings or sensations. Wherever there is great pain or distress there is suffering.²⁷

We can see from the points above that a basic requirement for suffering is that a being must be sentient to experience it. However, for those that argue that animals cannot suffer, suffering also requires something further. Peter Carruthers argues that suffering has a phenomenological character that is not present without consciousness:

consciously experienced feelings require second-order thoughts.²⁸ Carruthers contends

24 In these cases there will be multiple harms present – the direct or indirect harm causing the suffering and the suffering itself, which is a further harm, however this point is only tangentially related to the purpose of this section.

25 David DeGrazia and Andrew Rowan, "Pain, Suffering, and Anxiety in Animals and Humans," *Theoretical Medicine* 12, no. 3 (September 1991): 199 & 201.

26 Ibid., 200.

27 Ibid., 201.

28 Peter Carruthers, *The Animals Issue: Moral Theory in Practice* (Cambridge: Cambridge University

that pain can be both conscious and non-conscious; that the feeling of pain requires reflective consciousness – thinking about feeling – and for most non-human animals, lacking such consciousness, pain is merely a physical response. Since animals, in his view, cannot feel pain – there is no phenomenological content to their pain – they cannot therefore suffer.²⁹ Carruthers argues that if he is correct then non-human animals (and certain humans) that do not experience conscious mental states 'make no real claims upon our sympathy'³⁰ when they experience pain. A creature such a mollusc, which appears to have the requisite biological make-up to experience pain,³¹ is unable to suffer. Thus suffering appears to require higher-order reflective consciousness. In similar veins, Daryl Pullman argues that in order to suffer a being must be able to ascribe meaning to its experiences – suffering comes about when a person is unable to make sense of a painful experience,³² and Eric Cassell characterises suffering as 'a specific state of distress that occurs when the intactness or integrity of the person is threatened or disrupted'³³.

There are several things to be said in response to these conceptualisations of suffering. In terms of Carruthers' higher order consciousness account of suffering it would seem that whilst this definition of suffering excludes many non-human animals, it might not

Press, 1992), 181.

29 Ibid., 187–193.

30 Ibid., 190.

31 Or at least, they possess the requisite biology for nociception, which produces automatic responses to noxious stimuli and represents the physical rather than phenomenological component of pain (Colin Allen, "Animal Pain," *Noûs* 38, no. 4 (2004): 637.).

32 Daryl Pullman, "Human Dignity and the Ethics and Aesthetics of Pain and Suffering," *Theoretical Medicine and Bioethics* 23, no. 1 (2002): 78 and 80.

33 Eric J. Cassell, "Diagnosing Suffering: A Perspective," *Annals of Internal Medicine* 131, no. 7 (October 5, 1999): 531.

exclude them all – particularly not the higher order mammals such as great apes and dolphins for which research has shown that they are capable of reflection.³⁴

Additionally, it is questionable whether either the higher-order consciousness or personhood accounts of suffering represent an adequate definition of suffering. An adequate theory of consciousness does not seem to require the rolling together of phenomenological and reflective consciousness as Carruthers does. And an inability to have second-order thoughts about experienced pain may mean that, rather than most-non human animals being unable to suffer as a result, provided they are sentient, all kinds of noxious stimuli become suffering. If a being cannot rationalise or articulate pain, consent to it, or understand that it might be in his or her interests, then we have reason to think that the experience of pain might, in some circumstances, be worse (more unpleasant or harmful) for that being than for a being with those capacities. For example, when we make a trip to the dentist for a painful but necessary procedure we may well suffer during the procedure, and our dread beforehand might make us suffer then too; we might even suffer afterwards as we recall the experience. But, the procedure is chosen and we are able to understand that the suffering we experience is in our interests and that it is a good thing, and our expectations and memories will be tempered by these facts. For an animal there is no such understanding, there is merely the experience and memory of a painful and inexplicable event. As I have pointed out, one of the reasons we can experience pain without suffering as a result is because we can chose to experience pain and understand that it is in our interests to do so. We can also judge that pain may only be momentary in a way than an animal cannot. We can

34 cf. Call, and Shettleworth and Sutton in Susan Hurley and Matthew Nudds, *Rational Animals* (Oxford: Oxford University Press, 2006), chap. 10 and 11.

make a rational calculation about overall benefits and harms brought about by a particular noxious stimulus. Thus, a person might choose to become frightened by a viewing a horror film, but for a child unable to understand and conceptualise such a film, viewing it would be a traumatic affair. Rather than suffering resulting from the loss of the ability to ascribe meaning to experiences, as Pullman and Cassell argue, it may instead be that it results from the absence of such abilities. Instead of suffering resulting from the loss of autonomy, agency, or dignity because of unpleasant feelings or sensations, it could be that the absence of rational autonomy in the presence of such stimuli³⁵ also leads to suffering. Furthermore, a requirement that suffering results in the loss of autonomy or personhood and the resultant conclusion that non-autonomous beings cannot therefore suffer looks like an arbitrary and question-begging conceptualisation. Similarly, thinking about feelings, the second-order thoughts that Carruthers thinks are required for suffering, may allow us to conceptualise unpleasant stimuli in a way that makes them more bearable for us than for other animals. Adopting the conceptualisations of Carruthers, Pullman or Cassell would require us to come up with a new term for negative emotional responses felt by animals in response to certain stimuli, and there seems little point in doing so when *suffering* accords with our linguistic intuitions so well.

Carruthers might respond by revising his claim to say that the ability to experience emotions rather than second-order consciousness is what is needed for a being to suffer; effectively removing his link between reflective and phenomenological consciousness. He could then go on to argue that animals do not experience emotions:

35 For a comprehensive rebuttal of the meta-cognitive account of suffering along a different line see Allen, "Animal Pain," 617–643.

in other words, non-human animals can experience nociception but not pain or suffering, thus most non-human animals are not sentient. Bob Bermond makes precisely this argument, stating that only anthropoid apes and possibly dolphins have been proved to experience negative emotions.³⁶ However, the idea that animals do not feel emotions, despite Bermond's view, is not plausible.³⁷ Victoria Braithwaite has even shown evidence that fish are conscious to some degree and can feel emotions such that they are capable of feeling pain and suffering.³⁸ The experience of pain for many non-human animals is clearly more than a physical shying away from a noxious stimulus, it causes them emotional distress in a way that is recognisable as pain or suffering. I do not think that to say that we are mistaken in this recognition is defensible. And, even if the matter were scientifically unsettled, or impossible to decisively settle, there are reasons to make our default assumption that animals can suffer and feel pain. It would be far worse to mistakenly assume that they do not than to mistakenly assume that they do.

Nevertheless, it is reasonable to think that there are different ways in which beings can suffer, and the loss of autonomy is certainly one of them. From this we could conclude that autonomous beings suffer in different ways to non-autonomous animals.³⁹

36 Bermond in Marcel Dol et al., eds., *Animal Consciousness and Animal Ethics: Perspectives from the Netherlands* (Assen: Van Gorcum, 1997), chap. 9.

37 Martha Nussbaum, *Upheavals of Thought: The Intelligence of Emotions* (Cambridge: Cambridge University Press, 2001), 119. Nussbaum points to research indicating that animals are emotional beings and that their emotions relate to their well-being, although she concedes that there are questions about the range of emotions felt by animals and whether any are capable of emotions requiring causal thinking (such as anger).

38 cf. Victoria Braithwaite, *Do Fish Feel Pain?* (Oxford: Oxford University Press, 2010), chap. 4.

39 It is important, I think, to keep in mind that human beings are autonomous in degrees, ranging from not autonomous at all, to largely autonomous, and that the the degree to which their actions are

Suffering resulting from the loss of autonomy and suffering to beings where autonomy is absent appear on the surface to be essentially the same in quality; both occur in the absence of autonomy. But the threat of the loss of autonomy, or the memory of its loss might make the suffering of persons worse (or, as I have pointed out above, being able to rationalise suffering might in some circumstances actually lessen their suffering). At the beginning of this section I rejected the claim that the suffering of humans is different in kind to that of non-human animals, given what I have argued above, it might seem that the revised claim that the suffering of persons is different in kind to that of non-persons is plausible. It may indeed be that personhood-affecting suffering is different in kind to that of non-personhood-affecting suffering, but it does not seem to be the case that persons only suffer when their personhood is threatened. Whilst this can provide an argument that greater harm can be done to autonomous beings through suffering, it is not an argument that non-autonomous beings cannot suffer or that their suffering is of no moral concern, which leads me to a discussion of moral standing and reasons for the respectful treatment of non-human animals, of which the capacity to suffer is foundational.

4 Value and reasons

Since it is the contention of this thesis that at least some acts of animal liberation are morally permissible and indeed perhaps sometimes morally required it is necessary to

autonomous or the product of external factors can be impossible to determine. Similarly, it may be that certain non-human animals are sufficiently psychologically sophisticated to appear on the range at some point. At the same time, autonomy is not necessarily rendered absent through suffering, it may be that it is degraded or eroded. Thus, when we talk of suffering in autonomous beings we should be aware of the complexities and uncertainties inherent under the surface of such a statement.

illustrate reasons why the plight of animals should concern us. In other words, if we have moral duties to or regarding non-human animals, what is the source of those moral duties? Throughout this section, and indeed the whole thesis, the term *moral standing* is used to denote that something is worthy of direct moral consideration. Because objects can be morally considerable for both instrumental reasons and because they are valuable for their own sake, *moral standing* serves to differentiate beings who are morally considerable for their own sake from things that are owed moral consideration for extrinsic reasons. Beings due moral consideration for their own sake have moral standing and moral agents have categorical duties to them. I say more about how the notion of value relates to the moral treatment of animals later.

My argument takes a twin track approach to ascribing moral standing to non-human animals; reflecting on, first, the sources and justifications of the moral standing of non-human animals, and second, how those sources and justifications cohere with other considered moral convictions. An important aspect of the animal liberation debate concerns questions of value and normative responses to value. Determining value and declaring a given value to be normatively significant are subject to a range of meta-ethical problems, many of which are outside the scope of this thesis. To mitigate these problems I will subject normative beliefs about the proper respect due to human beings to tests for consistency via the argument from marginal cases (AMC). The AMC is that our commonsense beliefs about the appropriate treatment of so-called 'marginal humans' are at odds with treatment of non-human animals in ways that mean we should, for the sake of consistency, either raise the moral standing of non-human animals or lower that of marginal humans. Both of these strategies will be familiar to

readers of the literature on animal liberation, but the establishment of a basis for moral duties is essential for the arguments I develop later on, and so I hope that readers will forgive my repetition of oft-stated arguments. I describe the AMC in greater detail below.

Much of my thesis will rest upon the claim that certain non-human animals have qualities that provide us with reasons to treat them respectfully. Certain non-human animals have a good of their own, rooted in their physical and mental nature and consisting in them living healthy lives and in exercising their capacities fully.⁴⁰ Through the use of these capacities and by virtue of their bodily health and integrity they can have a life that can objectively go well or ill for them irrespective of their instrumental value to others.⁴¹ As Tom Regan argues: the welfare of non-human animals does not differ in kind from that of humans because 'the same categories of thought (interests, benefits, harms, etc.) that illuminate the most general features of human welfare are equally applicable to animal welfare'⁴². That is to say that humans and other animals can each suffer the same kinds of harms or enjoy the same kinds of benefits: the interest I have in not being hungry, ill, or without shelter, is much the same for me as it would be for a non-sapient creature. And whilst they may not possess moral or rational autonomy, non-human animals nevertheless operate according to a kind of 'preference autonomy' in that they pursue goals according to beliefs and desires. For example, a dog may prefer one brand of dog-food over another, and it may fetch a thrown stick in

40 cf. Richard Kraut, "Desire and the Human Good," in *Ethical Theory: An Anthology*, ed. Russ Shafer-Landau (Oxford: Blackwell, 2007), 321.

41 cf. Regan, *The Case for Animal Rights*, 243–248.

42 Ibid., 120.

the belief that it will be given a treat that it desires in return. Regan adds that in addition to interests (things an animal is interested in) as expressed in terms of wants, desires, and preferences, non-human animals have interests in the sense that things can contribute to their good (things an animal has an interest in). The combination of preference-interests and welfare-interests (biological, social and psychological) and their satisfaction over time contributes to a life worth living and the resultant possibilities of being the object of both benefits and harms.⁴³ Clearly the extent to which a creature can be harmed or benefited and the extent to which it will have a welfare depends upon its physical and mental nature, so we might wish to say that the extent to which anything is owed to such a being is dependent upon these characteristics. I will explore this later, but the fact that a non-human animal has a good of its own opens up the possibility of moral standing.

The obvious counter response to this argument is to agree that non-human animals can have lives that are good for them, but then to deny that this represents any objective good that might obligate moral agents. That a creature has a good of its own might be a natural fact, but that does not necessarily imply that this fact grounds a value, is the same as a value, or makes that animal's good valuable. Kant famously held that non-human animals lack value for their own sake and that our duties toward them are indirect,⁴⁴ and this has remained a problem for some deontological defences of animal liberation ever since. The enduring moral force of Kant's maxim to never treat others as a mere means to an end, and the importance of his work to deontological approaches

⁴³ Ibid., 116–117.

⁴⁴ Immanuel Kant, "Duties to Animals Are Indirect," in *Animal Rights: a Historical Anthology*, ed. Andrew Linzey and Paul Clark (New York: Columbia University Press, 2004), 126–127.

to morality make his arguments hard to ignore, and so much of what follows in this section takes the form of engagements with Kant and with arguments developed in the Kantian tradition. Kant's account of value is of central importance to Kantian arguments about the correct treatment of non-human animals. Only objects possessed of final value are worthy of direct moral consideration, and for Kant final value exists only in humanity. Humanity is present in the rational exercise of the will to autonomously set ends. Duties to non-rational animals are indirect duties to humanity: we have duties regarding non-rational animals rather than duties to non-rational animals. To say that an object has final value is, to Kant, to say that it is worthy of direct moral consideration. For Kant, moral considerability is derived from value, and arguments about the correct treatment of objects are conducted in terms of their value. Kant's very narrow theory of final value and his strict exclusion of duties to non-rational animals does not however accord with our commonsense morality or intuition and because of this has been subject to considerable debate and consideration, which is where the AMC comes into play.

The AMC is a reflective process that highlights disjunctures between the everyday moral view that we should not treat children, the severely cognitively impaired, or non-human animals purely instrumentally, and arguments that human beings have special moral status by virtue of their status as humans, or because they possess some special uniquely human characteristic such as rationality. The AMC takes a number of different forms depending on the argument it is tackling, and I will apply it to the case of species membership in Chapter 2, but in the case of Kant it can be applied to the conclusion that the value of humanity (rather than of humans) springs from the

exercise of rationality, making only rational beings worthy of direct moral consideration, i.e. valuable for their own sake. If only rational-beings are worthy of direct moral consideration under Kant, and our intuition tells us that we should not regard children, the severely cognitively impaired, or non-human animals as mere means to our ends, then we must reconcile those two principles or be guilty of moral inconsistency. The choice at the conclusion of the AMC is whether to spread the net of moral standing widely or narrowly; either by limiting moral considerability to rational beings and thereby excluding some humans, or extending it to include those beings that our intuition regards as morally considerable for their own sake. The tendency of those deploying the AMC is to conclude that a strict Kantian account of value is unpalatable and that the net should therefore be cast wide. Rationality must be discarded as a necessary condition of moral standing, and something else, usually sentience, must be chosen instead.

Kantians have a number of options for responding to the AMC without abandoning Kant altogether. Reflecting upon Kant's conception of value and duty, and our considered intuitions leads to several possibilities. The rest of this section will explore approaches to valuing non-persons taken by Kantians, focussing upon attempts to develop direct duties to non-rational beings by Christine Korsgaard, Allen Wood and Onora O'Neill. Towards the end I look at an alternative Kantian strand of argument that tries to strengthen and flesh out an account of the correct treatment of non-rational beings through indirect duties to humans.⁴⁵ First, I explore Korsgaard's

45 Dan Egonsson, "Kant's Vegetarianism," *The Journal of Value Inquiry* 31, no. 4 (1997): 473–483; Lara Denis, "Kant's Conception of Duties Regarding Animals: Reconstruction and Reconsideration," *History of Philosophy Quarterly* 17, no. 4 (October 2000): 405–423.

account of duties to non-human animals, together with some problems with it, and then move on to Wood and O'Neill's position. The potential for respecting animals on indirect duties views is the least promising route because, as will become clear, it is too vulnerable to counterfactuals and any requirements for respect are entirely contingent upon the animal's value to another, and so I devote only a small amount of space to it.

Korsgaard's argument runs as follows. In pursuing things which we take to be valuable we confer value upon our ends. We choose ends because we value them.⁴⁶ By judging our ends as valuable we must also judge ourselves valuable – we are ends in ourselves and are sources of value (and thus are sources of normative claims that can bind others).⁴⁷ She writes: 'Because we are rational, we cannot act without at least implicitly endorsing the principles upon which we act, and in that sense willing them as laws'⁴⁸. This legislation of the principles upon which we act transforms desiring into valuing.⁴⁹ As it stands this 'conferral account' of value doesn't go anywhere towards creating obligations to non-human animals since the source of obligations remains the rational will. The next step is to demonstrate that in spite of this it is conceptually possible, without departing from Kant, for those without rational wills to be the loci of normative claims. Korsgaard points out that in his political writings Kant describes obligations to members of a political community who have not participated in the creation of its laws: women, children, servants, foreigners etc..⁵⁰ Thus, not being able

46 Korsgaard, "Fellow Creatures: Kantian Ethics and Our Duties to Animals.," 93.

47 Ibid.

48 Ibid., 95.

49 Ibid.

50 Ibid., 96; cf. §46:314-315 Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1797), 125–126.

to legislate does not imply not being able to obligate. This argument is illustrated by showing that, whilst only active citizens can legislate against murder, they need not do so merely because they view murder as bad only when done to active citizens.⁵¹

But, how do we get from a conferral account of value to the conclusion that those who do not legislate the principles upon which they act are ends in themselves and thus owed direct duties? One way to reach the conclusion is to argue, as Korsgaard does, that when we will our maxims as universal laws and treat our ends as valuable we do so acting upon the pursuit of our natural good.⁵² In valuing ourselves as ends we confer normative significance upon both our animal and autonomous natures.⁵³ This is similar to the argument developed by Allen Wood and Onora O'Neill.

Under a Kantian morality we are obligated to others only out of the moral requirement to respect the humanity in those persons,⁵⁴ where 'humanity in the person' refers to the characteristics that Kant thought were the distinctive attributes of moral personhood: rationality and the power to set ends.⁵⁵ However, since Kant would have us respect humanity not merely in the person, but also abstracted from the person – as we must do when respecting the potential humanity in children – it follows that it may be conceptually possible to respect the attributes of moral personhood in other senses

51 Korsgaard, "Fellow Creatures: Kantian Ethics and Our Duties to Animals.," 100.

52 Ibid.

53 Ibid., 104.

54 Allen W. Wood and Onora O'Neill, "Kant on Duties Regarding Nonrational Nature," *Proceedings of the Aristotelian Society, Supplementary Volumes* 72 (January 1, 1998): 193.

55 cf. Thomas E. Hill, "Humanity as an End in Itself," *Ethics* 91, no. 1 (October 1980): 85–86.

too. This provides scope for respecting moral personhood in its partial instantiation, where it once existed, where it is temporarily absent, in the abstract, and, most importantly for the non-human animals, where its necessary conditions exist.⁵⁶ The necessary conditions of autonomy; beliefs and desires, that make up the preference autonomy spoken of by Tom Regan, are necessary for, and an intrinsic part of, rational autonomy.⁵⁷ Thus, respecting rational autonomy in humanity requires respecting its necessary conditions, which are present in both persons and non-rational animals. O'Neill supplements Wood's paper by arguing that, given that the rational natures of persons are vulnerable to damage or destruction and that rationality is necessary for moral action, to ensure that acting morally is possible moral agents must protect and support each other in developing their talents and capacities.⁵⁸ And whilst one can hold that rational natures have absolute and unconditional value, Kant's arguments do not show that rationality being necessary for moral reasoning entails that only rationality is valuable. Although rationality is required for moral reasoning, a mental framework of beliefs, emotions, desires and so forth is also necessary. Kant's logocentrism commits us to respect for persons, but it need not preclude us from respect for non-rational beings by virtue of their possession of the necessary conditions of moral agency. Nor need it commit us to conclude that only rational actors are ends in themselves.

However, this argument is vulnerable to the reply, made by Thomas Skidmore, that although Kantians must value autonomy as an end, it does not follow that they must

56 Wood and O'Neill, "Kant on Duties Regarding Nonrational Nature," 196–200.

57 Ibid., 200.

58 Onora O'Neill, "Kant on Duties Regarding Nonrational Nature," *Proceedings of the Aristotelian Society, Supplementary Volume* 72, no. 1 (June 1998): 219.

value the necessary conditions of autonomy separately. If the conditions necessary for autonomy in humans are present in animals, they are not valuable unless they are, in that animal, the conditions upon which its autonomy depends. If the animal is not rational then those features of its being that it shares with rational beings do not gain value by virtue of being preconditions for value in rational beings.⁵⁹ However, whilst it is mistaken to think that respecting the necessary conditions for rationality in rational beings requires us to respect them in non-rational beings, the possibility that Kantians can value non-rational nature is not at the same time removed. Korsgaard's argument is more subtle and does not require us to value our animal nature⁶⁰ because it is a necessary condition for rationality. Rather, reasoning is part of the nature of most humans, and thus when we value ourselves as ends we confer value not so much upon rationality but upon our nature as rational beings. It is our 'natural good' that we take to be valuable; more so because our rationality depends upon our animal nature.⁶¹

Thus:

The strange fate of being an organic system that matters to itself is one that we share with the other animals. In taking ourselves to be ends-in-ourselves we legislate that the natural good of a creature who matters to itself is the source of normative claims. Animal nature is an end-in-itself, because our own legislation makes it so.

59 James Skidmore, "Duties to Animals: The Failure of Kant's Moral Theory," *The Journal of Value Inquiry* 35, no. 4 (December 1, 2001): 549.

60 There is a point to be made that in separating our nature into rational and animal we fall into an anthropomorphic trap; we make ourselves out to be something other than animals. Whilst rationality is a distinguishing feature of persons, we should not forget that persons remain animals.

61 Korsgaard, "Fellow Creatures: Kantian Ethics and Our Duties to Animals.," 104–105.

And that is why we have duties to the other animals.⁶²

This argument is supplemented by the claim that rules against, for example, torture that the rational will would legislate against would stand even if rationality were lost. If rational beings knew they were to lose their rationality and then be tortured, they would wish the prohibition on torture to still stand for them regardless.⁶³ Our rationality begins the legislative process but is not the end of it.

An alternative to the conferral model of value is the 'constitutive model' attributed to Kant by Alison Hills. Under this account pursuing goals is valuable insofar as the pursuit of goals 'is a constitutive means of functioning well as a rational agent'⁶⁴. If rationality were taken to be the sole source of value under this model then non-rational actors would only be worthy of moral consideration indirectly. However, in her book *Do Animals Have Rights?* Hills argues that if an animal can suffer it has direct moral status,⁶⁵ so I take her to be saying that whilst rationality determines the value of our goals and is valuable for its own sake, it is not the sole source of value of sentient creatures.⁶⁶ Kantians who see rationality as the source of all value and who also reject

62 Ibid., 105–106.

63 Ibid., 104.

64 Alison Hills, "Rational Nature as the Source of Value," *Kantian Review* 10 (2005): 69.

65 Alison Hills, *Do Animals Have Rights?* (Cambridge: Icon Books, 2005), 228.

66 Hills' thesis is that all sentient beings have moral standing, but that their differences in mental capacities means that the level of harm they can be subjected to varies (according to the sophistication of the kinds of goods they can lose out on) and they are therefore not all worthy of equal moral concern. To cause suffering or use animals instrumentally in ways that go against their good requires strong reasons, but great benefits to humans can be a sufficient reason because of the greater enjoyment of goods to be had by humans compared with more primitive animals (Ibid., 228–231.).

Korsgaard's account of value will struggle to grant direct duties to non-rational animals. However, the point I wish to make here is not that we should prefer the conferral account to the constitutive account or visa versa, but rather that there are avenues open to Kantians whether they adopt either of these accounts of value to grant direct duties to non-human animals. Indeed, there still further reasons that can be deployed from within a Kantian morality to grant direct moral consideration to non-rational animals, one of these, which I will now outline, is the 'pain as public reason' argument.

In 'The sources of normativity' Korsgaard argues that animal pain constitutes a kind of public reason that can obligate us. This claim proceeds from the premise that our human identity depends in part upon our animal nature, and therefore to value anything at all we must value our animal nature. When we obligate others we provide them with reasons that force them to place themselves in our shoes and so to recognise the value we place upon things. By recognising suffering in animals the rational agent is, in effect, accepting that animals have a reason to change their condition and that, since the agent recognises that they are suffering and that he would suffer in similar ways, that reason would also hold for him, and thus he has obligations to non-rational animals.⁶⁷

The idea that the good of animals gives them reasons to pursue that good or do certain things, such as avoid pain is rejected by Skidmore. It is implausible, he argues, for

67 Christine Korsgaard, "The Sources of Normativity," *Tanner Lectures on Human Values*, no. 12 (1992): 106.

beings unable to act for reasons to have reasons attributed to them.⁶⁸ When we set ourselves ends those ends provide us with a reason to maintain our physical well-being, but reasons are different from the inclinations and instincts of non-rational beings.⁶⁹ However, I do not think that this offers a fatal criticism of Korsgaard; the point is not so much that non-human animals in pain are giving reasons to rational actors, but that by acknowledging their pain reasons to act are created. Furthermore, whilst Skidmore is of course logically correct in arguing that reasons for acting cannot be attributed to beings incapable of acting for reasons, his position rests upon a question-begging inference that non-rational beings cannot act upon reasons. I do not intend to develop a response to this in any detail, but merely to point out that Skidmore has not made the case for his premise, and that others have argued that acting upon reasons is not dependent upon full practical rationality.⁷⁰

If we are to accept that non-human animals can suffer, and yet hold as the classical Kantian does, that only the suffering of rational beings should obligate us, then we may have some unpalatable choices to make. If we think suffering is bad for humans, why should it not be similarly bad for animals? One possibility is the thought that animal suffering is different in kind to human suffering in a morally relevant way. In Section 3, I conceded that it might be the case that there is a kind of suffering only

68 Skidmore, "Duties to Animals: The Failure of Kant's Moral Theory," 548.

69 Ibid.

70 Susan Hurley, Matthew Nudds, and F I Dretske, eds., "Minimal Rationality," in *Rational Animals* (Oxford: Oxford University Press, 2006), chap. 3; José Luis Bermúdez, "Animal Reasoning and Proto-logic," in *Rational Animals*, ed. Susan Hurley and Matthew Nudds (Oxford: Oxford University Press, 2006); Susan Hurley, "Making Sense of Animals," in *Rational Animals*, ed. Susan Hurley and Matthew Nudds (Oxford: Oxford University Press, 2006).

experienced by persons, but I concluded that differences in the experiential content of suffering are not reasons to ignore the suffering of non-persons. Nevertheless, the argument might be made that the kind of suffering that is felt by animals does not obligate us in the same way that human suffering does. If this argument succeed then we will need to decide how to respond to the suffering of humans with similar mental capacities to non-human animals (the so-called 'marginal humans'). It seems to me that we have two choices: 1) either bite the bullet and conclude that the suffering of marginal humans doesn't morally obligate us, or 2) accept that animal suffering might in some circumstances be different in kind, but it should obligate us in much the same way as human suffering (or more properly – suffering felt by persons) nevertheless. Accepting (1) still leaves the possibility of arguing that other factors obligate us to prevent suffering in marginal humans, but if the suffering doesn't obligate us then it is hard to see why we would wish to adopt other reasons, unless those reasons were indirect reasons to other people.⁷¹ For example, if the sight of a child, or patient with dementia, suffering causes a person anguish then that would provide a reason to prevent the suffering. The same could be said if causing or viewing suffering in animals or marginal humans made the viewer/causer more likely to cause suffering in fully autonomous persons. However, such a position is extremely unsatisfactory, first because we could reply that the feelings of anguish are inappropriate responses to the suffering and so the right response is not to prevent or end the suffering but to change the response to a more fitting one. After all, it seems strange to claim that moral action should be guided by irrational or incorrect beliefs. Second, if the suffering of children or non-human animals were to cause pleasant sensations or provide some good, then

71 As I mentioned in the introduction to this section, this is the position taken by Kant.

presumably we would have reasons to promote it, and this clashes with our intuitions and our common-sense morality.

If animal suffering is judged to be the same as (or close enough to) the suffering of persons, or if position (2) above is adopted, that the suffering of persons is different in kind than that of non-persons but should nevertheless still obligate us, might we still have reasons, in line with the Kantian view that duties derive from rationality and are owed only to rational beings, for denying that animal suffering obligates us?

Notwithstanding the clash with our intuitions in this respect, Korsgaard's treatment of this tenet of Kantianism is useful here. To recap: Korsgaard provides us with two significant reasons for doubting this claim. First; persons possess an animal nature which rationality depends upon, but which we also value for reasons independent of this fact. If a person values their animal nature for reasons other than that rationality depends upon that nature, then it is inconsistent not to value that same animal nature (and thus the capacity to suffer) in non-persons. Both persons and non-persons have lives that can go well or ill for them, and in each case suffering can harm the interests essential to the progress of those lives. Second, the suffering of animals is recognisable by persons as a harm to those animals in the same way as it would be to persons, and so can be seen as a form of intelligible public reason.

Thus, it is difficult not to conclude that, although many of the more primitive animals such as insects and molluscs probably or certainly cannot suffer, many animals can, and in the same or very similar ways to autonomous humans. Many of the reasons we view suffering as bad for us are the same as the reasons it is bad for non-human animals.

And even if suffering in non-human animals is very different from suffering in autonomous persons, we can still see that it is bad for them and that it is bad for the same reasons as it is for marginal humans. All of this still means that it is possible to conclude that whilst persons and non-persons can both suffer, their suffering can have a different quality to it; the suffering of conscious beings may differ from the suffering of self-conscious beings. This might lead us to assign greater significance to the suffering of self-conscious beings than of merely conscious beings, but it should not lead us to conclude that the suffering of merely conscious beings doesn't count at all. Even if we decide that a wide class of beings can experience pain (both physical and psychological) but not suffer, this still does not seem sufficient reason to conclude that the pain of those beings is of no moral significance. As Scanlon writes:

When we believe that a creature is in pain, we normally have an immediate sympathetic response: we see its pain as something there is reason to alleviate. Moreover, we have no reason to think this response is in general mistaken. Pain – whether that of rational creatures or nonrational ones – is something we have *prima facie* reasons to prevent, and stronger reason not to cause. Appreciating these reasons is central to understanding the value of sentient beings.⁷²

There are strong reasons for holding that the suffering of non-human animals does indeed obligate moral agents to prevent, alleviate, and act to minimise it, and to refrain from causing suffering. These reasons are connected with the discussions in the previous sections of this chapter about the value of non-human animals and the

72 Scanlon, *What We Owe to Each Other*, 181.

reasons we have for respecting them as more than a mere means to our ends. How this translates into everyday personal action and the demands of justice is drawn out in the following chapters.

4.1 Indirect duties views

Notwithstanding that Kantian ethics can often be a problematic and potentially hostile grounding for the moral standing of non-human animals, Korsgaard has provided some strong reasons for believing that moral agents have direct duties to non-human animals. However, Kant's own arguments for why we have (indirect) duties to animals are far less promising. Attempts to show potentially demanding indirect duties to animals using Kant's arguments struggle. The Kantian assertion that the poor treatment of animals results in cruel dispositions and the cruel treatment of humans is vulnerable to the counterfactual that if there exist circumstances where it can be shown that cruel treatment of animals does not lead to cruel treatment of humans (or even leads to kind treatment of humans) then duties not to be cruel to animals evaporate.⁷³ Under the indirect duties view we are left with the unpalatable position that nothing is owed, as a matter of morality, to those without rationality.

4.2 Reasons and values

I have dedicated considerable space to Kantian approaches to valuing non-human animals and deriving moral standing from that value: I have done this because of the

⁷³ In an unpublished conference paper 'Kant on the perfect similarity of duties to humans and duties to animals' Dita Wickins-Drazilova makes the argument that this characterisation rests upon an incorrect interpretation of Kant, and that Kant's argument is that the person who cruel to animals is necessarily already also cruel by disposition.

enormous importance of Kantian morality and the continuing preoccupation with his treatment of non-human animals. In order to accord with our considered intuitions and for reasons of consistency, the argument that rationality is the sole source of value must be abandoned. Attempts to endorse direct duties toward non-human animals whilst maintaining rationality as the sole property with final value or sole source of final value are unconvincing. Kantians wishing to grant moral standing to non-human animals need to either adopt a pluralistic Kantianism or discard rationality as both the source and terminus of value altogether.

The discussion on Kantian valuing above shows that debates about the moral standing need not be conducted, as Kantians have tended to do, at the level of value. What matters, in the specific case of non-rational animals, is not whether they have final value so much as the reasons we might give for them having final value; specifically that they have a good of their own. That this fact can be said to mean that they have final value according to some accounts does not appear to add a great deal to the normative case for pro-treatment arising from being in possession of a good of one's own. Nevertheless, their final value (as a place where the force of normative reasons does not rely upon further normative reasons)⁷⁴ can remain useful as an extra reason-giving property in an argument. Utilitarianism in particular focuses on considerations of the good of animals rather than on their value. Pro-liberationist utilitarians like

74 Johan Brännmark, "Passing the Buck: On Reasons and Values," in *Pattern of Values: Essays on Formal Axiology and Value Analysis*, ed. Wlodek Rabinowicz and Toni Rabinowicz (Lund: Lund Philosophy Reports, 2003), 80.

Singer⁷⁵ and Matheny⁷⁶ have concluded that the capacity of non-human animals to feel pleasure and pain demonstrates that they have interests deserving of consideration in a utilitarian calculation of overall wellbeing. Singer argues that beings which are capable of suffering and of experiencing enjoyment or happiness have interests in not suffering and in being happy and are thus deserving of moral treatment. Sentience is the 'only defensible boundary of concern for the interests of others'⁷⁷. The utilitarian treatment of sentient beings as carriers of well-being differentiates it from my assertion of their status as beings individually valuable for their own sake, and it leads to a very different treatment of my overall thesis topic, which resolves itself into a complex calculation of utility. Rather than speaking of the respect due to individual beings for their own sakes and by virtue of their own goods, the thesis would instead be concerned with whether treating animals in certain way contributes to the sum of utility whether that be happiness, preference satisfaction, well-being, or some other good. My thesis is not an attack on utilitarianism, and I am sympathetic to many of the conclusions that Singer and others have come to about the correct treatment of humans and other animals, but in attempting to present a normative account of the positive duties owed to non-human animals *qua* non-human animals I nonetheless find myself at odds with utilitarianism. My disagreements are of the standard sort and I shall not flesh them out in any great detail. Of key importance though is the difficulty that utilitarianism has in respecting the separateness of beings. By treating happiness as the sole ultimate value (or placing it within a container value such as welfare) its tendency is to treat

75 Peter Singer, ed., *Applied Ethics*, Oxford Readings in Philosophy (Oxford: Oxford University Press, 1986), chap. XIII.

76 Matheny, G. in Peter Singer, *In Defense of Animals: The Second Wave* (Oxford: Wiley-Blackwell, 2006), chap. 1.

77 Singer, *Applied Ethics*, 222.

individuals as receptacles of value rather than as valuable in and of themselves. As a result, the focus upon the overall good can in principle mean that tiny gains in overall utility can come at the expense of massive losses in individual utility. In its demanding promotion of happiness, utilitarianism struggles with the notion of respecting values rather than maximising them, and of course there are things and concepts we value, such as life, that we may wish to see respected, but struggle to see how promoting or maximising them is appropriate.⁷⁸ Finally, as is often noted, utilitarianism suffers from the epistemic problem of the impossibility of always knowing with sufficient certainty which course of actions will bring about the best result.⁷⁹ There are as many more problems with utilitarianism as there are solutions offered by utilitarians to the concerns listed above. However, whether a sufficing utilitarianism, or a pluralistic, or rule utilitarianism are adopted, the individual remains, in principle, usable as a mere means to another's ends – whereas I maintain that individual creatures with a good of their should not be treated as mere means to another's ends. Furthermore, the approach taken by utilitarianism to ethical questions, as W. D. Ross notes 'ignores, or at least does not do full justice to, the highly personal character of duty'⁸⁰ – a character that is important to the liberal conception of morality.

Putting aside the various metaethical perspectives, I hope that what has emerged from debates around the AMC, alongside Korsgaard's 'animal pain as public reason' argument, my very brief critique of utilitarianism, and the general discussion so far, is

78 Note that more sophisticated versions of utilitarianism or consequentialism may have less trouble accommodating the separateness of persons (cf. Philip Pettit, "Consequentialism and Respect for Persons," *Ethics* 100, no. 1 (October 1, 1989): 116-126.

79 For this reason, the more plausible versions of utilitarianism are probabilistic.

80 William D. Ross, *The Right and the Good* (Oxford: Oxford University Press, 1930), 22.

that we have good reasons for regarding suffering as bad for non-rational creatures and happiness as good for them, and that suffering and happiness are bad or good for them in much the same way as they are for rational creatures. Animals can suffer harms and benefits. This fact that they, like us, have lives that can go well or ill for them gives us reasons to value them for their own sakes and leads to the conclusion that they have some degree of moral standing. Now we might retort that plants, ecosystems or even bacteria can have an existence that go well or ill for them, that these things can also be harmed, and have final value, but it could not be said that such things have any awareness of their existence going badly or well and it is hard to see how they can be wronged. Arguments for respectful treatment of things which cannot themselves be wronged are obviously going to be on much weaker ground than arguments for respectful treatment of beings which can. Furthermore, the inconsistencies in our consideration of humans and non-human animals brought to light by the AMC do not appear when it is applied to non-sentient creatures, so the demand for a consistent approach to morality does not find purchase. This is because the good of most 'marginal' humans is much more closely comparable with non-rational animals than it is with plants or mere things. If we wish to promote a state of affairs that is good for all of us, or act respectfully towards each individual for their own sake, then we cannot without self-contradiction, or the inclusion of non-moral principles, deny moral standing to non-human animals. And it is therefore irrational to deny that non-human animals have moral standing.

5 Vulnerability

So far I've discussed reasons for respectful treatment of non-human animals because they have a good of their own and the capacity to suffer, but there are other ways of grounding duties toward other creatures. One of those ways is based upon an animal's vulnerability; arguments of this type appear in ethics of care along with contractualist, Aristotelian and Kantian moral discourses. Of these, the latter three ethical perspectives are most relevant to this thesis. In my discussion of Onora O'Neill's response to Wood's Kantian approach to animal rights I touched upon her contention that mutual vulnerability generates duties.⁸¹ Similarly Korsgaard talks of pain as a public reason. Thus there is a sense that because we carry vulnerabilities in ourselves, we can recognise them in others and this creates a shared identification; a kind of moral relationship of mutual vulnerability. Martha Nussbaum makes a similar point:

Even when we feel compassion for animals, whom we know to be very different from ourselves, it is on the basis of our common vulnerability to pain, hunger, and other types of suffering that we feel the emotion.⁸²

Chris MacDonald and Chris Tucker point out that a necessary condition of contractualism (which I discuss in detail in Chapter 3) is that the contracting parties must be vulnerable to others; if they are not then there is no incentive for the invulnerable party to limit their actions to others and so there is need for them to seek

81 O'Neill develops this point in greater depth in a paper on children's rights: cf. Onora O'Neill, "Children's Rights and Children's Lives," *Ethics* 98, no. 3 (April 1, 1988): 457.

82 Nussbaum, *Upheavals of Thought: The Intelligence of Emotions*, 319.

a contract in the first place.⁸³ Indeed, Sonia Felipe suggests that the shared vulnerability between humans and other animals shows us that Rawls' Original Position should be modified 'to consider the fragility of our bodily condition, and similarities between our needs and the needs of all living beings'⁸⁴. Thus we see vulnerability being used as a necessary condition of, or analogue for reciprocity, or as a form of public reason. As an analogue for reciprocity or as a public reason mutual vulnerability offers potential for incorporation into social contract theories. At a more basic level shared vulnerabilities help provide moral motivation for respectful treatment of non-human animals and other moral patients.

6 Conclusions

I began this chapter by specifying the kinds of non-human animals that are the objects of my account of duties. My account focusses upon those non-human animals that have a good of their own and can suffer – specifically category (b) moral patients as described by Tom Regan, and which map closely to the kinds of creatures that animal rights activists tend to concentrate their acts of liberation on. I have looked at the conditions required to make the lives of these moral patients worth living, defined in terms of a healthy and contented life, free from needless suffering, and where they are able to exercise the natural capacities characteristic of their species. Understanding the good of non-human animals gives us an idea of the content of respectful treatment; treatment which is grounded in recognising that having a good of one's own and the

83 Chris MacDonald and Chris Tucker, "Beastly Contractarianism? A Contractarian Analysis of the Possibility of Animal Rights," *Essays in Philosophy* 5, no. 2 (June 1, 2004).

84 Sonia T. Felipe, "Rawls's Legacy: a Limited Possibility of a Non-speciesist Environmental Justice," *Ethic@* 4, no. 1 (2005): 29.

capacity for suffering make a being worthy of special moral consideration. Beings of this type have moral standing and their good provides moral agents with categorical reasons for respectful treatment. Exploring how suffering is defined and recognised helps us to understand how relevant a moral consideration it should be, and the kinds of beings that can be said to suffer. I have concluded that humans and many non-human animals suffer in similar ways and make moral claims upon us as a result. Along similar and related lines, I have offered the shared vulnerabilities of humans and non-human animals as a further reason for moral agents to believe that they have moral duties to moral patients. Rather than focussing on the language of rights, I have attempted to take a broader ethical approach, focussing on reasons and respectful treatment. In the next chapter I move from the basis I have established for there being duties to moral patients to an exploration of the kinds of duties that we should have as a result. On one final note, whilst pain, suffering and mutual vulnerability can all give rise to emotions of compassion and sympathy, which themselves can provide us with reasons for action, I have sought to avoid making use of them for the reason that they can easily be corrupted or biased. Rather than our sympathy for a particular creature providing the reason for us thinking it worthy of direct moral consideration, the fact that a creature is worthy of direct moral consideration gives us reasons to feel sympathy or compassion toward it. Sympathetic emotions are secondary to moral reasons. I now move on to Chapter 2 to discuss the nature of the duties we have toward non-human animals.

