



Is There a Theoretical Foundation for Moral Extensionism in John Rawls's Contractarian Theory?

Fabian Stenhaug

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Supervised by

Professor Caj Sixten Strandberg

Department of Philosophy, Classics, History of Arts and Ideas

Faculty of Humanities

University of Oslo

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Abstract

In this thesis, I argue that there is a theoretical foundation for moral extensionism in John Rawls's contractarian theory. I find that there are compelling theoretical reasons for extending the circle for moral status from humans to nonhuman animals – and for according nonhuman animals *direct* moral rights – on the basis of Rawls's contractarian theory. The fundamental reason for this is that Rawls was an exponent of Kantian contractarianism, and that his theory has a clear Kantian foundation. And by combining the works of Mark Rowlands, Allen Wood, and Christine M. Korsgaard, I forward the claim that it seems nothing but consistent with a Kantian contractarian theory, such as the one afforded by Rawls, to both acknowledge and express that both humans and nonhuman animals are morally considerable on the basis of our shared sentient capacities. Sentience, not rational agency, seems the more reasonable cut-off point for morality on Rawls's contractarian framework, given its clear Kantian foundation. This is so for *conceptual* Kantian reasons, which Rowlands can be taken to provide; and for *substantive* Kantian reasons, which Wood and Korsgaard can be taken to provide. In effect, this thesis thus offers a substantial critique of the way Rawls himself construed our moral relations with nonhuman animals on the basis of his theory; particularly his notion that the possession of “moral personhood” is decisive for being entitled to equal consideration. The view I advance here contests that notion and offers an alternate outlook on how Rawls's contractarian theory should construe our moral relations with nonhuman animals. Ultimately, I think there are Rawlsian resources for encompassing nonhuman animals in the moral sphere.

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Introduction

This thesis concerns how far the notion of moral status can be extended by reference to the contractarian theory portrayed by John Rawls in *A Theory of Justice*. And the issue I seek to assess is whether one may use this particular framework to extend the circle for moral status from humans to nonhuman animals. What fundamentally motivates this assessment is to display an answer to the following sort of practical question: *can one use Rawls's contractarian theory to underwrite the notion that nonhuman animals possess moral rights in the direct sense, as opposed to in a merely indirect sense?* In other words, I seek to investigate whether there are Rawlsian resources for suggesting that nonhuman animals, not just humans, are morally considerable in their own right and can be possessors of direct moral rights.

I shall argue that there are such resources. More specifically, I shall argue that there are compelling theoretical reasons for extending the circle for moral status from humans to nonhuman animals by reference to Rawls's contractarian theory, given its clear Kantian foundation. And this yields the conclusion that one *can* use Rawls's contractarian theory underwrite the notion that nonhuman animals possess direct moral rights. But this is by no means a foregone conclusion. The relationship between animal ethics and Rawlsian thought has been debated for over 40 years (Abbey, 2007, p.2). And Rawls himself was hesitant, even reluctant, to include nonhuman animals within the scope of his contractarian theory. In fact, Rawls (1999, p.448) maintained that "... it does not seem possible to extend the contract doctrine so as to include them in a natural way". Furthermore, Rawls did not think that there could be a contractarian account of our moral relations with animals in that contractarian accounts only include relationships we have with other people (Dombrowski, 1998, p.64; see also Rawls, 1999, p.14).

In some sense, that is not at all surprising: the view that contractarianism is incompatible with animal rights is both widespread and tenacious (Rowlands, 2009, p.3). Indeed, it is almost universally assumed that contractarian approaches are unable to underwrite the granting of direct moral status to nonhuman animals (Rowlands, 2009, p.119). And it is generally agreed that while contractarian theories may justify assigning indirect moral status to non-human animals on the basis of their value to humans, they are fundamentally incapable of granting direct moral status to these creatures (Vickery, 2013, p.23). The reason for this is that nonhuman animals are not rational agents – and contractarian approaches, such as the one afforded by Rawls, subsume only rational agents under the umbrella of moral consideration and concern (Rowlands, 2009, p.121). In other words, Rawls, like most contractarian theorists, chose to

exclude non-human animals from moral consideration on the grounds that they lack rationality, or “moral personhood” (Vickery, 2013, p.23; Dombrowski, 1998, p.64).