2 Duties to non-human animals

In this chapter I take the discussion on respect from the previous chapter and ask what it means in terms of duties to non-human animals, laying the ground for the arguments in Chapters 4 and 5 on positive duties of liberation. I begin by considering negative duties grounded in the respectful treatment of non-human moral patients, focussing upon the duty to never use a being with moral standing as a mere means to an end. In Section 2, I consider whether some traditional reasons given for privileging humans are sufficiently compelling to weaken the arguments for animal liberation. I weigh-up species membership, personal partiality, and the value of personhood as reasons for giving higher status to humans than other animals. Of these, I find species membership not to be morally significant, and whilst personal partiality does provide excuses for differential treatment I argue that species is an unsuitable characteristic upon which to hang reasons of partiality. Additionally, even if it were, partiality neither provides a sound basis for morality nor grants licence to treat beings not enmeshed within relationships as mere means to the ends of those that are. Thirdly, the possibility that the special value of personhood is sufficiently weighty to automatically privilege persons over non-persons is revisited, with the conclusion that whilst there may be circumstances where the possession of personhood means that the interests of a person should be given greater consideration than those of a sentient non-person, this is not always the case. In any case, whilst personhood is undoubtedly important, both as the necessary condition for moral action, and as a component of the good of persons, it is not true that all humans are persons, and nor does it follow that not all non-humans lack personhood. Finally, I conclude the chapter by introducing positive

duties of *aid* and *rescue* owed to moral patients, laying the foundation for the discussion in Chapters 4 and 5 on their relevance to animal liberationist activities of direct action encompassing; civil disobedience, sabotage, and rescue.

1 Duties of respect and beneficence

In the previous chapter I discussed respect for non-human animals and reasons for holding that non-human animals have moral standing; particularly those of the type that Tom Regan classifies as category (b) moral patients. To recap – moral patients of the type that I am concerned with are those relatively complex sentient beings, capable of suffering, and which experience emotions, have desires and preferences, live what might be termed a biographical life, but nevertheless lack the relevant capacity for reason that would render them accountable for their actions. This section will look at how respectful treatment translates into duties owed by moral agents to moral patients. Respect for non-human animals means holding that their interests count for something in moral deliberations. As I have previously discussed, it means accepting that they have a good of their own, and that this good places strictures upon how moral agents should treat them. My particular concern, as I have made clear already, rests in assessing the moral status of acting in defence of creatures that can suffer. Thus, to a very large extent the starting point of my enquiry will determine the kinds of duties and the objects of those duties that I will discuss. I make this point to be clear that gaps in my theorising about non-sentient beings or creatures incapable of suffering may be present – but that this will be intentional: I will not be saying anything about trees, invertebrates, or other non-sentient beings.

It makes sense to think that the duties we have toward non-human animals will follow from the reasons we have for believing that they are worthy of direct moral consideration. Thus, because a non-human animal has a good of its own, we have duties to refrain from interfering in that animal's pursuit of its good so long as that good does not depend upon interfering with the good of another creature with moral standing. Again, I am talking here specifically of non-human animals that are capable of suffering (and the avoidance of unnecessary suffering will naturally form part of that animal's good). This *non-interference principle* immediately throws up some counter-intuitive problems when we start thinking about what it would mean for predatory animals whose good is tied up in eating other creatures. If the duty not to interfere in an animal's pursuit of its good is overcome when that good is threatened, and another animal has the consumption of that animal as part of its good, then by intervening to defend one animal a moral agent will be both respecting and breaching the principle simultaneously. Whilst I do not believe that the predation problem poses the problems that writers like Carl Cohen¹ and others believe it does, my particular concern is limited to circumstances in which moral agents are harming non-human animals as part of the practices of modern liberal democratic states, and to understanding the ethical status of animal liberation acts made in their defence. Even if we strongly endorse a principle that the only obligatory duties we have are negative ones of non-interference (which would solve the predation problem) that does not mean that negative duties describe the whole landscape of morality. A position which makes only negative duties obligatory (such as that of libertarians) still has space for supererogatory acts of beneficence. But deciding whether acts of beneficence are

1 cf. Carl Cohen, "Do Animals Have Rights?," *Ethics & Behavior* 7, no. 2 (1997): 94–96.

supererogatory or obligatory is not necessary to deciding what beneficence means in terms of non-human animals because it is perfectly possible to determine what constitutes the good of a creature separately from arguing that good is a reason-giving property to hang duties off.

In the case of human beings, we commonly regard the good to be dependent upon general well-being and the exercise of autonomy to make, pursue, and revise life plans through acts of choosing. Thus duties to humans involve protecting and promoting well-being and respecting autonomy. The good of non-human animals does not involve autonomy, but just as autonomy is a special feature of our good, so to are the normal species capabilities of non-human animals to them. The pursuit of a non-human animal's good involves bodily health and the exercise of its capacities. Thus a bird's good involves being able to fly, a monkey's involves climbing trees, and so forth. And for social animals it involves being part of a community; their herd, pack, troupe, pod etc. In addition the well-being of an animal requires that it does not suffer undue or unnecessary suffering (and by unnecessary I mean unnecessary for it) and that its bodily needs are satisfied. If we are to respect the good of non-human animals and, in Kantian terms, treat them as ends in themselves, then this means that we should never treat them as mere means to our ends; we should aid them when they are in dire need; and we should promote their ends when we can do so without over-burdening ourselves. If we were discussing how to respect persons as ends in themselves we would want to add that any cooperation with them should be on voluntary terms. Obviously determining whether cooperation is voluntary is more difficult when discussing animals, but it does not seem to be impossible. At the very least we could

say that cooperation should be mutually beneficial. This mode of treatment represents the kernel of respectful treatment detailed in the previous chapter. In respecting an animal we take account of its good: for humans that good includes the exercise of autonomy in addition to other natural functions, together with the avoidance of unnecessary suffering. But, as I drew out in my treatment of Korsgaard's thesis in Chapter 1, Section 4, acting autonomously forms but a part of the good of persons, just as in animals the exercise of their capacities helps constitute their own goods.

2 Differential treatment

Treating someone or something as an end in themselves need not require granting them equal treatment with all other beings judged worthy of being treated as ends in themselves. It could be that there are strong reasons for putting the interests of human beings above those of other animals. For instance, there might be reasons of partiality, or of promises or contracts reached between human persons, or it might be judged that the complex mental lives and capacity for personhood make the interests of human persons in certain things, such as in not suffering or in continuing to live, stronger than those of other sentient beings. In the following section I will assess three possible avenues for unequal treatment, starting by taking together 1) the moral significance of species membership, and 2) the justifiability of personal partiality, before moving on to touch upon 3) the special value of personhood. Contracts and promises comprise potentially important reasons for special treatment, however I will cover them in the following chapter when I tackle justice and social contract theories. Chapter 3 will, through an examination of the foundational principles of justice in

political liberalism, look at the place of moral patients in social contract theory and will ask whether their exclusion renders any conception unjust. This theme will be carried on in Chapter 4 where I will explore the interplay between duties towards the state and fellow citizens and the demands of wider morality in respect of non-human animals. Whilst these reasons will not licence treating non-human animals in purely instrument terms, they may nevertheless limit the kinds of actions that could be justifiable in their defence.

2.1 Species membership and partiality

It is common to see those endorsing an animal liberationist position argue that species membership is not a relevant moral consideration.² Taking species into account when moral decisions are being made is ‘speciesist’ they contend, in the same way that taking race or gender into account might be. Is the case that species membership is not a relevant moral consideration really as self-evident as pro-animal liberation theorists claim? Below, I examine two potential challenges to the assumption of moral irrelevance and assess their strengths: the first concerns personal identity and meaningful relationships, and the second addresses itself to whether moral rules should be applied to categories of beings rather than individuals. Both positions are found wanting and I conclude that neither provides good reasons for accepting species membership as a morally relevant consideration.

2 cf. Peter Singer, *Animal Liberation: Towards an End to Man’s Inhumanity to Animals* (London: Granada Publishing, 1977); Tom Regan, *The Case for Animal Rights* (London: Routledge, 1984); David DeGrazia, *Animal Rights: a Very Short Introduction* (Oxford: Oxford University Press, 2002).

The theorists who deny that species membership is morally relevant do so by referring to capacities and characteristics. Humans, they contend, are considered worthy of moral concern, whilst non-human animals are not, because of certain capacities held by humans as a species norm: language, rationality, moral agency, autonomy, etc.

However, since these capacities are not possessed by all humans to the same degree (or at all), or are seemingly selected arbitrarily to exclude those who cannot possess them, reliance upon them must also exclude those humans not possessed of the characteristics from moral consideration. The argument that human beings are worthy of moral consideration by virtue of their humanity alone relies upon a definition of what it is to be a human. Any definition of *humanity* phrased in terms of characteristics that are shared with other species, or are not held by all and to the same degree leaves itself open to the charge of inconsistency. Conversely, any definition of *humanity* based upon physiognomy or physiology leaves itself open to the charge of speciesism and arbitrariness. This argument from marginal cases (AMC), which I used earlier in Chapter 1, has been advanced by utilitarians, contractarians, and deontologists alike.³

In this section I consider the two main arguments for believing that species membership is morally relevant. The first of these, which I shall call the *Inherent Value* argument, is a set of perspectives placing relevance on species membership along two significant and interwoven strands: (a) is that species membership is inherently good because it is an essential component of personal identity, and in the case of humanity that identity is the source of morality and thus inherently valuable for an additional

3 Singer, *Animal Liberation: Towards an End to Man's Inhumanity to Animals*, 21–44; Regan, *The Case for Animal Rights*, 77–78; Jeff McMahan, *The Ethics of Killing* (Oxford: Oxford, 2002), 203–228; Mark Rowlands, *Animals Like Us* (London: Verso, 2002), 44–47.

reason. And (b) is that species membership constitutes a form of relationship, and relationships are both inherently valuable and determinants of moral duties. The second perspective, which I will refer to as the *Epistemic Argument*, makes ethical judgements based upon a principle that it is epistemically correct to make judgements about moral standing at the species-based category level, i.e. that judgements about how to treat an individual of a species should be derived from general facts about that individual's species rather than from facts about the specific individual. I will consider each of these two types of argument for speciesism in turn, beginning with the arguments of Cora Diamond, Elizabeth Anderson, and Eva Kittay along strands (a) and (b) of the *Inherent Value* position.

Before doing so however, I should say something about environmentalism because it can offer a position superficially similar to that of the *Epistemic Argument*. A significant branch of environmental ethics places value in biological collectives (species, herd, ecosystem, 'biotic community') rather than in the individual members of that collective (though there are some, such as Callicot who have revised this position in order to try to assign value to both)⁴. Whilst this might at first glance look like speciesism, in reality it makes no claims about the respective values of different species (or other biotic communities) and thus would require additional reasons to be given for privileging one species over another.⁵ In its basic form there are instances when it

4 Baird Callicot, *Beyond the Land Ethic: More Essays in Environmental Philosophy* (Albany: State University of New York Press, 1999), 59–76.

5 It should be noted whilst I will be arguing that species membership is not morally relevant throughout this section, this should not be taken as an argument for the moral equality of species. That the former implies the latter is a straw man argument used by Cohen against animal liberationists – my position makes no such claims, being as it is rooted in moral individualism.

might be right under ecological principles to do this: such as when one species threatens a wider ecosystem (as with invasive or destructive species like mink, cane toads or locusts), but these reasons are contingent rather than necessary facts about a species. For these reasons I do not believe that an environmental ethic is readily compatible with speciesism⁶ of the kind that Regan and Singer argue against and will not address it further in this section. However, what has become apparent from this brief consideration of environmental ethics is that when we talk about whether species membership is morally relevant we can mean one of a number of things. We might be asking if species membership is relevant when choosing between the interests of one or more individuals of differing species; or when choosing between species *qua* species. Alternatively, we might be asking whether species are finally valuable in ways which are not reducible to the final value of their individual members.⁷ The latter two questions are the ones to which environmental ethics addresses itself, but it is the former question that is the true subject of this section.

2.1.1 Relationships and species

Cora Diamond argues that humanity is defined both by the otherness of non-humanity and by the significance of certain social and cultural practices which mark points of difference with non-human animals.⁸ This perspective is important to draw out because it marks the key zone of conflict with those who deny the relevance of

6 The same would be true, I presume, of other types of holism, such as a utilitarian holism.

7 cf. my discussion of Kantianism and final value in Chapter 1, Section 4.

8 Cora Diamond, "Eating Meat and Eating People," in *Animal Rights: Current Debates and New Directions*, ed. Cass Sunstein and Martha Nussbaum (New York: Oxford University Press, 2004), 98.

species membership through comparisons of certain capacities between individuals of different species. So, for the likes of Cora Diamond, Eva Kittay, and Elizabeth Anderson, that which makes us human and tells us what we owe to each other is not necessarily vested in anything biological,⁹ but comes from the kind of relationships and identities we can and do have - identities and relationships that are dependent upon our humanity.¹⁰ Diamond, Kittay, and Anderson all contend that using the AMC to make capacities the foundation of moral standing either misses the point of what is important in morality,¹¹ or worse still, constitutes an attack on what it is to be human.¹² Morality, Anderson reminds us, is not just about principles of justice derived from intrinsic capacities, it is also about how we regard and treat others; its interpersonal content is important.¹³ By comparing capacities, they say, we downplay difference in our search for similarity, and we ignore the meaning and significance of relationships and identities. By raising the standing of non-human animals in this way we unavoidably lower the standing of so-called marginal humans: children, those with severe cognitive impairments etc.¹⁴ In any case, Kittay argues, the choice of which capacities to hang moral standing from is arbitrary because 'whether or not an

9 Ibid., 102.

10 Eva Feder Kittay, "At the Margins of Moral Personhood," *Journal of Bioethical Inquiry* 5, no. 2 (2008): 144–145; Diamond, "Eating Meat and Eating People," 97–102. I should add that Anderson offers a more nuanced position that the kinds and significance of relationships we have supervene upon our normal species life, a life that for us includes language, rationality, autonomy and so forth (Elizabeth Anderson, "Animal Rights and the Values of Nonhuman Life," in *Animal Rights: Current Debates and New Directions*, ed. Cass Sunstein and Martha Nussbaum (New York: Oxford University Press, 2004), 281–282.).

11 Ibid., 280; Kittay, "At the Margins of Moral Personhood," 151–152.

12 Diamond, "Eating Meat and Eating People," 95; Kittay, "At the Margins of Moral Personhood," 152.

13 Anderson, "Animal Rights and the Values of Nonhuman Life," 280.

14 Diamond, "Eating Meat and Eating People," 95–98; Kittay, "At the Margins of Moral Personhood," 152 and 155.

individual possesses any one set of intrinsic properties is not sufficient to determine whether or not this individual can have a moral life and be part of a moral community¹⁵. At the same time, these authors point to contingent social, cultural, and historical circumstances as the source of morality. In this way Kittay sees social relationships, such as the family,¹⁶ as providing moral reasons to privilege some beings over others,¹⁷ and she defines a social relationship as ‘a place in a matrix of relationships embedded in social practices through which the relationships acquire meanings’¹⁸, before further suggesting that non-human animals cannot be placed within her kind of social relationship.¹⁹ Like Kittay, Diamond also thinks moral status is conferred by identity and the practices which construct it, illustrating her point by arguing that there is a moral difference between eating a pet and eating a wild animal not because of their respective capacities, which might be identical, but because of the nature of our relationship with the two creatures. Anderson makes a similar argument, illustrating how the importance of the concept of *human dignity* gives us reasons to behave differently towards an Alzheimer's patient than toward a dog with the same cognitive capacity; reasons that have everything to do with conceptions of humanity and social practice, and little to do with biological capabilities.²⁰

That there is something in these arguments is hard to deny. Anderson, for example, is

15 Kittay, “At the Margins of Moral Personhood,” 123.

16 Note that Kittay sees family membership as a social relationship supervening upon biological relationships, but not necessarily dependent upon them.

17 Kittay, “At the Margins of Moral Personhood,” 151–152.

18 Ibid., 144.

19 Ibid., 155.

20 Anderson, “Animal Rights and the Values of Nonhuman Life,” 282.

quite correct to write that many of the rights we confer upon people are unintelligible outside of their social and cultural context;²¹ we would not, as Bertrand Russell famously quipped, demand 'Votes for Oysters!'.²² And Kittay is correct in pointing out that harms or goods brought into the world are not necessarily dependent upon the properties that Singer, McMahan or Regan use to determine moral standing. A rational and autonomous being can bring great harm into the world, whilst a non-autonomous being can create good and be both the recipient of love and a bringer of joy. A morality that privileges capacities may indeed miss the importance of other values: love, joy, solicitude etc., but that is not to say that it needs to or will do so.

However, one might respond that capacities such as autonomy are far from arbitrarily selected as Kittay contends. Rather, autonomy is good for its own sake or valuable regardless of the amount of additional goodness it brings into the world through its exercise. Should it be possible for a person to have increased welfare, or lead a more valuable life, but at the expense of his or her autonomy, we do not then conclude that it would be better if they lacked autonomy altogether. Furthermore, the exercise of autonomy is every bit as fundamental, if not more so, to the practice of morality as the need for relationships. Without moral autonomy there is no morality; it is through the exercise of choice that morality acquires meaning as a concept.

Similar points can be made of sentience. Sentience has value to the sentient being regardless of the other possibilities it allows – sacrificing sentience in order to increase welfare does not seem a good trade. If a cat could live a longer life, free from pain, if it

²¹ Ibid., 280–282.

²² Bertrand Russell, *History of Western Philosophy* (London: George Allen & Unwin, 1961), 753.

were magically transformed into a tree we would not think that a good deal for the cat. And importantly, sentience is of particular relevance because those who lack sentience cannot be wronged: to be sentient is to be capable of being harmed.

The view that equal respect and consideration stem from social relationships irrespective of facts about a being's capacities is also problematic in more ways than arise from downplaying the importance of autonomy and sentience. If moral equality, or at the very least moral standing, is contingent upon a place within a social relationship then no underlying argument for inherent worth can be made. As Scanlon points out, relationships such as those of friendship and family, which are commonly and plausibly held to be valuable, have 'a built-in sensitivity to the demands of right and wrong'²³ because they require us to recognise that those we have relationships with are persons with moral standing independent of our relationship with them²⁴ and this moral standing constrains our behaviour in ways which can override or add to our relational duties. Anderson places too much normative emphasis on the different kinds of relationships that we can have in determining degrees of moral consideration owed. The nature and strength of our duties towards one another is dependent to some degree upon our relationships, but whether a being has a place in a relationship is not a necessary condition for moral standing. Moral standing can exist quite independently of contingent facts. However those contingent facts may inform our moral obligations. We do not, for example, think that prohibitions on killing apply only to our friends. Therefore, in order for us to value social relationships for reasons beyond our own contingent facts of affection, or utilitarian calculations of their value, we must

23 Scanlon, *What We Owe to Each Other*, 166.

24 Ibid., 165.

seek underlying moral principles. Lacking a commitment to inherent worth, we have no reason to value non-instrumentally those with whom we have no relationship. And that inherent worth must come from something other than contingent facts: the capacity to suffer, the possession of interests, the experience of life as a continuum all present themselves as plausible possibilities.

Even if we appealed to others to value us on grounds that they value their relationships as we do ours, we would still struggle to justify relationships unfettered by other considerations of morality. As Scanlon points out:

There would, for example, be something unnerving about a “friend” who would steal a kidney for you if you needed one. This is not just because you would feel guilty toward the person whose kidney was stolen, but because of what it implies about the “friend's” view of your right to your own body parts: he wouldn't steal them, but that is only because he happens to like you.²⁵

There are special relationships of love, obligation, friendship, and family which can place moral obligations upon us, but those obligations are not unlimited or unbounded, they must also be at least minimally constrained by a commitment to fundamental moral equality.

Whilst it is right to highlight that acting morally is not exhausted by treating like cases alike, it would be wrong to conclude that we should pay no heed to like capacities or

²⁵ Ibid.

capabilities as a result. A socially constructed identity in which the concept of *personhood* is enmeshed might lead us to privilege those with whom we relate, but nothing in this fact tells us that it is right to do so. Yes, social relationships may give life meaning and significance, but these things can be found in both morally wrong and morally right acts. It would indeed be a strange world where morality stopped at fair treatment and went nowhere toward good treatment, and a barren morality that required us to give consideration only to need whilst ignoring emotional ties and relationships of love, dependence, or obligation. But at the same time, a world where social relationships took the place of an underlying principle of moral equality would be a frightening and undesirable one.

Nevertheless, it may be that there are some arguments which I have not considered that could take account of my objections. Perhaps it can be shown that relationships that humans and animals have are of a different quality or kind? If this were true then the capacities possessed by humans might not matter so much as their place within a relationship. Supposing this were proved to be true (or that some other argument has been advanced which defeats my objections); to make species membership a relevant consideration would still require some work because so far only difference and not normative significance has been established. Kittay, for instance, has claimed that species membership is morally analogous to family membership; that ‘as humans we are indeed a family’,²⁶ and that this therefore gives us reasons to privilege humans over animals irrespective of their comparative capacities.²⁷ Kittay’s characterisation of a

26 Kittay, “At the Margins of Moral Personhood,” 152. Kittay does not offer an argument to justify this statement, or at least if she does I cannot see where.

27 Ibid.

family is of a social relationship grouping conditional not upon intrinsic properties, but rather upon birth, adoption and marriage, which provides critical support in times of need. Whilst it is true that humans are born into their species, in the same way as they are born into a family, there is as yet no way to become human through marriage or adoption. Nor is it obvious that human beings are sufficiently entwined in a global relationship for the kinds of moral duties and moral status conferred by family membership, as Kittay describes it, to exist. Distant strangers are not dependent upon me as children, nor in old age; I have no bonds of kinship with them and would not expect them to have the same duties toward me as a close family member. Indeed, for the most part I know nothing about them – not even a name.

Kittay might respond that, whilst it is not factually analogous to family membership, species membership is *morally* analogous to family membership. Humanity, like the family, represents a set of interdependencies, and human beings rely upon each other to meet their needs. To be sure, much of the world's population is reciprocally interdependent to some degree – but not all of it is, and in most cases levels of interdependence are extremely low. A stronger case might be made for communities of interest, nationalities, or local communities, but even then I doubt many people would consider that their obligations to someone on their street are the same – either in strength or in kind – as those they owe to a family member. And if such a case were to be made it also could be pointed out that we have similar interdependencies with non-human animals: guide dogs, farm animals, pets and so forth. In this sense human beings depend upon non-human animals to meet their daily needs (and visa versa), and have formed complex and meaningful relationships with them.

Neither is family membership necessarily akin to an interdependent grouping of moral peers as Kittay argues;²⁸ family membership may be a supportive and nurturing environment of equals in many, if not most cases, but it can as easily be composed of relationships of cruelty, exploitation and domination. And although we do indeed have *prima facie* reasons to privilege family members *ceteris paribus*, when we expose principles of partiality to extreme or marginal cases – such as the requirement to choose between the trivial need of a relative (perhaps a particularly cruel and morally dubious relative) and the desperate and immediate need of a nearby²⁹ stranger – then the weakness of using family membership unqualified as a reason to privilege becomes clear.

When Kittay writes 'no gorilla and no dog, however attached I may become to it, can be my daughter – with all the emotional, social, and moral resonance that has'³⁰ rather than showing that we cannot have strong and meaningful relationships with non-human animals, she is instead displaying a lack of imagination. Is it really so hard to believe that a society might currently exist, have existed, or will exist in the future that creates meaningful social relationships with its companion animals – certainly more meaningful relationships than it does with some distant humans of which it knows nothing?

The analogy of species membership with family is mistaken. The circumstances by which one becomes part of a family are not analogous to those by which one is born a

28 Ibid., 124.

29 Nearby because it helps us determine that we are best place to assist in this case.

30 Kittay, "At the Margins of Moral Personhood," 155.

human. In this, species membership therefore seems to me to be a more arbitrary a selection criteria for moral standing than any capacities based approach.³¹ In this respect, it is very hard indeed to see how species membership is at all like a family beyond the bare facts of sharing genetic data to some degree. Indeed, it is unclear to me how we get from the very special, non-general associative relationships of parents and spouses to the very general relation of species membership. These familial relationships are distinctive in part precisely because they are *not* universal. But, even if the analogy were sound, it would not provide convincing reasons to automatically privilege humans over animals, nor to grant moral equality to all members of that family irrespective of their capacities. The manner in which I treat families other than my own is not a matter of personal preference; they are not fair game in the pursuit of my own family's interests.

I have addressed the contention that species membership is akin to a social relationship and that this gives us reasons to privilege species members over non-members, and I have touched very briefly upon arguments that difference has a role in conceptualising humanity, and that morality is located in a contingently formed identity. However, I have not properly defended the capacities approach from the charge that it somehow, by linking moral standing with the possession of capacities shared across species and not held by all humans (or held to the same degree), lessens the standing of humans and constitutes an attack on the very notion of the human. One might ask how finding that I can suffer in ways not dissimilar to the apparent experience of a deer or a dolphin somehow makes me less of a human. The answer certainly does not seem

31 Indeed, it could be said that what species we are born into is a matter of luck.

apparent to me, nor is it apparent in the work of Diamond, Kittay or Anderson. The suggestion found in Diamond's argument; that the 'significance' of what it is to be human rests upon and requires a morality that implicitly privileges species membership³² is question begging because it is premised upon the assumption that species membership is morally relevant. I can only reply by saying that I do not see how this can be proved, nor any compelling reason to accept her particular concept of the human as desirable or convincing. Given that it is not at all obvious how the conceptualisation of being human is weakened by the AMC, or indeed how it might be argued that the notion of being human is an inherently valuable one in the same way that one might show how personhood is valuable, it does not seem necessary to respond in depth to Diamond's critique – it is up to her and those who agree with her to provide convincing reasons.

2.1.2 Humans and non-humans: differences of kind

However, the *Inherent Value* arguments developed by Diamond, Anderson and Kittay are not the only ones used to defend the moral relevance of species membership. Carl Cohen and Tibor Machan each argue for the moral relevance of species membership along very different lines to the aforementioned authors. Cohen and Machan adopt what appears to be an ethical naturalist account of natural rights, although Machan's position is more fleshed out than Cohen's in this respect. Each contends that the essential nature of human beings as moral agents shows that they have natural rights which non-human animals, not being moral creatures, cannot possess.³³ However,

32 Diamond, "Eating Meat and Eating People."

33 Tibor Machan, "Right, Liberation and Interests: Is There a Sound Case for Animal Rights or

whilst the positions of Cohen and Machan are rooted in ethical naturalism, their arguments can be shown to be problematic by tackling them at the methodological rather than meta-ethical level. Cohen sets humans as a species above non-human animals by arguing that the difference between the two is one of kind:

The capacity for moral judgement that distinguishes humans from animals is not a test to be administered to human beings one by one...The critical distinction is one of kind. Humans are of such a kind that rights pertain to them *as humans*; humans live lives that will be, or have been, or remain *essentially* moral.³⁴

Machan expresses a very similar view, contending that natural rights are derived from the 'type of mentality' possessed by humans, a mentality that makes them moral agents.³⁵

It is not so much the underlying assumption that the prescriptive can be derived from the descriptive that is troublesome here, but rather the views that we should deduce facts about individual things by reference only to their paradigmatic instances,³⁶ which for humans Machan states are 'normal' mature humans,³⁷ and that we should apply

Liberation," in *New Essays in Applied Ethics*, ed. Hon-Lam Li and Anthony Yeung (Hampshire: Palgrave MacMillan, 2007), 50; Tom Regan and Carl Cohen, *The Animal Rights Debate* (Lanham: Rowman and Littlefield, 2001), 37.

34 Regan and Cohen, *The Animal Rights Debate*, 37.

35 Machan, "Right, Liberation and Interests: Is There a Sound Case for Animal Rights or Liberation," 50.

36 Ibid.

37 Ibid., 50 and 53.

moral rules derived from natural facts to classes of beings rather than individual beings.³⁸ In essence, Machan and Cohen think we should make moral judgements according to definitions derived from understandings of the nature of human and non-human animals which come from paradigmatic cases of those beings. Machan goes on to contend that the argument for deriving moral rules from marginal cases, as Singer and Regan do, is ‘epistemologically flawed’³⁹, in that the AMC mistakenly tries to discover logically necessary truths from what is more properly a matter for discovery through scientific method.⁴⁰ However, his own methodology is flawed enough in itself that his other conclusions must be doubted. It is not at all the case that:

[w]hen one defines a class of beings, one focuses on what they are normally, and in the case of living things, what they are at the state of their maturity. So infants and those who are impaired will not (yet or wholly) fit the correct definition of the concept ‘human being’ fully, but it is clearly understood – in biology, botany and other life sciences – that a certain definition is the most apt way to classify them.⁴¹

It might be true that for the purposes of shorthand scientists will use the term ‘human’ to classify all those sharing the necessary genetic material, but when it comes to applying knowledge in specific cases pertinent facts about an individual human often have to be taken into account: their age, gender, health, weight etc. In many sciences frequent use of outliers and abnormal cases is made to gain knowledge of a thing and

38 Ibid., 56.

39 Ibid., 50.

40 Ibid., 53.

41 Ibid.

the category of things that it exists within. A good example of this is found in psychology, where the focus upon the abnormal has been a common method of learning more about the so-called ‘normal’ functioning of the mind. Furthermore, the observed regularities amongst ‘normal’ mature humans cannot be contextualised without reference to the irregularities that set the parameters of normality. The mistakes that Machan makes are first; to set a question-begging methodology from which to derive ethical facts, and second; to inexplicably take facts about *persons* and apply them to the category of *humans* rather than the more rational and obviously appropriate category of *persons*. It is a mistake shared by Cohen. The error in this segue from persons to humans is made apparent by reference to Machan’s work not on animal rights, but on epistemology and moral knowledge. He writes:

the concept of “human being” need not involve some necessary truth in the formalist sense. This means that it is not necessarily ruled out that some heretofore nonrational animals will join the category of beings properly designated as human or that such an animal will join that category in some significant respect and thus possibly acquire rights.⁴²

If a non-human animal can be included within the classification of the human (and thus the moral community) by virtue of its moral agency/rationality, then it is contradictory to assert elsewhere that species membership as defined in biological terms is the morally relevant determinant of who has rights and who does not. Machan cannot have it both ways.

42 Ibid., 43–44.

Cohen and Machan, having tried to assign moral rules according to classification of beings by their species, offer additional reasons to believe species membership is morally relevant. Both argue that humans are justified in treating other species as having lower moral standing because the use of non-human animals brings instrumental benefits to humans through their use in medical experimentation.⁴³ Again, it is hard to see that this amounts to any kind of argument at all that species membership is a morally relevant consideration; benefits to humans through the use of non-human animals might provide utilitarian justifications for carrying out such experiments but it tells us nothing about why species is relevant in that calculation. An assertion that X is useful is not an assertion that X is right, and even if it were, it would not be the same as an assertion that because the category to which X belongs is useful to the category that Y belongs therefore the category to which X belongs has a lower moral standing than the category to which Y belongs. Such arguments are simply invalid. The utilitarian gains that are to be had by humans from non-human animal experimentation bear upon their respective statuses as individual creatures rather than their membership of this or that particular species.

At this juncture, and before concluding the section, I want to pause to bring in the arguments of Peter Carruthers, who attempts to rebut the conclusions of the AMC from a contractualist standpoint. His arguments and conclusions seem quite similar to those of Cohen, but his reasoning is quite different. Carruthers too sees enhanced moral standing in those with rational agency, and his concern is to accommodate those humans lacking rational agency within the moral realm of the social contract.

43 Ibid., 58; Regan and Cohen, *The Animal Rights Debate*, 65.

Carruthers makes the claim that, for contractualists, species membership must be a relevant moral consideration.⁴⁴ He concedes that by imagining the social contract as an agreement between rational actors, and conceiving of morality as 'a system of rules to govern the interaction of rational agents within society'⁴⁵ it therefore follows that those without rationality would have a lower moral standing. Nevertheless, Carruthers maintains that, notwithstanding this problem, species membership is a relevant consideration because of the unwanted negative consequences brought about by accepting the conclusion of the AMC. These he says are the risk of social instability brought about by not granting full standing to the loved ones of rational actors,⁴⁶ and to the slippery slope problem arising from the difficulty of determining agency where the boundaries between humans at different life stages and with different capacities are not sharp or fixed and determinate.⁴⁷ Once again, these are not directly facts about the moral relevance of species membership *qua* species membership: they depend upon distinct arguments which place a relevance upon species membership derivative of its usefulness in achieving some goal. If the goal is valuable, according to this view, then the steps taken to achieve it are instrumentally valuable. Species membership is thus only morally relevant in cases where we are either willing to accept that the ends justify the means and where the ends are judged to be good or worthy by some standard, or where we can show that the means are themselves good or worthy. What cannot be shown is that species membership is morally relevant independent of such facts.

44 Carruthers, *The Animals Issue: Moral Theory in Practice*, 54–55.

45 Ibid., 98.

46 Ibid., 117.

47 Ibid., 115.

What does this then mean for species membership as a moral consideration? If the moral relevance of species membership depends upon the goodness of the consequences for humans in taking it into account, then the question has already been begged. As the AMC demonstrates: there is no single defining characteristic, or combination of characteristics, that all humans possess to the same degree, or to some minimum threshold, and at all times of their lives beyond the bare facts of genetics that marks them as humans. Neither are there contingent social, historical or cultural facts that create moral relationships linking all humans to each other and that might give provide partialists with moral reasons for privileging humans over non-human animals. The most plausible reasons for accounting species membership as morally relevant have come from the relationship account of morality. Whilst this is ultimately unsuccessful it is nevertheless surely not wrong, and entirely understandable, to be motivated by feelings of greater sympathy for one's own species. That such sentiments equate to moral reasons is however another matter entirely. Species membership can thus be a relevant consideration, but only by derivation from some other moral principle. Attempts to make species membership an independently moral consideration cannot succeed. The arguments above of course refer, as I discussed earlier in the section, to cases where interests of individuals of differing species are being weighed up; it might still be argued, by environmental ethicists, that species *qua* species have an final value separate from the value of their individual members and that there are thus circumstances where species are morally relevant. However, this is an unrelated question from whether species *membership* is morally relevant.

2.2 The importance of personhood

One particularly important avenue left open for justifying differential treatment, and which I touched upon both in the previous section and in Section 4, is to consider the seemingly important characteristic of personhood. Many have argued, in some form or other, from Kant, through to Rawls,⁴⁸ Narveson,⁴⁹ Cohen⁵⁰, Carruthers,⁵¹ and others, that the possession of personhood either separates out those worthy of moral consideration from those unworthy (as in the Kantian separation of the universe into Persons and Things), or provides a reason to give greater weight in deliberations to that being's interests compared to a sentient non-person. The question is then, whether the capacity for personhood is morally relevant in ways separate from other forms of mental complexity?

Personhood is a somewhat slippery concept, which has received numerous definitions, but which is paradigmatically associated with cognitively normal adult human beings. The common kernel amongst liberal thinkers is perhaps best associated with Kant. For Kant a person is someone who can reason and act autonomously, that is someone capable of reflecting upon desires and choosing whether to follow them. This capacity for reason and self-direction allows for moral action. It is this moral personality that liberal theorists have presaged the idea of a fundamental moral equality upon.

However, personhood so defined is not a status that one necessarily has or has not, rather it is a scalar property that beings gradually come into or fade out of and possess

48 John Rawls, *A Theory of Justice: Revised Edition* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1999), 442–447.

49 Jan Narveson, "Animal Rights," *Canadian Journal of Philosophy* 7, no. 1 (March 1, 1977): 161-178.

50 Cohen, "Do Animals Have Rights?"

51 Carruthers, *The Animals Issue: Moral Theory in Practice*.

in varying degrees, the paradigm case being the move from childhood to adulthood and then perhaps into dementia. Thus, for the purposes of fundamental moral equality there is generally an assumption of moral equality made based upon a threshold level of the capacities needed for personhood. Once a being has crossed a certain level of mental sophistication they are judged to be moral agents and thus worthy of equal moral consideration. As we have seen, there also tends to be a degree of *post facto* fudging to expand the circle of moral standing to conclude other humans who are not within the bounds set for full personhood and to insure that common intuitions are accounted for.

The importance of the capacity for personhood seems connected with other reasons for partiality or differential treatment – the choice of relationships we make, the ability to make contracts and keep promises, to conform to standards, norms, and rules and so forth. In this respect, personhood is morally relevant in ways that other range properties such as height, the ability to solve problems, speed and so forth are not. Being a person is also a component and constitutive part of the good of persons and in this respect, as I discussed in the previous chapter, moral agents thus have reasons for respecting personhood in others. Because personhood depends upon capacities that non-persons lack, or do not possess to the same level, persons can be harmed in ways that non-persons cannot. A dog cannot be harmed by breach of a promise made to it, because one cannot make a promise to a dog. Neither can one lie to a dog (although one could mislead it one would probably not be harming it in the way that one would if one lied to a person) or harm it by preventing it from making autonomous choices simply because it is not an autonomous chooser.

However, granting that personhood allows for a greater or different range of harms to be done to person than a non-person, and that it allows for a range of moral relationships not open to non-persons, does not provide an overriding reason for concluding that the interests of persons override those of non-persons whatever their agent-relative strengths. Neither does it provide an overriding reason for concluding that the possession of capacities intrinsically connected with personhood at the relevant levels mean that all of the interests of persons always override those of non-persons. Rather, it seems to me that there are questions to be answered, particularly given the extent to which personhood is assumed in humans rather than closely tracking specific necessary characteristics, about the weight that should be accorded to personhood in moral deliberation, and the circumstances in which it can become an overriding consideration.

It is likely that there are circumstances when the interests of persons and non-persons are being weighed where the fact that one being or set of beings are persons means that they can be harmed to a greater extent than non-persons if the decision goes against them. But then this seems true of other capacities relevant to a being's good too, and is certainly not an argument for species partiality. When interests are weighed between humans a basic degree of moral equality is assumed – the assumption of a basic, underlying moral standing limits what it is permissible to do to them regardless of their relative merits. Now it can be imagined that there are extreme circumstances in hypothetical situations where this principle falls apart. For instance, if a young and brilliant doctor, and a somewhat demented old loafer are in a boat, adrift on the ocean, and out of provisions, weeks from land or rescue, there comes a point where one must

die to save (feed) the other. In such circumstances an impartial observer could be excused for judging that it would be better for the doctor to live, either on consequentialist grounds that he will do more good if he lives, or that more harm is done to him if he is killed, or on non-consequentialist grounds that he possesses the characteristic of personhood to a greater degree and thus is of greater worth. Whilst I admit to some discomfort at imagining the circumstances I do not think that the reasons for choosing the doctor over the loafer are by nature wrong. However, the idea of using such hypothetical to inform wider moral practice does seem to lead down a slope we would not wish to countenance, and such extreme situations should perhaps therefore be considered *sui generis*.

It is clear that only moral persons can have duties towards others, but as I have argued, drawing upon Korsgaard in the previous chapter, it does not follow from this that only moral persons are owed duties. The importance of personhood is not the same as the importance of morality. It seems more appropriate to have concern for the special capacities that make up moral personhood than moral personhood abstracted from those capacities which Jeff McMahan identifies as making up autonomy: 'self-consciousness, rationality, analytical intelligence, and imagination'⁵². Added to this are the things personhood is important for – the ability to rationally develop, revise, and pursue goals and life plans. Therefore, when weighing up competing interests there will be circumstances where the interests of moral persons count for more than those of sentient non-persons, but, taking into consideration the points I made earlier in discussing the AMC about the need for a consistent set of moral principles, the

52 McMahan, *The Ethics of Killing*, 261.

difference in relative weightings will still be bounded by deontological constraints, most notably the principle of never using a moral patient as a mere means to an end.

Finally: whilst it is clear that not all humans pass the threshold set for full personhood, given that the characteristics necessarily for personhood are range properties we could say that many of them are nevertheless owed the status of partial personhood. Beings possessed of the necessary capacities for personhood to certain degrees may be able to set, pursue and revise goals, and reason to a limited degree, but nevertheless lack sufficient moral personality to be held accountable for their actions. Whilst lacking moral culpability, we could nevertheless argue that they possess personhood to a degree sufficient for it to form a component of their good and that they can thus be harmed in ways that non-persons cannot. This proposition accounts for the intuition that developing humans are persons before they become accountable for their actions. It is intuitively appealing to think of my young children as persons – particularly once they gain rudimentary language and begin expressing preferences and pursuing goals – but I would not wish to say that they are fully-fledged moral agents. One thing to be said about this position however is that not only will it not encompass all humans below the full personhood threshold, but conversely it may well include some non-human animals such as dolphins and great apes.

So, to conclude this section: whilst I have argued that species membership does not provide a reason for privileging human beings over other animals, I have accepted that human persons possess certain characteristics that are necessary for personhood and which mean that there are ways they can be harmed that non-persons cannot. Thus

there are reasons for giving greater weight to the interests of moral agents than of moral patients in some circumstances. However, the fact that a being is a moral agent rather than a moral patient does not imply that persons are intrinsically more valuable than non-persons, or (and most importantly) that the interests of non-persons can always be overcome to serve the interests of persons. The deontic principle of never treating a moral agent or moral patient as a mere means to an end serves to reconcile our intuitions about the correct treatment of human moral patients with conclusions reached through reflecting upon the AMC so that we achieve a coherent and consistent set of moral rules.

3 Duties of remedy and aid

My arguments thus far have been for a negative duty of non-interference with the good of non-human animals. This negative duty prevents moral agents from using moral patients as mere means to their own ends (although it need not prevent their use altogether). In the forthcoming chapters I move from duties of non-interference to consider duties of assistance and remedy and explore how moral agents should respond to violations of the duty of non-interference. Those chapters focus upon acts of civil disobedience, sabotage, and rescue carried out in defence of non-human animals living within the context of the modern liberal state.

I do not wish to devote extensive space to providing a theoretical justification for the existence of positive duties to others;⁵³ the liberal democratic state that my thesis

53 cf. Rowan Cruft, "Human Rights and Positive Duties," *Ethics & International Affairs* 19, no. 1 (2005): 29-37 for one such account.

concerns itself with assumes them as given. Thus, the claim that we have duties to assist the severely disabled, the sick, injured, starving, and infirm within society is left undefended. My purpose instead is to examine the ethics of illegal animal liberationist activities and extend positive duties to non-human animals in a consistent and non-speciesist fashion. My contention in this regard is, given what I have argued so far, that if non-human animals are worthy of direct moral consideration, and we endorse an account of positive duties, then moral agents have duties to aid non-human animals in dire need.

4 Conclusions

In this Chapter I have examined what the respectful treatment of non-human animals argued for in Chapter 1 means in terms of duties of non-interference, and have touched upon positive duties of aid and remedy towards them. I have concluded that species membership and partiality do not offer compelling reasons to privilege humans over non-humans, and have explored the special significance of personhood in moral deliberation.

In Chapter 3, I relate the issues at stake in animal liberation to the concept of justice and to political liberalism, asking whether non-human animals should be included within the sphere of justice and looking particularly at the social contract theories of Rawls and Scanlon. In Chapters 5 and 6, I go on explore what an ethic of positive duties towards non-human animals means for a moral agents living within liberal democratic states, with particular emphasis on those cases where duties to non-human animals bring moral agents into conflict with other humans.

3 Justice and animals

Acts of animal liberation predominantly occur within humanised geographies and within the framework of organised political communities.¹ In this chapter I therefore look at the place of the non-human animals who share human spaces to a large extent, particularly those considered the property of humans, and I ask what we owe to those creatures. Specifically, the chapter is concerned with the issue of justice in liberal democratic societies and whether moral patients, non-human ones in particular, should be included within its sphere.

In this chapter, I focus upon duties of justice apart from unqualified moral duties because the realm of justice not only marks out many of those moral duties that are enforceable and not merely a matter of preference or goodwill, but it also embodies the realm of obligations owed by members of a political community to one another and to the state.² Thus, establishing duties of justice to non-human animals will become

1 One notable exception is the activities of the Sea Shepherd Conservation Society who operate in the seas and oceans to protect whales from whalers.

2 Ruth Abby has argued that non-human animals need not be included in the sphere of justice for them to be owed strict duties of morality (Ruth Abby, "Rawlsian Resources for Animal Ethics," *Ethics & the Environment* 12, no. 1 (2007): 1-22), but as Garner points out in response (Robert Garner, "Rawls, Animals and Justice: New Literature, Same Response," *Res Publica* (n.d.): 5), these duties will amount to little protection in practice because any enforceable and conflicting duties of justice will take precedence. Garner illustrates this point by reference to the lexical priority of liberty and its inclusion a principle of justice in Rawls' theory of justice (Ibid.). Because animals are outside of justice, and because liberty is such an important principle of justice, how we should treat non-human animals becomes an issue of human freedom rather than animal wellbeing, and is thus placed in the realm of competing conceptions, held by moral agents, of the good. In response to this kind of claim, Garner has raised an argument against the inclusion of non-human animals in the sphere of justice based on their co-operation in the scheme for mutual advantage on the basis that it permits exploitation (Robert Garner, "Rawls, Animals and Justice: New Literature, Same Response," *Res Publica* (n.d.)). This criticism is, however, misplaced because it depends upon the acceptance of a

important to my arguments in Chapters 4 and 5, where I argue that if animals are to bear the burdens of cooperation they should receive the benefits of it, and that where they are not receiving those benefits this creates a justification for illegal acts of animal liberation. Furthermore, I argue that if non-human animals are owed duties of justice then the natural duty to make society more just includes acts carried out in their defence. Added to these arguments is a concern for a conception of justice that is morally consistent such that it avoids distinguishing between humans and other animals on arbitrary grounds, such as species membership, or relying upon questionable meta-ethical positions such as the argument from natural kinds.³ Thus, reasons for including non-human animals within the scope of Rawlsian or Scanlonian contractualist accounts of justice are both practical ones of ensuring a coherent and consistent account of justice, and theoretical grounds that, because they bear the burdens of social cooperation, they should also enjoy its benefits.

In my previous two chapters I developed a case for the respectful treatment of non-human animals according to the deontic principle that non-human animals should not be treated as a mere means to an end, and I argued that this principle also grounds positive duties of remedy and aid. The key issues I address in the two chapters following this one are concerned with the nature of those positive duties when they

strict abolitionist account of animal liberation that views any usage of animals as exploitation. Thus, one need only point to mutually beneficial relationships between humans and animals, of the sort that an animal would have consented to were it a contracting party in the Original Position, to deflect the criticism. The mistake in the critique described by Garner is the conflation of current and historical patterns of animal use with the what would be permissible within a theory of justice sensitive to the good of non-human animals.

3 See Chapter 2, Sections 2.1.1-2.1.2.

generate conflict with other human beings in the context of liberal democratic states. Much of what I have to say in those two chapters depends upon the establishment in this chapter that a political liberalism⁴ which does not respect non-human animals is unjust. My aim in this chapter is not so much to offer a fully-fledged alternative account of justice, but to illustrate the failings of some of the most influential accounts of liberal justice in respect of non-human animals and to offer up some potential means of addressing those failings.

I begin by describing the key features and values of liberalism and their relationship with democracy, before drawing out the aspects of political liberalism which I believe need to be addressed for justice to be achieved. Liberalism as a political ideology can take numerous forms: from the utilitarian liberalism of Jeremy Bentham and John Stuart Mill; or the rights based account whose thread we see stretching from Locke or Kant through to modern liberatarian thinkers such as Steiner and Nozick and which is grounded in the claim of the natural equality of persons; to the social contract theories originating in Hobbes, Locke, and Rousseau. However, the values at stake – the fundamental freedom and equality of persons - and the problems with them for an ethic of respectful treatment towards non-human animals are roughly the same, so I do not attempt to fully describe and address every possible form of liberalism. Instead, I concentrate upon social contract theories, especially the contractualism articulated by Rawls and Scanlon. In the course of this, I discuss the values grounding the contract, particularly that of equality, and I ask whether it is possible to include non human animals within contractualism. Before I do so, I should like to devote some space to describing what I mean by the term *justice* and its relevance to liberalism.

4 Note that I use the term political liberalism in the broad rather than specifically Rawlsian sense.

1 *Justice*

Justice is not specifically or exclusively a liberal principle, what is considered a fair distribution, or a deserved punishment will vary according to the principles and values that a particular conception of justice is aligned with. A Marxist account of a just society will differ radically from an liberal one. So what is the relevance and relationship of justice to liberalism? On a conceptual level, one could say that justice is a principle of arbitrating between conflicts of interest or values, and of assessing whether a particular distribution or set of arrangements is consistent with certain values. This latter part of a conception of justice - linking justice with particular values - enables us to talk of distinctly liberal conceptions of justice. Liberal justice is concerned with mediating conflicts between the freedoms of morally equal individual persons, or with distributing goods between persons in accordance with the values of freedom and equality. When linked with particular values in this way *justice* can also be thought of as synonymous with *moral right* or *fairness*.

The scope of justice can be limited to the regulation of interactions between fellow citizens; or it can be set more expansively as a principle that tells us how different political communities should act toward one another. In keeping with Rawls' original project and the scope of my thesis, I will concern myself only with *justice* as limited by the boundaries of a particular political community and will not consider the merits or otherwise of a global conception of justice. And, I should also point out that the idea of justice is only appealed to when certain conditions are met; these are what Rawls labels *the circumstances of justice* – the conditions under which human cooperation is

both necessary and possible.⁵ Rawls stipulates that justice applies to individuals, possessing roughly similar mental and physical attributes, living together in a common geographical area. Furthermore these individuals are vulnerable, for if they were not, cooperation would be unnecessary. He further stipulates that resources are limited enough that questions of how they should be distributed in order for individuals to pursue their conceptions of the good arise, but not so scarce that cooperation breaks down.⁶

Liberal justice of the sort thinkers like Rawls,⁷ Dworkin,⁸ and Scanlon⁹ have been concerned with refers to the fair distribution of the costs and benefits of social cooperation, both material and in terms of things such as freedom and political power. This conceptualisation can be cashed out both as the realisation of prior moral principles, and in procedural terms for distributive purposes. Justice can thus provide the moral basis for distributing the benefits and burdens mentioned, and upon which rests the justification for the obligations of citizens to the state (I will say more about this in Chapter 4), or, justice can be understood in procedural terms when referring to the application and formulation of the rules of distribution. A liberal account of procedural justice might proceed from the value of equality of persons to the operation of a system according to impartial rules applied impartially.

One reason why it is more correct to speak of liberalisms rather than of liberalism is

5 Rawls, *A Theory of Justice: Revised Edition*, 109.

6 Ibid., 109–110.

7 Ibid., 4.

8 Ronald Dworkin, *Freedom's Law: The Moral Reading of the American Constitution* (Oxford and New York: Oxford University Press, 1999), 25.

9 Scanlon, *What We Owe to Each Other*, 208–211.

that the liberal values of freedom and equality are subject to different conceptualisations. For example, freedom can be conceived in a minimalist negative sense as the absence of interference. Freedom, or liberty, thus corresponds to being able to act without being subject to control or interference by others. But freedom can also be understood as a richer concept involving having the ability and opportunity to make meaningful choices in pursuit of rationally chosen and revisable life plans. Meanwhile, equality can be understood as an abstract moral principle relating to how individuals should be treated regardless of physical or mental attributes or circumstance, or as a material goal to aim at. These values can also be seen as values to protect (which could translate into a rights-based liberalism), or ones which should be promoted (which might lead to a perfectionist account of liberalism). How these values should be conceptualised in order to take a liberal approach to justice for non-human animals will be drawn out in the course of the proceeding discussions.

1.1 Liberalism and democracy

Foundational values of liberalism, as I've already discussed, are a belief in the natural freedom and equality of all persons. Political liberalism aims to provide a justification for the authority of the state that preserves these two values. The liberal state is thus based upon agreement or consent and exists to serve the interests that the governed have in those values. However, different conceptions of the individual can exist within liberalism broadly conceived, and liberal theorists have developed their ideas in different ways. Thus Hobbes moves from the premise of the natural equality of persons as an empirical claim – no person is so powerful that he or she cannot be brought down by another – to a justification for state authority based upon what free

and equal individuals would consent to through a rational calculation of their own individual interests. In particular, these interests lie in being able to pursue their individual ends without having to fear violence and death. Locke, on the other hand, begins with a belief in the moral equality of persons, which permits none to claim inherent superiority. Furthermore, the naturally social nature of humans drives them to political association. Since no person has a natural right to authority over another, the authority of the state must come from the consent of the governed. Both Locke and Hobbes hold that persons are born free and equal, and that the authority of the state depends upon agreement, but each conceive the basis of that equality differently and arrive at sovereignty by agreement via a different route. However, both Hobbes and Locke develop the device of the social contract (albeit in different forms) to legitimise state authority through agreement or consent. The difference between a contract based upon self-interested necessity and one aimed at upholding the values of freedom and equality roughly corresponds to the difference between contractarian and contractualist theories of the social contract, which is my focus in what follows.

So where does democracy fit in all of this? For starters, democracy both provides a functional check against tyranny, and expresses the normative values of freedom and equality – everyone has an equal right to participate and stand for office, sovereignty is vested in the people and power is exercised by consent. Liberalism, meanwhile, provides the moral foundation for democracy and places constraints upon it.¹⁰

Participation in democratic decision-making is promoted and justified in terms of the

10 David Beetham, “Liberal Democracy and the Limits of Democratization,” *Political Studies* 40, no. 1 (1992): 44. I should say here that I am making no claims about whether liberalism requires democracy or democracy requires liberalism, it seems that it is possible to have one without the other. However, the scope of this thesis is explicitly limited to a concern with liberal democracy.

liberal value of autonomy: 'to be able to shape the course or conditions of one's life through sharing control over collective decisions is a necessary counterpart to exercising such control at the personal or individual level'¹¹. However, the fit between democracy and liberalism is not perfect and there are tensions between them, particularly between the rights of individuals to have a say in decisions that affect them and the requirements of controlling a large territorial state.

1.2 Social contract theories

Having sketched a brief outline of the values of liberalism, how they feed into a liberal democratic political community, and what that means in terms of justice, I want to now move on to consider political liberalism in more detail. Given my concern with acts of animal liberation in liberal democratic societies, this next section summarizes some arguments drawing out and justifying political and civic duties within political liberalism. To begin with, on account of the huge influence they have had, I focus upon social contract theories.

Earlier, I wrote that social contract theories are divided into contractarian and contractualist camps, drawing on the legacy of Hobbes and Locke respectively. Contractarianism sees the social contract as the means by which rational individuals secure their self interest to the maximum degree permitted by joint activity.¹² The vulnerability to others stemming from the circumstances of justice, and the benefits to

¹¹ Ibid., 45.

¹² cf. James Buchanan, *The Limits of Liberty: Between Anarchy and Leviathan* (Chicago: University of Chicago Press, 1975); David Gauthier, *Morals by Agreement* (Oxford and New York: Oxford University Press, 1987); Jan Narveson, *The Libertarian Idea* (Peterborough, ON: Broadview Press, 2001).

be achieved through cooperation make the contract worth pursuing. Standardly contractarians also hold that the content of morality is also determined by what is mutually agreeable in the contract so envisioned.¹³ I do not intend to dwell upon contractarianism because I do not believe it offers as welcoming a home for positive duties as contractualism and because its account of normativity is largely indifferent to the plight of non-human animals (and indeed anyone who is not fully rational and independent)¹⁴.

Contractualism on the other hand is grounded on prior moral principles of equal respect and equal freedom, and, in my view, offers far greater scope for the inclusion of animals within the scope of liberal justice because of its prior conception of rightness. There are two very broad ways of looking at the liberal ideal of contractualism: one is in terms of the contract as an expression of consent to be governed and a promise to obey the law (provided the conditions of legitimate authority are met),¹⁵ and another is as a device for determining what constraints upon freedom are acceptable to free and equal people coming together for mutual benefit, and for providing justificatory standards for the establishment of those constraints.¹⁶ Thus, in equally broad terms; arguments against including non-human animals within the domain of political liberalism can be categorised as arguments that non-human animals cannot make or

13 cf. Gauthier, *Morals by Agreement*.

14 cf. Eva Feder Kittay, *Love's Labor: Essays on Women, Equality, and Dependency* (London and New York: Routledge, 1999); Lawrence C. Becker, "Reciprocity, Justice, and Disability," *Ethics* 116, no. 1 (October 1, 2005): 9-39.

15 cf. Kent Greenawalt, "Promissory Obligation: The Theme of Social Contract," in *Authority*, ed. Joseph Raz (New York University Press, 1990).

16 Samuel Freeman, "Moral Contractarianism and a Foundation for Interpersonal Morality," in *Contemporary Debates in Moral Theory*, ed. James Dreier (Oxford: Blackwell, 2006).

respect promises, or non-human animals are not the kinds of creatures that can justify their actions to others and have actions justified to them in return. Whether these barriers can be overcome depends upon whether these positions also hold that political or wider morality is, or should be, solely concerned with the kinds of beings that can make and respect promises or make and receive justifications. For the time being I am going to concentrate upon the place of non-human animals in justificatory liberalism; I return to the importance of promising and contracting later. My discussion of liberal contractualism is largely confined to the theories of Rawls and Scanlon although later I introduce some criticism of the inclusion of non-human animals offered by Carruthers.

1.3 Justificatory liberalism

If humans have direct duties to other animals as I have argued then what should be the place of animals in the realm of justice? There are two central concerns that animal liberation theories need to address: whether social contract theories *should* exclude non-human animals, and whether there is something in the nature of social contract theories that necessarily, even if there is no overriding normative reason to do so, *does* exclude non-humans animals.

The normative case for excluding animals from justice says that justice is a matter for moral equals and that, not being moral agents/persons, non-human animals cannot be morally equal with persons and thus are owed nothing. In a similar vein, the meta-ethical argument against extending justice to animals says that only persons can obligate each other and so it simply makes no sense to include animals as contracting

parties in a political community. The practical reasons are of a much more prosaic sort to do with resource implications and for this reason I largely confine the following discussion to the more theoretical issues, starting with a reiteration of what I mean by personhood, outlined in Chapter 2, in this context and its importance to liberalism and contractualism.

In Chapter 1, I introduced the term *moral agent* to describe an autonomous and culpable being capable of making good or bad moral choices. It is the nature of rational agents as individuals able to make moral choices that supposedly separates persons from other animals. If personhood is about being an autonomous moral agent, and here I take autonomy to mean self-governance – the exercise of reason to make and revise goal-directed choices,¹⁷ then liberalism is about ensuring the maximum compossible freedom of individuals within a political community to exercise their autonomy. Thus Mill writes: 'the only freedom which deserves its name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs'¹⁸. This formulation is echoed much later in Rawls' first principle of justice: 'Each person is to have an equal right to the most extensive system of equal basic liberty compatible with a similar system for all'¹⁹. Contractualist liberalism has provided a political theory, based on a principle of equal respect for individual persons, to allow each person to exercise their autonomy in the pursuit of their respective

17 Dworkin offers a clearer definition, defining autonomy as 'a second order capacity of persons to reflect critically upon their first order preferences, desires, wishes, and so forth, and the capacity to accept or attempt to change these in light of higher-order preferences' (Dworkin in Robert Goodin and Phillip Pettit, eds., *A Companion to Contemporary Political Philosophy* (Oxford: Blackwell, 1995), 360.

18 John Stuart Mill, *On Liberty* (Hertfordshire: Wordsworth, 1859), 17.

19 Rawls, *A Theory of Justice: Revised Edition*, 220.

conceptions of the good. If contractualism is grounded in the equal moral status of persons then it appears at first glance to offer little scope for non-human animals to be granted political protection because their status as non-persons gives them no say in the creation of the contract, which is in any case formulated with persons in mind. However, it is immediately obvious that, defined in these terms, contractualism does not offer much protection to human moral patients either since they, like non-human animals, lack the full moral personhood that supposedly grounds equality and is the basis of the contract. Here we have our first warning bell against conceiving of justice as something that limits itself to interactions between persons.

In the following section I look at the two most influential justificatory accounts from the Kantian tradition: Rawlsian and Scanlonian contractualism and assess whether they necessarily limit the circumstances of justice to regulating relationships between persons, and what scope there is within them for moral patients. There are of course other flavours of contractualism, but I will assume that in discussing Rawls' and Scanlon's theories points will be brought out that are relevant to other contractualist accounts.

2 Rawls, contractualism and animals

In *A Theory of Justice*, Rawls defends liberal principles of freedom and equal consideration of persons and lays out how these values can lead to a just or nearly just society. Rawls details the principles of justice that he thinks free and equal rational actors would agree to if they were placed in an initial bargaining position. Rawls uses a thought experiment where self-interested and mutually indifferent actors decide come

together to decide upon how society should be ordered in order to be just. To prevent arbitrary distributions of societal goods the contractors are kept ignorant (behind a 'Veil of Ignorance') of their final place in society, their stock of natural assets, and their conception of the good.²⁰ Rawls argues that the thought experiment of the hypothetical contract, where situations are judged just according to whether they would be agreed upon by parties placed in that 'Original Position', would result in agreement of the following two principles for ordering a just society:

the first requires equality in the assignment of basic rights and duties, while the second holds that social and economic inequalities, for example inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society.²¹

Rawls' theory is explicitly intended to provide moral principles for political institutions²² and form the basic structure of society. The principles generated by it 'regulate the choice of a political constitution and the main elements of the economic and social system'²³. The political morality that Rawls develops in addition to distributing social benefits and burdens, also assigns the rights and duties of those living in political communities. In other words, legal rights enjoyed by citizens derive from the Original Position.

However, Rawls' theory presents a serious problem for justifying acts in defence of non-human animals carried out against a liberal state or its citizens because neither the

²⁰ Ibid., 11.

²¹ Ibid., 13.

²² Ibid., 194.

²³ Ibid., 7.

institutions of the basic structure, nor the principles of justice are built to accommodate non-human animals. In *A Theory of Justice* Rawls makes two statements that highlight this. Rawls is explicit in his belief that 'the capacity for a sense of justice is necessary in order to be owed the duties of justice, it does seem that we are not required to give strict justice anyway to creatures lacking this capacity'²⁴. But he also states in the same paragraph: 'it is wrong to be cruel to animals and the destruction of a whole species can be a great evil. The capacity for feelings of pleasure and pain and for the forms of life of which animals are capable clearly imposes duties of compassion and humanity in their case'. In highlighting this problem of thinking that animals are owed direct duties but that there are theoretical issues with including them in an account of justice Rawls strikes at the heart of why acts of animal liberation can be so problematic. Rawls writes: '[animals] are outside the scope of the theory of justice, and it does not seem possible to extend the contract doctrine so as to include them in a natural way'²⁵. What reasons might he have for thinking this? One possibility is that the definition of justice depends upon *a priori* assumptions about who justice is for and why it is for them.

Justice describes the principles that determine how the benefits and burdens associated with social cooperation are fairly distributed.²⁶ Justice as fairness is necessary to determine how society and its institutions should be ordered because society is ordered by the coming together of rational beings with equal moral status²⁷ under terms of mutual respect (and self-interest) to determine how to organise social cooperation. For

24 Ibid., 448.

25 Ibid., 448.

26 Ibid., 4–7.

27 Ibid., 417.

Rawls people have an inbuilt sense of justice and are, drawing from Kant, naturally free and equal rational beings – society is ordered in such a way as to accord with these initial assumptions. Society might be ordered by free and equal rational beings, but the distribution of benefits and burdens is not confined to them. How then does Rawls deal with human moral patients? The answer is that he tries to put the issue largely to one side²⁸ and the arguments he does give are flawed. In what follows I explore the normative and conceptual claims Rawls makes in relation to moral personhood and reciprocity. I challenge, among other things, the way that Rawls frames justice with people of roughly similar physical and mental abilities in mind, together with his argument for respecting the potential for moral personality in children, and I examine different ways of understanding reciprocity. I make and defend the claim that moral standing rather than Rawls' notion of moral personality should be the necessary and sufficient conditions for being owed justice.

The scope and nature of beings owed justice under Rawls' account has been addressed not just by those writing on justice for non-human animals, but also by theorists concerned with justice for the disabled. Sophia Wong, for instance, begins by accepting that the scope of Rawlsian justice excludes those with cognitive disabilities,²⁹ but argues that Rawlsians should use the potential in an individual to develop Rawls' two moral powers as the basis for moral personhood. Her approach differs from Rawls' in

28 Later, in *Justice as Fairness* Rawls again deliberately puts to one side the implications for his theory of those with disabilities and disorders that prevent them from being fully cooperating members of society (John Rawls, "Justice as Fairness: Political not Metaphysical," *Philosophy & Public Affairs* 14, no. 3 (July 1, 1985): 234. He does the same in *Political Liberalism* (John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005), 21.).

29 Sophia Isako Wong, "Duties of Justice to Citizens with Cognitive Disabilities," *Metaphilosophy* 40, no. 3-4 (2009): 383.

that where Rawls stipulates that the scope of justice is limited to those possessed of roughly similar mental and physical attributes,³⁰ Wong extends it to cover those with cognitive disabilities.³¹ Wong argues that the implication of the argument made in *Political Liberalism* that citizens' basic needs must be met as a requirement of justice and this requirement is lexically prior to the liberty and equality principles,³² means that justice demands that citizens with cognitive disabilities are enabled to become full-cooperating members of society.³³ In other words, if in order to be a fully-cooperating member of society one must be a moral person, and the basic needs of citizens must be met as a requirement of justice, then justice requires that those with the potential to be moral persons be enabled to become moral persons – their moral personhood is a basic need. Since many of those with cognitive disabilities can develop Rawls' two moral powers given sufficient time and resources, they too are owed justice.

Wong's approach has the benefit of being very close to the way Rawls treats children as potential cooperators, but it is not without difficulties. One problem concerns the Rawlsian notion of citizenship, and another the epistemic problem of judging potential. I will examine each in turn.

Going back to the requirement to meet the needs of citizens: if it is a requirement of justice that citizens' basic needs be met, it does not follow that becoming a citizen can count as one of those basic needs since the principle says nothing about meeting the needs of non-citizens. The Rawlsian citizen is assumed to have moral personality.³⁴ If

30 Rawls, *A Theory of Justice: Revised Edition*, 109–110.

31 Wong, "Duties of Justice to Citizens with Cognitive Disabilities," 392.

32 Ibid., 384; cf. John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005), 7.

33 Wong, "Duties of Justice to Citizens with Cognitive Disabilities," 384–385.

34 Rawls, *Political Liberalism*, 29–35.

the citizen must have moral personality, and the basic needs of a citizen must be met, then all that follows is that the basic needs of those already possessed of moral personality must be met. Wong's argument can gain no purchase. However, Rawls, in apparent contradiction, also describes the structure of society as a relationship between citizens that we enter by birth and leave in death.³⁵ Thus, citizenship can be thought of as a transcendental characteristic that stretches into the past and future of a being with moral personality. If we take the latter claim, then it would seem that there are grounds for claiming that those with the potential for moral personhood have strong claims to assistance in realising their personhood.

However, Wong concedes that judging who has the potential to develop their moral powers over a lifetime is extremely difficult and unreliable, and even if we can make reasonable predictions in some cases given present knowledge, we cannot predict whether advances in medicine might change the probability for those cases in the future.³⁶ Knowing what is possible and whether a potential is realisable can often be too high an epistemic hurdle. Wong's answer is to prefer an inclusive precautionary principle even if that ends up encompassing individuals for whom we can be confident will never become fully-cooperating members of society, no matter how many resources are expended in trying to enable them to do so. Putting those epistemic issues to one side; if it were possible to know whether someone would never become a fully-cooperating member of society, would it be right to therefore exclude them from their sphere of justice? Part of the answer may lie in how we define what it means to fully-cooperate and whether full cooperation is a necessary condition of being the

³⁵ Ibid., 445.

³⁶ Wong, "Duties of Justice to Citizens with Cognitive Disabilities," 394–395.

recipient of justice. We might, for example ask ourselves whether partial cooperation counts for anything? I will return to these questions shortly when I discuss the claims of Christina Hartley, before doing so however, I want to examine one potential reply from an animal liberationist perspective to Wong.

In response to Wong, the animal liberationist will likely wish to deploy the AMC to ask why justice should encompass those who we are reasonably sure will never be enabled to become fully-cooperating members of society, whilst non-human animals with similar capacities will be excluded. Wong anticipates this with a contention that there is a moral difference between those deprived of something a species has evolved for and one that has evolved without a capacity. The relevant capacity here is the ability to use human language and participate in human society.³⁷ Wong devotes little space to this argument and shortly after making it goes on to accept that the potential inclusion of animals within justice is neither undesirable nor a weakness of her theory.³⁸ However it is worth engaging with nevertheless. The idea that a characteristic not possessed by a being, but which a being has evolved to possess should be considered a morally relevant fact about a being seems, like the claim for granting moral personality to children, to rely upon some sort of transcendental link between a characteristic and a being. However, there seems no reason to ground moral considerations about the proper treatment of a being on conceptions of them which have no empirical basis.³⁹

Christie Hartley also constructs an argument based on the premise that Rawlsian social

³⁷ Ibid., 398.

³⁸ Ibid.

³⁹ cf. Bernard Williams, "The Idea of Equality," in *Contemporary Political Philosophy: An Anthology*, ed. Robert E. Goodin and Philip Pettit (Oxford: Blackwell, 2006), 454.

contract theory 'does not properly address the needs and interests of persons with disabilities' or their carers and thus is unacceptable.⁴⁰ And like Wong, Hartley's critique seeks to maintain a contractualist approach to justice along Rawlsian lines. Hartley focuses upon the themes of reciprocity and mutual respect found in Rawls' *Political Liberalism* - she makes that claim that the principle of reciprocity does not imply equal contribution, but mutual contribution. People with disabilities contribute to the mutual project in many ways and cooperate on terms of mutual respect. Hartley contends that the social contract depends upon the establishment and maintenance of social bases of mutual respect and that even those without Rawls' two moral powers are capable of engaging in the kinds of relationships necessary for this.⁴¹ All of those capable of communication, whether verbal or not, and engaging in mutual relationships can provide companionship and support to others in a way which is necessary to developing a culture of respect and reciprocity.⁴² This 'capacity for engagement' is sufficient to include many (including non-human moral patients) who would be pushed out by Rawls' limitation upon justice to those of roughly similar attributes, but it still leaves humans who lack consciousness outside of the scope of justice.⁴³ Nevertheless, Hartley reminds us that 'Contractualists can recognise that duties of justice are not the only duties we have'⁴⁴, other duties such as benevolence may also be owed. If Hartley is committed to a Rawlsian contractualism this does of course leave her open to the criticism, levelled at Rawls, that excluding such duties from justice

40 Christie Hartley, "Justice for the Disabled: A Contractualist Approach," *Journal of Social Philosophy* 40, no. 1 (2009): 17.

41 Ibid., 28.

42 Ibid., 29.

43 Ibid., 30.

44 Ibid., 31.

makes them a matter of preference.

These sorts of criticism and solutions are echoed by many others.⁴⁵ Some, like Wong and Hartley, seek a contractualist account that can include human moral patients, others, like Nussbaum, see the Kantian basis of contractualism as too strong an impediment⁴⁶ and offer an alternative, non contractualist approach in its place.

Nussbaum replaces key features such as the rough moral, physical, and mental equality of individuals and mutual advantage as a basis for cooperation, with a focus on the needs and capabilities of those living together.⁴⁷ In a move similar to Nussbaum's, I will return to address the necessity of moral equality as the basis for mutual cooperation later in Section 3.

A few paragraphs back, I mentioned in passing how Rawls deals with the lack of his two moral powers in children.⁴⁸ Having touched upon what his account of justice means for the severely disabled, I am now going to return to Rawls' approach to children, and other moral patients, in my own critique of his theory of justice.

In a passage within *A Theory of Justice* on paternalism and the priority of liberty Rawls

45 cf. Adam Cureton, "A Rawlsian Perspective on Justice for the Disabled," *Essays in Philosophy* 9, no. 1 (January 1, 2008); Cynthia A. Stark, "How to Include the Severely Disabled in a Contractarian Theory of Justice*," *Journal of Political Philosophy* 15, no. 2 (2007): 127-145; Harry Brighouse, "Can Justice as Fairness Accommodate the Disabled?," *Social Theory and Practice* 27, no. 4 (2001): 537-560; Henry Richardson, "Rawlsian Social-contract Theory and the Severely Disabled," *The Journal of Ethics* 10, no. 4 (December 11, 2006): 419-462; Kittay, *Love's Labor*; Nussbaum, *Frontiers of Justice*.

46 Nussbaum, *Frontiers of Justice*, 146.

47 Ibid., chap. 3.

48 Scanlon makes a similar case to Rawls for giving moral consideration to children, and his account suffers from similar problems (cf. Scanlon, *What We Owe to Each Other*, 185.).

argues that rational actors behind the Veil of Ignorance would want to grant rights to children and those whose autonomy is otherwise lost, damaged or underdeveloped as insurance against the possibility of their own rationality being compromised.⁴⁹ Later he adds that whilst children and infants may not be autonomous they nevertheless have an as yet undeveloped capacity for rationality that should be protected⁵⁰ and he argues that whether ultimately rational agents are in the pre-rational stage of their lives or not when goods are being distributed and society ordered is a matter of luck.⁵¹ Rawls' position seems reasonable, and as he says, it accords with our considered judgements.⁵² However, his argument for protecting children on grounds of their potential to be fully autonomous, taking on board what I've already argued concerning transcendental characteristics, is no real protection at all. Imagine if a child possessed a genetic disorder or illness that meant that we could say with absolute certainty that they would never develop full rationality; either their rational faculties would remain undeveloped or they would die before becoming fully autonomous. Rawls' argument for equal treatment and consideration of humans is based upon the capacity for 'moral personality', that is a sense of justice and conception of the good.⁵³ And whilst Rawls says that the capacity – not the realisation of it – is necessary for being owed justice, he makes his argument based on the assumption that the capacity is 'a potentiality that is ordinarily realized in due course'⁵⁴. Rawls acknowledges that the example I have given, or cases where formally rational people lose their moral personality 'may present a

49 Rawls, *A Theory of Justice: Revised Edition*, 218–219.

50 Ibid., 445–446.

51 Ibid., 446.

52 Ibid., 447.

53 Ibid., 442.

54 Ibid.

difficulty⁵⁵ but he does not address this difficulty and simply assumes that it does not present a problem for his theory. In this Rawls is clearly wrong, and as a result a good deal has been said by others about this aspect of his theory (such as those discussed above on justice for the disabled). Such criticisms include that he takes an overly narrow view of what it means to contribute and cooperate in mutually beneficial ways, or that his requirement for individuals to be roughly similar in capabilities is exclusionary.

So how might Rawls deal with the contradictions I have illustrated? One option is that he could abandon his insistence that the capacity for moral personality is a necessary condition for a being to be owed justice (I will expand upon this shortly). Or he might modify it to stipulate that it only applies where we can have absolute or reasonable certainty that the potentiality for moral personality will be actualised. But this doesn't leave the child who will die young, or those who have permanently lost their rationality through accident or disease in a very good position. Rawls still has an option if he is determined to include these beings within the sphere of justice, and that is to fall back on his assumption that rational actors in the Original Position would want to insure themselves against the possibility that they will not have full moral personality, and therefore would include such parties within the sphere of beings who are owed justice. However, in doing this it seems to me that the contracting parties are implicitly conceding that a sentient being lacking moral personality is nevertheless a being with a good of its own worthy of moral consideration for its own sake and additionally entitled to protection by the institutions and requirements of justice. If they do not concede this then why seek justice for these beings - after all even a self-interested

55 Ibid., 446.

desire to protect oneself against the possibility of being at the mercy of another's charity carries with it the belief that one will have a good of one's own even if lacking moral personhood? If a contractor believed that by ending up lacking a moral personality he would only have value in virtue of being useful to a moral person, then he would have no reason to insure himself against being valueless. Only the belief that a life without moral personhood has value for its own sake can create a reason for insuring against the possibility of living such a life by including moral patients within the sphere of justice. Thus, to accord with our considered convictions and rational reflection about the moral status of non-persons, moral standing rather than the capacity, ordinarily realised, for moral personality should be the necessary and sufficient condition for a being to be owed justice.

If human beings who lack moral personality are owed justice because they are valuable for their own sake then we are led to ask: how are non-human animals different from humans permanently lacking moral personality? As far as *A Theory of Justice* goes it does not seem to me that they are different in any significant way. Rawls' statement that the capacity for pleasure and pain in an animal imposes duties towards it shows that he thinks non-human animals have a good of their own. There do not seem to be any clear reasons why the contracting parties in the Original Position could justify insuring themselves against the non-development or permanent loss of moral personality and at the same time exclude certain creatures that they consider to have moral standing but no moral personality from justice. One might argue that the parties to the Original Position might exclude non-human animals because they know that they will be humans, since only humans could be in the Original Position working

out the principles of justice. However, the Original Position is not the means by which the parties to justice are determined, but rather a heuristic device by which to determine the principles of distributive justice and to assess whether circumstances accord with those principles. The scope of justice is set prior to the Original Position by the values of freedom as autonomy and the equality of moral persons. Rawls formulates justice from the standpoint of the autonomous person and justifies its principles by reference to the good of the autonomous person. If the scope of justice is extended to include those moral patients with moral standing as well as moral persons there is nothing about the device of the Original Position that prevents the idealised contractor from placing himself in the shoes of a moral patient in order to determine or evaluate principles of justice and distributive circumstances.

Rather than do this however, Rawls instead gives a different reason why rational agents would want to include those who had lost their moral personality or who might never gain it; that the consequences of excluding those beings would have a negative impact upon the institutions of justice.⁵⁶ Presumably the risk of excluding beings who lack moral personality comes from upset caused to moral agents who have sentimental attachments to those beings, or from a slippery slope argument. However, saying that excluding humans who are not moral persons risks just institutions can be true without having any bearing on whether non-human animals should be owed justice. In fact, it is possible to go further and say that excluding non-human animals from justice also risks just institutions for the same reasons.

⁵⁶ Ibid., 443.

2.1 The problem of equal justice

Part of the problem created by Rawls results from his attempt to extend the liberal principle of equality of persons to human non-persons. Just as Wood and O'Neill attempt to ground respect for humanity in an abstract conception of personhood⁵⁷ Rawls appears to be trying to do the same. Again, the mistake that Rawls makes lies in trying to make humanity and personhood the same thing. This mistake can be seen in the following passage:

the meaning of equality is specified by the principles of justice which require that equal basic rights be assigned to all persons. Presumably this excludes animals; they have some protection certainly but their status is not that of human beings.⁵⁸

Rawls jumps from requiring that rights be assigned to persons to asserting that the reasons that animals are therefore excluded is because they are not human – his reasoning in this respect is fallacious (see Chapter 2, Section 2.2).

In Chapter 1, I argued that basic morality, with particular reference to Kantian morality, can and should include non-persons. And Rawls clearly wants to also include non-persons in political morality (despite the lack of satisfactory arguments for why non-human animals should be excluded whilst human moral patients are included). Indeed, it would be a very strange and undesirable political morality indeed that did not include them. But if at the same time non-human animals are not recipients of justice then, as Robert Garner points out, how we treat them is a matter of personal

⁵⁷ See Chapter 1, Section 4.2

⁵⁸ Rawls, *A Theory of Justice: Revised Edition*, 442.

preference – they have no real protection at all⁵⁹ (despite what Rawls says above). If morality is not just for persons, and not just for humans, then there does not seem to be any moral reason why non-human animals living within political communities should not be recipients of justice. The reality is that political morality cannot restrict itself to relationships between moral persons because political and moral communities are made up of a mix of moral agents and moral patients. And indeed Rawls concedes that *A Theory of Justice* is incomplete. He writes:

Justice as fairness is not a complete contract theory. For it is clear that the contractarian idea can be extended to the choice of more or less an entire ethical system, that is, to a system including principles for all the virtues and not only for justice.⁶⁰

However, those values which are to be more than matters of preference will need to be included in political morality. If categorical moral duties really are owed to non-human animals then animals must be granted justice, if they are not then duties toward them are not really duties at all.

Having given some reasons for thinking that justice needs to include both moral agents and moral patients within it I will, in the next section, consider the role played by the attachment to equality in theories of justice. Some of the material in this section may appear to be covering the same ground that I covered in Chapter 1, however, whilst it is certainly grounded in the conclusions I make there, the aim is to show something

59 Robert Garner, "Animal Rights, Political Theory and the Liberal Tradition," *Contemporary Politics* 8, no. 1 (2002): 14.

60 Rawls, *A Theory of Justice: Revised Edition*, 15.

different and relate those earlier conclusions to the issue of justice rather than basic moral consideration. In Chapter 1 I established that certain non-human animals have moral standing, but I made no strong claims about the relative standing of beings with differing capacities (either in terms of combinations or degrees). Claims about the objects of justice however often assume that justice is a matter for moral equals. In the section below I not only challenge the view that personhood necessarily grants increased moral standing over sentient non-persons, but I also explore how justice might be configured between morally unequal beings. I conclude that moral inequality is no impediment to being the object of justice, thus allowing non-human animals into the sphere of justice even if personhood is judged to confer moral superiority. As part of this argument I necessarily shift the discussion in places to one about respect and moral standing rather than focussing exclusively on justice.

3 Respect for inferior creatures: equality and justice

As I mentioned above, the reason that a just society requires 'equality in the assignment of basic rights and duties' is that the contracting parties – the recipients of justice – are assumed to be equal in the first place. Rawls, in the tradition of Kant, Locke, and Hobbes, assumes the rough physical and mental equality of parties to justice.⁶¹ The assumption that there is no great difference in physical and mental powers, particularly the capacity for rationality, between humans does much of the work in justifying moral equality, but, as Nussbaum points out, this has enormous consequences for those with both physical and mental disabilities, and for sentient

⁶¹ Ibid., 109–110.

non-humans.⁶²

How would justice look if either moral equality were not assumed, or if it were not presaged upon rough physical and mental equality? Kant's principle of equal respect for humanity in persons, which Rawls draws upon, does not, as I hope I have shown, preclude animals from being granted respect for their own sakes. In this section I consider both justice between morally unequal beings, and how the principle of equality can be reformulated so that it does not rely upon rough equality of capacities. I begin by attempting to show that it is possible to respect non-human animals for their own sakes without committing to a principle of equal respect for persons and non-persons.

Thus far I have resisted couching the debate about the proper conduct of moral agents towards non-human animals in terms of their relative values, instead using the vocabulary of reasons. However, in this section I address the issue of how the lives and interests of non-human animals can be weighed against those of human persons if their values are taken to be different. In this section I consider the position that persons are simply worth more than non-persons whilst at the same time arguing that inequality need not preclude respectful treatment and strong positive duties. Within this discussion I also consider some potential negative consequences in the realm of the non-ideal associated with doing so. These consequences involve the risk of feelings of superiority leading to discrimination. Towards the end of the section I also briefly address the proposition that the value of persons and that of moral patients are simply

62 Nussbaum, *Frontiers of Justice*, 16.

incommensurate.

Let us say then, for a moment, that the sceptic will absolutely not be convinced that animals should be included in political morality. The idea, says the sceptic, in response to principles like Singer's *Equal Consideration of Interests* (which I will come to later in the section), that non-human animals have equal moral standing to humans is preposterous. And let us imagine also that somehow the sceptic has convincingly dealt with the argument from marginal cases in a way that accords with our intuitions about non-autonomous humans. Is all lost for non-human animals? Absolutely not. It does not follow from statements to the effect that humans are morally equal, or that persons are morally equal, and humans or persons are morally superior to non-human animals that therefore non-human animals have no moral standing. As the Neoplatonist philosopher Porphyry wrote to his friend Firmis:

...it does not follow, if we have more intelligence than other animals, that on this account they are to be deprived of intelligence; as neither must it be said, that partridges do not fly, because hawks fly higher..⁶³

It is perfectly possible to claim, without logical error, that the moral status of persons can be greater than that of moral patients whilst at the same time arguing that both should be protected by the deontic constraint that neither should be treated as a mere means to an end. Such a principle would protect the basic goods of both moral agents

63 Porphyry, *On the Abstinence of Eating Flesh*, trans. Thomas Taylor, 1823, bk. III, [http://www.platonic-philosophy.org/files/Porphyry - On the Abstinence of Eating Animals.pdf](http://www.platonic-philosophy.org/files/Porphyry%20-%20On%20the%20Abstinence%20of%20Eating%20Animals.pdf) para 8.

and moral patients, but allow for greater weight to be given to the interests of moral agents when arbitrating conflicts, or it could allow resources to be directed at promoting the goods of moral agents, whilst merely protecting the goods of moral patients. Indeed, I will argue (without committing myself to views about the superiority of any particular creature's good) that very strict direct duties can be owed by moral agents to moral patients even if moral agents are regarded as having a higher moral standing than moral patients.

In a recent paper entitled 'Respect for Everything' David Schmidtz considers the relative respect-worthiness of different species.⁶⁴ Schmidtz dismisses treating all species with equal respect, whilst holding on to the possibility of respectful treatment nevertheless. He writes 'We can have reasons to treat nonhuman species with respect, regardless of whether we consider them to be on a moral par with *homo sapiens*'.⁶⁵ But how should we do this? In the following part of this section of the chapter I take the supposed lack of moral parity between species as a starting point to explore how we can show respect for lesser beings. Alongside this I examine some risks that accompany principles of justice and respect that include a moral hierarchy, before concluding that there is nothing incoherent in respecting inferior creatures for their own sakes, although there may be practical difficulties manifested in the realm of the non-ideal to do with the emotional content of respect in doing so.⁶⁶

64 Schmidtz's focus on species is somewhat distracting and so I will instead assume, for the sake of argument, that certain capacities are respect-worthy in differing degrees.

65 David Schmidtz, "Respect for Everything," *Ethics, Policy & Environment* 14 (June 2011): 132.

66 Although this paper is concerned with how we can respect inferior beings, I remain agnostic about whether there indeed exists any particular characteristic or characteristics that can be identified as conferring superiority.

So how and why should we respect inferior beings? To say that one living being is inferior to another is to say that it is worth less than the other - that the inferior being's good should count for less in deliberations between the two. Meanwhile, the idea of respect requires an argument about what should be the appropriate objects of respect, the grounding for that respect, and how we should show respect to its object. Schmitz suggests several reasons to respect living beings, some of which I have already discussed. We can respect them because we recognise that they have a good of their own and they are morally valuable for their own sakes.⁶⁷ Or we can respect them for some property that they possess, such as beauty or speed, that we admire.⁶⁸ Finally, we can respect them because respecting inferior beings can be virtuous or ennobling.⁶⁹ My concentration in this section will be on respect grounded in the inherent moral worth of living beings, and which I devoted the content of Chapter 1 to.