The crux of this orthodox and generally assumed view of the relation between Rawlsian contractarianism and animal ethics is perhaps most clearly formulated by Peter Carruthers:

Morality is here [i.e. according to Rawls’s contractarian theory] pictured as a system of rules to govern the interaction of rational agents within a society. It therefore seems inevitable, on the face of it, that only rational agents will be assigned direct rights on this approach. Since it is rational agents who are to choose the system of rules, and choose self-interestedly, it is only rational agents who will have their position protected under the rules. There seems no reason why rights should be assigned non-rational agents. Animals will, therefore, have no moral standing under Rawlsian contractualism, in so far as they do not count as rational agents (Carruthers, 1992, p.98-99).

Thus, to put it more generally, the crux of the orthodox view is that only rational agents have moral standing and may be assigned direct moral rights. Non-rational beings, in contrast, may, at best, be assigned indirect moral standing and rights on the basis of their value to humans (see Bernstein, 1997, p.49; Regan, 2014, p.192-193). In this way, the circle for moral status can be said to be restricted to rational agents, or moral persons, as far as Rawls’s contractarian theory goes. And this has led many commentators to assert that Rawls’s theory is unsympathetic, or unfriendly, to the plight of nonhuman animals (Vickery, 2013, p.25; see also Bernstein, 1997, p.49).

But not all agree with this way of relating Rawls’s contractarian theory to the animal issue. Perhaps most influentially, Mark Rowlands has forwarded a case for why one should relate Rawls’s contractarian theory to the animal issue in a profoundly different way. On Rowlands’s view, Rawls’s theory can, when properly understood, be used to underwrite the moral claims animals (see Rowlands, 2009, p.118; Rowlands, 1997, p.236). More specifically, it can be used to justify the claim that nonhuman animals possess *direct* moral rights. As we shall see, Rowlands’s argument depends, crucially, upon assessing what form of contractarian theory Rawls actually afforded; namely, a *Kantian* form of contractarianism. And, crudely put, Rowlands’s argumentative strategy is to render Rawls’s theory internally consistent with its so-called “Kantian core”; that is, to re-interpret Rawls’s theory so as to end up with a version that is truer to Rawls’s underlying Kantian motivation and methodology (see Rowlands, 2009, p.128). Once one has this, Rowlands argues, Rawls’s contractarian theory can, in fact, be used

to underwrite the direct moral claims of nonhuman animals. This is so since sentience, not rationality, serves as a much more reasonable cut-off point for morality on the Kantian version of contractarianism – and thereby on Rawls’s theory as well, given its Kantian core.

The argument I shall develop throughout this thesis very much proceeds from and draws upon that of Rowlands. In particular, it exploits Rowlands’s argumentative strategy of appealing to the “Kantian core” of Rawls’s contractarian theory. In general, I believe that the crux of Rowlands’s argument appears correct: insofar as Rawls’s theory is applied in a way which is truly consistent with its Kantian core, it does appear that one should accord nonhuman animals moral status and direct moral rights on the basis of their sentient capacities. Yet, although I ultimately endorse the crux of Rowlands’s argument, I shall argue that it faces a pressing problem that must be addressed in order for this sort of argument to fully succeed.

I will, conveniently enough, simply refer to this as “Rowlands’s problem”. In essence, this problem encapsulates the worry that Rowlands’s argument, despite its many virtues, ultimately ends up begging a fundamental question that must be further assessed on the Kantian version of contractarianism. The question Rowlands ultimately ends up begging, I believe, is precisely the question of what it is that serves as the “cut-off point” for morality on the Kantian contractarian position – and thereby on Rawls’s contractarian position as well, given its Kantian core. I argue that, on the face of it, it seems nothing but consistent to side with Rawls’s stated view in excluding nonhuman animals from the moral sphere on the ground that they lack rational agency, or “moral personhood”, as this simply reflects precisely the Kantian notion that rational agency is the source of moral standing. In other words, “Rowlands’s problem” is that it would appear perfectly consistent with the Kantian core of Rawls’s theory to maintain that only rational agents are to be accorded moral status and direct moral rights – and omit nonhuman animals from the moral sphere on this basis.