I begin by accepting, for the sake of argument, that the moral standing of living beings is comparable⁷⁰ in some way and present in differing degrees. A being with moral standing is a being owed respect for its own sake and regardless of its value to others. However, it may also have value conferred upon it from extrinsic or contingent sources, and I want to start by separating those kinds of value from the final value associated with moral standing. For example, a being might possess special agent-relative value such as that conferred by an owner upon a companion animal, or it may

67 Schmitz, "Respect for Everything," 130.

68 Ibid., 136.

69 Ibid., 133.

70 Moral standing and respect-worthiness certainly offer themselves as plausible standardising values to make possible the comparison of different kinds of morally relevant value-conferring reasons and properties.

be a member of a species that persons find particularly beautiful, or it may be very rare. All of these extrinsic sources can confer value upon a non-human animal, but they do not take away from or otherwise alter the underlying final value of the creature. And whilst they might provide contingent reasons for favouring one being over another, they do not provide universal principles. For example, if I see my pedigree dog fighting with a stray mutt on the street, I have reason to intervene on the side of my dog because he is my property, he is a companion animal whom I love, and he is an especially valuable (in monetary and aesthetic terms) member of his species. All of these things give *me* reasons to favour my dog, but this does not mean that my dog has a greater degree of moral standing than the other. Similarly, the moral superiority of the good philanthropist, conferred by his character and actions, does not permit him to use the selfish criminal as a mere means to his ends. We do not think that the criminal's bad character and poor conduct mean that the good philanthropist is free to murder him for his organs, or because his cured skin would make a fetching hat. If we were faced with a situation where the selfish criminal and the good philanthropist were drowning in a pond and we were in a position to save them, we would be likely to opt save the good philanthropist over the criminal, but the worthiness of the respective characters of the two individuals, whilst providing us with reasons to favour one over the other, does not take away from the basic equal moral standing of the two. All things considered we have reasons to favour the interests of one over the other in some circumstances, and although these are morally significant reasons, they are not because the final value or moral standing of the philanthropist is inherently greater than that of the selfish criminal. Certainly, we would not imagine that a just society is one which permits the citizen of good character to earn the right to use the citizen of bad

character as a mere means to his ends. Nor would a society which licensed free-reign against others on grounds of partiality be worthy of being named just (see my discussion on partiality in Chapter 2, Section 2.1).

In Chapter 1, I argued that the possession of certain capacities, which make one a moral patient, is sufficient for moral standing. Nevertheless, and notwithstanding the discussion so far, the thought may be still present that personhood grants higher moral standing than mere sentience and biographical experience. That is to say that final value might come in degrees and personhood might be a factor which raises that value. Of course, this needs to overcome the objection that the selection of personhood as an additional value conferring property is special in a way that other intrinsic properties such as the ability to run fast, fly, or spit poison is not. Couched in terms of aspects of a being's flourishing or natural good it could well be said that the importance of personhood is no more valuable to persons than the ability to run fast is to a cheetah, or swim well is to a dolphin. But supposing personhood is special – that the necessity of personhood for the existence of morality gives those possessed of it higher moral standing than those without – how then should we proceed?

Acceptance of the fact that moral standing is a matter of degree lends itself to some troubling conclusions. After all, moral personhood, like sentience, is something which is held in varying amounts and which changes over a being's life-cycle. The unpalatability and complexity of varying what is owed to a being based upon their position along a scale of personhood leads to the adoption of a threshold model of moral considerability in its place, such that moral standing is conferred once

personhood is developed to a sufficient level. But as the AMC shows, a model with a single threshold based upon a capacity such as rationality or personhood, does not accord well with our considered intuitions, and so we might wish to adopt a model of value that confers levels of moral standing based upon multiple stepped thresholds and which contains varying degrees of certain capabilities within wide bands – such as sentience, biographical existence, rationality, full moral personhood etc. This model has the advantage of preserving the importance of personhood, whilst also reconciling this with our intuition that humans who fail to reach the personhood threshold are also worthy of moral consideration. Of course, this still does not lend itself to the conclusion that persons can use non-persons as they wish, but it might be used to assign their interests greater weight.

However, if this model is adopted then, as David DeGrazia illustrates, the possibility is left open that an alien species, or modified human (a post-person) with greater degrees of rationality, impartiality, moral reasoning and so forth than the best human moral person could well merit being accorded higher moral standing⁷¹ than a paradigm person. If we wish to protect ourselves against the argument that they should be able to use us as mere means to their ends and also avoid charge of arbitrariness or inconsistency in our treatment of beings with lesser moral standing than ourselves, then the establishment of deontic constraints of near inviolability protecting any being with foundational moral standing is one solution.

Whatever model chosen, differences in moral standing, as I have shown, do not equate

71 David DeGrazia, “Genetic Enhancement, Post-persons, and Moral Status: a Reply to Allen Buchanan” (presented at the Humans and Other Animals, LSE, 2010).

to those with greater moral standing being permitted to do as they will with those of lesser standing. Furthermore, reasons for differential treatment can be couched in terms which do not rely upon appeal to different levels of moral standing. DeGrazia gives two examples to illustrate this in the paper I cited above. The first is the case of *Rats vs Children* where diseased rats make their way into your house and threaten the lives of your children by their presence. The decision to kill the rats (painlessly if possible) does not need to be couched in terms of the greater moral standing of your children, but rather in terms of defence against harm – after all, points out DeGrazia, you might also be justified in killing a human person in similar circumstances. The second case is of *Lifeboat*, in which a number of people, plus a dog, are aboard a lifeboat and unless one passenger is thrown overboard all will drown. Whilst all passengers, human and canine, can be said to pose an equal threat to each other, it seems permissible to sacrifice the dog to save the humans. Again, the reason for this need not be to do with differences in moral standing, but rather on consequentialist grounds that the fact that the humans are persons means that they have richer existences than the dog and are thus threatened by a greater degree of harm than it. Thus, the interests of persons can be weightier than those of moral patients, or carry moral priority, without their being any underlying difference in moral standing.⁷²

72 Agreeing with DeGrazia might appear that it requires giving some of the ground captured in respect of my argument concerning different kinds of suffering in Chapters One and Two, but I do not believe this to be the case for two reasons. One is that the arguments in those chapters concentrated on the wrong done by inflicting suffering, here I talk about the relative badness of death. Second, these cases concern where one being is acting as a threat to another, allowing deontological constraints to be overcome in self- or other-defence. The arguments in Chapters One and Two sought to establish those constraints, prohibiting the use of moral patients as mere means to the ends of moral agents, not to establish an absolute prohibition on harm whether unjustified or justified.

Given what I have written, it may well be preferable to drop the insistence on different moral standings between persons and other sentient beings and simply work from a single baseline level of moral standing accorded to beings which meet the criteria necessary to be called moral patients, whether they possess personhood or not. This assumption of basic moral equality is the approach famously taken by Peter Singer and it addresses the problem apparent in the AMC of reconciling granting all human beings equal moral status regardless of capacities with the fact that species membership does not seem a morally relevant attribute. Singer's claim is that the capacity of animals to suffer means that we should consider their interests in not suffering equally with those of humans.⁷³ Singer gets from the assertion that both humans and animals feel pain to a principle of equal consideration of interests by first asserting that a principle of equality does not require that those considered equal need to be treated the same way – much as DeGrazia illustrates. Treating a human and a pig as moral equals does not require giving a pig equal political rights to a person. Equal consideration is not the same as equal treatment. He too points out that humans come with differing morally relevant capacities, including differing intellectual levels and different levels of the ability to feel pain. Individual humans are not equal in their abilities and capacities, but this is no impediment to treating them as moral equals. Neither is it possible to find a single characteristic, shared by all humans and to the same degree that we can pin moral equality to. Equality, he says 'is a moral ideal, not a simple assertion of fact'⁷⁴.

73 cf. Singer, *Applied Ethics*, chap. XIII.

74 Singer's assertion is not entirely satisfactory – liberal moral equality treats those with certain capacities and memberships as equal for procedural purposes, but not everyone has those capacities. Moral equality tends to be cashed out in terms of rights, and with the focus on liberty and rationality these are assigned differently to children, lunatics, and those in vegetative states. Certainly, whether Singer's postulate is substantially true is an open question. However, since I am

Factual differences in abilities and capacities do not provide us with justifications for unequal considerations of interests.⁷⁵ Nevertheless, whilst different capacities and traits may or may not give reasons for adopting differential moral standing, they can give reason for differential treatment. Persons obviously have an interest in having their personhood protected which non persons do not. Thus, persons merit treatment which respects their personhood or autonomy, just as non-persons merit treatment which respects their sentience. Differences in interests and capacities necessary for, and intrinsic to, a being's ability to flourish can merit differential treatment as part of a principle of respect for that being's good, whether they are regarded as having equal or differential moral standing.

Whether persons and non-persons have equal moral standing or not, the principle of respect for their goods mandates that any being with a moral standing should not be treated as a mere thing or a mere means to another's ends. At the very least this means involves adopting a *prima facie* principle of non-interference, or perhaps more properly, a principle of not interfering without taking account of, or acting to promote, that being's good. This much is relatively uncontentious. It is when the good of inferior beings clashes with the good of superior beings the moral difficulties come to the fore.

Whilst it might be possible to rank morally superior and morally inferior living beings

not making the equal consideration of interests a central or necessary part of my thesis I do not subject Singer's claim to further scrutiny.

75 In place of being an 'experiencing subject of a life' that I have adopted from Tom Regan's thesis, Singer argues, following from Bentham, that the capacity to feel pain, or for suffering and happiness, is the basic capacity that marks out whether something can have welfare-interests (Singer, *Applied Ethics*, chap. XIII.).

depending on their value- or disvalue-conferring properties, superiority does not licence free reign. The moral superiority of the good philanthropist does not permit him to use the selfish criminal as a mere means to his ends. And where animals and humans are concerned, concluding that the needs and wants of human persons count for more than those of inferior beings might not be wrong, but it also does not imply that the trivial needs and wants of human persons outweigh the fundamental needs of lesser beings.⁷⁶ Nor does it mean that the superior being has a right to use the inferior one as a mere means to an end. As Schmidtz writes 'claims of superiority do not easily translate into justifications of domination'⁷⁷.

Thus, granting respect to inferior creatures is both intellectually possible and morally coherent. Respectful conduct means not dismissing a being's needs out of hand. And it means acknowledging that their moral standing places duties upon us to pay heed to the things that make up their good. Respect requires us to recognise the interests which comprise or further a being's good, and it requires us to act justly and without arbitrary discrimination. Finally, respect-warranting characteristics are categorical, that is they constrain us regardless of circumstance or desire.⁷⁸

However, there remain practical problems with respecting inferior creatures. Respect is

76 Whilst determining our obligations and right conduct in respect of choosing between the relative interests of inferior and superior beings is far from straightforward, it does seem at least theoretically possible. And of course, there may be additional obligations held by moral agents toward each other and toward other creatures resulting from contract, promises, historical circumstances and so forth that might impact on the obligations owed to respect-worthy beings.

77 Schmidtz, "Respect for Everything," 132.

78 Joseph Raz, *Value, Respect, and Attachment* (Cambridge University Press, 2001), 168.

not just a mode of conduct, an acknowledgement of value, and an according of something's due. Respect is also a feeling,⁷⁹ it has emotional content. The feeling of respect acts as a moral motivation to right action. Superiority and inferiority are more than reasoned evaluative judgements: they too are feelings, they have a phenomenal aspect to them. If I judge myself superior to another person based upon a reasoned evaluation of relevant facts, then I am likely also to *feel* superior to them. There is a risk, associated with the evaluative judgement that the value of human persons is greater than that of other living beings, that the feeling of superiority accompanying this judgement might overcome the moral motivation to right action generated by the acceptance that lesser beings are nevertheless respect-worthy. I make this point because whilst my thesis concerns itself with theory, it does so with an eye to practical application. If we are to judge non-persons as morally inferior to persons then in order for us to act morally toward them we will need to take care not to let the emotional content of the feelings of superiority overcome our moral motivation in acting respectfully, or cloud our moral judgement in weighing claims. Feelings of superiority can all too often be accompanied by those of contempt, and the unjustified dismissal of the inferior being's needs. As McCarty points out 'all human moral agents who do regard the moral law as providing an all-sufficient reason for action are frail. Yet because they are frail, they may sometimes lack sufficient motivation to act morally in the face of contrary inclinations'⁸⁰. Considering these risks, it may be that regardless of whether the tiered model of moral standing is more plausible than the single baseline

79 Schmitz, for example, talks of the feeling of respect felt in the presence of certain trees (Schmitz, "Respect for Everything," 133.).

80 Richard McCarty, "Kantian Moral Motivation and the Feeling of Respect," *Journal of the History of Philosophy* 31, no. 1 (1993): 427.

model we should opt for the single baseline model on prudential or precautionary grounds.

3.1 Value incommensurability

One further possibility, also raised by Schmidtz, is that the value of personhood is simply incommensurate with the value of other capacities which make up the goods of other creatures. I admit that I struggle to see how the incommensurability of the value of personhood compared with the value of sentience does much work in excluding non-human animals from justice. Incommensurability does not provide any kind of reason for treating non-persons as mere means to the ends of persons. So long as the value of a moral patient's good is acknowledged, whether we can compare the value of that good in a measurable way to that of a moral patient's or not does not prevent us from respecting each being's good. Whilst there may be no objective way of ordering the value of Monet's *The Garden at Giverny*, Thomas Mann's *Death in Venice*, or that of an ancient oak tree along a single scale either naturally or via some kind of transformation, the fact that they all have value and can be respected in a way that accounts for their unique form of value remains. What value incommensurability may do is make distributive principles or mediating conflicts in hard cases impossible. Perhaps in such circumstances extrinsic sources of value or acquired obligation could help steer decision-making. One thing I am sure of is that uncertainty over relative worth is a poor grounding for ethical principles which carry such enormous negative consequences for non-human animals.

3.2 Unequal beings in the Original Position.

Assuming the establishment of a hierarchy in which moral agents and moral patients are both considered respect-worthy for their own sakes but where moral agents are ranked lower, how might Rawls' Original Position be re-imagined to generate principles of justice? If the parties are unequal in the Original Position then it is hard to see how non-human animals could make any successful demands: their interests count for less and they have no bargaining power. Various authors have suggested that Rawls' theory can be redeemed for non-human animals and other moral patients by extending the heuristic of the Veil of Ignorance so that it obscures species membership.⁸¹ Mark Rowlands makes the further point that if intelligence, or strength, or beauty are what Rawls considers undeserved natural talents to be obscured behind the Veil of Ignorance in the initial situation, then it also makes sense to think of rationality like any of those other undeserved natural talents,⁸² But, if the Veil of Ignorance is extended to cover species membership in the just society, then the contracting parties would certainly demand that all parties be accorded justice. In this sense the stipulation that Rawls makes that the parties in the Original Position are morally equal looks superfluous.

It is possible that there might be an objection to the thickened Veil that, because only human beings can reason about the principles that contractors will be party to, only they should be the beneficiaries of those principles. But the obvious response to this is

81 cf. Peter S. Wenz, *Environmental Justice* (Albany: SUNY Press, 1988), 249; Rowlands, *Animals Like Us*, chap. 3.

82 Mark Rowlands, "Contractarianism and Animal Rights," *Journal of Applied Philosophy* 14, no. 3 (1997): 241–243.

to point out that it is far from the case that all humans are capable of this degree of reasoning, and in any case, those involved in bargaining are not really the same as those to whom the principles of justice apply, rather, they are abstracted and idealised bargainers who exist only as an imaginative means of deriving fair principles to accord with prior moral values and assumptions. And because the concern rests upon the prior values and assumptions fed into the Original Position, if those values and assumptions differ, then the concern vanishes with them.

Whether the parties are moral equals or not, it is hard to see how, not knowing their final position once the Veil is lifted, how the parties would arrange things differently than Rawls says that equal parties would. Peter Carruthers comes to the same conclusion⁸³ and criticises the extension of the Veil for this reason (amongst others). His critique involves a claim that non-human animals would end up receiving equal rights to humans under this imagining.⁸⁴ However, there is no reason to think that this would be the case. A non-autonomous being is hardly going to want to be included in the distribution of certain goods. Those goods that Rawls concerns himself with are the ones which rational actors seek as means to the pursuit of their ends. The sorts of goods that non-human animals would want to be included in a just distribution are hardly going to include social status or great wealth, but they would instead relate to the pursuit and fulfilment of the creature's natural good. Scanlon asks what this would mean in terms of moral principles if animals were included and responds 'One natural suggestion is that they would have at least *prima facie* reason to object to principles that would permit people to act in ways that were contrary to "the good" of the

83 Carruthers, *The Animals Issue: Moral Theory in Practice*, 99.

84 Ibid.

creatures in question'⁸⁵. In any case, the objection that morally unequal parties in the Original Position would end up creating *de facto* equality could be overcome with a weighted bargaining process (Dworkin's resource auction⁸⁶ set up with an initially unequal distribution of purchasing power presents itself as one plausible way of imagining how this might be achieved). It would seem that in thinking about how best to include non-rational beings with moral standing in the distribution of benefits and burdens of a scheme of social cooperation Scanlon's suggestion fits very well with the normative principles for respectful treatment that I have argued for so far.

Notwithstanding these counter points, the argument that Carruthers makes that justice would become untenable because thickening the Veil of Ignorance to obscure species membership would result in a demand for equal rights (or equal consideration) for nonhuman animals is questionable for yet further reasons. Certainly, contractors in the initial situation, as self-interested and risk averse, will want to ensure that whatever species they end up as they will be free to pursue their good. It could be argued that if distributive principles are developed behind a thickened Veil then non-human animals who find themselves disadvantaged by luck might be owed resources to enable them to flourish in spite of disability. This might be one way in which demands for equal rights across species develop. Whilst Carruthers thinks this is self-evidently ridiculous, I remain unsure how, for non-human animals living within human society, that this really counts as a criticism rather than a desirable feature.

85 Scanlon, *What We Owe to Each Other*, 183.

86 cf. Ronald Dworkin, "What Is Equality? Part 2: Equality of Resources," *Philosophy & Public Affairs* 10, no. 4 (October 1, 1981): 283-345.

It is likely that Rawls' Original Position can survive dropping the equality principle if the Veil of Ignorance is thickened, particularly as it is presaged upon the dubious stipulation in the circumstances of justice of rough physical and mental equality amongst persons. Worries over the reliance on rough natural equality and the role it plays in developing principles of justice are heightened, not just by the arguments from disability, species membership, or natural variation in human capacities, but also by the spectre of post-persons raised by DeGrazia.

3.3 The mixed society

The point of Rawls' project is to develop principles (and justifications for them) that allow citizens to live together in a stable and well ordered liberal democratic society, where they can exercise their moral powers in pursuit of conflicting and incommensurable conceptions of the good. This is the outcome Rawls seeks, and so he sets up devices like the Original Position, Veil of Ignorance and Reflective Equilibrium in such a manner as to achieve it. But, as Scanlon acknowledges, democratic liberal societies are not comprised entirely of rational persons with fully-developed moral powers – we share our societies with moral patients too. Rawls thinks that the rationality and capacity for reasonableness from free and equal citizens is what allows them to take part in a scheme of social cooperation.⁸⁷ But, it is not true that powers like rationality are necessary for cooperation in society. As Mary Midgley points out:

All human communities have involved animals. Those present in them always include, for a start, some dogs, with whom our association seems to be an

⁸⁷ John Rawls, "Kantian Constructivism in Moral Theory," *The Journal of Philosophy* 77, no. 9 (1980): 518.

incredibly ancient one, amounting to symbiosis...All creatures which have been successfully domesticated are ones which were originally social. They have transferred to human beings the trust and docility which, in a wild state, they would have developed toward their parents, and in adult life towards the leaders of their pack or herd.⁸⁸

Human societies have always involved cooperation and reciprocal arrangements with non-human animals, whether they be guide or guard dogs, draft animals, cats for pest control, or pets for company. And human society has always involved relationships with human beings who have either not fully developed or have lost the moral powers that make them full persons. Rawls characterises the liberal society by reminding us that 'one common theme of liberal thought is that the state must not favour any comprehensive doctrines and their associated conception of the good'⁸⁹. By leaving non-human animals out of the Original Position Rawls relegates their welfare to a private concern of individual citizens. In other words, he makes duties to animals indirect duties to those citizens for whom the good of animals is a moral concern. But, respect for the good of animals should not be considered part of a comprehensive doctrine subject to reasonable rejection by others; it is not a good to be pursued by persons because the good of animals is a good for those animals themselves. Right action demands that we respect the good of non-human animals for their own sake, and that respect is prior to the good. Thus, any society that fails to account for the good of the non-human animals that are included in that society is not a just one. If a

88 Mary Midgley, *Animals and Why They Matter* (Athens, America: University of Georgia Press, 1983), 112.

89 Rawls, *Political Liberalism*, 191.

political community regulates the affairs, and determines the standing of those who are included within the distribution of its benefits and burdens in a way that is unjust, then the moral case for breaking the laws of that community in defence of those to whom it acts unjustly will be much stronger.

4 Scanlonian contractualism

Where Rawls seeks to develop a political morality through the metaphor of the contract, Scanlon attempts the somewhat wider task of providing general moral rules to govern what individuals owe to one another as a matter of morality, 'including such things as requirements to aid them, and prohibitions against harming, killing, coercion, and deception'⁹⁰. The Scanlonian contractor, rather than operating behind the Veil of Ignorance as a Rawlsian risk-averse and rationality self-interested agent, is both aware of his or her circumstances and motivated by the desire to justify himself or herself to others on grounds that they could not reasonably reject. So, where Rawls seeks principles which free and equal citizens can agree upon in idealised conditions, Scanlon instead tries to find principles that cannot reasonably be rejected. Going back to my discussion in Chapter 1 on Kantian morality and respect, moral agents have the capacity to act according to reason and in the face of their desires. Part of being a moral agent also involves recognising the reasons that others have for their actions and beliefs. Respect for persons thus involves providing them with justifications for actions that impact upon them that they could not reasonably reject. The requirement for justifiability captures the Kantian ideal of treating individuals as ends in themselves rather than mere means. Scanlon recognises that the domain of social morality does

90 Scanlon, *What We Owe to Each Other*, 6.

not just relate to a coming together for mutual advantage – if it did then the rules of morality would exclude those who have a place in society but who are unable to benefit or harm others.⁹¹ Thus, Scanlon can avoid the complaint made against Rawls that narrowly conceived ideas of mutual advantage or reciprocity exclude those with cognitive disabilities.

Unlike Rawls, Scanlon allows that his ethical contractualism has room for non-human animals by conceding that it makes sense for beings which can feel pain to be included in the class of beings owed reasons justifying treatment that impacts upon their good. The reason for this, and reminiscent of Korsgaard's pain as public reason argument, is that pain is something that we see as bad for the both ourselves and animals, and have therefore have strong *prima facie* reasons to prevent, alleviate or avoid causing.⁹²

Scanlon writes:

the requirement of justifiability to others should be extended to include all creatures [who are conscious and capable of feeling pain]. A contractualist account can accommodate this intuition if it holds that in deciding which principles could not reasonably be rejected we must take into account objections that could be raised by trustees representing creatures in this group who themselves lack the capacity to assess reasons.⁹³

Scanlon's contractualism requires that objections to principles must be couched in terms of reasons for rejection. When deciding upon a principle the interest of others

91 Ibid., 180.

92 Ibid.

93 Ibid., 182–183.

must be taken account of.⁹⁴ Scanlon's approach is not to seek what it would be rational for parties to agree to, but to arrive at a judgement which accommodates all parties on a principle of mutual respect.⁹⁵ The basis of mutual respect in persons is the capacity to respond to reasons (though, as Nussbaum points out, it need not be the sole basis)⁹⁶, but that need not preclude a basis of respect for non-persons of the type I developed in Chapter 1, and which accords with Scanlon's own conception of the good of non-persons. As Scanlon outlines, respect for non-persons and the requirement for principles which cannot be reasonably rejected can be achieved by the assignation of trustees to look after their interests. Thus, a Scanlonian contractualism can determine the correct treatment of non-human animals by asking if a trustee acting on behalf of a non-human animal could reasonably reject principles which treated it in certain ways and in light of the burdens rejection would place upon others. It is very hard indeed to see how a principle which used non-human animals as a mere means to an end for persons would survive the test of reasonable rejectability; any such principle would place a burden on non-human animals in a way which did not respect them as beings with a good of their own.

Scanlon's approach to non-human animals is not without its flaws however. In a discussion on human moral patients he ends up concluding that the mere fact that a being is born a human is enough to give us reasons to think that we should have to justify our actions to it (or its trustee).⁹⁷ The implication is that human beings are by nature owed more by way of reasons than other animals. Scanlon's response to the

⁹⁴ Ibid., 192.

⁹⁵ Ibid., 194.

⁹⁶ Nussbaum, *Frontiers of Justice*, 150.

⁹⁷ Scanlon, *What We Owe to Each Other*, 185.

charge that this amounts to speciesism is to say that our special relationship to humans born of other humans provides us with reasons to justify our actions to them⁹⁸ – thus it is the relationship we stand in with other humans that gives reasons to include them in justice. However, it would seem that here the reason we have for granting justice is less to do with the species and more to do with the relationship. If a human orphan were raised by wild animals, and grew up savage, without language, and lacking moral agency then it does not seem that they would be owed anything by virtue of their species. We certainly have no familial relationship with them, and no shared experience to serve as a proxy for one. On the other hand, a dog raised as a companion animal and thought of by its keeper as a member of the family might well stand in the kind relationship that Scanlon sees as generating a requirement for actions to be justifiable to them.⁹⁹ Scanlon's insistence on the importance of species membership is really an argument about a being's place in a relationship.

5 Contracting animals

One potential source of criticism of the points I have made so far, and which might come from those seeking to generate principles of justice from the device of the social contract, is that animals are simply not the sorts of beings that it makes sense to talk about as parties that can enter into a contract (or make and receive promises).

Promises and obligations are generally conceived as having special (although slightly mysterious) moral significance. Since they are not moral agents and not autonomous animals cannot be placed under obligations. And since animals cannot have obligations, why should anyone feel obligated toward them? The first thing to say is that

98 Ibid.

99 cf. *ibid.*, 185.

obligations and contracts are not the same thing. I can be obligated to you for any number of reasons and none of them need to be generated by a contract. I've already mentioned friendship as a source of obligation in Chapter 2; the obligations of friendship are not the sorts of things that spring from contract or even necessarily promising. The same is true of family obligations. We even talk of obligating oneself. If I can be obligated to you, without you being obligated to me in return, then there is no reason to say that moral agents cannot be obligated to non-human animals. And if we look more closely at contracts we see that they are the same – contracts can quite happily generate non-reciprocal obligations. However, what differentiates contracts from straightforward promises is that contracts are things that not only formalise arrangements between their parties, but they are things that are done with the consent of all parties. Thus, since animals cannot consent we should conclude that they cannot be parties to a contract. However, this view is also mistaken. First, the move to say that animals cannot consent is too hasty – there may well be ways of eliciting consent from non-human animals, although I will not examine how plausible or successful these might be. Second, the argument that consent of the parties themselves is needed for contracts to obligate is easily defeated through the introduction of advocates into the contracting process. When legal obligations are being drawn up toward children or the severely mentally ill, or patients in comas, we have no problem in believing that a fully autonomous being is capable of acting on their behalf to grant consent. And we can also think of cases where moral persons enter contracts with each other which set out duties to a third-party moral patient such as between separating parents or the state and a foster-carer. It may be that there is a conceptual concern that the duties generated by contract create correlative rights on the part of non human animals, but

whilst my thesis does not depend upon a rights-based ontology, I see no principled reason why, if human moral patients can be accorded rights, non-human animals cannot. Certainly, an interest based theory of rights, such as that articulated by Feinberg sees no difficulty in ascribing rights, exercised by trustees or advocates, to non-human animals in such circumstances.¹⁰⁰

The idea of a contract with an animal is therefore not at all implausible or impractical. Indeed, several writers in the field of animal husbandry and environmental ethics have raised the possibility of a hypothetical 'contract of domestication'. Larrère and Larrère write that the domestication contract imposes duties upon humans not to mistreat the animals they domesticate and requires that we 'provide the animals with conditions of life which are more satisfactory for it than if it were living in a state of nature'¹⁰¹.

Similarly Clare Palmer discusses the need for a contract between humans and domestic animals rather than one between humans and humans that also happens to take account of animals.¹⁰² The possibility of a contract with non-human animals is thus neither incoherent or impossible.

6 Carruthers: against animals in the contract

One contractualist who argues strongly against the inclusion of animals in contractualist thinking is Peter Carruthers. Carruthers' scope is much broader than Rawls, who sees contractualism as governing political morality, and Scanlon who sees it

100 cf. Feinberg, "The Rights of Animals and Unborn Generations."

101 Catherine Larrère and Raphaël Larrère, "Animal Rearing as a Contract?," *Journal of Agricultural and Environmental Ethics* 12, no. 1 (2000): 56.

102 Clare Palmer, "The Idea of the Domesticated Animal Contract," *Environmental Values* 6, no. 4 (November 1997): 412.

as governing morality between either persons or those with who we stand in relation to. Unlike Rawls and Scanlon, Carruthers thinks the social contract should present us 'with a way of seeing what our morality should be, if the only constraints upon its content are rational ones'¹⁰³. For Carruthers contractualism explains the origins of moral motivation and of morality itself¹⁰⁴ - contractualism provides moral rules for all of our moral thinking. The contractualist standpoint expresses what morality is.

Carruthers relies upon interpretations of Rawls and Scanlon to back up his argument that animals are outside of a contractualist morality. He says of Rawls that '[m]orality is viewed [by Rawls] as constructed *by* human beings, in order to facilitate interactions *between* human beings, and to make possible a life of cooperative community'¹⁰⁵.

Attempts by writers such as Rowlands and Wenz to extend the Veil of Ignorance to obscure species membership are 'done without any independent theoretical rationale, simply to secure the desired result – that animals should have moral standing'¹⁰⁶. He goes on to conclude that Scanlonian contractualism will also fail to grant moral standing to any animals that are not rational agents.¹⁰⁷ It is unfortunate that Carruthers so badly misrepresents Rawls and Scanlon: Rawls, as I have illustrated, is very clear that he is concerned only with political morality, and Scanlon specifically devotes space to exploring how animals can be included. He too is clear that he is not attempting to describe the whole landscape of morality.

Carruthers' contractualism, in restricting itself to rational agents and in setting itself up

¹⁰³ Carruthers, *The Animals Issue: Moral Theory in Practice*, 44.

¹⁰⁴ Ibid., 48.

¹⁰⁵ Ibid., 102.

¹⁰⁶ Ibid., 100.

¹⁰⁷ Ibid., 105.

as a comprehensive morality, is closer to moral contractarianism than contractualism.

A contractarian morality is grounded in agreement between parties who are both vulnerable to each other and who seek to benefit from cooperation with each other.¹⁰⁸

If morality is entirely derived from these principles, then it is hard to see a place for animals in morality. This is because, whilst animals in society are vulnerable to humans (and can benefit them), it is difficult to see how humans are vulnerable to those animals to the same degree. But then, this kind of egoistic 'what's in it for me?' morality does not leave space for dependent non-rational humans either.

7 Conclusions

In this chapter I have examined the relationship between non-human animals and liberal accounts of justice, focussing on social contract theory. I have argued that non-human animals living in human communities are owed duties of justice, and I have explored ways in which they can be included within the sphere of justice. Along the way I have questioned the liberal insistence on the moral equality of parties to justice, and rejected some of the foundations of that moral claim, concluding that whether moral patients are considered morally equal or morally inferior to moral agents they can and should be considered the proper objects of justice.

The contractualist account clearly captures something about how moral agents obligate each other by providing reasoned justifications for actions. But an account of political morality that only concerns itself with interactions between moral agents is incomplete and cannot properly determine how moral agents should act towards the moral

¹⁰⁸ Narveson, *The Libertarian Idea*, chap. 13.

patients that are part of the social arrangements around which political institutions are built. Thus, for political liberalism to be just it must include principles of fairness that do not neglect moral patients simply because they are not rational. It must do this because communities of humans are not comprised solely of rational actors, and it would be wrong for the benefits enjoyed as a result of social cooperation to come from an unequal bearing of the burdens. The specific details of how best to include non-human animals in political communities are beyond the scope of this thesis, but one possibility, developed by Will Kymlicka and Sue Donaldson in their recent book *Zoopolis: A Political Theory of Human Rights* is to use a citizenship model and to categorise animals into how they relate to political communities. Kymlicka and Donaldson do this by developing different rights and political structures to regulate relationships with non-human animals depending upon whether they live in the wild, are domesticated, or are non-domesticated but inhabit the same spaces as humans (they label this category 'liminal animals').¹⁰⁹ In the following two chapters I build upon the argument that a society that fails to respect non-human animals living within it as a matter of justice is not a just one. As such, the basis for political authority, legitimacy, and the duties of citizens are undermined. Chapters Four and Five in part two of my thesis cover what this means for an assessment of the ethical permissibility of illegal acts carried out in defence of non-human animals within liberal democratic societies.

109 cf. Donaldson and Kymlicka, *Zoopolis: A Political Theory of Animal Rights*.

Part II

They'd try and tell me the best way is education, which is ultimately the goal, but how do you draw attention to something so corrupt and secretive that it has its own laws and is violently defended by those same forces who use the law and the police to resist all attempts to effect change, if not by using extra-political methods? Write a book? But who will read it? No, there shouldn't be violent confrontations over little animals, ladies batoned and CS sprayed, kids cut by razor wire, there shouldn't be rocks thrown at riot police and through windows, but there shouldn't be tortured animals dying in cages either and it's no good complaining.¹

In Part I, I gave three reasons for believing that we owe direct duties to non-human animals: 1) the fact that they can suffer and have a good of their own together with, 2) the vulnerability we share with them, and 3) the fact that they bear the burdens of social cooperation. I have characterised those duties as duties of respect for the natural good of animals, which involves a *prima facie* duty of non-interference, together with positive duties to prevent, alleviate, minimise, and avoid causing suffering. These might collectively be labelled duties of beneficence and of non-maleficence. Furthermore, I argued that where these animals are part of human societies these duties are also duties of justice. Contemporary liberal democratic societies have not adopted these ideal principles and continue to relate to animals in terms of a utilitarian calculation of their usefulness to humans. This has led to a refusal by a minority to accept the legitimacy of the law in respect of non-human animals and to the perpetration of a variety of

¹ Keith Mann, *From Dusk 'till Dawn: An Insider's View of the Growth of the Animal Liberation Movement* (London: Puppy Pincher Press, 2007), 16.

illegal acts in defence of animals, and it is to these illegal acts, and their moral permissibility, that I now turn. In assessing the permissibility of law-breaking we must take account of a number of factors: the rightness of the cause, its urgency, the intentions of the actors, the nature of the acts, and the existence of competing duties to the state and other individuals. This multitude of competing factors makes assessing the moral permissibility of breaking the law a complex and difficult procedure and will no doubt result in areas of uncertainty. In the proceeding chapters I draw out what is at stake in different kinds of animal liberation activity and evaluate their permissibility. Acts are permissible if the competing reasons speaking against them are insufficient to cause agents to refrain them.² Animal rights activists engage in three broad and overlapping categories of direct action: 1) civil disobedience aimed at trying to communicate moral values and highlight injustice, change attitudes towards non-human animals and lead to a change in the law, 2) acts of rescue and defence, and 3) acts of sabotage designed to prevent, hinder, and disrupt harmful practices. In many cases these occur at the same time. Direct action thus includes acts of civil disobedience, sabotage, coercion, and rescue.

My aim in Part II is to show that duties of justice and morality bear upon the duties of beneficence and non-maleficence in ways relevant to assessing the permissibility of illegal acts carried out in defence of non-human animals (and indeed in other cases). I argue that in any non-perfectly just society there is a duty to strive for increased justice, and that there is an obligation both to avoid taking part in and to oppose injustice. These three duties of justice and morality provide reasons to think not only

2 cf. Joseph Raz, "Permissions and Supererogation," *American Philosophical Quarterly* 12, no. 2 (April 1, 1975): 161-168.

that direct action can be permissible in defence of non-human animals, but also that it may well be obligatory. Against these reasons for action, I weigh some countervailing reasons: tactical, prudential, and moral, although these I find to be generally insufficient to render many defences of non-human animals impermissible. In broad terms, my aim is to establish whether different kinds of liberationist activity can be sufficiently justified to overcome duties owed to the political community at large taking into account any special features of each kind of act and considering any special facts about the place of non-human animals.

4 Direct action in defence of non-human animals

In this chapter I argue that acts of civil disobedience carried out in order to defend the interests of non-human animals is morally permissible because the duty to obey the law is subordinate to the duty to respect the good of beings with moral standing. The chapter is structured as follows: first, I provide an overview of arguments about the source and strength of political obligations, which give agents reasons to obey the law, and I assess the strength of those reasons. Next, I take the first of three categories of illegal liberationist activities that I introduced above: civil disobedience, and discuss it in depth, drawing out problematic areas such as whether violent disobedience is permissible, and whether there are problems in acts of civil disobedience in defence of non-citizens, as I do so. Overall, I conclude that civil disobedience in defence of non-human animals is morally permissible in many circumstances. Throughout the chapter I make arguments which rest upon some important background assumptions, these are:

1. the political communities that take centre stage in the discussion are justified according to liberal and democratic principles;
2. justice applies under conditions of moderate scarcity; necessary resources are neither so abundant nor so scarce as to make discussion of justice moot;
3. moral agents have positive duties to aid moral patients in dire need.

The first argument that might count against illegal acts in defence of non-human animals is the very fact that they are illegal. The very fact that an act is illegal seems, if it does not absolutely forbid it, to create an additional justificatory burden to be overcome. The following section will explore why this is so and the conditions required for the law to impose that additional justificatory burden.

1 Political obligation and the duty to obey the law

If breaking the law in defence of non-human animals is wrong, then we need to establish why it is so. There does not seem to be any particular feature that can be picked out about the principle of defending non-human animals from harm that could be called morally wrong by nature or in and of itself, although it might be wrong to defend non-human animals in specific circumstances. An example of a morally wrong defence might be someone who intervenes to prevent their child from being given medicine to kill the tapeworm living parasitically within the child for the sake of that tapeworm. So there may be features about specific acts or classes of acts in defence of non-human animals about which it could be said that they are morally wrong. One of those features might be that the acts are illegal. If the illegality of an act determines (or at least contributes to) its wrongness then we need to be able to explain the source of the moral obligation to obey the law, that is the source of political obligation. At this stage of the argument, the nature of an act as one carried out in defence of non-human animals is not relevant to whether its illegality makes it wrong, rather, what we need to determine are general principles establishing duties to obey the authoritative commands of political sovereigns. If these can be found, then we can look at the

circumstances in which they would make acting in defence of non-human animals morally wrong.

There are several contenders for potential sources of political obligation, and all have had their strengths and weaknesses discussed at great length. I do not propose to present a detailed account of each; a brief summary is sufficient to get across the points that I wish to make, primarily that there is no general moral duty to obey all laws irrespective of facts about the legitimacy of the law or about the morality of specific laws. Indeed, what I wish to illustrate is that the permissibility of breaking the law can depend upon whether the law is just, whether it has been justly constituted, and whether, even if the law is both just and has been justly constituted, there are nevertheless overriding moral reasons to break it. A straightforward example of the latter case is that of breaking the law by driving through traffic lights when they are red in order to get a chronically ill person to hospital and urgent life-saving treatment before he dies. In the absence of a legally codified immunity to the law on observing traffic light rules in circumstances where to do so would prevent a life from being saved, it is surely permissible to break the law to save a life. The duty to aid another in dire need overrides the duty to obey the law because, for the law to possess practical authority it must not be incompatible with respect for the good of others. A law which overrides or excludes morally significant facts, such as the dire need of a moral innocent, in favour of a value such as conformity, is in conflict with the basic requirement of respect for the good of others for their own sake. The duty to respect others for their own sake is foundational and prior to the political duties. This duty of respect for others grounds deontological constraints around actions affecting them and

duties of assistance towards them. The mere existence of a law that would hinder either respectful treatment or rendering aid is insufficient reason alone to overcome the duty of aid, to do so would require strong reasons to obey the law consistent with the principle of respect. Duties to obey traffic laws are *prima facie* or *pro tanto*¹ and I hope to show that a similar process of moral reasoning applies to many acts carried out in defence of non-human animals, particularly act of rescue (Chapter 5).

The most prominent theories of political obligation justify adherence to the law on one of the following grounds: 1) grounds of gratitude for benefits received (benefit theories), 2) fairness to those who cooperate in providing them (fair play theories), 3) grounds of consent, the obligation has been consented to (consent theories), or 4) grounds of natural duties of justice (natural duties accounts). Whilst these crude outlines of key theories between them cover a great deal of the ground in respect of political obligation, they do not describe the whole theoretical landscape. Nevertheless, as I have stated above, it is unlikely that a fuller account than I have space for would add a great deal to the main thrust of my arguments. Moving on then, what are the strongest grounds for obligating citizens to obey the law and how far do those obligations go under each of the theories mentioned in this paragraph?

Taking benefit theories first: these hold that political obligation,² and thus a duty to obey the law, arises out a duty of gratitude for the benefits received by citizens from

1 *Prima facie* if the justness of the law is in question, *pro tanto* if it is not (or at least if it is not substantially unjust).

2 Indeed, for the purposes of this thesis I treat political obligation and the duty to obey the law as synonymous.

the government.³ Thus, the fact that the government keeps me safe from external aggression, enforces contracts, and provides me with roads to use, and so forth, all gives me reasons to be grateful and to submit to its authority. The strongest case for owing duties of gratitude exists where benefits are actively sought or voluntarily received,⁴ after all, why should a person necessarily be obligated because he has enjoyed an unsought benefit? There is no sense in which a street busker earns a right to my charity simply by playing music within my earshot and which I neither sought nor requested.⁵ And, even if some benefits from government are sought and accepted, just because they are does not mean that obedience to all laws is owed. For one thing, there may be laws which are neither sought, nor accepted, and do not even provide benefits either to all or to some,⁶ and for another, it does not seem at all obvious that obedience is the correct fitting attitude in response to gratitude.⁷ There is no logical connection between gratitude and obedience. Neither do other responses such as conformity or deference obviously offer themselves as alternative fitting responses to gratitude. Of all possibilities, reciprocity looks to be the most fitting, but again, this response does not fit where benefits are unsought and unwanted, and it does not provide a strong reason to obey all laws, merely those consensually benefited from. Chris Wellman makes the further point that the connection between the individual's adherence to the law and the state's ability to provide benefits is extremely loose. Obedience to the law by the

3 Rex Martin, "Political Obligation," in *Political Concepts*, ed. Richard Bellamy and Andrew Mason (Manchester: Manchester University Press, 2003), 44; Christopher Heath Wellman, "Toward a Liberal Theory of Political Obligation," *Ethics* 111, no. 4 (July 1, 2001): 736.

4 Martin, "Political Obligation," 44.

5 cf. Nozick, *Anarchy, State, and Utopia*, 93–94.

6 Martin, "Political Obligation," 44–45.

7 Leslie Green, "Law and Obligations," in *The Oxford Handbook of Jurisprudence and Philosophy of Law*, ed. Jules Coleman and Scott Shapiro (Oxford: Oxford University Press, 2002), 529.

individual does not significantly impact upon the state's ability to provide benefits, and 'even if the state could not provide its benefits without the help of every last one of its citizens, more is required to show that each citizen is obligated to obey the law'⁸. On the other hand, there may be some benefits that are indispensable to what H. L. A. Hart phrases as 'maintaining the fabric of a tolerable, orderly society'⁹. These benefits are of the sort that we ought to want and may therefore provide some reason to comply with the law. However, if the benefit of a well-ordered society is derived from significant injustice, or requires the toleration of significant injustice, then those benefits are impermissible. The argument that benefits are required for an orderly society, and that non-compliance with the law puts those benefits at risk, is insufficient to generate a duty since the character of the benefits rather than mere receipt of them is what morally obligates.

Fair play theories are similar to benefit theories, but in their case the obligation to obey the law is an indirect one owed to fellow citizens through the enjoyment of the benefits of cooperation and the shared costs required to achieve them.¹⁰ That is, when a scheme of cooperation benefits a community, it is wrong, *ceteris paribus*, if the costs incurred in bringing those benefits are not shared equally. With fair play theories political obligations derive from the fact that benefits can only be achieved if everyone, or nearly everyone, joins in, but doing so carries costs for each.¹¹ To free-ride, that is

8 Wellman, "Toward a Liberal Theory of Political Obligation," 736.

9 Herbert L. A. Hart, *The Concept of Law (Clarendon Law Series)* (Oxford and New York: Oxford University Press, 1961), 170.

10 Ibid., 45–46; George Klosko, "Political Obligation and the Natural Duties of Justice," *Philosophy & Public Affairs* 23, no. 3 (1994): 252.

11 Martin, "Political Obligation," 45.

receive benefits at no cost to oneself that others have made sacrifices to achieve, is simply unfair. And, whilst this does provide a reason to obey laws which individuals benefit from, this obligation, as in the case of benefit theory, does not at the same time logically extend to all laws. As Rex Martin points out '[o]bedience to some laws may not benefit everyone (and obedience to some laws might not benefit anyone)'¹². If the benefits of social cooperation are not consented to then the obligations created are not voluntary, and if obligations must be voluntary for authority to be legitimate, and given that many benefits cannot reasonably be avoided or refused, founding obligation to the law on fairness is problematic.¹³ Thus, as Wellman argues, in order to successfully ground political obligation in a principle of fair play citizens must be denied the choice to refuse benefits. However, to deny choice is in conflict with the liberal principle that individuals form political communities in order to pursue their own autonomously chosen and revisable conceptions of the good.¹⁴ Fair play theories may require a degree of paternalism to justify obligations to obey the law which is extensive enough to be incompatible with liberalism.¹⁵

Consent theories, on the other hand, hold that political obligations are grounded in the consent of the governed. Under these theories authority is legitimate if consented to. Political authority is conceived as something which is agreed to in the form of a promise or contract between the sovereign and the governed, one aspect of which is an agreement amongst the governed to cede their natural rights in certain areas (the

12 Ibid., 46.

13 Green, "Law and Obligations," 531.

14 Wellman, "Toward a Liberal Theory of Political Obligation," 738.

15 Ibid.

exercise of coercive force being the paradigm example) to the sovereign. Of course the key questions for consent theories are what counts as consent and more importantly for this discussion: whether consent, even explicit uncoerced and fully informed consent truly grounds an obligation to obey all current and future laws. In truth consent is not enough, and this can be illustrated by a brief exegesis of the debate between Locke and Hume on the sufficiency or necessity of consent to political authority.

Locke begins with the premise that men are born free and equal with no one having authority over another by nature, and then concludes from this that authority must be derived from somewhere other than nature.¹⁶ Furthermore, since people are not morally bound by promises extracted by force, or which violate their natural rights (for Locke these are life, liberty, and property), authority over another must instead come from consent.¹⁷ Whilst he argues that only express consent can make one a full member of a political community, he also contends that political obligations can also come from tacit consent.¹⁸ Locke says that by enjoying the benefits of a state; owning land, using its highways, living in a place, etc., people demonstrate a form of tacit consent to state authority over them.¹⁹ That enjoying state benefits counts as consent can be demonstrated by showing that there is an alternative option available to citizens

16 John Locke, *Two Treatises of Government and A Letter Concerning Toleration*, ed. Ian Shapiro (New York: Yale University Press, 1690), sec. 87.

17 Ibid., sec. 89.

18 Or which Simmons argues should more properly be called 'implied consent' by Locke (A. John Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1981), 88–90..

19 Locke, *Two Treatises of Government and A Letter Concerning Toleration*, sec. 119.

– that is to refuse the benefits. Locke argues that citizens can always refuse to accept benefits simply by leaving a country and thus choosing to remain implies consent.²⁰

Hume responds to Locke by pointing out that this is not really a valid option for most. He uses the example that people are free to leave a ship at sea but were they to do so it is likely that they would drown.²¹ Strictly speaking they are free to leave the ship at any time should they disagree with the captain's orders, but the burdens associated with the choice to leave are so great as to make the choice a false one. Requiring people to leave a country in order to express refusal to consent is too onerous a condition because the costs associated with doing so are prohibitive to many both in monetary and psychological terms.²² Hume argues furthermore both that there has never been a genuine expression of consent,²³ and that consent is always thought of as really being conditional upon the authority consented to being just: that there is no obligation to obey morally wicked laws issued by an authority which has been consented to. Furthermore, according to Hume, historically all states have arisen not from consent, but from circumstances of injustice; war, oppression, and unjust appropriation.²⁴ Certainly, one would be hard put to provide evidence of states which have begun through the consensual agreement of their citizens. Even then, Hume argues, there is nothing in the historical origins of a state, whether just or unjust, which prevents us from judging that their present laws and institutions are just. Thus, popular consent is

20 Ibid., sec. 121.

21 David Hume, *Essays and Treatises on Several Subjects: Essays, Moral, Political and Literary* (Edinburgh: Bell and Bradfute, 1793), 234.

22 Ibid.

23 Ibid., 236.

24 Ibid., 240–252.

not a necessary condition of legitimate authority. Locke's theory is thus really reliant upon whether the state is just rather than upon consent for its moral force.

Hume's response to Locke illustrates that even strong forms of consent require something further to justify obedience to the law; what matters in determining whether we should obey laws is whether they are morally good laws. That they have been consented to might provide part of the reason why particular laws are morally good laws, but without knowing the content of the laws themselves it does not provide the full or overriding set of reasons to obey those laws and indeed it is quite conceivable that a law that has not been consented to is perfectly just and that this gives us sufficient reasons alone to conform to it. And this leads into natural duties of justice as a source of political obligation.

Natural duties accounts differ from those based upon acquired duties in that political obligation is contingent upon whether society is just rather than any agent-relative concerns such as whether they have consented to its authority or not. This is the position that Rawls adopts as an additional principle to that of fairness. Rawls argues that the principles which individuals in the Original Position would agree to are natural duties of justice and that they include duties to:

support and to comply with just institutions that exist and apply to us...Thus if the basic structure of society is just, or as just as it is reasonable to expect in the circumstances, everyone has a natural duty to do his part in the existing scheme. Each is bound to these institutions independent of his voluntary acts, performative

or otherwise.²⁵

Rawls' theory includes both obligations of fairness and natural duties working together; natural duties of justice are fundamental and those of fairness apply to benefit from unequal distributions of primary goods.²⁶ If complete obedience to the law were necessary to achieve justice then that would be a strong reason to make disobedience impermissible, but it does not seem that all laws, even those that are themselves just, are necessary for the maintenance of a just society.²⁷ Furthermore, it simply is not true that acts of civil disobedience and other forms of law breaking necessarily put society at risk: widespread, sustained lawbreaking; law-breaking for personal gain; and breach of particular laws rather than defiance of the basis of a state's authority all need to be taken into consideration when asking whether illegal acts will cause more harm to justice than good. It is not hard to imagine that even substantially just legal systems might include areas where they are unjust, and there does not seem to be a compelling reason to respect unjust laws in an otherwise substantially just system provided that doing so does not put the substantially just conditions at risk.²⁸

Taking the brief discussion of political obligation into account leads to the conclusion that an overriding general duty to obey all laws is extremely difficult to justify.

Whether political obligation is explained in terms of fairness, benefits received, consent, or natural duties of justice, none of these theories justify an obligation to

25 Rawls, *A Theory of Justice: Revised Edition*, 99.

26 Ibid.

27 Green, "Law and Obligations," 538–539.

28 cf. *ibid.*, 538.

obey all laws in all circumstances. At best they provide qualified *pro tanto* reasons to obey the law, at worst they can be argued to provide no convincing obligation to obey laws *qua* laws or the law *qua* the law. Nevertheless, that there might not be a general duty to obey all laws, or even direct duties to obey specific laws, is not to say that there are no moral reasons or duties to obey specific laws under certain conditions and in certain circumstances. These reasons can be out of gratitude for the benefits received as the result of a law, or out of an obligation grounded in fairness to others making sacrifices so that a benefit can be received, or they may be because a promise has been made or consent to be governed been given. Finally, the duty to obey a law may result from natural duties of justice or because adherence to a particular law is necessary for justice. In the case of benefits theories, for the law to obligate the benefits received must be permissible benefits, and in fair play theories the attainment and distribution of goods must itself be fair. In all cases it would seem a requirement that for a law to obligate it must not be unjust, or, if it is unjust, it must not be a sustained, serious, and widespread injustice, and it must be necessary for the maintenance of a substantially just system.

What the preceding section has shown is that certain circumstances of cooperation generate duties whether they be of justice or fairness, or good faith, or something else. Whether those duties are then codified, publicised, and ranked according to their importance to the political community via their expression in law is less relevant than whether they exist in the first place.

We can thus establish whether actions taken in defence of non-human animals are

permissible in political terms by whether the circumstances of political cooperation are of the sort that do generate obligations in the first place: whether they are fair, beneficial, just etc., and then whether there are particular facts about specific types of acts or circumstances that might render them permissible or impermissible. I have shown in the previous chapter that political communities which treat non-human animals as mere means to human ends cannot properly be called just and would not thus generate political obligations to respect laws that permit or require harm to non-human animals. Where society is fundamentally unjust, there is a moral obligation not only to refuse to participate in unjust practices, but also a duty to work towards a just state of affairs. This is one of the natural duties that Rawls outlines; the requirement to 'assist in the establishment of just arrangements when they do not exist, at least when this can be done without too much cost to ourselves'²⁹. The duty to strive for a more just society can be considered an extension or aspect of the duty to improve one's moral powers.³⁰ A society that relies heavily upon exploitative child labour is not a just one, and if the state is failing in its role as *parens patriae*, then its citizens have a duty to strive to change things so that it is not. Similarly, the duty to oppose and reform unjust practices creates a justification for civil disobedience in protest against harms done to non-human animals.

2 Civil disobedience

Before continuing I should say a little about what I mean by civil disobedience and

²⁹ Rawls, *A Theory of Justice: Revised Edition*, 293-294.

³⁰ I will say more about these duties later on in my section on the permissibility of using violence during acts of rescue when I discuss issues of culpability.

why it is useful to distinguish it from acts of sabotage or rescue. First, civil disobedience describes a variety of illegal acts of dissent. A paradigm case of civil disobedience has the features of being a conscientious attempt through deliberate breach of law to induce a change both in the beliefs of others and in the law itself through the communication of values and the strength with which they are held.³¹ It is conscientious in that it represents the sincerely held beliefs of the civilly disobedient agent, which give her reasons to act both in terms of the values themselves and in order to maintain her sense of integrity.³² It is likely that some actions which I will include under the rubric of civil disobedience will draw disagreement about their status as acts of civil disobedience. In response, I should say that my concern is with the legitimacy of the acts I describe, rather than with whether they more properly belong in this conceptual category or that. My use of the term *civil disobedience* is more of a convenient shorthand to describe illegal acts aimed at communicating a moral viewpoint or changing legislation and I do not wish to be drawn into a linguistic argument over terminology.³³ Nevertheless, in order to distinguish violent civil disobedience from acts of selfish or wilful criminality and from terrorism I do need to say something about the constraints placed upon violence that make it civil. Some

31 Kimberley Brownlee, "Features of a Paradigm Case of Civil Disobedience," *Res Publica* 10, no. 4 (December 2004): 337–351.

32 Ibid., 340–343.

33 One potential criticism of the approach I take is that it does not allow me to easily appeal to the credibility of civil disobedience over more radical forms of protest and thus to argue that a liberal democratic criminal justice system ought to tolerate or respond more leniently to it than other forms of protest, or indeed ordinary offending. In response I should say that my thesis does not seek to outline the correct response the state should take to animal rights protest, I have sought to avoid straying into the waters of punishment and toleration for reasons of space and scope. Rather, my concern is with individual right action in response to political injustice.

degree of conceptualisation is unavoidable. Violent civil disobedience is distinguished from other forms of violence both by the conscientious and communicative aspects to it that I mentioned above, and which are derived from the principle of respect due to fellow citizens *qua* persons and to fellow sentient beings. A violent act that is unmindful of the good of others is not conscientious and therefore not civil. And a violent act that does not attempt to communicate a reason for the act is similarly disrespectful of the personhood of others. To be mindful of the good of others acts of violence must be constrained in terms of the range of targets, the level of violence used, and the steps which must be taken prior to violent means being chosen. I will say more about these constraints in Section 2.2 below. *Civil disobedience* as I use the term differs from acts of sabotage or rescue in that it is addressed at the political community. An act of sabotage or rescue can be made covertly and carried out without specific intent to change minds or laws. Thus, civil disobedience can fulfil the duty to work towards a just society in a way that non-civilly disobedient, i.e. non-communicative rescue and sabotage cannot. However, I do not wish to claim that acts of rescue or sabotage cannot be directed at the political community and cannot count as acts of civil disobedience. Instead, what I do wish to claim is that there is a conceptual difference between an act carried out with the primary intent of communication, and one that is carried out with the primary intent to rescue or to damage the infrastructure of harm,³⁴ and that acts with different intended consequences require different justifications. I will draw out the justifications for rescue and sabotage in Chapter 5.

34 One potential concern in using acts of rescue as communicative tools is that it risks instrumentalising the objects of rescue. Whilst I raise this concern, I will not address it further.

2.1 Civil disobedience and animal liberation

The kinds of civilly disobedient acts carried out by animal rights activists are many and varied. They include marches; protesting outside of and picketing stores, laboratories, and homes; arson of buildings; splashing paint on fur clothing; vandalism to homes and vehicles; graffiti; contaminating products; and disrupting phone and email communications and hacking websites of companies involved in harming non-human animals. In one infamous UK case the remains of the grandmother of a farm owner who bred Guinea Pigs for supply to laboratories were stolen by activists.³⁵ These actions are carried out with a number of different aims in mind. Activists hope to highlight their moral cause, which they feel has been neglected, treated with insufficient seriousness, or not given enough weight in moral discourse. Often they feel that the efficacy of animal testing has been overstated for commercial reasons and wish to highlight this fact (I do not intend to debate the efficacy of animal testing here, whether it is efficacious does not in my view count as a sufficient justification for its practice). So there is a desire to communicate both the moral argument against using non-human animals as the means to human ends or treating non-human animals cruelly, and to express the view that the interests of non-human animals and the views of civil disobedients have not been given sufficient airing or consideration.

Communicative acts draw attention and magnify the message (whether they do so in a positive manner is not the issue here). Additionally, some of the acts listed above, such as targeting the homes of scientists, the businesses who invest in or profit from experimentation, and the consumers who purchase goods such as fur coats are all acts

35 Nick Britten, "Pensioner's Body Stolen by Animal Rights Group Is Found - 'Telegraph,'" *The Telegraph*, n.d., <http://www.telegraph.co.uk/news/uknews/1517356/Pensioners-body-stolen-by-animal-rights-group-is-found.html>.

aimed at coercing a change in behaviour by damaging financial interests or inducing fear.

Non-violent acts intended to communicate a message or express dissatisfaction are perhaps the least problematic to justify of the types of actions carried out by civil disobedients. They can be justified on grounds that the political process, or communicative channels, such as the media, are weighted against arguments in the interests of non-human animals, or do not adequately convey the seriousness of conviction held by protesters or the degree of harm caused to non-human animals. If those who profit from harm to animals are able to exert greater influence because the profits they gain from harming non-human animals enable it, or if media channels adopt cultural norms disfavouring non-human animals, (and the evidence seems to show that both of these are the case)³⁶ then the use of methods, such as civil disobedience, to convey moral messages may be justified. Acts which invoke fear or involve violence require greater justification.

2.2 Violent disobedience

Whilst many theorists have argued that civilly disobedient acts which include violence are impermissible or are not really classifiable as civil disobedience, my own view is that these definitions are overly narrow and needlessly prescriptive. In this section I will describe the requirements that respect for others places upon the use of violence and explain how they can be met in cases of animal liberation protest. In discussing

36 Robert Garner, *Animals, Politics, and Morality* (Manchester: Manchester University Press, 1993), chap. 8.

violent acts – the sorts of acts which Audi describes as extreme physical or psychological attacks upon persons, animals, or property³⁷ – I have in mind the conceptualisation of violence developed by Bufacchi. Bufacchi conceives of violence as a violation of integrity³⁸ in that it takes away something from the object of the violent act 'therefore shattering the pre-existing psychological and/or physical unity that was in place before the violence took place'³⁹. Violence infringes upon the integrity of a thing; the being of an animal, or the physical or psychological unity of a person. Violence is not only harmful, but also *prima facie* wrong or bad and thus special justification is needed to overcome the moral presumption against violence. There is thus a question whether the presumption against violence can be overcome in order to defend non-human animals. If harms inflicted through violent protest can be shown to be proportionate, necessary, and directed against legitimate targets then the argument for their permissibility would be strong.

Many of the civilly disobedient acts carried out by animal liberationists take the form of violence against property or threats against the person,⁴⁰ and in some cases police officers have been injured during animal rights protests. In the introduction to my thesis I stated that over 3.6 million scientific procedures were carried out on non-

37 Robert Audi, "On the Meaning and Justification of Violence," in *Violence: A Philosophical Anthology*, ed. Vittorio Bufacchi (Hampshire: Palgrave MacMillan, 2009), 165.

38 Bufacchi refers to the non-moralised meaning of integrity and an idea of wholeness (Vittorio Bufacchi, *Violence and Social Justice* (Hampshire: Palgrave MacMillan, 2007), 41.)

39 Ibid., 46.

40 Unfortunately it is difficult to gather empirical evidence on the level of violence against property or the person carried out by animal rights activists in the course of their activities in the UK as the government and courts do not collect such data. In searching through newspaper reports I have been unable to find any instances where the objects of a threat from animal rights activists have been physically harmed.

human animals (specifically vertebrates) in the UK in 2009. Worldwide the figure is many more millions. The amount of harm caused to non-human animals through farming makes those numbers pale into almost insignificance. For example, approximately 75,000,000 tonnes of bovine, sheep, and goat meat per year are 'produced' in farms across the world⁴¹ - billions and billions of animal deaths. Now one could say that the level of meat produced is not relevant to the point about the level of violence. If it could be shown that all or most meat were produced in a humane way then this reply might gain some purchase, particularly if the position is taken that painlessly killing is not a violent act. At least according to Bufacchi's definition, killing, even painless, is without doubt a violation of the physical and psychological unity of a being and would count as violence. One could imagine that this definition of violence might come under some strain in the case of voluntary and assisted euthanasia, where consent has been given. The idea that such deaths are violence does seem to stretch the notion somewhat. However, I think it doubtful that if humans were killed in the same way as non-human animals in slaughterhouses – by being bled to death after the vessels in the neck are cut and following stunning via percussive delivery of a bolt to the brain or electric shock to the cortex⁴² – that there would be any hesitation in calling such a procedure violent. In the UK chickens are killed in assembly lines by suspending them from their feet into electrified water to stun them. Pigs are gassed with carbon dioxide. Chickens and pigs are immersed in scalding water to remove hair and feathers. In all cases, there is evidence that stunning methods can have variable results and that

41 Food and Agriculture Organisation of the United Nations, *FAO Statistical Yearbook* (New York: The United Nations, 2010).

42 It should also be noted that in the UK Halal and Shechita slaughter practices are permitted, which see the animals being bled to death without any form of stunning.

stunning is often carried out unsuccessfully.⁴³ Methods of slaughter and stunning are selected by balancing meat quality against the effectiveness the methods used.⁴⁴ Neither should the practice of slaughter be considered in isolation from the whole process of producing animals for food, their rearing, transport to slaughter, pre-slaughter captivity, and eventual deaths. In the UK, where around 100,000 cattle, sheep and pigs are slaughtered in abattoirs every single day, the Department for Environment, Food and Rural Affairs (DEFRA) are currently considering installing CCTV cameras in abattoirs after shocking levels of animal abuse in them were uncovered by an animal rights charity.⁴⁵ The UK has some of the highest animal welfare standards in the world – elsewhere factory farming is prevalent, and welfare standards in slaughterhouses are far lower (if they are regulated at all). Furthermore, as I mentioned above, farming is not the whole story. Acts of animal liberation tend to be carried out not to rescue farm animals, but to rescue those held in laboratories where the levels of cruelty are considered by activists to be far higher. As I highlighted in the introduction to my thesis, the vast majority of licensed procedures carried out on non-human animals in laboratories are done without anaesthetic.

Nevertheless, it is conceivable that animals may in some cases, or in the future, be

43 Temple Grandin, “Progress in Livestock Handling and Slaughter Techniques in the United States, 1970–2000,” in *The State of the Animals 2001*, ed. Deborah Salem and Andrew Rowan (Washington D.C.: Humane Society Press, 2001).

44 B. Nowak, T.V. Mueffling, and J. Hartung, “Effect of Different Carbon Dioxide Concentrations and Exposure Times in Stunning of Slaughter Pigs: Impact on Animal Welfare and Meat Quality,” *Meat Science* 75, no. 2 (February 2007): 290–298.

45 “Cruelty to Farm Animals Should Come as No Surprise | Alasdair Cochrane | Comment Is Free | Guardian.co.uk”, August 5, 2011, <http://www.guardian.co.uk/commentisfree/2011/aug/05/cruelty-farm-animals-slaughterhouse>.

raised and killed in ways which could escape classification as violent (although this would require adopting a broader definition of violence, such as that of Audi which, as mentioned earlier, encompasses extreme physical or psychological attacks upon persons, animals, or property). However, such acts would still violate the principle of respect for another being with a good of its own. It is commonly considered that by violating a deontological constraint to do harm against another, an agent forfeits his protection under the same principle. So if I breach my duty not to harm you by launching a punch at your face, you are no longer under a duty not to harm me in your own defence. The same principle applies to third-party Samaritans. Thus, under the respect principle, even the treatment of a non-human animal not conceived of as violent, but which nevertheless treats it as a mere means to human ends could generate a duty to aid and make violent civil disobedience permissible.

However there remains a question about proportionality. Proving that meat production, or vivisection is violent does not prove that it is on a par with all civilly disobedient violent acts carried out in protest. How one weighs up the lives of millions of non-human animals, with a calculation about the levels of harm they have, or are likely to receive, against the limits of what might be permissible in their defence is an open and perhaps impossible question. But it seems relatively straightforward to me to say that violence against property and other actions which fall short of physical harm against culpable persons are unlikely to meet a threshold of dis-proportionality given the scale of violence, and the lack of respectful treatment towards non-human animals in captivity.

One potential defence against this claim is to argue that whilst treatment of non-human animals is violent and does violate the respect principle, violent disobedience is not the correct response to it because it is unnecessary. Deontological constraints are not inviolable, rather they are nearly so and may be overcome when it is necessary to do so – as in the case of violent acts of self defence. To be necessary, breach of these constraints must be the only reasonable way to urgently prevent a further unjustifiable breach. Thus, if the only way to prevent an innocent from imminent harm is to harm their attacker, then the duty not to harm the attacker can be overcome so long as no more harm is done to them than is necessary to prevent their own intended harm.⁴⁶ Thus, we must ask the question if acts of violent civil disobedience are necessary in order to aid creatures who have value in themselves? A standard condition of permissible civil disobedience, particularly violent disobedience, is that all other avenues have been pursued and failed.⁴⁷ The reason that other avenues must be pursued is that violence is *prima facie* wrong and requires strong justification, justification that is strengthened by the failure of non-violent methods. To attempt civil disobedience, particularly violent disobedience, without first engaging in attempts at non-coercive

46 One question raised by this line of thinking is whether there is a duty to attempt to prevent harm (and cause harm in the process) even if it isn't possible to prevent the attacker's harm? If the duty to intervene can be separated from the harm prevented to the victim then would seem that there are reasons to intervene that are internal to the agent and unrelated to the good of the victim. The arguments I lay out in this thesis are concerned with how the good of non-human animals creates duties in us, not whether our conduct towards them should be determined by what is virtuous. What is at stake in cases of other defence in my argument is the urgent need of the victim, not the character of the bystander. Harming another engaged in an attack on an innocent cannot be motivated by the good of the victim if the harm done by the attacker to the victim is unpreventable. Rather, it would seem to be connected with some other attitude: retribution, the maintenance of a virtue, or something else. Whilst these may yet be fitting attitudes, they are not justified by reference to harm prevention.

47 cf. Rawls' last resort condition Rawls, *A Theory of Justice: Revised Edition*, 327–328.

persuasion demonstrates a lack of respect for the good of persons as the kinds of beings who can give and respond to reasons. Similarly, if viable non-violent courses of action are open, then pursuing violence would be wrong. Certainly, animal rights organisations engage in programmes of continual lobbying, awareness raising, and campaigning through the normal democratic channels. And animal welfare levels have clearly improved. But the figures above show that the level of animal suffering remains almost unimaginably huge and the pace of change is obviously happening too slowly for those animals currently suffering and likely to suffer in the future.

It could be argued that in a democratic society it is not possible to exhaust democratic means of bringing about change; the periodic election of new governments and the continual legislative process means that change is always possible. However, as Alan Carter discusses: the possibility of changing an unjust law in defence of other species may be available but only in theory⁴⁸ because, whilst the legislative process makes it procedurally possible, there is insufficient will or desire amongst legislators or electors to do so. That is there may be a *de jure* means to change laws but these can never be *de facto* realised. Therefore, whilst mechanisms to change laws may exist, their existence does not provide an overriding reason for obeying the law because the possibility of changing unjust laws may not be realisable. Furthermore, it is usually necessary to change opinions before the law can be changed and it may well be that civil disobedience is the only remaining or effective means to do this.⁴⁹ A reasonable case for the moral necessity of civil disobedience in defence of non-human animals can

48 Alan Carter, "In Defence of Radical Disobedience," *Journal of Applied Philosophy* 15, no. 1 (1998):

34.

49 Ibid.

therefore be made.

The targets of animal rights protests are governments, private individuals (such as people who wear fur), those who cause harm directly (farmers, scientists, breeders), and those with economic interests in systems of animal abuse: company shareholders, suppliers, employees, directors and owners. In each of these cases, a causal link can be established between harms done and the targets of protest. However, it is also inevitable that ostensibly innocent people will have (or have had) their interests or property harmed by civil disobedience. The permissibility of causing harms to these people may be strengthened if complicity⁵⁰ in harms to non-human animals can be shown. Comparing the number of people who are vegan or vegetarian (or even conscientious omnivores) to those happy to consume animal products and enjoy the benefits of animal research, and inferring from the present state of animal protection legislation, indicates that most people approve of harmful, but legal, practices towards non-human animals. Furthermore, they regularly contribute money to receive those benefits and resist proposals for radical change. The numbers of potentially illegitimate victims of harms caused by civil disobedience in protest against harms to non-human animals are thus fairly low, and the majority or targets can be shown to be responsible to some degree for the harms protested against.

Having built some of the case for permissibility of civil disobedience in defence of non-human animals, including violent disobedience, I now want to explore some of the features of non-human animals that mark out civil disobedience carried out in their

⁵⁰ The issue of culpability, particularly where violence is directed at persons, is a complex one, and I will discuss it in some detail later on when I address acts of rescue.

defence from other kinds of civil disobedience. The section below therefore examines the relationship between citizens and non-citizens within a political community, and between persons and non-persons.

2.3 The special status of non-human animals

A political community may be just, or nearly just in its laws insofar as its citizenry is concerned. And I take it, as a conceptual claim, that the basis for the legitimacy of an ideal liberal democracy is that it is just, or nearly just. In non-ideal circumstances it should be working towards being just or nearly just. Certainly, I think that the assumption with liberal democracies is that the commitment to freedom and equality, enshrined in the law, makes them just or nearly just. The fact that its citizens are treated in a nearly just manner can easily lead to the conclusion that the community is a just one. But appearances can be deceiving here because political communities encompass and affect a range of people and other beings; citizens and non-citizens. Not only are there many non-citizens living within them such as asylum seekers and refugees, immigrants, tourists, and foreign students, but the consequences of actions carried out within a state's borders can have far reaching consequences beyond them – cross border pollution is a paradigm example. Arguments against civil disobedience grounded in obligations to other members of a political community are therefore insufficient to render protest against harms to non-citizens impermissible.

Non-citizens⁵¹ may bear the burdens of a political community's cooperative activity

51 My arguments may also apply to different classes of citizenship ranging from partial to full – such as with children, prisoners, the mentally ill, etc.

without receiving any or all of the benefits. It appears then that under many of the justifications for political obligation outlined above the non-citizen living within a host territory would have a far weaker obligation to obey the law than the citizen.

Asymmetries in power to affect decision-making between citizens and non-citizens are in many ways both inevitable and desirable – we do not wish to give democratic control over our nation's defence policy to an external power. However, they also lead to injustice where innocents are harmed by the actions of the *polis*. Asylum seekers, economic migrants, and international students can all protest injustice, engage in civil disobedience, and make appeals to legal bodies. Whilst they are more vulnerable than the citizen, they are not defenceless and they can at least make their voices heard.

Non-persons are in a far more precarious position. Whilst non-persons have no obligation to obey the law since they are incapable of being obligated and therefore of breaking the law, nevertheless they may still become victims of unjust laws and suffer for that. At the same time, unlike persons who are not citizens, non-persons cannot speak up for themselves, present a case, engage in disobedient acts, leave a territory for somewhere safer (in most cases), and are for all practical purposes defenceless and powerless. Non-persons are utterly reliant upon persons to represent them and their interests. Carter expresses the situation thusly: 'there is an indeterminate class of people who cannot participate in *any* democratic polity that we might construct. Yet we can affect that class even to the point of determining its size'⁵². Carter refers to unborn humans as well as future generations and other species (he overlooks non-citizens). Whilst non-humans and future generations have their well-being affected by

52 Carter, "In Defence of Radical Disobedience," 37.

political communities that they are not a part of, and are defenceless against, 'it is impossible for future generations to be civilly disobedient now on their own behalf, just as it is impossible for them to participate in our present decision-procedures'⁵³. I do not intend to be drawn into the metaphysical and epistemological problems associated with the interests of future generations (I discuss this in a following subsection), but the point Carter makes here is equally relevant to non-human animals; their interests are demonstrably harmed by decisions over which they have no control and no way of protesting against. And as Carter writes of future generations 'it is impossible for us to obtain their consent to our acting against their interests. Hence, it could be argued, we have no justification for acting against their basic interests when it is unnecessary in meeting our own'⁵⁴. That a political community can have a profound harmful impact upon those outside the community, or those who live within it as non-citizens, imposes a duty upon that community to consider the interests of those others in its conception and institutions of justice.

There are a number of arguments which could be raised against this position and I will now work through some of the strongest of them. Showing that laws permitting or requiring harm to animals are either just, or at least do not constitute a severe and sustained injustice, would be one way of rendering civil disobedience impermissible on the grounds discussed so far. Given what I have said so far: that it is not possible for a political community to be both just and at the same time permit the harmful treatment of non-human animals as mere means to human ends, this argument is not available to the critic. Neither does it seem possible to show that laws permitting or requiring

⁵³ Ibid.

⁵⁴ Ibid.

animals to be harmed are necessary to the maintenance of justice. Thus, it cannot be argued that meeting aims of civil disobedience protesting harm to non-human animals would necessarily bring about an unjust society.

Another avenue the critic might pursue is that protesters benefit from systems that use animals as resources to benefit humans through the goods produced, the economic outputs, or the fruits of research. The civil disobedient could of course respond by repeating some of the arguments discussed in the section above on political obligation – that the benefits received are unsought and are either refused or would be refused if it were possible to do so. This would seem to place a condition on permissible civil disobedience that disobedient actors protesting in defence of animals refuse (where possible) to accept benefits derived from harms to non-human animals. In addition, civil disobedients could argue that the benefits that citizens receive are impermissible benefits and thus acting out of gratitude or a sense of fairness are inappropriate responses. I say more about impermissible benefits in my discussion of rescue acts in the next chapter. The benefits derived from harms done to non-human animals cannot be used to require the support of institutions that permit or require these harms.

Two further types of argument might yet succeed in rendering civil disobedience impermissible; each is more convincing than the ones raised above. I discuss them in order. The first of these argues that it is wrong for a minority to impose the view that it is wrong to harm non-human animals when this view is not widely held by the majority (the *democratic argument*). The second is that the harms done to non-human animals are in their interests and constitute a fair distribution of the benefits and

burdens of social cooperation. Civil disobedience on their behalf thus harms non-human animals, rendering it impermissible (the *opportunity of life argument*). I will show that these two arguments are mistaken.

2.4 Procedural unfairness and majoritarianism

According to the *democratic argument* it is wrong for a minority to impose its views upon a majority, and civil disobedience, as an attempt to affect political change, constitutes such an attempt. Therefore civil disobedience is wrong. The *democratic argument* of course depends upon having determined that democratic institutions are intrinsically just, and on determining that such a minority imposing a view is, by nature, undemocratic. In this section I put aside the arguments for strong deontic constraints protecting non-human animals and instead argue that civil disobedience in defence of non-human animals can be defended on grounds that it challenges procedural unfairness. Indeed, I also draw attention to claims that civil disobedience can benefit democracy and may even be necessary for it to function well.

In reply to the *democratic argument* the liberationist might argue that there is some kind of procedural unfairness present which prevents the majority decision from being legitimate. Garner and Singer both take this tack in their discussions of civil disobedience, with Garner arguing that disobeying the law may be permissible when decisions have been taken democratically, but without a proper hearing being given to one viewpoint, or if all of the facts which should have been relevant to the decision have not been available.⁵⁵ In the case of animal rights this defence could be used

55 Garner, *Animals, Politics, and Morality*, 230.

because 'the use of animals in scientific procedures is a notoriously secretive business and there is a strong case for saying that the anti-vivisection case is not heard properly as long as the public is not allowed to see and read about what goes on in laboratories'⁵⁶. This defence of disobedience however limits actions to those aimed at correcting the procedural unfairness such as drawing attention to information that has not been properly discussed. But democratically taken decisions can also be influenced by those with the greatest lobbying power due to their wealth or connections. In light of this Singer writes that if sections of the polis 'should find themselves faced with a law which they opposed, but which was passed because of the disproportionate influence of other groups, they cannot be urged to obey on the grounds that the pressure group system was a fair compromise'⁵⁷. Garner's view is that in the case of animal interests the odds are stacked against them unfairly, justifying some forms of civil disobedience on these grounds.⁵⁸ The arguments below will be generalisable in support of civil disobedience on many issues, but the evidence I present illustrates how civil disobedience in defence of non-human animals in particular can be justified on grounds of procedural unfairness.

If we look at some of the evidence on lobbying, defined as legal attempts to influence policy or action by governments, then considerable credence is lent to the views of Garner and Singer. The figures and statistics below illustrate the ability of interest groups to use their financial power to disproportionately influence and shape the

⁵⁶ Ibid., 231.

⁵⁷ Peter Singer, *Democracy and Disobedience* (New York and London: Oxford University Press, 1974), 123–124.

⁵⁸ Garner, *Animals, Politics, and Morality*, 237.

political agenda, and to shut out minority views. For example: in the 1999-2000 United States electoral cycle the American Meat Institute contributed \$56,500 dollars to federal candidates through its Political Action Committee (PAC). In total agribusiness contributed \$4.3m of which \$1.5m went to Democrat candidates and \$2.8m to Republicans. Republicans received 64% of the donated funds from egg and poultry producers, 78% of the funds from livestock producers, and 84% of the funds from food processors. Taking these figures Marion Nestle has concluded that donations from food producers are preferentially directed at candidates likely to favour the corporate interests of the donors, pointing in particular to the fact that donations are targeted at members of the House and Senate Agriculture Committees.⁵⁹ Furthermore, Nestle found that 'members of the House of Representatives who received PAC funds from dairy industry groups were almost twice as likely to vote for dairy price supports as those who did not...the more money the members received from dairy PACs, the more likely they were to back price-support legislation'⁶⁰. In Europe the Confederation of Food and Drink Industries in the EU (made up of national federations, major food and drinks companies, and European sector associates with voting rights according to their financial contributions) had a budget in 2006 of €3.737m and 'enjoys direct high level contacts with members of the Commission, MEPs, and EU presidency representatives, estimated at an average of fifty-one a week involving the president or the chairs or leading members of policy committees'⁶¹.

59 Marion Nestle, *Food Politics: How the Food Industry Influences Nutrition and Health* (Berkeley, Los Angeles and London: University of California Press, 2007), 102–103.

60 Ibid., 104.

61 Wyn Grant and Tim Stocker, "Politics of Food: Agro-Industry Lobbying in Brussels," in *Lobbying the European Union: Institutions, Actors, and Issues*, ed. David Coen and Jeremy John Richardson (Oxford and New York: Oxford University Press, 2009), 239.

The amount spent by groups fighting for improved animal welfare or the abolition of farming and testing is considerably smaller⁶² than those outlined above, which adds credibility to the assertion that democratic procedures are weighted against a fair and balanced consideration of animal interests (or at least the views of those concerned for their interests). This in turn provides reasons for thinking that civil disobedience can be justified on grounds that in particular cases a pluralistic democracy can disproportionately favour particular interest groups and result in policies which have not been subject to a fair decision-making procedures.

Indeed, it may even be the case that civil disobedience may not merely be justified by deficiencies in procedural democracy,⁶³ but also that civil disobedience is good or even necessary for healthy democracy. This sort of argument has been advanced by a number of key authors. Maurice Keeton, for instance, argues that where legal means of affecting peaceful change are inadequate civil disobedience can be both useful and necessary.⁶⁴ And just as Rawls argues that civil disobedience, by acting as a corrective against just institutions becoming unjust, can maintain and strengthen those institutions,⁶⁵ so William Smith describes how civil disobedience helps prevent

62 There not been systematic research into the amount spent lobbying on behalf of non-human animals, however the sums available in the annual reports of groups like Compassion in World Farming, which spends 30% of its income (its income totalled £4.4m in 2009) on lobbying and campaigning and European Coalition to End Animal Experiments indicate that the figure is comparatively low compared with the combined spend of agricultural and food, cosmetic, chemical, and pharmaceutical industries. Furthermore, groups lobbying for better treatment of non-human animals are fragmented along welfarist (Compassion in World Farming) and abolitionist (European Coalition to End Animal Experiments) lines.

63 cf. Daniel Markovits, "Democratic Disobedience," *Yale Law Journal* 114 (2005 2004): 146 and 152.

64 Morris Keeton, "Morality of Civil Disobedience," *Texas Law Review* 43 (1965 1964): 507.

65 Rawls, *A Theory of Justice: Revised Edition*, 336.

prevailing orthodoxies stifling and excluding new ideas and directions in the public sphere.⁶⁶

If the *democratic argument* cannot succeed in rendering disobedience impermissible then perhaps what is known as the *opportunity of life argument* can succeed. This argument is perhaps the most convincing of those offered and so I will devote considerable space to unpicking and rebutting it.

2.5 The Opportunity of life

One way that it might be argued that the use and treatment of non-human animals constitutes a fair distribution of the benefits and burdens of social cooperation, which takes into account the interests of non-human animals, is what Milligan labels the *opportunity of life argument*.⁶⁷ In essence this argument attempts to show that the harms done to non-human domestic animals are in their interests. That is not to say that farming animals, or experimenting on them are done in the interests of the animals themselves, but nevertheless, in bringing them into existence they have had the opportunity to live a life, and if life is valuable for its own sake, or if a good life is valuable and it can be shown that they live a life of reasonable quality, then although they are being used as a means to human ends they are nevertheless having their interests met at the same time. Milligan quotes Leslie Stephen to characterise how the *opportunity of life argument* is often expressed: "The pig has a stronger interest than

⁶⁶ William Smith, "Civil Disobedience and the Public Sphere," *Journal of Political Philosophy* 19, no. 2 (June 1, 2011): 146 and 152.

⁶⁷ Tony Milligan, *Beyond Animal Rights: Food, Pets and Ethics* (London: Continuum, 2010), 30.

anyone in the demand for bacon. If all the world were Jewish, there would be no pigs at all⁶⁸.

I begin my argument *vis a vis* the *opportunity of life argument* by asking whether the life of a farmed non-human animal can be considered worthwhile for it, and I do so by comparing the life of a farmed animal with that of a wild one. After concluding that, whilst it is possible for animals to live pleasant lives as farmed animals, it is not the norm that they do, I use Parfit's *Non-Identity Problem* to argue that no harm is done to non-human animals by bringing them into existence as farmed animals, but by the same token no harm is done by abolishing farming either. In other words, if the loss of farming results in there being 'no pigs at all' no pigs are wronged in the process. Notwithstanding that animals may well benefit from being brought into existence and living a minimally decent life, I go on to show two things. First, I show that it is impermissible to kill non-human animals for human use since it violates the constraint against using them as a mere means to an end. And second: I show that, because it violates the respect principle, the forced benefit in living granted by being farmed should not be considered a fair trade for being prematurely killed.

2.5.1 Do captive animals live worthwhile lives?

Milligan's response to the *opportunity of life argument* is to make the convincing claim

68 Ibid., 32. The same quote is also used by Singer in his treatment of the same topic (Singer, *Applied Ethics*, 105.). The *opportunity of life argument* could also be applied against acts of sabotage and rescue, although, given the focus of rescue acts is directed at saving presently existing individual animals, and the *opportunity of life argument* concerns structural elements the animal industry over time, it would more be difficult to straightforwardly apply against rescue acts.

that the benefit to farmed animals of being brought into existence is contingent upon the lives they go on to lead being good one. He writes:

those creatures that do come into a worthwhile existence as livestock may perhaps be said to have a genuine interest in the continuation of the meat rearing system if they would not come into a worthwhile existence without the latter'.⁶⁹

Presently existing farm or laboratory animals can therefore be said to have benefited by being brought into existence. However, unless life is valuable for its own sake, this benefit is contingent upon whether the lives of said animals are worth living. That non-human animals do lead lives worth living cannot of course be assumed and so I now turn to the question of whether their lives are indeed worthwhile.

The belief that they are leads to a forceful articulation of the *opportunity of life argument* from Roger Scruton, who writes:

I find myself driven by my love of animals to favour eating them. Most of the animals which graze in our fields are there because we eat them. Sheep and beef cattle are, in the conditions which prevail in English pastures, well-fed, comfortable and protected, cared for when disease afflicts them and, after a quiet life among their natural companions, dispatched in ways which human beings, if they are rational, must surely envy. There is nothing immoral in this. On the contrary, it is one of the most vivid triumphs of comfort over suffering in the entire animal world. It seems

69 Milligan, *Beyond Animal Rights: Food, Pets and Ethics*, 39.

to me, therefore, that it is not just permissible, but positively right, to eat these animals whose comforts depend upon our doing so.⁷⁰

Scruton's argument depends upon a rather romantic view of farming practices and numerous of his assumptions: that cattle are cared for when disease strikes, live in comfort, are killed 'enviably', and experience far less suffering than they otherwise would (i.e. if they lived in the wild), are wide open to challenge. In what follows I discuss and refute Scruton's assumptions. Later I also challenge the view that it would be right to kill these animals even if it were true that they lived such blissful lives as he fancies.

It is easy to overstate the benefits to livestock that Scruton claims above. Poor conditions and harsh treatment of livestock are prevalent across the world, and there is little doubt that animals in farms and laboratories suffer terribly. Disease and injury are usually only cured or prevented when it is profitable to do so. For example, Foot and Mouth Disease is a disease affecting livestock that is usually not fatal, is preventable through vaccination, and is curable. Yet vaccination against Foot and Mouth is not considered cost-effective, and so when an outbreak of the disease hit UK cattle in 2001 6-10 million sheep and cattle were killed, most of whom showed no signs of the disease and were destroyed merely as a precaution.⁷¹ No doubt there are farms where non-human animals live a contented, reasonably long life and are well cared for, but this is

⁷⁰ Scruton, *Animal Rights and Wrongs*, 100.

⁷¹ The Food and Environment Research Agency Department for Environment Food and Rural Affairs (Defra), "Defra, UK - Foot and Mouth Disease - Information Page", n.d., <http://footandmouth.csl.gov.uk/>.

not the norm. For most domestic animals not bred as companion animals the benefits they gain are limited.

As Milligan points out, to succeed the *opportunity of life argument* must show that the life an animal will live in a farm or laboratory is worth living.⁷² To say that a potential animal might have an interest in a life of suffering is clearly wrong, and we can say with some certainty that the conditions required for a good life are not met in most farms – certainly not in intensive factory farms,⁷³ or in scientific laboratories. The trade-off for the animal is a reasonably fixed, but short, lifespan in a farmed setting rather than an indeterminate lifespan in a wild setting and it does not seem at all obvious that such a trade-off best serves the animal's interests in most cases.⁷⁴ One way of illustrating this is to compare the life of a farmed animal with that the wild one, which proponents of the *opportunity of life argument* might have us believe is less desirable for the animal than its farmed existence.

2.5.2 The good of living wild

Unfortunately it is far from easy to demonstrate that the life of a farmed animal is significantly better than that of a wild animal, even if we assume as reasonably good and contented, if shortened life⁷⁵ for the farm animal. A farmed animal living a good

72 Milligan, *Beyond Animal Rights: Food, Pets and Ethics*, 32. Although this is Milligan's argument, it is more correct to say that the *opportunity of life argument* implies only that the mere opportunity for life, however bad that life may be, is valuable. I address this contention in the next section

73 Ibid., 33–34.

74 Ibid., 32–34.

75 A cow's natural lifespan averages 15–25 years, whilst a dairy cow lives for 3–5 years (“The Destructive Dairy Industry,” *Born Free USA*, n.d., <http://www.bornfreeusa.org/facts.php?>

life will enjoy freedom from starvation, extremes of cold and heat, it will be at lesser risk of disease and injury, and it will not risk predation until a certain point in its life is reached. It may even be guaranteed a painless death. On the other hand, it may lose the use of capacities essential to its flourishing, such as flight for farmed birds. Neither is it certain that a wild animal will suffer disease, hunger, injury or painful death – these things are risks for which we have no measure of likelihood.⁷⁶ The question of whether a farmed life is better than the life of a wild animal is an open one – it cannot simply be assumed by those adopting the *opportunity of life argument*. Indeed, if ideal farming conditions are not assumed then there is every likelihood that the life of a wild animal is better for that animal than one in captivity.

2.5.3 Wrongful life and the Non-Identity Problem

Unfortunately, the solution to the *opportunity of life argument* is not as simple as this.

more=1&p=373.), a beef cow 15-20 months (“Cows / Animal Liberation Victoria”, n.d., <http://www.alv.org.au/issues/cattle/cattle.php>), and a cow used for breeding 7-9 years.

- 76 The view that wild animals live in a Hobbesian state of unrelenting conflict, suffering and hardship as suggested by writers like Dennett (Daniel C. Dennett, *Darwin’s Dangerous Idea: Evolution and the Meanings of Life* (London and New York: Penguin, 1996).), Dawkins (Richard Dawkins, *River Out Of Eden: A Darwinian View Of Life* (London and New York: Basic Books, 1996).), and Williams (George Willams, “Mother Nature Is a Wicked Old Witch,” in *Evolutionary Ethics*, ed. Matthew H. Nitecki and Doris V. Nitecki (New York: SUNY Press, 1993).) is challenged by Balcombe. Balcombe argues that the lives of wild animals are often filled with satisfaction – evolutionary development has directed animals to seek useful and desirable things and not simply to avoid danger. In surviving and gaining the things that they strive for: food, shelter, sexual congress etc. non-human animals experience pleasure and lead fulfilled and enjoyable lives (Jonathan Balcombe, *Second Nature: The Inner Lives of Animals* (New York: Palgrave Macmillan, 2010), 143–162.). Furthermore, the level of hardship faced in the wild is overestimated (partly because humans see the lives of wild animals through the lens of the wildlife documentary, which focuses on the dramatic aspects of life) – in species often portrayed as facing constant threat of predation, such as antelopes, the chances of avoiding predation are 90-96 percent in any given year (Ibid., 150.).

As Parfit's *Non-Identity Problem* illustrates, determining whether farmed or laboratory animals are harmed by comparing their lives with the ones they might have lived if born wild may not be possible. In brief, the *Non-Identity Problem* rests upon the premise that which particular future people will come into existence is dependent upon any number of factors relating to the time of conception. Changes to factors relating to conception also change who will be born. If a woman delays conceiving a planned baby for a month, the baby born will grow into a different person than the one who would have been born if conceived a month earlier. Since the person who would have been born had we not changed things does not come into existence, we do no harm by making these changes (assuming a person-affecting view of morality). Thus, actions which lead to beings being born into harmful states as a result of actions taken up until their birth cannot be said to have wronged them (assuming they have lives worth living) since if the actions had not been taken they would not have existed. In the case of farm animals, the *Non-Identity Problem* shows that non-human animals are not wronged by being brought into farmed lives rather than wild lives, since they would not be the same individual creatures if they had been. Of course, by the same token it cannot easily be that coming into existence counts as a benefit for future animals. One way around this is to take the *prior existence view* adopted by Milligan (and Singer),⁷⁷ which I will examine now.

The *prior existence view* makes judgements about whether harms are done to beings based upon the assumption that they will exist prior to any decisions taken that might harm or benefit them.⁷⁸ If farming is assumed, then under this view it is possible to

⁷⁷ Peter Singer, *Practical Ethics* (Cambridge University Press, 2011), 88–89.

⁷⁸ Ibid., 88.

argue that those brought into existence by it are benefited. Milligan uses the *prior existence view* to conclude that farming serves the interests of potential animals prior to their existence⁷⁹ and attempts to balance these future interests against those of presently living farm animals, whose interests in continued existence and a good life are threatened by farming. He concludes that the interests in coming into existence balance against the interests in continued pleasant existence resulting in stalemate⁸⁰ that neither favours nor disfavors the abolition of farming practices. Milligan's answer relies upon being able to show that presently existing animals live a minimally decent life, and it makes assumptions about parity of numbers between present and future animals (ones which do not seem remotely convincing given the numbers of creatures who will come into existence compared to the ones that currently exist). More importantly, whilst the *prior existence view* might help answer whether farming practices benefit future animals created by them, it is not truly appropriate to answering whether ending farming practices wrongs or harms future beings because it does not really escape the *Non-Identity Problem*. An argument that farming practices should be continued because they benefit future beings begs the question if the benefits it assumes require that farming is continued. This point, is made by looking at Joel Feinberg's examination of the interests of future generations in an argument that re-frames the debate in more convincing terms.

In his essay on 'The Rights of Animals and Unborn Generations' Feinberg argues that, whilst it makes sense to protect potential interests of future beings, those interests are contingent upon their coming into existence and no wrong is therefore done by

⁷⁹ Milligan, *Beyond Animal Rights: Food, Pets and Ethics*, 37.

⁸⁰ Ibid., 39.

preventing a being from existing.⁸¹ Thus, we predictably harm some indeterminate future being by placing a bomb that will explode at a future date, or by failing to leave enough and as good for future generations, but we wrong no one by taking birth control pills. This is because there are no present interests of future generations and hence there is no interest in coming into being.⁸² One cannot be better off by being born since a non-existent being lacks properties about which it can be said are better or worse off. If this is true, then ending practices which bring non-human animals into existence to be used as mere means to human ends harms no animals.

The obvious response to this is to drop the commitment to a person-affecting view of morality in favour of a consequentialist aggregation of utility. If this is done then the rightness or wrongness of ending farming can be determined by calculating the overall total good or bad in continuing or ending farming. Of course, to do this and conclude in favour of farming one must assume that the disvalue in being killed is outweighed by the value in having lived. In order to argue this very point Singer has concluded that animal lives are replaceable, that is: if animal A is killed in a way that involves no suffering and at the same time animal B is brought into existence, and both A and B are comparable animals (in terms of their production of utility), then no overall harm is done. If animals are replaceable in this way then no moral wrong is done to them in killing them provided that they suffer no other harms along the way. Furthermore ending systems of farming prevents the replacement of animal lives and thus would count as an overall disutility.⁸³ This utilitarian conception of non-human animals as

81 Feinberg, "The Rights of Animals and Unborn Generations," 170–172.

82 Ibid., 172.

83 No mention so far has been made of the disutility of farming – the environmental impact of

replaceable receptacles of utility appears⁸⁴ to be a view shared by Scruton, who argues that there is no objection to be made in 'humanely' prematurely ending the life of a non-human animal that has lived a well cared for and enjoyable life because that animal, in enjoying life, has produced a 'positive addition to the sum of joy'⁸⁵. He adds: 'a good farmer, rearing sheep and cattle on pasture, and free range chickens for eggs, contributes more to the sum of animal welfare than a thousand suburban dreamers, stirred into emotion by a documentary on television'⁸⁶.

We certainly would not think that the murder of a person is not wrong provided that the murderer fathers a child as a replacement (or better yet, manufactures a biological clone of his victim), but should we regard the killing of non-human animals as wrong in similar vein? After all, what makes personhood valuable is connected with the capacity to form rational and revisable life plans and to make choices in the pursuit of goals. Animals do not possess these capacities. Singer's view is that the killing of any sentient being, human or otherwise, is permissible if that being lacks 'the capacity to desire to go on living'⁸⁷ - that is to say that it has no preference for continued existence. Death, under this view, can therefore be thought of as compatible with an animal's

flourishing. If animals are not harmed by being painlessly killed, then it is not wrong to livestock farming is far greater and far less efficient than that of plant-based food production. If the environmental costs are factored in it might turn out that ending livestock production produced a net utility within a consequentialist framework.

84 This classical utilitarian position, which aims at increased total happiness rather than increased average happiness, it is what Narveson refers to as the 'Total View' (cf. Jan Narveson, "Utilitarianism and New Generations," *Mind* 76, no. 301, New Series (January 1, 1967): 62.).

85 Scruton, *Animal Rights and Wrongs*, 104.

86 Ibid., 105.

87 Peter Singer, "Killing Humans and Killing Animals," *Inquiry: An Interdisciplinary Journal of Philosophy* 22, no. 1 (1979): 153.

kill them, and therefore farming them can be considered a benefit. Furthermore, it could even be argued that since being killed might not be harmful to them, there may not even be any burden associated with the benefits they receive and we could therefore say that non-human animals do better than humans in a system of political obligation based upon fair play or gratitude for benefits received. But why should we think that non-human animals of the sort we are concerned with in this thesis have no interest in continued existence? These animals do have an identity over time; they have emotions – fear, desire, pleasure, solicitude, happiness, etc.; they can form emotional bonds and antagonisms; some mourn losses; others have a theory of mind; they cooperate socially; have memories; and they learn.⁸⁸ Death for these creatures might not result in the destruction of the life goals and constructed lives that killing a person would cause, but it is demonstrably bad for them nonetheless.

It if is wrong to affect circumstances so that fewer beings are born than otherwise would have been, then the implication is that any programme encouraging birth control is wrong. Thus, the *opportunity of life* argument implies that it is wrong for environmentalists or those concerned with human welfare to promote education programmes encouraging voluntary birth control on grounds that current rates of population growth are unsustainable and will eventually lead to environmental destruction and human misery. Abstracting good producing actions from their impact upon particular beings in this way leads to Parfit's *Repugnant Conclusion* – it means the continuation of farming can be justified on utilitarian grounds even if a huge increase in animals being farmed would lead to them all living miserable lives, and it makes

88 cf. Chapter 1, Section 1.

ending farming wrong even if it harms no animals to do so. Just as Parfit does for human populations, I find the *Repugnant Conclusion* unacceptable for animal ones.

If we stick with Feinberg's argument and a person-affecting (or more correctly sentient-being-affecting) morality, and assume it takes care of whether ending farming would be wrong for animals, we are still left with a question over whether the continued existence of farming is good for non-human animals. One potential strategy is to tackle the assumption of a minimally decent life once more. To do this I ask if the life of a farmed or laboratory animal could be described as a 'wrongful life'. Following this I take the issues raised as a platform to illustrate that whilst non-human animals may not be wronged by being brought into existence as farmed or laboratory animals, they are often wronged in their continued existence and their deaths.

Non-human animals could be said to have been brought into 'wrongful life'⁸⁹ if the acts of an agent pre- their conception cause them to be harmed post conception and if it is reasonable to think that the lives they go on to live are not worth living as a result. Of course there remains a non-identity problem in wrongful life cases in that non-existence cannot be a better condition than life for someone because non-existence is not a condition that someone can be in. Feinberg, however, thinks that this apparent paradox can be explained away by looking at the problem in terms of the preferences of presently existing persons. Thus, he argues that it is intelligible to claim, without paradox, that non-existence might be objectively preferable to a life of hardship as

89 cf. Joel Feinberg, "Wrongful Life and the Counterfactual Element in Harming," *Social Philosophy and Policy* 4, no. 1 (1986): 145–178.

judged by a reasonable person.⁹⁰ For the sake of argument let us accept Feinberg's solution for the moment. Normally wrongful life cases are applied to instances where the fault for severe disability can be traced to the actions of someone pre-conception.⁹¹ If those acts caused foreseeable consequences then it is difficult to argue that no harm was done because there was no one to be harmed in existence at the time the act was caused (just as in the cases above of the person who pollutes the earth or sets a bomb to go off in the future). In order for such a life to be wrongful the burdens associated with living must be thought to outweigh the benefits gained by being alive. Can the lives lived by non-human animals be classed as wrongful ones?

It is easy to imagine that non-existence might be rationally preferable to a life spent being repeatedly operated upon, without anaesthetic, in a laboratory, or to being cooped up in a battery cage all of one's life. The lives of some captive animals are assuredly intolerable. But that is certainly not true of all of them, and it may not be true of most of them. But what of those that a reasonable person would prefer non-existence to? Wrongful life cases make sense when applied to cases where the actions of an agent affect the body or mind of the wronged person or being in some permanent manner, but they do not seem applicable when applied to beings brought into circumstances where the thing which makes life intolerable for them is the result of the continuing actions of an agent. Thus, we might correctly say that an animal born with foreseeable very severe disabilities as a result of some scientific procedure (such as cloning) counts as a wrongful life, but being born into a life as a dairy cow does not.

⁹⁰ Ibid., 158–159.

⁹¹ For a comprehensive discussion on the topic of wrongful life cases see Allen Buchanan et al., *From Chance to Choice: Genetics and Justice* (Cambridge: Cambridge University Press, 2001), chap. 6.

So, if a human were conceived with the intention of being sold into slavery, it is the post-conception wrong of selling them into slavery, and the actions of the slave owner during their continuing life that make things intolerable for them. The wrong to them is loaded post conception and post birth. The same applies to the majority of captive animals. The act of bringing an animal into existence to live the life of a farm or laboratory animal does not harm the animal so much as the continuing actions of agents later in its life.

I am forced to conclude that, under a *prior existence view*, being brought into existence counts as a benefit for farmed or laboratory animals. Similarly, if we ask if existing is a benefit for presently existing animals living minimally good lives as farmed or laboratory animals then I am forced to also concede that it does. Nevertheless, even if existence thanks to farming practices benefits non-human animals in one way, this does not imply that it is right to farm them nor that it is wrong to end farming practices. I have already argued that ending farming harms no future non-human animals, what I will now argue is that even if it is true that non-human animals benefit by being granted existence and a minimally decent life (or even the blissful life that Scruton fancies they lead) through farming, the killing and use of them for human benefit is nevertheless a) wrong, and b) does not count as a fair distribution of costs and benefits of social cooperation.

Without resorting to consequentialism and a view that the overall utility brought into the world can be abstracted from individual lives (and thus the disutility of killing can be offset by maintaining or increasing the number of lives in existence), the argument

that death for these non-human animals is not wrong cannot succeed. But, as I have argued, what is right lies not in overall utility abstracted from individual lives, but in respecting beings in the pursuit of their good for their own sake. It is hard to see how one can respect an animal and its flourishing by killing it for instrumental reasons, no matter how well it is treated before its death. It cannot be in the interests of a healthy sentient being to die in order to feed, clothe, or otherwise assist another being unless that being has set the good for the beneficiary of its death as part of its good and constitutive of its ends in a way that requires its death, and it is impossible for a being lacking personhood to do this. To regard loss of life as an acceptable burden to bear in return for the benefits of cooperation is to fall back to the specieisist 'Kantianism for humans, utilitarianism for animals' doctrine that I have argued against throughout this thesis. So, whilst a short, but happy life is clearly preferable to no life, this fact neither licences the killing of created life, nor makes it wrong to oppose a system that brings life into being for the purpose of ending it later. An insistence that a minimally decent farmed life is an acceptable benefit for a non-human animal to counteract the burden of being killed for human consumption, or used to produce human pleasure and nutrition, cannot be sustained without resort to speciesism.⁹²

The *opportunity of life* argument attempts to claim that the system of farming affords potential animals with a life they would not otherwise have and it is thus in their interests for the system to continue. Indeed, the benefit of life and security granted to domesticated animals can be claimed as a benefit of social cooperation for which short life (or use as a means of milk or egg production) can be considered appropriate

92 Unless it also holds that the same is true for many so-called marginal humans.

burdens to be borne in return. Furthermore, it could be concluded from this that to end a system which benefits animals in this way is wrong and thus civil disobedience against it is misguided. However, these arguments rest upon assumptions about the quality of life enjoyed by farmed and laboratory animals which are rarely met, or upon dubious and speciesist utilitarian calculations and incorrect claims about the moral replaceability of animal lives. The system of livestock production for human usage does not offer clear-cut benefits to existing animals: the difference between life as a farmed animal and that of a wild animal is far from obviously better in the former case, and clearly worse in many instances (such as for laboratory animals and intensively farmed animals). Whilst it can be argued that being brought into existence is a benefit (notwithstanding the *Non-Identity Problem*), that benefit does not licence the treatment of non-human animals as a mere means to an end during its continued existence. The idea that early death is an acceptable burden to impose for being brought into existence begs the question about whether it is permissible to use animals as a mere means to an end. It certainly is not in the interests of potential animals to be brought into a life of suffering, and that is precisely what awaits most animals born into domestication today. Furthermore, the idea that a few years of contented life constitutes a fair exchange for a being's life and body seems extremely dubious – a forced exchange on one thing for another of lesser value is unjust⁹³ and it is therefore not merely permissible, but also obligatory for moral agents to work to end this injustice.⁹⁴

93 Matthew H. Kramer and Hillel Steiner, "Theories of Rights: Is There a Third Way?," *Oxford Journal of Legal Studies* 27, no. 2 (June 20, 2007): 239.

94 For some arguments along similar lines to the ones made in this section see: Jeff McMahan, "Eating Animals the Nice Way," *Daedalus* 137, no. 1 (2008): 66-76.

Finally, I wish to make one further point, and that is to say that even if the *opportunity of life argument* is accepted – perhaps the reader is more convinced by consequentialism than I am – it still does not completely rule out direct action on behalf of non-human animals because it relies upon certain welfare conditions being met. This is a view that I think most proponents of the *opportunity of life argument* would have to concede.

Scruton for example goes as far as to argue that treatment of animals that leads to them living lives divorced from natural conditions and which destroys their appetite for life, in other words, which prevents them from flourishing to a significant extent, is wrong regardless of whether it is legal.⁹⁵ Thus, I do not necessarily need to disagree with Scruton and others who share his views in order to mount a defence of civil disobedience on behalf of non-human animals, although my case will be probably be stronger if I do.

2.6 Conclusions

This chapter has explored the foundations of political obligation and used them to determine whether it is permissible to carry out acts of civil-disobedience on behalf of non-human animals. I have concluded, building on arguments from previous chapters and, given the nature of the law and the injustice in a political system that treats non-human animals as mere means to human ends, that certain forms of civil-disobedience are indeed permissible. Permissible forms of civil disobedience are those consistent with treating people as ends in themselves, both as sentient beings with a good of their own, and as persons *qua* beings who can both give and respond to reasons. Thus acts which use individuals as a mere means to strike fear in others, or pay no heed to

95 Scruton, *Animal Rights and Wrongs*, 101–102.

the good of innocent bystanders are impermissible. These kinds of acts fall into the category of terrorism. And to attempt civil disobedience without first attempting non-coercive persuasion (where possible) demonstrates a lack of respect for fellow citizens. In the case of violent disobedience, because violence is *prima facie* wrong there is a presumption against its use. To be justified, the use of violence must be the only viable course open to the disobedient; other more civil courses of action with a reasonable chance of success must have been attempted first. Acts of civil disobedience, to remain respectful of others must also be proportionate, necessary, and directed against legitimate targets. These are the boundaries of permissible civil disobedience. Furthermore, the duty to work towards a system that is just, or substantially just, together with the special status of non-human animals as voiceless and vulnerable beings make some form of action obligatory. I have considered counter arguments against civil-disobedience, such as that farming is in the interests of non-human animals and thus ending systems which bring non-human life into the world would be wrong, or that it is wrong to impose the view of a minority upon a majority that endorses the use of animals as mere means. In each case I have found that the case for the permissibility of civil disobedience in defence of non-human animals is undefeated. In Chapter 5, I build upon those arguments made above in an examination of the permissibility of acts of rescue, including ones which require violence against humans to succeed, and for the permissibility of sabotage in defence of non-human animals.

5 Acts of rescue and sabotage

Beatrice was a 15 year-old rhesus monkey used in arthritis research and to this day somehow remains the only monkey ever to be rescued by raiders from a British laboratory. Bereft of human contact but for surgery and injections, she was delighted to be taken from her cage during the rescue and would never part with the blanket she was given to keep her warm during the journey away from the lab.¹

In Chapter 4, I began by separating positive acts of illegal animal liberation into three overlapping categories: 1) those best characterised as civil disobedience: illegal protest, property damage, threats, intimidation and other sorts of acts designed to communicate a message and raise awareness of an issue, or change behaviour through coercive means, 2) acts of rescue to liberate captive animals as a means of directly preventing harm to them, and 3) acts of sabotage designed to prevent, hinder, and disrupt harmful practices. The first of those categories was covered in Chapter 4. In this Chapter I discuss categories 2) and 3). Clearly, in terms of animal liberation, these three types of act will often occur in concert; a raid by animal rights activists on a laboratory that experiments on non-human animals, or a factory farm where battery hens are raised, might be videoed to highlight the plight of the animals being rescued, and it might be accompanied by acts of deliberate property damage aimed at harming the interests of a business and making further harm to non-human animals more difficult. However, having already discussed acts of civil disobedience in Chapter 4, in this chapter I look at the justifications for each type of act in isolation from those

¹ Mann, *From Dusk 'till Dawn: An Insider's View of the Growth of the Animal Liberation Movement*, 92.

offered for the other categories. Thus, readers should assume that, in the examples I give, the purpose of any act of liberation discussed is purely aimed at rescuing a non-human animal from harm. An act of rescue aimed at raising awareness and changing social conditions may well be permissible, but the justifications will be of a different character from those I cover. Similarly, acts of sabotage will be discussed as if their ultimate purpose were to prevent present and future harms and with no concern for making a public statement. Nevertheless, despite wishing to limit the scope of my arguments, there is some crossover in terms of the normative theoretical issues between the three types of acts. This overlap is particularly obvious where it relates to the status of non-human animals as property, and when considering the permissibility of violence and constraints imposed by the moral status of the law, and so discussion about rescue acts in some respects is necessarily also relevant to acts of civil disobedience.

Whilst rescuing non-human animals from humans need not necessarily involve violence, an account of animal liberation will still have to address how rescuers should act if violence is required as part of the act of rescue. Therefore, acts of rescue will have to apply different standards of justification depending upon whether violence is necessary to the success of a rescue. For example, acts of rescue requiring property damage to succeed are likely to require a weaker standard of justification than acts which require violence against persons to succeed. And where violence against persons is necessary, the culpability of the object of violence bears upon the justification needed. Naturally, the greater the level of violence required, the greater the strength of the justification needed to render it permissible. Maintaining a degree of separation

between justifications for rescue or sabotage and justifications for the use of violence in rescue or sabotage is not straightforward – there are many areas of overlap – but I hope that the reader will keep the distinction in mind as the chapter progresses. The bulk of the chapter covers acts of rescue, and the permissibility of using violence to do so, with a small section towards the end addressing sabotage. Throughout this chapter I make use of the related concepts of justification and excuse: acts are justified if there are reasons for thinking that the act was right all things considered, and they are excusable if there are reasons for thinking that the agent was not wholly responsible for an unjustified act (for example, in cases of mistaken beliefs or duress).

1 Acts of Rescue

This first section will cover acts of third-party intervention to rescue non-human animals in farms or laboratories from harm. The arguments I will outline and develop take the suffering caused to non-human animals in order to benefit humans as a violation of the respect principle outlined in Chapters 1 and 2. This violation of the constraint against using a non-human animal as a mere means to an end provides reasons for moral agents to rescue them. Obviously the interest that animals have in not suffering is not the only one of their interests contravened by their use as experimental subjects, and many scientific procedures do not cause any suffering at all. It is my view that these other interests such as in freedom, happiness, companionship, living wild and so forth may also provide reasons for third-party intervention, however I will concentrate upon suffering. I do this because I believe that suffering caused to non-human animals through experimentation² is more harmful to them in the vast

2 Whilst my arguments will largely be addressed at animal experimentation, because that is where the

majority of cases than the thwarting of other aspects of their good and thus constitutes a more egregious violation of the respect principle.

The moral permissibility of animal experimentation has been exhaustively debated within the literature,³ so I want to try to avoid repetition where possible. Rather than presenting a restatement of well-rehearsed arguments such as Singer's utilitarian account of the significance of animal suffering,⁴ Regan's Kantian rights-based theory,⁵ or Cochrane's interest theory of animal rights,⁶ my intention is to present a defence of acts of rescue derived from the account of the moral standing of non-human animals that I developed in the previous chapters. I begin by briefly recapping how positive duties to non-human animals are grounded in my account, together with what those duties might be and how they apply to non-human animals being harmed by humans. To do this, I draw upon the literature on third-party intervention and duties to aid innocent victims from their attackers. During this debate, I examine justifications for violating the respect principle and draw out the harms caused to various parties by both liberation and vivisection; concluding that under the direct positive duties accounts benefits accrued from non-consensual harms to others are impermissible. After considering justifications for violating the respect principle, I will assess the case for the use of force in rescue attempts, focussing upon the culpability of those who

public debate tends to be focussed, they apply also to farming.

3 Erwin, Gendin, and Kleiman, *Ethical Issues in Scientific Research*, chap. 4; Garner, *Animals, Politics, and Morality*, chap. 5; Regan and Cohen, *The Animal Rights Debate*; Milligan, *Beyond Animal Rights: Food, Pets and Ethics*, chap. 7.

4 Singer, *Animal Liberation: Towards an End to Man's Inhumanity to Animals*.

5 Regan, *The Case for Animal Rights*.

6 Alasdair Cochrane, *An Introduction to Animals and Political Theory* (Hampshire: Palgrave Macmillan, 2010), chap. 8.

harm animals by treating them as mere means, and the consequences of sanctioning violence. Whilst I will argue that the use of violence is sometimes justified, I also find that its use is substantially limited and I will lay out a set of conditions for maximally permissible acts of rescue. These are:

- 1) Unless full culpability can be established and there are no other options, violence against the person should be avoided.
- 2) Acts of rescue carry stronger justificatory force in cases where non-human animals are being rescued from certain types of procedures. These are:
 - a) procedures that cause the greatest amount of suffering;
 - b) procedures that have the least chance of success;
 - c) procedures that bring the least benefit to humans and other animals.
- 3) Just as the culpability of the researcher is relevant, so too are the motives and intentions of the liberator: they should be acting to protect the interests of the animal and with the intention of minimising or avoiding violence.
- 4) In order to avoid the rescue causing further harm to the animal, there is an obligation to ensure continuing care if the creature requires it after rescue.

Some of these conditions may seem a little out of place given the deontological constraints I have focussed upon, but it is not my intention to defend an account of morality that pays no heed to the consequences of actions or the character of moral

agents. These things can be important, not only in providing a richer picture of morality, but also in resolving the so-called 'hard cases' where the boundaries of morality are tested. The relevance of some of these factors can be shown by considering conditions 2 and 3. In condition 2, I stated that the consequences of the procedures being carried out on non-human animals have a bearing on the permissibility of rescuing those animals. It is a fact that an enormous number of experimental procedures are carried out and with varying chances of success, varying levels of suffering involved, and varying resulting benefit to humans and other animals. If the liberationist is presented with a choice between rescuing two different non-human animals, each suffering to different degrees, then he should rescue the one that suffers the most. The calculation is less clear in the case of 2b and 2c since these considerations do not relate to the good of the animal itself, but it does seem better, all things considered, to rescue an animal from a procedure that brings no benefit than to rescue one that brings great benefit where equal levels of suffering are being caused. Nevertheless, the importance of the good of the animal in determining right action means that 2a is lexically prior to 2b and 2c (I propose no ordering of these two latter conditions); it is preferable to rescue a non-human animal suffering greatly from a procedure that is likely to bring great benefit to humans than it is to rescue one that barely suffers but brings little benefit to humans or is unlikely to succeed. In a similar vein, condition 3 can be shown to be relevant by asking whether an act carried out with good motives is to be preferred to one which is carried out with bad motives, or by accident. Were we ourselves freed from peril as a result of accidental acts of another agent we would have little cause to thank our rescuer. And if we were rescued as a means to cause harm or communicate a view then our rescuer would be treating us a

mere means to their ends. Condition 3 helps to show that maximally permissible acts are those which do not instrumentalise the objects of rescue in violation of the principle of respect. I will draw out the full range of conditions in greater depth throughout the course of the chapter.

1.1 Positive duties to aid non-human animals: a re-cap

To summarise: animal liberationist accounts of the moral standing of non-human animals, such as the one I laid out in Chapters 1 and 2, hold that creatures with lives that can go well or ill for them, and which can suffer are owed moral consideration by virtue of these facts. These accounts hold that if suffering is bad for humans regardless of the level of rationality possessed by any particular human, then suffering is also bad for non-rational animals for the same reasons. To hold that suffering is bad for humans, but not bad for other animals capable of suffering is inconsistent and arbitrary. Therefore it should follow *ceteris paribus* that the suffering of non-human animals should generate the same basic duties to them as it does for humans. The logical consequences of this conclusion have been used as the basis for *reductio ad absurdum* arguments against granting rights to animals. For example, David G. Ritchie responding to Henry Salt, writes:

in our exercise of our power and in our guardianship of the rights of animals, must we not protect the weak among them against the strong? Must we not put to death blackbirds and thrushes because they feed on worms, or (if capital punishment offends our humanitarianism) starve them slowly by permanent captivity and vegetarian diet? What becomes of the "return to nature" if we must

prevent the cat's nocturnal wanderings, lest she should wickedly slay a mouse?
Are we not to vindicate the rights of the persecuted prey of the stronger? or is
our declaration of the rights of every creeping thing to remain a mere
hypocritical formula to gratify pug-loving sentimentalists...⁷

More recently, the *reductio* has been deployed in a similar fashion by Carl Cohen.⁸ By and large the response from those arguing for animal rights has been to accept the *reductio* and shy away from following through from the premise that suffering is bad for non-human animals to the conclusion that they are owed positive duties. Instead, most have adopted an account of positive duties toward humans and negative duties towards other animals,⁹ And whilst many have discussed negative duties to let non-human animals be, or rights that they might have not to suffer or be killed, few have given detailed attention to what positive duties of assistance non-human animals in dire need might be owed, particularly in the case of animals being used as experimental subjects or being farmed for human use. Rather than being logically absurd, I believe that a key reason that the *reductio* arguments I have referenced so far have found purchase is because the conclusions they dispute go against cultural and historical practices: the apparent absurdity of arguing for positive duties to non-human animals results not from the validity of the arguments advanced but from the distance they open up between what is morally right and current and historical cultural and social practices. In Chapter 2, I showed how an account of duties towards non-human

7 David Ritchie, *Natural Rights: A Criticism of Some Political and Ethical Conceptions* (London: Routledge, 1894), 109–110.

8 Regan and Cohen, *The Animal Rights Debate*, 30–31.

9 For example, cf. A Simmons, “Animals, Predators, the Right to Life, and the Duty to Save Lives,” *Ethics & the Environment* 14, no. 1 (2009): 15–27.

animals couched in purely negative terms is inconsistent if it also holds that positive duties to human moral patients are owed for their own sakes.¹⁰ My proceeding arguments develop the argument for positive duties further.

1.2 Third-party intervention

In this section I seek to establish two things in order. First, I develop a case for the permissibility of acts of rescue grounded in the duty of aid owed to non-human animals for their own sake. Following from this, I defend the claim that it is permissible to use force in carrying out rescue acts, and establish the conditions that must be met for that permissibility. A key part of this latter defence relies upon countering the charge that acts of rescue are impermissible because they harm the interests of human beings. I show that this charge fails because the benefits derived from the use of animals as mere means to human ends are derived impermissibly.

For the purposes of this section then, let us proceed on the basis that humans and non-human animals are owed some of the same basic moral duties by virtue of their shared capacity to suffer and their sentience above some basic threshold. And let us assume the fuller account of duties owed to both human and non-human animals which sets the most basic duties as those of non-maleficence and of beneficence. Note that this account does not rule out differing sets of duties above the basic ones, or advance any argument, either for or against, about agent relative duties, or duties stemming from circumstances, agreement, promises, and so forth, or about relative moral considerability. All that it does is state that sentient beings with a basic level of moral

¹⁰ cf. Chapter 2, Section 3.

standing; those that have lives that can go well or ill for *them*, are owed these two sets of basic duties.

If suffering is bad for a non-human animal and for the sake of that animal itself, then we have, under the positive duties account, reasons to alleviate, prevent, and avoid causing suffering to it. This is the position taken by Scanlon,¹¹ and it is one that I think accords with both our intuitions and considered convictions such that few would want to disagree with it. If we encounter an animal in distress and are in a position to alleviate that distress without our incurring undue burdens, we should act to alleviate the distress. So intuitive and uncontroversial is this position that it is strange that so few theorists have been willing to take the next step and ask what we should do if that suffering is being caused by a human.¹² Indeed, even the much weaker question of what responses are permissible has barely been considered save by those arguing against the permissibility of rescue acts: their arguments will be addressed in the course of the rest of the chapter.

I want to take a small step backwards here and flesh out the duty of rescue a little more, before continuing to apply it to the case of non-human animals. This duty is standardly considered, by those who hold that it exists, to be limited by the burdens it places upon whoever is in a position to carry out the act of rescue. Thus, the duty is usually qualified as being one of 'easy rescue'.¹³ Whilst we would have a duty to save a

11 Scanlon, *What We Owe to Each Other*, 181.

12 Instead, arguments tend to be framed in terms of what the ideal situation should be, that is they are arguments against causing suffering to non-human animals, and arguments about how we should conduct ourselves or our societies so as to minimise suffering, rather than arguments about what we should do when confronted with suffering (cf. Garner, *Animals, Politics, and Morality*, 229.).

13 Feinberg, *The Moral Limits of the Criminal Law Volume 1: Harm to Others*, 126–186; Kent

child from drowning in a bath, we would not have a similar duty to save a child from drowning in a crocodile-infested lake. Where this duty of rescue involves rescue from an attacker, and so becomes a duty of intervention, facts about the attacker and victim come into play. By intervening a third-party is acting to protect a good (that of the victim) which is deemed sufficient to merit causing harm to the attacker if necessary. The attacker, in breaching his or her duty of respectful treatment towards the victim is at moral fault. This moral fault, taken together with the innocence of the victim, opens up the attacker to the possibility of justified harm.¹⁴ The attacker's responsibility for causing harm to another removes some of the duties others have not to harm him.

1.2.1 Identifying duty bearers

One thing any account of positive duties will have to do is identify upon whom the duty of rescue falls. The initial point I want to make is that a general duty of rescue does not imply specific duties to specific non-human animals falling upon specific moral agents, so the first step from this will be to identify who the duty bearers are. One possible place to find these is in the literature on humanitarian intervention, and in particular I want to suggest those put forward by David Miller to determine national obligations to aid distant strangers in dire need. The factors Miller outlines include: whether we are responsible for their plight in some way (have we created the situation leading to the animal's suffering); whether we have a relationship with them (did we

Greenawalt, "Legal Enforcement of Morality," *The Journal of Criminal Law and Criminology* (1973-) 85, no. 3 (January 1, 1995): 710-725; Arthur Ripstein, "Three Duties to Rescue: Moral, Civil, and Criminal," *Law and Philosophy* 19, no. 6 (November 1, 2000): 752; Allen Buchanan, "Justice and Charity," *Ethics* 97, no. 3 (April 1, 1987): 560.

14 David Rodin, "War and Self-Defense," *Ethics & International Affairs* 18, no. 1 (2004): 64.

raise, supply, or capture the animals); whether we profit from their plight (are we a shareholder or an employee in a company experimenting on animals); and whether we are the parties best placed (in terms of proximity and ability) to aid.¹⁵ In line with mainstream views about duties to aid, the costs to those upon whom the duties to aid fall should not be overly burdensome (the duty of 'easy rescue' discussed above), particularly if they lack direct responsibility for the suffering experienced by the animal. In most circumstances, the legal sanctions imposed by the state such as imprisonment and/or large fines, together with other dangers involved in acts of rescue are likely to be significant enough to rule out making the vast majority of such acts obligatory for individuals. The difficulty of locating responsibility for rescue acts in an ethical framework that makes them obligatory, and the burdens associated with rescue, illustrate that those endorsing an account of positive duties to non-human animals need not be nervous that extending third-party intervention theory to non-human animals risks endorsing wide-spread violence.¹⁶ Finally, in accordance with the principle of 'ought implies can', rescue must be possible and those rescuing must be able to fulfil any secondary duties of continuing care.

1.2.2 Paradigmatic intervention

The paradigm case of permissible third-party intervention in defence of another is where an innocent victim is being threatened by a culpable attacker and where the innocence of the victim and culpability of the attacker are objective facts known to the

15 David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), chap. 5.

16 cf. John Hadley, "Animal Rights and Self-Defense Theory," *The Journal of Value Inquiry* 43, no. 2 (2009): 165-177 for an articulation of this concern.

third-party bystander. Furthermore, in the paradigm case the threat to the victim is imminent and urgent. In such cases it is generally considered morally justifiable to use reasonable force against the attacker to prevent harm to the victim, which can include killing them if no other option is available. I should say at this point that I know of no circumstance where animal liberationists have been in a position where the only possible way of saving an animal in dire need has been to kill a human, and I know of few cases where any violence against the person has been carried out (save where it has been against the liberationist). Rather, most acts of liberation to rescue animals are carried out covertly and with the aim of avoiding conflict and resistance. Nevertheless, as John Hadley points out, the extension of third-party intervention theory to non-human animals raises some uncomfortable possibilities which require serious consideration.¹⁷ I outline and address the problems raised by Hadley later on, but for now I begin by asking what reasons there are for thinking that it is permissible to rescue non-human animals, potentially using violence against property or person, from a laboratory where they are being caused great suffering for scientific¹⁸ purposes?

Recall, our starting position is that suffering is bad for animals for their own sake and that we have reasons to prevent, end, or alleviate it. There are therefore reasons grounded in respecting non-human animals for their own sakes and in the badness of the suffering for breaking into the laboratory to rescue them (provided this were

¹⁷ Ibid.

¹⁸ In the UK, any scientific procedure involving suffering or harm to a non-human vertebrate (and one species of octopus) requires a licence, and that 67% of procedures are not carried out under anaesthetic. It is therefore reasonable to assume that any laboratory carrying out licence scientific procedures upon non-human animals is intentionally causing suffering or harm to those animals (Home Office, *Statistics of Scientific Procedures on Living Animals: Great Britain 2009*, 8.).

possible). Additionally, non-human animals, not being moral agents, cannot possibly be responsible for their predicament as laboratory animals are not culpable for any act of wrongdoing that might licence someone to carry out harmful acts upon them. Neither have the animals consented to their treatment and nor would they be likely to if they could. Thus we have non-consensual suffering and harm carried out against innocent victims. At this point, the utilitarian may wish to argue that if the animals' suffering is creating a positive amount of whatever value they consider fundamental: happiness, desire/preference satisfaction, well-being etc. the reasons for attempting a rescue can be overridden. However, as I will show, the imperative never to treat finally valuable beings as mere means to an end means that the expected benefits to humans gained through procedures which cause involuntary suffering do not do away with the duties to rescue non-human animals.

1.2.3 Harm to humans

There is another argument that might be used against acts of liberation and it is that by freeing animals used as experimental subjects liberationists are harming both the financial interests of the companies (and thus their shareholders) performing experiments, and those likely to benefit from the results of any research. In this subsection, I refute the claim that the use of non-human animals as mere means to human ends, and in ways which cause those animals to suffer, is necessary for the benefit of humans. A consequence of the fact that the use of non-human animals in this way is unnecessary is that acts of rescue are rendered permissible. Furthermore, I also show, that even if the argument against necessity falls, there remain many

instances of procedures that do not meet the necessity test so, whilst this may restrict the range of permissible rescue acts, it does not render them impermissible in all circumstances.

Of all the arguments deployed against animal rights activists the charge that their activities harm humans is perhaps the one that chimes the most with public sympathy. The application of utilitarian principles governing the use of non-human animals, together with the reduced moral status accorded them, lends itself to a conception of research using animals as something that is necessary to improve human well-being. This conception is reflected in the terminology used in relation to animal research: laws or moral injunctions limiting 'unnecessary suffering' beg the question about whether the infliction of suffering to benefit humans is necessary in the first place. So how might the liberationist reply to the charge that the use of animals for human benefit is necessary and thus trumps any claims animals might have? Part of the answer as to whether rescuing animals harms the interests of humans by preventing necessary research lies in how we define *harm* and *necessity* and in how those concepts relate to respectful treatment.

In Chapter 4, I stated that for an act to be necessary breach of the respect principle must be the only reasonable way to urgently prevent a further unjustifiable breach. A consequentialist might define it in terms of harm – thus a harmful act might be deemed necessary if it is the only way to prevent another unjustified harm. Now it is clear that many acts of vivisection, such as those performed for cosmetic or military testing are not strictly necessary in this latter sense because they are not aimed at products that prevent harm. Neither it is always the case that in experiments where the aim is to

prevent harm, such as in the case of life-saving drugs, that vivisection is the only reasonable way to achieve the ends so sought.

The effectiveness of animal testing and the possibilities of alternative methodologies is an area much debated. However, it is probable that some animal testing does meet the consequentialist/harm-based criteria of necessity; it is the only reasonable way to develop products quickly enough to save lives. If animal testing is necessary to protect vital human interests in some cases, then those in favour of it can claim that by preventing testing the liberationist is harming those interests. Under the definition of harm so far adopted as of a that of the non-consensual wronging or setting back of interests of a sentient being¹⁹, is it apparent that preventing necessary experimentation does harm those who will benefit from it. One response might be to claim that benefits are only potential, but it still seems likely that there are some experiments that we can know with a very high degree of certainty will bring benefits and which are necessary under the utilitarian definition. However, I do not think that either the necessity of the procedures or the benefits that they bring ends the argument against liberationists. As Regan points out; demonstrating that humans benefit from animal experimentation is not relevant to assessing the moral status of non-human animals²⁰ - justifying experimentation on grounds of the benefits it brings to humans begs the question about whether animals are protected by deontological constraints. Arguing that they are not is certainly a valid position to take, but it should not be assumed. Furthermore, the consequentialist 'lesser of two evils' defence of necessity is implausible because it

19 cf. p.33.

20 Regan conducts his argument in terms of rights, Tom Regan, "Empty Cages: Animal Rights and Vivisection," in *Contemporary Debates in Applied Ethics*, ed. Andrew I. Cohen and Christopher Heath Wellman (Wiley-Blackwell, 2005), 81.

seems to turn all questions of competing values into simple utilitarian calculations of the greater good, giving free-reign to disregard the good of individual beings for themselves and eroding the meaning of necessity.²¹

An alternative stance to take is the one that this thesis rests upon: that non-human animals are protected by deontological constraints and that we have duties towards them. The role played by these constraints becomes clear if we begin by examining the issue without reference to non-human animals. Few people are likely to agree that the interests of those who could benefit from research carried out unethically upon human beings have their interests harmed by forbidding that research. Indeed, many journals refuse to even publish data that has not been gathered ethically. Even 67 years after Sigmund Rascher carried out hypothermia tests by immersing prisoners of the Nazis in icy water, or strapping them naked in the snow, debates still continue about whether the data gleaned from his experiments should even be used regardless of whether it can save lives or not.²²

If the scientist wishes to argue that hindering animal research harms the interests of those who benefit from it, then he will have to also accept that he may at the same time be arguing that preventing suffering to humans is harmful to other humans who might benefit from it. It may still be that preventing these kinds of actions is harmful to a greater number of beneficiaries than are harmed by the procedures, but even then we

21 cf. Alan Brudner, "A Theory of Necessity," *Oxford Journal of Legal Studies* 7, no. 3 (December 21, 1987): 341–342.

22 Kristine Moe, "Should the Nazi Research Data Be Cited?," *The Hastings Center Report* 14, no. 6 (December 1, 1984): 5–7; Stephen G. Post, "The Echo of Nuremberg: Nazi Data and Ethics,," *Journal of Medical Ethics* 17, no. 1 (March 1991): 42–44; David Bogod, "The Nazi Hypothermia Experiments: Forbidden Data?," *Anaesthesia* 59, no. 12 (2004): 1155–1156.

would not think it wrong to prevent them. And, presumably, if the scientist decides that he has been wrong to harm non-human animals and decides to cease his research, he might under this view also be harming those who would have been benefited had he not made that decision – but he is surely justified all things considered to make this choice.

Even if we can say with certainty that a particular procedure will definitely result in a benefit to a particular person in the future, it can simply be argued that benefits derived from severe non-consensual harms are impermissible. For example, if two ill people could each benefit from a new kidney, and they together pay for a rogue surgeon to kidnap a person and steal his kidneys, we would not say that preventing the kidnap and theft of the person's kidneys is impermissible on account of the future benefits to the two ill people. We probably would not even want to say that preventing the kidnap harms the two ill people. It does not seem intuitively correct to class preventing potential future benefits accrued from harmful acts as a harmful act. Even if that intuitive conclusion is wrong, it is still impermissible in normal circumstances to non-consensually harm an innocent to provide benefits to another. The animal liberationist can thus argue that the establishment of the necessity of the actions he thwarts, and the harmful consequences of his actions, are insufficient to render his acts of rescue impermissible because the experimental acts are themselves morally impermissible. Thus, the respect focussed conceptualisation of necessity allows us to include a sense that the ends cannot always justify the means in a way that accords with our intuitive and commonsense morality better than a purely consequentialist one. In any case, it seems likely to me that a great deal of animal experimentation will not meet

the utilitarian standard of necessity²³ outlined above and so animal liberationists can argue that in many cases they do not even have to defend their actions against the charge that they prevent necessary research. This will be even more true for acts of liberation from farms where suffering is caused because there are few, if any, who can claim that it is necessary for them to consume animal products in order to prevent harm.²⁴ Furthermore, the failure of many experiments to meet the harm-based/'lesser of two evils' necessity test means that even if the liberationist concedes that great benefits to humans make limited necessary suffering permissible, there will still be many cases where acts of animal rescue are permissible.

This then is a substantial part of an argument for the permissibility of rescuing non-human animals from harm. The points made here accord with those in Chapter 3, Section 3, where I discuss how deontological constraints apply even where moral agents and moral patients are determined to possess different moral value. The justification for rescuing non-human animals arises from the duty to prevent, end, or alleviate suffering for the sake of the animal itself, and it is one which we share with other humans. We might call this the *humanitarian justification* for rescue since it represents a universalisation of principles of impartial beneficence or kindness across the species barrier. The *humanitarian justification* provides reasons for thinking that acts of rescue might be permissible, particularly those that do not involve force or violence. However, it does not tell the whole story, some of which is tied-in with the permissibility of the use of force. In these next sections, I examine the permissibility of

23 Rowlands, *Animals Like Us*, chap. 6.

24 Recall the assumed circumstances of justice which include conditions of moderate scarcity discussed in Chapter 3, which mean that starvation is not an issue.

third-party intervention using violence to rescue non-human animals. Intervention may take a number of forms including social censure, legal proceedings, forcible restraint, property damage, and violence against the person. For the time being, I concentrate on the most extreme form of intervention, namely defensive violence aimed at those who are harming non-human animals. If the case for the strongest form of intervention can be established, then it will be easier to justify lesser forms. This of course assumes that there can be circumstances in which the only means available to prevent an unjust harm to a non-human animal is through the use of violence and thus by doing the attacker harm. In line with my discussions in Chapter 4, I make use of Bufacci's definition of a violent act²⁵ as one that infringes upon a being's integrity, be that the being of an animal or the physical or psychological unity of a person. Violent acts are both harmful and *prima facie* wrong, and requires a strong justification.

1.2.4 The permissibility of violence

Whether violence is permissible in acts of animal liberation creates a dilemma outlined in detail by Hadley. Hadley thinks that sanctioning the use of violence through the extension of third-party intervention²⁶ theory to non-human animals poses a serious theoretical problem to animal rights advocates, particularly those endorsing deontological accounts, but also species-egalitarian utilitarians and others.²⁷ Hadley's dilemma is that on the one hand extending third-party intervention theory to non-

25 Violent acts can be distinguished from acts done violently; one can slam a door violently without it being an act of violence. When I write of violence I assume the sense of the concept involving a threat to the integrity of a being or thing.

26 Hadley makes reference to the extension of self-defence theory: I have substituted the term third-party intervention theory in its place as the more correct terminology.

27 Hadley, "Animal Rights and Self-Defense Theory," 168.

human animals raises what he calls the 'multiple inappropriate targets' problem:

if people who are harming animals are liable to third-party defence, then tens of thousands, possibly millions, of well-intentioned, law abiding, good-natured, talented and otherwise reasonable people will be legitimate targets for violence.²⁸

The enormous range of people made targets for violence clashes with the intuitions of most people and is so unpalatable that it can easily create the basis for a *reductio ad absurdum* argument against liberation. However, there is the possibility that these intuitions are wrong and are simply the result of speciesism. But, Hadley explains, there are other reasons than speciesism for resisting the possibility of making so many people legitimate targets. One is that the level of violence engendered would be undesirable and amount almost to civil war.²⁹ Another is that the violence would end up being directed at people with whom we empathise, know, love, and respect - '[t]he thought of them being subjected to violent assault or harassment is intuitively repugnant'³⁰. The other horn of Hadley's dilemma is that:

if people who harm animals are not liable in terms of being responsible for unjustified harms without an acceptable excuse, then moral agents who buy and sell, confine, mutilate without anaesthetic, infect with disease, kill for pleasure, and otherwise use rights-bearers as tools will not be legitimate targets for proportionate third-party defensive violence.³¹

28 Ibid.

29 Ibid., 169.

30 Ibid.

31 Ibid.

But, Hadley thinks, this conclusion requires differential treatment of humans and animals of comparable cognitive capacities and 'makes the claim that animals have valuable lives worthy of protection ring hollow'³². Refusing to extend third-party intervention theory to animals is therefore at odds with species-egalitarianism and claims that non-human animals have rights³³ (or interest trumping protections). Hadley examines a number of ways for escaping the dilemma.³⁴ One is to ask if the possibility of society becoming more violent, because duties to animals make humans liable to defensive violence, is a serious enough consequence to prevent such violence. Another is that the prospect of violence towards those we love, respect, and identify with is both abhorrent and more significant in deliberations than an impartial weighing of lives.³⁵ The first of these positions seems to lead to the conclusion that violence can never be justified no matter the cause, and the second leads to a ethic of partiality with all of the problems I identified in Chapter 2, Section 2.1. Hadley also considers attempts by other theorists including Regan, Rowlands, and McMahan, to build the consequences of defensive violence on behalf of non-human animals into the deliberations. In these cases an all things considered position takes the supposed lack of efficacy of such violence in changing social conditions for all animals as a reason for narrowing the range of potential legitimate targets for violence.³⁶ These arguments leave us with the troubling conclusion that acts of rescue, whether carried out on behalf of humans or animals, are justified only when they can be shown to improve the lot of others in similar circumstances (or at least not worsen their lot). This conclusion

32 Ibid.

33 Ibid., 170.

34 Ibid., 170–175.

35 Hadley, "Animal Rights and Self-Defense Theory."

36 Ibid., 170–174.

of course offers little comfort for an individual in dire need and depends upon falling back on consequentialist reasoning. Sadly, Hadley fails to find a firm resolution beyond either abandoning attempts to extend third-party intervention theory to animals, or biting the bullet and concluding that our intuitions about the absurdity of the multiple inappropriate targets problem are simply wrong.³⁷ However, in another recent paper he offers a way out based upon a subjective assessment of the attacker's culpability, and it is to the question of culpability that I will now turn.

1.2.5 Culpability

Clarifying whether violence or force might be permissible against an attacker, can be aided by establishing if the attacker is truly culpable. Within the deontological framework so advanced, should vivisectionists be thought of as culpable attackers? In purely objective terms, it can be argued that they are: their intentional actions have caused a morally considerable being to suffer solely for some end other than that of the being itself. One might respond that this charge of culpability is too inclusive; that it takes no account of justificatory reasons for action that might exculpate the attacker. Whilst the attacker has intentionally and knowingly harming a respect-worthy being in ways that treat it as a mere means to another's ends, they may yet be exculpated for causing harm if their reasons for causing the harm are justified. I have already assessed whether potential benefits to humans from harms caused justify those harms (and argued that they do not), and shortly I examine some other possible justification and excuses which may exculpate an attacker, such as whether the force of cultural norms impinges upon their culpability, or whether the legality of their acts excuses them.

³⁷ Ibid., 175–176.

If the vivisectionist is committing a blameworthy act against an innocent victim then acting in defence of the non-human animal, and even using violence to do so, appears to meet the circumstances of the paradigm case of permissible third-party intervention. However, it is likely that we will wish to take the motives and beliefs of the attacker and the intervening bystander into consideration.³⁸ For the sake of simplicity, I assume that the liberationist is acting from good motives; that is, they are acting from an intention to save a respect-worthy being from harm, and not for personal gain through criminal acts, and with firm beliefs about the innocence of the animal and culpability of the vivisectionist.³⁹ But what of the vivisectionist, is it correct to think of them as culpable attackers? Several facts pertain to the answer. I begin by showing that neither the status of non-human animals as property, nor the legal permissibility of harmful acts against non-human animals, render third-party intervention to rescue them impermissible. After this I devote a substantial section to examining whether there are grounds to think of those who carry out socially acceptable and culturally normal acts which harm non-human animals as innocent attackers. In particular I focus upon refuting the argument that scientists and farmers count as innocent attackers of non-human animals.

1.2.5.1 Ownership and the legality of harm to non-human animals

Let us begin by examining the status of laboratory animals not only as sentient beings,

38 Russell Christopher, "Self-Defense and Defense of Others," *Philosophy & Public Affairs* 27, no. 2 (1998): 123-141.

39 If the liberator acts for reasons of self-promotion, or as part of a communicative act of civil disobedience, and not to alleviate the suffering of the animals themselves, then the concern arises that the objects of the rescue are being treated as the mere means to an end in violation of the respect principle.

but also as property. The vivisectionist could argue that because the animals are owned by him or his employer he may use them as he wishes (that the animal is, by virtue of this status as property, a mere thing). The response can be made to this that animal ownership in liberal democracies is not conceived of in ways comparable with that of property in Roman law and which we might describe today as full liberal ownership, which permits an owner to do what they wish with an owned object short of using it to harm another. Rather, it is better conceived as a variety of configurations of Hohfeldian incidents⁴⁰ governing the relationships of an owner and others with that particular animal.⁴¹ In cases of full liberal ownership the configuration of incidents grants the owner absolute power over his property. Often things are owned in ways that do not give the owner complete control over them and in the case of non-human animals ownership represents different sets of claims, powers, immunities, and privileges which depend upon the kind of animal owned, and its place or use in society. These incidents of ownership limit what can be done to the animal. In this way, ownership of a pet dog represents a different set and configuration of incidents of ownership than that of a pet goldfish. The duties a dog owner has in respect of that dog are different than those relating to their goldfish – actions that might be permitted if carried out against a goldfish might carry severe sanction if carried out against a dog. Similarly, ownership of a farm animal is different from that of a pet, and different again from that of a laboratory animal. However, in all cases of ownership: of pets, laboratory animals, and farm animals, the incidents of ownership do not permit owners

40 cf. Wesley Newcomb Hohfeld, "Fundamental Legal Conceptions as Applied in Judicial Reasoning," *The Yale Law Journal* 26, no. 8 (June 1917): 710-770.

41 Leif Wenar, "The Concept of Property and the Takings Clause," *Columbia Law Review* 97, no. 6 (October 1, 1997): 1923-1946.

to do as they wish to their animal, harm to the animal is always limited, and it is limited for the sake of the animal itself. In the case of laboratory animals, the duty to avoid harming the animal is considered to be overcome by the benefits derived from harming it, but there remains a duty to minimise suffering, albeit one that can also be overridden if it will interfere with the efficacy of procedures being carried out. Thus, taking the property status of laboratory animals, in legal terms, into account reveals that the moral status of non-human animals under law is somewhat indeterminate and expressed in contradictory terms.⁴² Furthermore, ownership of an animal clearly does not licence treating them as mere things. Even acceptance that non-human animals being property permits treatment that does not respect their good would not tell the whole story. A proportion of animals used in laboratories are either captured from the wild or purchased from animal pounds or shelters. The liberationist can thus advance an argument, given either his account of duties owed, or because the ownership of animals purchased from pounds or sanctuaries might be indeterminate, that the supposed ownership of the animals does not meet the requirements of just acquisition of property and is thus invalid.

The fact that animals are owned is not the only legal consideration with bearing upon the matter at hand. In political communities of the sort that is standardly considered to be substantially just, such as a liberal democracy, it is generally thought that there are *prima facie* reasons to obey the law and to think that the legality of an act is linked to an evaluation of its moral rightness. Thus, the vivisectionist can take the legality of his

42 Whilst this reflects the status of the law in regard of animals, it does not constitute an argument about the morality of treating non-human animals as property. Elsewhere I have argued that ownership of non-human animals is compatible with respectful treatment of them (cf. Steve Cooke, "Duties to Companion Animals," *Res Publica* 17, no. 3 (June 15, 2011): 261-274.

work as an indication that it is morally permissible. However, as I have argued in Chapter 3, there are reasons both to doubt that a political community which treats non-human animals as mere means to the ends of humans can be substantially just. And, in addition, as M.B.E. Smith has claimed, and in line with my arguments in Chapter 4, whilst there can be *prima facie* duties to obey specific laws, there may not be a *prima facie* duty to obey the law as a body no matter how justly constituted.⁴³ Smith poses the question 'May a reasonable man take mere illegality to be sufficient evidence that an act is morally wrong, so long as he lacks specific evidence that tends to show that it is right?'⁴⁴ and he concludes that the 'reasonable man would withhold judgement until he learned more about it'.⁴⁵ Thus, the liberationist might reply to the charge of illegality that the legal status has little bearing upon the moral permissibility of his actions (or that of the scientist) either at first glance or after reflective consideration.⁴⁶ He might argue that he acts from the belief that either the benefits derived from the procedures do not outweigh the costs in terms of overall utility (taking greater consideration of animal interests or welfare into account than the vivisectionist does), or that the derivation of benefits from a procedure are insufficient reason to overcome the duty not to cause the animal suffering or act against its interests (or the right of the animal not to be made to suffer). Thus, he can argue that the law, in accepting that suffering is bad for the animal *qua* an animal but nevertheless permitting that suffering to be caused for reasons that either go against the interests of

43 M. B. E. Smith, "Is There a Prima Facie Obligation to Obey the Law?," *The Yale Law Journal* 82, no. 5 (April 1, 1973): 950-976.

44 Holly Smith, "Culpable Ignorance," *The Philosophical Review* 92, no. 4 (October 1, 1983): 973.

45 Smith, "Is There a Prima Facie Obligation to Obey the Law?," 974.

46 cf. David Lyons, "Moral Judgement, Historical Reality, and Civil Disobedience," *Philosophy & Public Affairs* 27, no. 1 (1998): 46-48.

the animal itself, or result in a negative amount of utility being produced, is unjust and therefore does not obligate.

The legality of vivisection and the illegality of rescuing animals (in the UK) raises a further interesting problem. Because there might be *prima facie* reasons to respect and uphold the law, the vivisectionist could be thought, not only to have a right to resist the liberationist from interfering with his lawful activity, but also to have a duty to try to prevent the animal liberationist from doing so. Nevertheless, even if these duties are present, it does not seem obvious how the right or duty to prevent liberation could be taken as grounds to nullify the liberationist's duty to rescue the animal.⁴⁷

I have argued above that neither the legality of acts of violence towards non-human animals, nor animals' special status as property give sufficient reason to think that the use of violence to aid them is impermissible. Before going on to consider other non-legal factors which might make such violence impermissible I want to add two relevant points. The first is that animal rights activists have often acted on the belief or knowledge that permitted levels of suffering were being exceeded in farms or laboratories⁴⁸ and so a defence of legality is not always available to the vivisectionist. And the second is that not all acts of rescue or defence involve owned animals or even illegality. The actions of hunt saboteurs to disrupt fox hunts (foxes are unowned) and of the Sea Shepard Conservation society to protect whales from whaling ships (it is

47 Unless it is held that the nature of rights and duties is such that they are required to be compossible, in which case it may still be the case, and I would argue that this is the more convincing position, that the duty of intervention removes the duty to prevent it.

48 Keith Mann details a number of raids by animal rights activists that proved illegal levels of suffering were being caused to farm or laboratory animals (Mann, *From Dusk 'till Dawn: An Insider's View of the Growth of the Animal Liberation Movement.*).

often the case that the activities of whalers are illegal) are prime examples. So, if the legal status of animal experimentation does not provide the vivisectionist with reason to think that their actions are morally permissible, then what facts might give cause to doubt their culpability and provide an excuse for the harming of non-human animals?

1.2.5.2 Innocence and culpability

Species-egalitarians hold that there are no morally relevant capabilities that all humans and no animals possess, and that it is therefore inconsistent to grant greater moral standing to humans than other animals. Those species-egalitarians who not only hold that it is wrong to harm non-human animals, but also that non-human animals are owed direct positive duties find themselves with a problem. This problem, explored by Hadley,⁴⁹ is that from the species-egalitarian perspective, those who pose unjustified threats to non-human animals appear to meet the conditions of a paradigm case of liability for third-party defensive violence.⁵⁰ The extension of third-party intervention theory to non-human animals is coherent from an animal rights perspective, but also counter-intuitively opens up the possibility that huge numbers of people could become targets for defensive violence. However, the concern about the existence of 'multiple inappropriate targets'⁵¹ can be avoided, even if the objective wrongness of harming non-human animals is established, if the blameworthiness of those who harm animals in ways that are generally considered acceptable, such as in farming, or scientific research, can be questioned.

49 John Hadley, "Moral Responsibility for Harming Animals," *Think* 8, no. 22 (2009): 51–55; Hadley, "Animal Rights and Self-Defense Theory."

50 Hadley, "Animal Rights and Self-Defense Theory," 167–168.

51 Ibid., 168.

Hadley's solution is to argue that people who harm animals during socially acceptable practices are not fully culpable for the harm that they cause, even if the harm is considered unjustified and carried out against an innocent. Rather, they can be excused for their actions because the agent's responsibility is diminished by the cultural, social, and historical norms, values, and standards, which shape how people relate to animals. Because of these cultural accretions and institutional structures agents are 'psychologically incapable of grasping the immorality of their actions and, as far as their dealings with nonhuman animals are concerned, suffer chronic normative competence impairment'.⁵² Against the charge that exculpating those who harm animals in socially acceptable situations allows gratuitous cruelty to be excused for the same reason, he responds that the strong norm against animal cruelty makes it unlikely that normative incompetence can be claimed⁵³ in cases of where cruelty is intended. Finally, Hadley also makes the claim that familiarity with animal rights principles is insufficient to overcome a person's 'chronic normative incompetence'.⁵⁴ He concludes 'It is reasonable to suggest, given their inculcation into societies with a long history of social and institutional support for viewing animals as tools, that even the enlightened remain somewhat blinded'⁵⁵.

Hadley's argument invites us to examine the claim that social and historical influences can render a person normatively incompetent and thus make wrong-doing excusable. It is true to say that persons are not perfect moral beings always able to reason perfectly and overcome their desires, and neither are they blessed with perfect knowledge.

52 Hadley, "Moral Responsibility for Harming Animals," 53.

53 Ibid., 54.

54 Ibid., 55.

55 Ibid.

However, Hadley's claim goes beyond this and is troubling because in excusing objectively wrong acts on the grounds that he does Hadley strays too close towards denying that moral agency is a meaningful concept. This worry speaks to how moral personhood is conceived and to what it is that renders agents responsible for their desires, beliefs, acts and intentions. One response aimed at allaying this concern might be to claim that excusing an act does not count as a denial of responsibility and therefore the complaint against the idea of normative incompetence is too strong. John Gardner argues that an excuse does not equate to a denial of responsibility, because, whilst excuses are putative reasons for actions at a particular time, one's responsibility (defined simply as the ability to offer excuses and justifications), exists over time.⁵⁶ One asserts one's responsibility and affirms one's status as a reason-giving being by offering justifications and excuses in retrospect. However, the argument for normative incompetence suggests that agents cannot offer fully rational explanations because their rationality is impaired by the structures within which human existence is embedded, and that this impairment cannot be overcome. Thus, the concern about the erosion of the concept of moral personhood remains.

Moral personhood is the state of being where persons are capable of reflecting upon their desires and beliefs and of shaping and directing their will.⁵⁷ Persons act morally when they act according to what they want to will, that is to say when they act autonomously.⁵⁸ Thinking about this definition of *personhood*: Hadley's contention

56 John Gardner, "The Mark of Responsibility," *Oxford Journal of Legal Studies* 23, no. 2 (2003): 161–162.

57 Harry G. Frankfurt, "Freedom of the Will and the Concept of a Person," *The Journal of Philosophy* 68, no. 1 (January 14, 1971): 12.

58 Ibid., 14–15; Paul Formosa, "Moral Responsibility for Banal Evil," *Journal of Social Philosophy* 37,

could be understood in two ways. One way is that persons who harm animals for benign or banal reasons are not acting autonomously; that they are in Frankfurt's terms acting wantonly.⁵⁹ Another is that they might be acting autonomously, but their beliefs and desires have been so strongly influenced that they are unable to use their rationality to determine what is right, and thus what they want to will is imposed from without. In either case the agent's reasons for actions should make a difference to how we judge them.

A person may harm a non-human animal for banal reasons. Perhaps he works in a laboratory or abattoir and the harm that he does to non-human animals never really occurs to him. He does not think about the rightness of his actions – harming animals is 'just a job' to him. In this sense, the agent is unreflectively acting on first-order desires and not functioning as a moral person. Now it is a fact that persons sometimes, or even often act without reflecting upon their actions. We all act wantonly some of the time. However, despite the fact that persons are imperfect beings who often fail to act in accordance with reason and morality, that persons are imperfectly moral is known to them, and persons thus have a duty to seek to improve themselves. As Larry May argues, moral agents have duties to reflect upon their first-order attitudes and either endorse or reject them.⁶⁰ Thomas Hill makes a similar point, arguing that moral agents have what he calls 'forward-looking moral responsibility'⁶¹ - that is they have

no. 4 (2006): 506.

59 Frankfurt, "Freedom of the Will and the Concept of a Person," 11.

60 Larry May, "Insensitivity and Moral Responsibility," *The Journal of Value Inquiry* 26, no. 1 (January 1992): 17–18.

61 Thomas E. Hill, "Moral Responsibilities of Bystanders," *Journal of Social Philosophy* 41, no. 1 (2010): 29.

second-order responsibilities to exercise due care in moral deliberation, to develop their moral virtues, and to subject themselves to moral self-scrutiny.⁶² The same sorts of arguments are made by Holly Smith.⁶³ However, constant reflection and re-reflection upon every action, attitude, desire, or belief would lead to paralysis, and it is therefore unreasonable to require reflection unless a reason to reflect presents itself. Thus, the person who reflects upon an act and endorses it as right, continues to act rightly if they repeat that act without further reflection in the future, unless they receive new cause to reflect upon the act's rightness. Indeed, agents may have reasons not to reflect upon their actions, which could provide a defence against the charge of moral responsibility.

Making persons who harm non-human animals liable to defensive violence involves making them liable to violence at the hands of another person. This interpersonal aspect reminds us that humans are social beings. The sum of human knowledge and thought resides not with the individual but with the collective or community. Because human life is finite and imperfect, and because humans live within social structures, human persons must rely upon others and place trust in their judgements. The person who devotes himself to advancing the field of particle physics cannot also know all there is to know about human physiology, and they must therefore trust, to a very great degree, those who devote themselves to the study of human physiology to inform them of this subject. The degree of reliability or trustworthiness of each individual's knowledge is increased by the collective aspect of the pursuit of knowledge and the fact that it is subject to challenge and inspection by other experts in the field,

62 Ibid., 32–37.

63 Smith, "Culpable Ignorance," 543.

and by processes which render transparent the methods by which conclusions are reached. Where decisions are made about the moral rightness or wrongness of an act, established general consensus provides a reason for acceptance by the agent of a principle or practice. In the case of animal testing, or farming, the normative framework is provided by animal welfare legislation and popular public opinion. This then is a practical reason for the agent not to reflect upon his actions, and he can claim diminished responsibility on the grounds that his actions fall within accepted standards and he is not operating outside of what is expected of him. The agent has reason to trust that others have determined the rightness of his actions and no strong reason has presented itself to require that he reflect upon the beliefs that others have apparently endorsed. I will address this position shortly, but I want to first make the point that a demand for periodic reflection does not specify how frequent 'periodic' is, neither does it seem possible to set a frequency that is not arbitrary. Thus, before blaming another for lack of reflection, they must be given reasonable time or prompting to reflect.

Before discussing specifics of the case of harms dealt to non-human animals let us consider some general characteristics about moral beliefs that give agents cause to question popular beliefs and to make periodic and spontaneous reflection upon them necessary. For instance, whilst it is true that numerical consensus tends to improve reliability, it does not at the same time remove the chance of unreliability, and thus, that a belief is widely held is insufficient grounds in itself to provide a reason not to question it. Indeed, facts about characteristics of the belief may give agents cause to question: a widely held belief that is inconsistent with another widely held belief, or which is incoherent, or illogical, or which rests upon an obviously false premise is one

that invites reflection regardless of its general acceptance. Furthermore the knowledge that persons are imperfectly rational and imperfectly moral is reason in itself to require persons to subject their beliefs to critical reflection and to actively seek further reasons for endorsing or rejecting them. The importance and effects of collective beliefs has been discussed, but that those beliefs are seldom uncontested, even if only by minorities, is also important. The presence of disagreement amongst moral agents over a principle is itself a reason to reflect upon that principle. To ignore the rationally endorsed views of other persons is to question their personhood: moral agents cannot consistently hold that their moral agency is important, without acknowledging the importance of the moral agency of others to them. We respect the personhood of others by seeing them as moral agents, and as part of that we are required to reflect upon the reasons they give – even if we ultimately decide that there is some flaw or error in their reasoning. In the case of the moral standing of animals the presence of animal rights activists, vegetarians and vegans, and widely expressed discourses arguing for increasing the moral standing of non-human animals, together with the fact that the different moral rules which societies adopt in their treatment of non-human animals *vis a vis*: companion, laboratory, wild, and farm animals; native and non-native species; animals of similar capacities but different species; and so-called 'marginal humans' are confused and contradictory and all make introspection warranted.

Having argued that the fact that a belief is widely held is insufficient for it to be accepted without question, I now turn to specific facts about the treatment of non-human animals which give agents further cause for moral reflection. One specific countervailing reason giving agents cause to reflect that immediately presents itself is

the ubiquity of the belief that the infliction of pain and suffering is *prima facie* wrong. The normative content of morality is paradigmatically concerned with injunctions against causing harm to others, and causing pain or suffering to another are paradigmatic examples of *prima facie* harmful acts.⁶⁴ The *prima facie* wrongness of causing suffering gives the agent reason to question acts which cause non-human animals to suffer. And the strong norm against vicious cruelty towards animals, which Hadley acknowledges, gives agents further reason to ask whether the suffering-causing acts which they do are cruel. It still might be argued that moral codes against animal cruelty are really only indirect injunctions against causing suffering to non-human animals and that their real concern is with the bad character of persons exhibited in cruelty to animals, and which suggests that the person who is cruel to non-human animals will be more likely to be cruel to humans. However, to contend that belief in the moral wrongness of cruelty to non-human animals is unconnected with the good of the animal itself does not accord with general or considered views about cruelty and, as I have argued several times in the course of my thesis, is unconvincing.

Thus the agent who causes non-human animals to suffer for banal reasons has ample reasons to reflect upon the rightness of his actions rooted both in the character of the act itself, and in general facts about the fallibility of persons and the unreliability and contested nature of knowledge. And if suffering-causing acts are wrong, then his lack of reflection is culpable. To act without reflection, when one has been presented with good reasons for reflection is to turn one's back upon moral reasoning. It is to cease to be moral. To be capable of moral reasoning and moral action, and to nevertheless refuse to use those capacities is itself blameworthy. This is what Montmarquet

64 Scanlon, *What We Owe to Each Other*, 181.

describes as 'culpable intellectual irresponsibility'⁶⁵. The reasons that an agent has for not reflecting upon beliefs that are widely held and embedded in social institutions are insufficient to overcome those requiring reflection.

Like the banal wanton,⁶⁶ the benign wanton has accepted social viewpoints about his actions without reflection. The difference between them is that the banal wanton has assumed the permissibility of his actions, whilst the benign wanton has accepted the rightness of his actions. The benign wanton might be a kind person, motivated to do good, perhaps holding a first-order desire to cure disease for the benefit of mankind, and a general second-order desire to have this first-order desire (without having reflected upon the rightness of specific acts carried out against non-human animals). In most respects the benign wanton is little different in culpability from the banal wanton, however, because the benign wanton acts with good intentions – he believes that his acts are either not harmful, or on balance justified and will bring net good – we are inclined to think better of him. And whether he has reflected upon his actions or not, the agent who causes suffering to non-human animals in the name of science is not comparable to the one who tortures animals for pleasure (with perhaps some widely publicised exceptions)⁶⁷ – his is acting with good intentions and his actions will, in many cases, bring great benefits to humans. Nevertheless, regardless of whether he acts for benign or banal reasons, the wanton harmer of non-human animals is culpable

65 James A. Montmarquet, "Culpable Ignorance and Excuses," *Philosophical Studies* 80, no. 1 (October 1995): 48.

66 Recall that the wanton is one who does not act according to what they want to will, they are non-autonomous.

67 Robert Garner describes some of these in a chapter on animal experimentation: cf. Garner, *Animals, Politics, and Morality*, 136–138.

for his ignorance – his failure to reflect is an act of intellectual negligence, which renders him responsible for the harm that he does.

However, Hadley's argument against holding those who harm non-human animals in ways that are socially acceptable responsible for their actions is more than an exculpation of unreflective ignorance. In arguing that agents are insufficiently responsible for harmful acts carried out against non-human animals to merit being the objects of defensive violence, even if they have been exposed to principles of animals rights, Hadley seems to be suggesting that objective reflection and endorsement of principles outside of cultural norms is impossible for most people. He states that agents are '**psychologically incapable** of grasping the immorality of their actions'⁶⁸ and this goes beyond arguing that the framework of attitudes and rules within which the individual exists creates barriers to reflection. Rather, it implies that even if the barriers to reflection are overcome, agents will still be unable to comprehend the wrongness of their actions. Therefore, even if we successfully argue that the agent should have reflected upon his actions and realised that they were wrong, Hadley can claim that this is an impossibility for them and thus their responsibility remains diminished. If recognising the wrongness of acts or beliefs that run contra to social and institutional norms is not possible then under the 'ought implies can' principle moral agents are not required to be moral in ways that contradict the values that a society endorses. No one can be held responsible for acts that have been widely endorsed by the society in which they live, no matter how objectively wrong those acts are. Hadley's view narrows down morality and personhood so that it becomes dependent upon external forces; implying a causally deterministic or probabilistic metaphysic which denies free will.

68 Hadley, "Moral Responsibility for Harming Animals," 53 (my emphasis).

Without going any further into the debate about free will and determinism, one need not accept determinism to agree that external influences do shape how people reason and the beliefs and desires that they hold, and that holding beliefs contrary to accepted norms can be difficult. The social nature of human beings makes us want to conform, and as already mentioned, requires us to base beliefs upon trust in others. There may even be something particularly difficult to apprehend about the wrongness of harm to non-human animals that comes from the obvious differences between humans and other animals. But at the same time there are those who adopt views which oppose the prevailing majority views on the standing of non-human animals, and it seems both hubristic and condescending of those who harm non-human animals in widely acceptable ways to imply that they cannot acknowledge the wrongness of their acts because they are psychologically incapable or inferior. Having said that, it should be acknowledged that agents possess moral powers along a continuum, and it may be that some lack the natural capacities to develop their sympathies or reason to the level required to be held culpable in certain circumstances.⁶⁹

What does not appear obvious or evidenced is that those who harm non-human animals or are complicit in their harm are in any way different in their capacities from those who decry such practices. So it does not seem reasonable to conclude that acknowledging the wrongness of harming animals is impossible when for so many it is clearly not, and when no evidence has been produced to show differences in moral capabilities between those who acknowledge the wrongness and those who do not. If

⁶⁹ Those who are unable to develop their capacities need to be distinguished also from those who have not developed their capacities, but who could have done. The former are not culpable, the latter are (cf. Aristotle, *The Nicomachean Ethics*, ed. Lesley Brown, trans. David Ross (Oxford: Oxford University Press, 2009), bk. III.).

agents are to be excused for performing objectively wrong acts because they have been blinded by social attitudes, expectations, and norms then they will only ever have reason to reflect upon things which go against what is customary. To think that one can be a good moral person whilst never questioning social norms and institutional codes, or never discarding them, is to endorse an impoverished concept of morality. Indoctrination or habituated insensitivity are insufficient to fully excuse wrongful acts. As Christine McKinnon asks '[w]hy should this lack of imagination which blinds us to others' needs not be seen as blameworthy? Why should failure to foster sensitivity to other persons' needs not be seen as morally reprehensible?'⁷⁰. Moral agents are not simply reflections of cultural practices and beliefs for if they were their very agency would be subject to question. And, if agents are incapable of reasoning correctly about animals outside of the accepted social codes, then we are left with no way of distinguishing between those who have not deliberated upon their actions and beliefs and those who have, or those who have deliberated and acknowledged that they do wrong, but who lack sufficient motivation to change their behaviour. In so doing, a disservice is also done to those who have fully reflected upon their actions, considered the wrong-making properties and concluded that they are, in spite of the harm done to non-human animals, acting rightly. Such a view is perfectly compatible with a utilitarian framework, or with those who dispute that animals can suffer or feel pain to any degree or to the same degree as humans.⁷¹ Denying agency in this way also fails to account for the responsibility of those who think that moral agents have positive

70 Christine McKinnon, "Ways of Wrong-doing, the Vices, and Cruelty," *The Journal of Value Inquiry* 23, no. 4 (December 1, 1989): 323.

71 cf. Pullman, "Human Dignity and the Ethics and Aesthetics of Pain and Suffering," 75; Carruthers, *The Animals Issue: Moral Theory in Practice*, chap. 8.

duties to non-human animals to make their case, for it is clear that the wrongness of doing harm to non-human animals is not self-evident to most.

The actions of those who harm non-human animals for purely instrumental reasons are attributable to those agents; there are alternative actions which they could have taken; and as moral agents they have the capacity to recognise wrongness and reflect upon their actions, beliefs, and reasons. In these senses agents are responsible for actions that they take and which harm non-human animals. However, in defending a non-human animal against harm by a person, a third-party does not necessarily know whether that person is acting without reflection or upon rationally endorsed beliefs. Nor do they know if the agent's motivations for action are benign, banal, or cruel. Neither can they be certain that the agent possesses sufficient moral competence to be fully responsible for their actions. Furthermore, the external social and institutional forces that Hadley describes make both the recognition of certain moral perspectives, and the adoption of them more difficult. Instead of being non-culpable for harming non-human animals, it is more correct to say that from the perspective of the third-party, the agent's responsibility in the settings we are concerned with is indeterminate. The third-party defender of non-human animals must separate out the wrongness of the act from the intentions and beliefs of the agent. The act can be wrong, without the agent being blameworthy for it.

An alternative way out of the multiple inappropriate targets problem is to bring uncertainty about the objective wrongness of harming non-human animals for instrumental reasons into the frame. If the imperfect nature of moral agents requires them to reflect upon their beliefs, it also follows from their imperfection that, even

assuming the possibility of objective moral truths, agents cannot have certainty about moral facts. Thus, even if a belief appears to the agent to be very likely true, and that the reasons against holding that belief appear weak, the possibility must be held by the agent that they have made an error in evaluation or judgement. And if this is so, then the culpability of the agent who harms non-human animals cannot ever be established with absolute certainty. Obviously this would be true of all moral facts, and it does not prevent agents from being almost certain or very confident of the rightness or wrongness of acts. Taken alone, the impossibility of being certain of the truth of a moral fact is not sufficient to remove responsibility from agents for wrong-doing, because if it were then we face the same problem of holding agents blameworthy as the strict determinist, but this uncertainty might combine with others to become a significant element of deliberation. How then should these facts about the fallibility of agents be taken into account by the liberationist?

Whilst it does not seem right to fully excuse moral agents who harm non-human animals for reasons other than necessity or the good of the animal on grounds of their situation, at the same time there are epistemic constraints that prevent third-party would-be defenders of non-human animals from fully assessing their culpability. Furthermore, there are reasons to think that in some circumstances their actions would be more or less excusable depending upon their beliefs, acts, capacities, intentions, and circumstances. However, even if the third-party is either uncertain of an agent's level of responsibility, or has determined that they are not at all responsible for their actions, that an attacker is innocent does not necessarily rule them out from being the legitimate target of defensive violence. Rather, uncertainty about culpability may, if it

does anything, merely raise the bar required to justify defensive violence. The fallibility of agents means that the liberationist has reason to temper her intervention, and to use the most modest means possible to fulfil her duties to non-human animals and achieve their rescue.

1.2.5.3 The use of defensive violence against innocent attackers

Hadley's argument rests upon the unwritten premise that it is impermissible to harm innocent attackers. For it to succeed that premise must be true. And if it is true then Hadley's rights-based approach to non-human animals suffers somewhat because if attackers are non-culpable then it could be argued that they violate no rights by harming non-human animals and the scope for finding wrong in farming animals for meat or using them for experimental purposes is therefore substantially narrowed down. A violation of a right is an unjustified interference of that right. If the force of social and cultural factors is offered as an excuse for harming non-human animals then we can claim that the rights of the non-human animal have been violated because excuse is not justification. However, if those who cause non-human animals to suffer are deemed non-culpable because they lack true agency then their defence is effectively one of diminished responsibility and they no more violate a right than a tiger does by killing a zebra.

However, since my own approach has been to frame the debate about the moral standing of non-human animals in terms of duties and reasons for action rather than rights I shall not expand upon this problem further. Instead, I shall concentrate upon the premise that it is impermissible to harm innocent attackers, for whilst Hadley does

not himself defend it, the premise is one which has been the subject of some debate. The question of whether innocent attackers are immune to third-party defensive violence is pertinent because, if 'chronic normative incompetence' makes attackers innocent - then it does not seem permissible to intervene to save the innocent victims of brainwashed child soldiers, or easily led Nazi-officers. This possibility seems to clash with our intuitive response to such situations and thus demands more careful consideration than Hadley gives it.

An attacker who is culpable is generally considered to have forfeited his right not to be harmed either by his innocent victim or by others acting in his defence.⁷² The very thing that justifies violence against the culpable attacker makes it problematic against the innocent attacker – the innocent are, by their nature, immune from harm. If it is permissible for a third-party to use violence against an innocent in defence of another innocent, then presumably it is permissible for a further party to violently intervene to prevent the defensive violence and so on.⁷³ The possibility of an infinite regress, if it cannot be overcome, could indeed render other defence against innocent attackers impermissible.⁷⁴

However, if the justification for defensive violence does not solely hinge upon the culpability of the attacker then perhaps this can be overcome. One option, explored by McMahan, is for partiality to play a part – that is, if a third-party has some special

72 Jeff McMahan, "Self-Defense and the Problem of the Innocent Attacker," *Ethics* 104, no. 2 (January 1994): 256.

73 cf. *ibid.*, 283–284.

74 Whilst the cases that McMahan is thinking about are threat-to-life cases, the concern over a violent regress where innocents threaten harm or serious harm to other innocents is the same.

relationship with the the victim of an innocent attacker he or she gains a permission to intervene on the victim's behalf.⁷⁵ This particular solution is not likely to be open to the animal liberationist attempting to justify violence against vivisectionists or farmers however. A more promising solution, for the liberationist at least, is to say that the numbers count and that it is permissible to intervene, for example, to save two innocent victims from one innocent attacker.⁷⁶ In most cases this would create a justification for liberationists to use defensive violence in aid of non-human animals threatened by humans. Nevertheless, it would also create cases where it would not be permissible, such as where ten scientists were performing a one-off experiment on a pair of monkeys. This latter case is intuitively unappealing however when the issue of normative incompetence is considered; something that becomes more apparent if the situation is changed to ten brainwashed Nazi scientists experimenting on a pair of Jewish prisoners.

One issue that I have not yet touched upon, and taking culpability out of the equation for now, is the thought that there is a difference in kind in basic moral standing between human persons and non-human animals. I suspect that the commonsense view that persons⁷⁷ are worth more than non-persons may account to a very large degree for the intuition that it is wrong to harm humans in defence of animals. However, it

75 McMahan, "Self-Defense and the Problem of the Innocent Attacker," 266.

76 Indeed, one of the most prominent defenders of the position that it is impermissible to use defensive violence against innocent attackers, Michael Otsuka, makes it clear that his argument does not apply to cases where it is necessary to kill one attacker to save many innocents (Michael Otsuka, "Killing the Innocent in Self-Defense," *Philosophy & Public Affairs* 23, no. 1 (January 1, 1994): 75.).

77 One problem that I think Hadley's argument would face is that by downplaying the culpability of agents and questioning their free will in the matter, the status and importance of personhood in this argument appears somewhat lessened.

may be that rather than any gap in relative moral worth between persons and non-persons, it is simply their membership in the category of persons that makes harming persons in the course of defending non-human animals impermissible. That is to say, no matter how small the gap in relative worth, the simple fact that a being is a person means that is never permissible to harm them in defence of a non-person. But it is hard to see why this might be the case, and our intuitions are not as fixed as I implied shortly before. Whilst I am not committed to the view either way that personhood makes a being more morally valuable than a sentient being without it, I do not believe, as I have already argued, that a difference in moral standing grants the superior being free licence to act as they will toward the inferior being. And it would seem strange to argue that, whilst a morally superior being is forbidden from acting cruelly toward an inferior one, nevertheless other persons are likewise forbidden from intervening to prevent him from breaching his duties if doing so causes him harm. The repugnant consequence of such a position would be to render violence defensive violence against abusers of children or the mentally ill impermissible. McMahan makes the point that victims of unjustified violence are not required to passively accept harms because their attacker is more intelligent or useful to society than they are.⁷⁸ It does not seem unreasonable to sanction intervening to prevent cruelty being committed against pets, and the same might be said of wild animals. It is not clear that there would be universal instinctive condemnation of a person who harmed a human in order to prevent him from cruelly treating a wild deer for example. I do not think that we can simply take the status of the attacker as a person and the victim as a non-human animal as sufficient reason to exempt the attacker from defensive violence without falling prey to

78 McMahan, "Self-Defense and the Problem of the Innocent Attacker," 261.

the charge of speciesism.

An argument can also be advanced that an agent's causal role (their material rather than moral non-innocence) in threatening a victim with harm is sufficient to render it permissible to harm them.⁷⁹ Although I shall not expand upon this argument I nevertheless raise it in order to show that the question of whether the innocence of an attacker exempts them from defensive violence is an open one and one which has yet to be conclusively settled. In any case, I do not believe that Hadley's argument that those who harm non-human animals have their actions excused on grounds of 'chronic normative incompetence' succeeds. If it did, there would presumably still be cases where attackers were not normatively incompetent and yet still harmed animals.

Having argued that acts of rescue, even including ones that involve violence against persons, can be justified and are thus permissible, I now move on to discuss the permissible use of sabotage by animal liberationists. In the coming section I show that it is possible to identify legitimate targets for sabotage carried out to protect non-human animals, and that sufficient reasons can be given to render sabotage permissible.

1.3 Sabotage

In *The Monkey Wrench Gang*, Edward Abbey's influential book of the 1970s, a group of misfits band together to sabotage attempts to build upon the wilderness they love.

Abbey not only popularised the term 'monkeywrenching' to describe sabotage in the

79 cf. Helen Frowe's argument that there are circumstances in which unjust harms can justifiably be caused to innocent attackers (Helen Frowe, "The Justified Infliction of Unjust Harm," *Proceedings of the Aristotelian Society (Hardback)* 109, no. 1pt3 (2009): 345-351.).

name of environmental activism, but his book proved inspirational to groups such as the Earth Liberation Front and Earth First. The method of preventing environmental destruction through monkeywrenching has also been adopted by animal liberationists to prevent harm to non-human animals.

Acts of sabotage are carried out by animal rights activists to prevent immediate harm to non-human animals, and also to harm the financial interests both of those companies who cause the harm, and those who profit from it. By causing damage activists hope to make the use of non-human animals as a mere means to human ends unprofitable. Animal rights activist Keith Mann writes of smashing the windows of butchers,⁸⁰ and of arson attacks against abattoirs, meat trucks, department stores, battery farms, and so forth.⁸¹ These activities are, he writes, carried out both to drive up the costs of the meat industry and to gain media attention⁸² (the communicative aspect of civil disobedience), and with care to avoid loss of life.⁸³

By the definition I gave earlier, as an act that harms the integrity of a thing, sabotage of property should be thought of as a form of violence, and as a harm done to its owners. As such property damage is *prima facie* wrong and requires justification. In the case of damage which prevents unjustified harm being caused to non-human animals in the present or immediate future there is strong justification for sabotage. Damaging property, without threat to human life or violence against persons, in order to prevent

80 Mann, *From Dusk 'till Dawn: An Insider's View of the Growth of the Animal Liberation Movement*, 350.

81 Ibid., 355.

82 Ibid., 356.

83 Ibid., 355.

an immediate or immanent and urgent threat to non-human animals appears to meet the test of proportionality, and it is unlikely that less violent means to nullify the threat are available. The strongest case for sabotage is in these cases - where the destruction of property is both necessary to prevent an immanent or immediate and urgent threat to a respect-worthy creature, and where that property forms part of the machinery of harm. I make this latter point because there seems to be an intuitively stronger case for destroying a machine used for acts of slaughter than there would be, for example, for destroying a building such as the Leaning Tower of Pisa in such a way that it fell upon an animal testing facility and so demolished it. Thus, it does not seem reasonable to destroy the computer network of a country to, in so doing, damage the computing facilities of a laboratory. Acts of sabotage must be proportionate to the aim of harm prevention and must also be tempered so as to minimise harms to those not directly and causally involved in wrongdoing. These conditions make sabotage or monkeywrenching more problematic when it is carried out not as an act of rescue, but as a means of harming the financial interests of those who treat animals as mere means, and those who profit as part of the causal chain. If damaging property with these aims in mind does not protect a vital interest of non-human animals from an immanent or immediate threat then it is open to the charge that it is unnecessary because other, non-violent means can achieve the same goal. One response might be to refer back to the arguments I made in the previous chapter about procedural unfairness in democratic societies and the difficulties present in using legal political means to fight injustice against a voiceless component of society.⁸⁴ As I argued in that chapter; those who profit from treating non-human animals as mere means to human ends are

84 cf. Chapter 4, Section 2.4

enabled through those profits to exert disproportionate influence on the democratic process *vis a vis* the treatment of non-human animals. The case against sabotage of this kind might also argue that many of these kinds of property damage, aimed at coercion rather than rescue or communication, are aimed at those with no direct causal link to the harmful treatment of non-human animals. But, referring back to the previous chapter once more, the number of persons truly lacking complicity in harms to non-human animals is probably quite low: if causal chains to harms can be established, then a wrong is still being committed. Nevertheless, it would seem that the most powerful case for sabotage is for actions against the property of those with the strongest and closest causal links to the harms caused to non-human animals. This case becomes stronger yet if the property being targeted has been acquired unjustly by profiting from the use of non-human animals as the mere means to human ends.

Thus sabotage in defence of non-human animals can be justified on two grounds. First, that it is a necessary and proportionate means of urgently preventing immediate or immanent harm to the vital interests of respect-worthy beings. To meet the test of proportionality the property sabotaged must form part of the machinery of harm, and damage must be no more than is needed to achieve the aim of protecting the non-human animal. Second, sabotage can be justified on grounds that it makes it more difficult (financially) for a company or individual to continue to harm animals or to harm them in the future, or that it makes it undesirable to do so given the threat of sabotage. In such cases the justifiability of sabotage is strongest against the property of those with the strongest direct causal link to harms to non-human animals, and where the property has been unjustly acquired through the mistreatment of non-human

animals. However, because of the lack of immanence of the harms prevented by this latter kind of sabotage, those who carry it out are required to demonstrate that other means have been exhausted or are unachievable.

1.4 Concluding remarks

To recap and offer some concluding remarks: if the capacity of non-human animals to suffer imposes moral constraints upon treating them as mere means to an end, then moral agents have *prima facie* reasons to prevent, end, alleviate, or reduce their suffering and this provides a moral justification for the rescue of suffering animals from research laboratories. Arguments about the legality of the research, or the benefits that it may lead to do not render acts of rescue impermissible. However, the case for using violence against persons to rescue these animals is less clear, although not entirely ruled out. The culpability of those who harm non-human animals can be said to be indeterminate, and the consequences of sanctioning widespread violence are troubling, may be counter-productive in the long run, and can lead to a slippery slope argument.⁸⁵ However, none of these objections categorically rule out the use of violence in all circumstances: there may be situations where culpability can be established, and violence is unlikely to harm public perception of liberation. Establishing the permissibility of violence in the absence of perfect knowledge will be extremely difficult. However, the discussion so far has made it possible to lay and develop out some conditions for establishing the maximum standard of permissibility for rescue acts. I listed these conditions at the beginning of my chapter and I will repeat them here. They are:

⁸⁵ This is the position taken by Peter Singer: Singer, *In Defense of Animals*, 9–10.

- 1) Unless full culpability can be established and there are no other options, violence against the person should be avoided.
- 2) Acts of rescue carry stronger justificatory force in cases where non-human animals are being rescued from certain types of procedures. These are:
 - a) procedures that cause the greatest amount of suffering;
 - b) procedures that have the least chance of success;
 - c) procedures that bring the least benefit to humans and other animals.

Note that a) is lexically prior to b and c, but that b and c are unordered.

- 3) Just as the culpability of the researcher is relevant, so too are the motives and intentions of the liberator: they should be acting to protect the interests of the animal and with the intention of minimising or avoiding violence.
- 4) in order to avoid the rescue causing further harm to the animal, there is an obligation to ensure continuing care if the creature requires it after rescue

In the case of acts of sabotage it matters whether the destruction or damage to the object of the act will directly prevent an immediate or immanent threat to a respectable being, and whether its destruction is necessary and proportionate. In cases where sabotage is carried out as a coercive means of preventing future harms by making them more difficult or unattractive, sabotage may still be permissible, but the level of justification required is higher.

Having built the case for the permissibility of rescue acts to save suffering non-human animals from harms, both legal and illegal, at the hands of humans, and of sabotage for similar purposes, I want to finish this chapter as I began it, with a quote from a liberationist. This one is from Pelle Strindlund and describes an exchange with a police interrogator following his arrest for freeing a captive beagle from a research laboratory at Gothenburg University.

The interrogator started out by offering, not a cigarette, but a banana. He was a tall man in civilian dress. He had apparently moved to the area from Västerbotten, a province in the north.

“So, who gave you the right to break the law? He asked.

Usually, in situations of this kind, I become apologetic and defensive; yet I heard myself answering:

“Must one justify one's actions, then, but not one's failure to act? Who has given us the right to let the dog remain there? Who has given us the right to let the vivisectors continue their experiments on her?”⁸⁶

Strindlund's words remind us that the dominant moral discourses around animal experimentation can place greater requirements for justification upon acts aimed at preventing animal suffering than upon those that intentionally cause it. I hope that if I have achieved anything through the discussions above that I have given cause to re-evaluate the moral status of acts of animal liberation.

86 Pelle Strindlund, “Butchers’ Knives into Pruning Hooks: Civil Disobedience for Animals,” in *In Defense of Animals: The Second Wave*, ed. Peter Singer (Oxford: Wiley-Blackwell, 2006), 168–169.

Epilogue

Moral agents have duties, both of non-maleficence and of beneficence, to moral patients. As beings capable of moral action, we have general duties not only to respect non-human animals as beings with a good of their own and avoid doing them harm, but also to aid them when they are in dire need. Duties of aid or rescue become duties of intervention or defence when non-human animals are unjustly threatened by moral agents. Citizens of liberal democracies also have duties to work towards a more just society, and to make efforts to end injustice. Societies which permit non-human animals to be used for the benefit of humans in ways which contravene the non-contingent needs of those animals are unjust, and it is the duty of every citizen to do their part to end such an injustice. Thus when animal liberationists break the law in defence of non-human animals, citizens, law-makers, and media organisations alike should constrain their condemnation of the liberationist. Rather, society should consider whether the moral force of the law rests upon a prevailing moral orthodoxy that unfairly and inconsistently weighs the interests of humans against non-humans. Preventing people from acting lawfully in ways which harm animals is not wrong since unjust laws carry little moral force. However, at the same time, illegal acts of animal liberation should themselves be constrained by duties owed to fellow humans as respect-worthy beings, and also by duties of civility owed to fellow citizens. These duties mean that liberationists should temper their interventions by seeking the least violent means of achieving their goals, and avoid courses of action which treat their fellow citizens as the mere means to an end.

Law-makers have, particularly in recent times, seen the radicalisation of the animal protection movement as a threat to the safety and security of citizens, and as undermining the authority and stability of the state. There have been moves to classify the actions of animal rights activists as terrorists.¹ Whilst it is undoubtedly true that some acts carried out by animal liberationists do fall into the category of terrorism, care should be taken not to stretch the concept of terrorism so as to include all positive acts carried out in defence of non-human animals, even if those acts include property damage or violence against humans. Rather than considering the radicalisation of the animal protection movement as a threat to liberal democracy, it should be seen positively, as citizens fulfilling their duties both to non-human animals, and to other citizens.

The reasons for thinking that direct action in the form civil disobedience, sabotage, and rescue are morally permissible have so far been expressed as other-regarding duties: duties to aid non-human animals, and duties to fellow citizens to work towards a just society. Of these, the natural duty to create and promote just institutions, the stabilising function of civil disobedience discussed in Chapter 4, and the justification for disobedience springing from procedural unfairness, all provide reasons for regarding civil disobedience as morally permissible independently of whether treatment of animals in ways which harm them is objectively wrong. In fact, we could

1 cf. Rachel Monaghan, "Terrorism in the Name of Animal Rights," *Terrorism and Political Violence* 11, no. 4 (December 1999): 159-169; Kai Hirschmann, "The Changing Face of Terrorism," *Internationale Politik Und Gesellschaft*, no. 3 (2000): 299-310; Mathew Humphrey and Marc Stears, "Animal Rights Protest and the Challenge to Deliberative Democracy," *Economy and Society* 35, no. 3 (2006): 400 - 422; Steve Vanderheiden, "Eco-terrorism or Justified Resistance? Radical Environmentalism and the 'War on Terror'," *Politics & Society* 33, no. 3 (2005): 425 -447.

argue that there are thus reasons to believe that civil disobedience can be justified even if disobedients are mistaken in their beliefs about the rightness of their cause. In addition, moral agents can also be said to have self-regarding duties of conscience. If an agent sincerely believes in the rightness of their cause then they have a duty to be true to their conscience so that their actions and beliefs cohere with one another. Acting in a manner that preserves consistency with deeply held moral convictions is essential to maintaining an agent's moral identity.²

The application of concepts from political theory to more traditional approaches to non-human animals from moral theory creates a richer picture of what we owe to non-human animals. Societies that include non-human animals within them, and which interact with non-human animals in ways that negatively affect the well-being of animals need to reconsider the extent of political duties and the scope of justice so that non-human animals are accounted for in ways that are both fair and right. Until they do so, illegal acts of animal liberation will continue to be both justified and necessary.

2 For a fuller discussion on this topic see David Lefkowitz, "On a Moral Right to Civil Disobedience," *Ethics* 117, no. 2 (2007): 202-233; Brownlee, "Features of a Paradigm Case of Civil Disobedience"; Henry J. McCloskey, "Conscientious Disobedience of the Law: Its Necessity, Justification, and Problems to Which It Gives Rise," *Philosophy and Phenomenological Research* 40, no. 4 (June 1, 1980): 536-557; Hywel D. Lewis, "Obedience to Conscience," *Mind* 54, no. 215, New Series (July 1, 1945): 227-253; James F. Childress, "Appeals to Conscience," *Ethics* 89, no. 4 (July 1, 1979): 315-335.

Bibliography

- Abby, Ruth. "Rawlsian Resources for Animal Ethics." *Ethics & the Environment* 12, no. 1 (2007): 1-22.
- Allen, Colin. "Animal Pain." *Noûs* 38, no. 4 (2004): 617-443.
- Anderson, Elizabeth. "Animal Rights and the Values of Nonhuman Life." In *Animal Rights: Current Debates and New Directions*, edited by Cass Sunstein and Martha Nussbaum. New York: Oxford University Press, 2004.
- "Animal Welfare Act 2006." Text, n.d.
<http://www.legislation.gov.uk/ukpga/2006/45/section/1>.
- Aristotle. *The Nicomachean Ethics*. Edited by Lesley Brown. Translated by David Ross. Oxford: Oxford University Press, 2009.
- Audi, Robert. "On the Meaning and Justification of Violence." In *Violence: A Philosophical Anthology*, edited by Vittorio Bufacchi. Hampshire: Palgrave MacMillan, 2009.
- Balcombe, Jonathan. *Second Nature: The Inner Lives of Animals*. New York: Palgrave Macmillan, 2010.
- Bearzi, Maddalena, and Craig Britton Stanford. *Beautiful Minds: The Parallel Lives of Great Apes and Dolphins*. Cambridge, Massachusetts & London, England: Harvard University Press, 2008.
- Becker, Lawrence C. "Reciprocity, Justice, and Disability." *Ethics* 116, no. 1 (October 1, 2005): 9-39.
- Beetham, David. "Liberal Democracy and the Limits of Democratization." *Political Studies* 40, no. 1 (1992).

- Bentham, Jeremy. *An Introduction to the Principles of Morals and Legislation*. London: Printed for W. Pickering, 1823.
- Bermúdez, José Luis. "Animal Reasoning and Proto-logic." In *Rational Animals*, edited by Susan Hurley and Matthew Nudds. Oxford: Oxford University Press, 2006.
- Bogod, David. "The Nazi Hypothermia Experiments: Forbidden Data?" *Anaesthesia* 59, no. 12 (2004): 1155-1156.
- Braithwaite, Victoria. *Do Fish Feel Pain?* Oxford: Oxford University Press, 2010.
- Brännmark, Johan. "Passing the Buck: On Reasons and Values." In *Pattern of Values: Essays on Formal Axiology and Value Analysis*, edited by Wlodek Rabinowicz and Toni Rabinowicz. Lund: Lund Philosophy Reports, 2003.
- Brighouse, Harry. "Can Justice as Fairness Accommodate the Disabled?" *Social Theory and Practice* 27, no. 4 (2001): 537-560.
- Britten, Nick. "Pensioner's Body Stolen by Animal Rights Group Is Found - Telegraph." *The Telegraph*, n.d.
<http://www.telegraph.co.uk/news/uknews/1517356/Pensioners-body-stolen-by-animal-rights-group-is-found.html>.
- Brownlee, Kimberley. "Features of a Paradigm Case of Civil Disobedience." *Res Publica* 10, no. 4 (December 2004): 337-351.
- Brudner, Alan. "A Theory of Necessity." *Oxford Journal of Legal Studies* 7, no. 3 (December 21, 1987): 339 -368.
- Buchanan, Allen, Dan W. Brock, Norman Daniels, and Daniel Wikler. *From Chance to Choice: Genetics and Justice*. Cambridge: Cambridge University Press, 2001.
- Buchanan, Allen. "Justice and Charity." *Ethics* 97, no. 3 (April 1, 1987): 558-575.
- Buchanan, James. *The Limits of Liberty: Between Anarchy and Leviathan*. Chicago:

- University of Chicago Press, 1975.
- Bufacchi, Vittorio. *Violence and Social Justice*. Hampshire: Palgrave MacMillan, 2007.
- Callicot, Baird. *Beyond the Land Ethic: More Essays in Environmental Philosophy*.
Albany: State University of New York Press, 1999.
- Carruthers, Peter. *The Animals Issue: Moral Theory in Practice*. Cambridge: Cambridge University Press, 1992.
- Carter, Alan. "In Defence of Radical Disobedience." *Journal of Applied Philosophy* 15, no. 1 (1998): 29-47.
- Cassell, Eric J. "Diagnosing Suffering: A Perspective." *Annals of Internal Medicine* 131, no. 7 (October 5, 1999): 531 -534.
- Childress, James F. "Appeals to Conscience." *Ethics* 89, no. 4 (July 1, 1979): 315-335.
- Christopher, Russell. "Self-Defense and Defense of Others." *Philosophy & Public Affairs* 27, no. 2 (1998): 123-141.
- Cochrane, Alasdair. *An Introduction to Animals and Political Theory*. Hampshire: Palgrave Macmillan, 2010.
- Cohen, Carl. "Do Animals Have Rights?" *Ethics & Behavior* 7, no. 2 (1997): 91-102.
- Cooke, Steve. "Duties to Companion Animals." *Res Publica* 17, no. 3 (June 15, 2011): 261-274.
- "Cows / Animal Liberation Victoria", n.d.
<http://www.alv.org.au/issues/cattle/cattle.php>.
- Cressey, Daniel. "Battle Scars." *Nature* 470, no. 7335 (2011): 452-453.
- "Cruelty to Farm Animals Should Come as No Surprise | Alasdair Cochrane |
Comment Is Free | Guardian.co.uk", August 5, 2011.
<http://www.guardian.co.uk/commentisfree/2011/aug/05/cruelty-farm-animals->

slaughterhouse.

Cruft, Rowan. "Human Rights and Positive Duties." *Ethics & International Affairs* 19, no. 1 (2005): 29-37.

Cureton, Adam. "A Rawlsian Perspective on Justice for the Disabled." *Essays in Philosophy* 9, no. 1 (January 1, 2008).

Dawkins, Richard. *River Out Of Eden: A Darwinian View Of Life*. London and New York: Basic Books, 1996.

DeGrazia, David, and Andrew Rowan. "Pain, Suffering, and Anxiety in Animals and Humans." *Theoretical Medicine* 12, no. 3 (September 1991): 193-211.

DeGrazia, David. *Animal Rights: a Very Short Introduction*. Oxford: Oxford University Press, 2002.

———. "Genetic Enhancement, Post-persons, and Moral Status: a Reply to Allen Buchanan". LSE, 2010.

Denis, Lara. "Kant's Conception of Duties Regarding Animals: Reconstruction and Reconsideration." *History of Philosophy Quarterly* 17, no. 4 (October 2000): 405-423.

Dennett, Daniel C. *Darwin's Dangerous Idea: Evolution and the Meanings of Life*. London and New York: Penguin, 1996.

Department for Environment Food and Rural Affairs (Defra), The Food and Environment Research Agency. "Defra, UK - Foot and Mouth Disease - Information Page", n.d. <http://footandmouth.csl.gov.uk/>.

Diamond, Cora. "Eating Meat and Eating People." In *Animal Rights: Current Debates and New Directions*, edited by Cass Sunstein and Martha Nussbaum. New York: Oxford University Press, 2004.

- Dol, Marcel, Soemini Kasanmoentalib, Susanne Lijmbach, Ruud van den Bos, and Esteban Rivas, eds. *Animal Consciousness and Animal Ethics: Perspectives from the Netherlands*. Assen: Van Gorcum, 1997.
- Donaldson, Sue, and Will Kymlicka. *Zoopolis: A Political Theory of Animal Rights*. Oxford and New York: Oxford University Press, 2011.
- Dworkin, Ronald. *Freedom's Law: The Moral Reading of the American Constitution*. Oxford and New York: Oxford University Press, 1999.
- . "What Is Equality? Part 2: Equality of Resources." *Philosophy & Public Affairs* 10, no. 4 (October 1, 1981): 283-345.
- Egonsson, Dan. "Kant's Vegetarianism." *The Journal of Value Inquiry* 31, no. 4 (1997): 473-483.
- Erwin, Edward, Sidney Gendin, and Lowell Kleiman, eds. *Ethical Issues in Scientific Research: An Anthology*. New York and London: Garland, 1994.
- Everett, Jennifer. "Environmental Ethics, Animal Welfarism, and the Problem of Predation: A Bambi Lover's Respect For Nature." *Ethics & the Environment* 6, no. 1 (2001): 42-67.
- "FAQs Insects, Plants", n.d.
<http://www.animalliberationfront.com/Philosophy/Morality/Biology/InsectAR.htm>.
- Feinberg, Joel. *The Moral Limits of the Criminal Law Volume 1: Harm to Others*. New York: Oxford University Press, 1987.
- . "The Rights of Animals and Unborn Generations." In *Philosophical Issues in Human Rights: Theories and Applications*, edited by Patricia Werhane, A. R. Gini, and David Ozar, 164-173. New York: Random House, 1986.

- . “Wrongful Life and the Counterfactual Element in Harming.” *Social Philosophy and Policy* 4, no. 1 (1986): 145-178.
- Felipe, Sonia T. “Rawls’s Legacy: a Limited Possibility of a Non-speciesist Environmental Justice.” *Ethic@* 4, no. 1 (2005): 23-37.
- Food and Agriculture Organisation of the United Nations. *FAO Statistical Yearbook*. New York: The United Nations, 2010.
- Formosa, Paul. “Moral Responsibility for Banal Evil.” *Journal of Social Philosophy* 37, no. 4 (2006): 501-520.
- Francione, Gary L., and Robert Garner. *The Animal Rights Debate: Abolition or Regulation?* New York: Columbia University Press, 2010.
- Frankfurt, Harry G. “Freedom of the Will and the Concept of a Person.” *The Journal of Philosophy* 68, no. 1 (January 14, 1971): 5-20.
- Freeman, Samuel. “Moral Contractarianism and a Foundation for Interpersonal Morality.” In *Contemporary Debates in Moral Theory*, edited by James Dreier. Oxford: Blackwell, 2006.
- Frowe, Helen. “The Justified Infliction of Unjust Harm.” *Proceedings of the Aristotelian Society (Hardback)* 109, no. 1pt3 (2009): 345-351.
- Gardner, John. “The Mark of Responsibility.” *Oxford Journal of Legal Studies* 23, no. 2 (2003): 157 -171.
- Garner, Robert. “Animal Rights, Political Theory and the Liberal Tradition.” *Contemporary Politics* 8, no. 1 (2002): 7-22.
- . *Animals, Politics, and Morality*. Manchester: Manchester University Press, 1993.
- . “Rawls, Animals and Justice: New Literature, Same Response.” *Res Publica*

(n.d.): 1-14.

Gauthier, David. *Morals by Agreement*. Oxford and New York: Oxford University Press, 1987.

Goodin, Robert, and Phillip Pettit, eds. *A Companion to Contemporary Political Philosophy*. Oxford: Blackwell, 1995.

Grandin, Temple. "Progress in Livestock Handling and Slaughter Techniques in the United States, 1970–2000." In *The State of the Animals 2001*, edited by Deborah Salem and Andrew Rowan. Washington D.C.: Humane Society Press, 2001.

Grant, Wyn, and Tim Stocker. "Politics of Food: Agro-Industry Lobbying in Brussels." In *Lobbying the European Union: Institutions, Actors, and Issues*, edited by David Coen and Jeremy John Richardson. Oxford and New York: Oxford University Press, 2009.

Greenawalt, Kent. "Legal Enforcement of Morality." *The Journal of Criminal Law and Criminology* (1973-) 85, no. 3 (January 1, 1995): 710-725.

———. "Promissory Obligation: The Theme of Social Contract." In *Authority*, edited by Joseph Raz. New York University Press, 1990.

Green, Leslie. "Law and Obligations." In *The Oxford Handbook of Jurisprudence and Philosophy of Law*, edited by Jules Coleman and Scott Shapiro. Oxford: Oxford University Press, 2002.

Hadley, John. "Animal Rights and Self-Defense Theory." *The Journal of Value Inquiry* 43, no. 2 (2009): 165-177.

———. "Moral Responsibility for Harming Animals." *Think* 8, no. 22 (2009): 51-55.

Hart, Herbert L. A. *The Concept of Law (Clarendon Law Series)*. Oxford and New York: Oxford University Press, 1961.

- Hartley, Christie. "Justice for the Disabled: A Contractualist Approach." *Journal of Social Philosophy* 40, no. 1 (2009): 17-36.
- Hills, Alison. *Do Animals Have Rights?* Cambridge: Icon Books, 2005.
- . "Rational Nature as the Source of Value." *Kantian Review* 10 (2005): 60-81.
- Hill, Thomas E. "Humanity as an End in Itself." *Ethics* 91, no. 1 (October 1980): 84-99.
- . "Moral Responsibilities of Bystanders." *Journal of Social Philosophy* 41, no. 1 (2010): 28-39.
- Hirschmann, Kai. "The Changing Face of Terrorism." *Internationale Politik Und Gesellschaft*, no. 3 (2000): 299-310.
- Hohfeld, Wesley Newcomb. "Fundamental Legal Conceptions as Applied in Judicial Reasoning." *The Yale Law Journal* 26, no. 8 (June 1917): 710-770.
- Home Office. *Statistics of Scientific Procedures on Living Animals: Great Britain 2009*. London: The Stationary Office, 2010.
- Hume, David. *Essays and Treatises on Several Subjects: Essays, Moral, Political and Literary*. Edinburgh: Bell and Bradfute, 1793.
- Humphrey, Mathew, and Marc Stears. "Animal Rights Protest and the Challenge to Deliberative Democracy." *Economy and Society* 35, no. 3 (2006): 400 - 422.
- Hurley, Susan, and Matthew Nudds. *Rational Animals*. Oxford: Oxford University Press, 2006.
- Hurley, Susan. "Making Sense of Animals." In *Rational Animals*, edited by Susan Hurley and Matthew Nudds. Oxford: Oxford University Press, 2006.
- Hurley, Susan, Matthew Nudds, and F I Dretske, eds. "Minimal Rationality." In *Rational Animals*. Oxford: Oxford University Press, 2006.

- Kant, Immanuel. "Duties to Animals Are Indirect." In *Animal Rights: a Historical Anthology*, edited by Andrew Linzey and Paul Clark. New York: Columbia University Press, 2004.
- . *The Metaphysics of Morals*. Translated by Mary Gregor. Cambridge: Cambridge University Press, 1797.
- Keeton, Morris. "Morality of Civil Disobedience." *Texas Law Review* 43 (1965 1964): 507.
- Kittay, Eva Feder. "At the Margins of Moral Personhood." *Journal of Bioethical Inquiry* 5, no. 2 (2008): 137-156.
- . *Love's Labor: Essays on Women, Equality, and Dependency*. London and New York: Routledge, 1999.
- Klosko, George. "Political Obligation and the Natural Duties of Justice." *Philosophy & Public Affairs* 23, no. 3 (1994): 251-270.
- Korsgaard, Christine. "Fellow Creatures: Kantian Ethics and Our Duties to Animals." *Tanner Lectures on Human Values*, no. 24 (2004): 77-110.
- . "The Sources of Normativity." *Tanner Lectures on Human Values*, no. 12 (1992): 19-112.
- Kramer, Matthew H., and Hillel Steiner. "Theories of Rights: Is There a Third Way?" *Oxford Journal of Legal Studies* 27, no. 2 (June 20, 2007): 281 -310.
- Kraut, Richard. "Desire and the Human Good." In *Ethical Theory: An Anthology*, edited by Russ Shafer-Landau. Oxford: Blackwell, 2007.
- Larrère, Catherine, and Raphaël Larrère. "Animal Rearing as a Contract?" *Journal of Agricultural and Environmental Ethics* 12, no. 1 (2000): 51-58.
- Lefkowitz, David. "On a Moral Right to Civil Disobedience." *Ethics* 117, no. 2 (2007):

202-233.

Lewis, Hywel D. "Obedience to Conscience." *Mind* 54, no. 215. New Series (July 1, 1945): 227-253.

Locke, John. *Two Treatises of Government and A Letter Concerning Toleration*. Edited by Ian Shapiro. New York: Yale University Press, 1690.

Lyons, David. "Moral Judgement, Historical Reality, and Civil Disobedience." *Philosophy & Public Affairs* 27, no. 1 (1998): 31-49.

MacDonald, Chris, and Chris Tucker. "Beastly Contractarianism? A Contractarian Analysis of the Possibility of Animal Rights." *Essays in Philosophy* 5, no. 2 (June 1, 2004).

Machan, Tibor. "Right, Liberation and Interests: Is There a Sound Case for Animal Rights or Liberation." In *New Essays in Applied Ethics*, edited by Hon-Lam Li and Anthony Yeung. Hampshire: Palgrave MacMillan, 2007.

Mann, Keith. *From Dusk 'till Dawn: An Insider's View of the Growth of the Animal Liberation Movement*. London: Puppy Pincher Press, 2007.

Markovits, Daniel. "Democratic Disobedience." *Yale Law Journal* 114 (2005 2004): 1897.

Martin, Rex. "Political Obligation." In *Political Concepts*, edited by Richard Bellamy and Andrew Mason. Manchester: Manchester University Press, 2003.

May, Larry. "Insensitivity and Moral Responsibility." *The Journal of Value Inquiry* 26, no. 1 (January 1992): 7-22.

McCarty, Richard. "Kantian Moral Motivation and the Feeling of Respect." *Journal of the History of Philosophy* 31, no. 1 (1993): 421-435.

McCloskey, Henry J. "Conscientious Disobedience of the Law: Its Necessity,

- Justification, and Problems to Which It Gives Rise.” *Philosophy and Phenomenological Research* 40, no. 4 (June 1, 1980): 536-557.
- McKinnon, Christine. “Ways of Wrong-doing, the Vices, and Cruelty.” *The Journal of Value Inquiry* 23, no. 4 (December 1, 1989): 319-335.
- McMahan, Jeff. “Eating Animals the Nice Way.” *Daedalus* 137, no. 1 (2008): 66-76.
- . “Self-Defense and the Problem of the Innocent Attacker.” *Ethics* 104, no. 2 (January 1994): 252-290.
- . *The Ethics of Killing*. Oxford: Oxford, 2002.
- Midgley, Mary. *Animals and Why They Matter*. Athens, America: University of Georgia Press, 1983.
- Miller, David. *National Responsibility and Global Justice*. Oxford: Oxford University Press, 2007.
- Milligan, Tony. *Beyond Animal Rights: Food, Pets and Ethics*. London: Continuum, 2010.
- Mill, John Stuart. *On Liberty*. Hertfordshire: Wordsworth, 1859.
- Moe, Kristine. “Should the Nazi Research Data Be Cited?” *The Hastings Center Report* 14, no. 6 (December 1, 1984): 5-7.
- Monaghan, Rachel. “Terrorism in the Name of Animal Rights.” *Terrorism and Political Violence* 11, no. 4 (December 1999): 159-169.
- Montmarquet, James A. “Culpable Ignorance and Excuses.” *Philosophical Studies* 80, no. 1 (October 1995): 41-49.
- “MPs Vote to Ban Fur Farms.” *BBC*, November 22, 2000, sec. UK Politics.
http://news.bbc.co.uk/1/hi/uk_politics/1035944.stm.
- Narveson, Jan. “Animal Rights.” *Canadian Journal of Philosophy* 7, no. 1 (March 1,

- 1977): 161-178.
- . *The Libertarian Idea*. Peterborough, ON: Broadview Press, 2001.
- . “Utilitarianism and New Generations.” *Mind* 76, no. 301. New Series (January 1, 1967): 62-72.
- Nestle, Marion. *Food Politics: How the Food Industry Influences Nutrition and Health*. Berkeley, Los Angeles and London: University of California Press, 2007.
- Nowak, B., T.V. Mueffling, and J. Hartung. “Effect of Different Carbon Dioxide Concentrations and Exposure Times in Stunning of Slaughter Pigs: Impact on Animal Welfare and Meat Quality.” *Meat Science* 75, no. 2 (February 2007): 290-298.
- Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic Books, 1974.
- Nussbaum, Martha. *Frontiers of Justice*. London: The Belknap Press of Harvard University Press, 2006.
- . *Upheavals of Thought: The Intelligence of Emotions*. Cambridge: Cambridge University Press, 2001.
- O’Neill, Onora. “Children’s Rights and Children’s Lives.” *Ethics* 98, no. 3 (April 1, 1988): 445-463.
- . “Kant on Duties Regarding Nonrational Nature.” *Proceedings of the Aristotelian Society, Supplementary Volume* 72, no. 1 (June 1998): 211-228.
- Otsuka, Michael. “Killing the Innocent in Self-Defense.” *Philosophy & Public Affairs* 23, no. 1 (January 1, 1994): 74-94.
- “Pain In Animals”, n.d.
- <http://www.animalliberationfront.com/Philosophy/Morality/Biology/PainInAnimals.htm>.

- Palmer, Clare. "The Idea of the Domesticated Animal Contract." *Environmental Values* 6, no. 4 (November 1997): 411-425.
- Pettit, Philip. "Consequentialism and Respect for Persons." *Ethics* 100, no. 1 (October 1, 1989): 116-126.
- Porphyry. *On the Abstinence of Eating Flesh*. Translated by Thomas Taylor, 1823.
<http://www.platonic-philosophy.org/files/Porphyry - On the Abstinence of Eating Animals.pdf>.
- Post, Stephen G. "The Echo of Nuremberg: Nazi Data and Ethics." *Journal of Medical Ethics* 17, no. 1 (March 1991): 42-44.
- Pullman, Daryl. "Human Dignity and the Ethics and Aesthetics of Pain and Suffering." *Theoretical Medicine and Bioethics* 23, no. 1 (2002): 75.
- Rawls, John. *A Theory of Justice: Revised Edition*. Cambridge, Mass.: Belknap Press of Harvard University Press, 1999.
- . "Kantian Constructivism in Moral Theory." *The Journal of Philosophy* 77, no. 9 (1980): 515-572.
- . *Political Liberalism*. New York: Columbia University Press, 2005.
- Raz, Joseph. "Permissions and Supererogation." *American Philosophical Quarterly* 12, no. 2 (April 1, 1975): 161-168.
- . *Value, Respect, and Attachment*. Cambridge University Press, 2001.
- Regan, Tom, and Carl Cohen. *The Animal Rights Debate*. Lanham: Rowman and Littlefield, 2001.
- Regan, Tom. "Empty Cages: Animal Rights and Vivisection." In *Contemporary Debates in Applied Ethics*, edited by Andrew I. Cohen and Christopher Heath Wellman. Wiley-Blackwell, 2005.

- . *The Case for Animal Rights*. London: Routledge, 1984.
- . *The Case for Animal Rights*. 2nd ed. Berkeley and Los Angeles: University of California Press, 2004.
- Richardson, Henry. "Rawlsian Social-contract Theory and the Severely Disabled." *The Journal of Ethics* 10, no. 4 (December 11, 2006): 419-462.
- Ripstein, Arthur. "Three Duties to Rescue: Moral, Civil, and Criminal." *Law and Philosophy* 19, no. 6 (November 1, 2000): 751-779.
- Ritchie, David. *Natural Rights: A Criticism of Some Political and Ethical Conceptions*. London: Routledge, 1894.
- Rodin, David. "War and Self-Defense." *Ethics & International Affairs* 18, no. 1 (2004): 63-68.
- Ross, William D. *The Right and the Good*. Oxford: Oxford University Press, 1930.
- Rowlands, Mark. *Animals Like Us*. London: Verso, 2002.
- . "Contractarianism and Animal Rights." *Journal of Applied Philosophy* 14, no. 3 (1997): 235-247.
- Russell, Bertrand. *History of Western Philosophy*. London: George Allen & Unwin, 1961.
- Scanlon, Tom. *What We Owe to Each Other*. Cambridge, Mass.: The Belknap Press of Harvard University Press, 1998.
- Schmidtz, David. "Respect for Everything." *Ethics, Policy & Environment* 14 (June 2011): 127-138.
- Scruton, Roger. *Animal Rights and Wrongs*. London: Continuum, 2006.
- Simmons, A. "Animals, Predators, the Right to Life, and the Duty to Save Lives." *Ethics & the Environment* 14, no. 1 (2009): 15-27.

- Simmons, A. John. *Moral Principles and Political Obligations*. Princeton: Princeton University Press, 1981.
- Singer, Peter. *Animal Liberation: Towards an End to Man's Inhumanity to Animals*. London: Granada Publishing, 1977.
- . *Democracy and Disobedience*. New York and London: Oxford University Press, 1974.
- Singer, Peter, ed. *Applied Ethics*. Oxford Readings in Philosophy. Oxford: Oxford University Press, 1986.
- Singer, Peter. *In Defense of Animals: The Second Wave*. Oxford: Wiley-Blackwell, 2006.
- . "Killing Humans and Killing Animals." *Inquiry: An Interdisciplinary Journal of Philosophy* 22, no. 1 (1979): 145.
- . "Possible Preferences." In *Preferences*, edited by Christoph Fehige and Ulla Wessels. Berlin: Walter de Gruyter, 1998.
- . *Practical Ethics*. Cambridge University Press, 2011.
- Skidmore, James. "Duties to Animals: The Failure of Kant's Moral Theory." *The Journal of Value Inquiry* 35, no. 4 (December 1, 2001): 541-559.
- Smith, Holly. "Culpable Ignorance." *The Philosophical Review* 92, no. 4 (October 1, 1983): 543-571.
- Smith, M. B. E. "Is There a Prima Facie Obligation to Obey the Law?" *The Yale Law Journal* 82, no. 5 (April 1, 1973): 950-976.
- Smith, William. "Civil Disobedience and the Public Sphere." *Journal of Political Philosophy* 19, no. 2 (June 1, 2011): 145-166.
- Stark, Cynthia A. "How to Include the Severely Disabled in a Contractarian Theory of Justice*." *Journal of Political Philosophy* 15, no. 2 (2007): 127-145.

- Strindlund, Pelle. "Butchers' Knives into Pruning Hooks: Civil Disobedience for Animals." In *In Defense of Animals: The Second Wave*, edited by Peter Singer. Oxford: Wiley-Blackwell, 2006.
- Taylor, Paul T. "The Ethics of Respect for Nature." In *Environmental Ethics: An Anthology*, edited by Andrew Light and Rolston III Holmes. Malden, MA: Blackwell, 2003.
- "The Destructive Dairy Industry." *Born Free USA*, n.d.
<http://www.bornfreeusa.org/facts.php?more=1&p=373>.
- Vanderheiden, Steve. "Eco-terrorism or Justified Resistance? Radical Environmentalism and the 'War on Terror'." *Politics & Society* 33, no. 3 (2005): 425 -447.
- Wellman, Christopher Heath. "Toward a Liberal Theory of Political Obligation." *Ethics* 111, no. 4 (July 1, 2001): 735-759.
- Wenar, Leif. "The Concept of Property and the Takings Clause." *Columbia Law Review* 97, no. 6 (October 1, 1997): 1923-1946.
- Wenz, Peter S. *Environmental Justice*. Albany: SUNY Press, 1988.
- White, Thomas I. *In Defense of Dolphins: The New Moral Frontier*. Wiley-Blackwell, 2007.
- Willams, George. "Mother Nature Is a Wicked Old Witch." In *Evolutionary Ethics*, edited by Matthew H. Nitecki and Doris V. Nitecki. New York: SUNY Press, 1993.
- Williams, Bernard. "The Idea of Equality." In *Contemporary Political Philosophy: An Anthology*, edited by Robert E. Goodin and Philip Pettit. Oxford: Blackwell, 2006.

Wong, Sophia Isako. "Duties of Justice to Citizens with Cognitive Disabilities."

Metaphilosophy 40, no. 3-4 (2009): 382-401.

Wood, Allen W., and Onora O'Neill. "Kant on Duties Regarding Nonrational Nature."

Proceedings of the Aristotelian Society, Supplementary Volumes 72 (January 1, 1998): 189-228.