This is where my main contribution enters the picture: I attempt to vindicate the crux of Rowlands’s argument, by way of arguing that more *substantive* Kantian reasons for according moral status to nonhuman animals can be found and inserted in the context of Rawls’s theory given its clear Kantian foundation. Using the respective accounts of Allen Wood and Christine M. Korsgaard as a basis, I forward the claim that it seems nothing but consistent with a Kantian form of contractarianism, such as that afforded by Rawls, to extend the circle for moral status from humans to nonhuman animals on the basis our shared sentient capacities. Not doing so, for example by way of restricting moral consideration to rational agents only, which Rawls himself did, appears fundamentally misguided, if not even arbitrary, as it fails to acknowledge

the full reach of Kant's theory of value. Thus, in continuation of Rowlands's argument, which essentially highlights that there are no *conceptual* Kantian reasons for withholding the granting of moral status to nonhuman animals, I further argue that there are also compelling *substantive* Kantian reasons for extending the circle for moral status from humans to nonhuman animals. Ultimately, this yields the conclusion that there is a theoretical foundation for moral extensionism in Rawls's contractarian theory – and that it can be used to underwrite the notion that nonhuman animals possess direct moral rights.

The plan is to proceed as follows. In the first chapter, I present the overarching approach that I will be employing: “moral extensionism”. In connection with this, I give a rough sketch of what the “debate” between Rawls and Rowlands revolves around in terms of this approach. In the second chapter, I provide an understanding of “moral rights” as well as its two distinct senses: “direct moral rights” and “indirect moral rights”. In the third chapter, I situate Rawls's theory in its proper theoretical context; namely, “the social contract theory tradition” more generally, and “Kantian contractarianism” more specifically. In continuation of this, I outline Rawls's theory, with a particular focus on why and how it represents a Kantian form of contractarianism, in the fourth chapter. And in the fifth chapter, I examine Rawls's stated view on the animal issue – before examining Rowlands's argument in the sixth chapter. In the seventh chapter, I provide a short summary of what the “debate” between Rawls and Rowlands revolves around and outline “Rowlands's problem” in continuation of this. And in the eighth chapter, I further assess the Kantian core of Rawls's theory by way of examining how the views afforded by Kant and Rawls align in virtually all relevant respects – and highlight in what way this appears to aggravate “Rowlands's problem”. But in the ninth chapter, I motivate why there may be a way of alleviating “Rowlands's problem”; namely, by way of consulting the “critical camp” in the debate concerning Kant's view on the animal issue. And in the tenth chapter, I examine the accounts afforded by Wood and Korsgaard, before inserting them in the context of Rawls's contractarian theory – precisely on the basis of its clear Kantian foundation – in the eleventh chapter. In the twelfth chapter, I reassess the “debate” between Rawls and Rowlands and spell out why there appears to be a rather strong theoretical foundation for moral extensionism in Rawls's contractarian theory, before commenting on some foreseeable objections in the thirteenth and final chapter. I conclude by summarizing the crux of the argument and highlighting some key implications and remaining issues.

Chapter 1: Moral extensionism

What I seek to investigate in what follows, then, is whether there is a theoretical foundation for moral extensionism in Rawls's contractarian theory. And what fundamentally motivates this undertaking is to display an answer to the following question: *can one use Rawls's contractarian theory to underwrite the notion that nonhuman animals possess moral rights in the direct sense, as opposed to in a merely indirect sense*. Before turning our attention to Rawls's contractarian theory, though, it seems fruitful to begin by explaining what "moral extensionism" is – as well as elucidating the related concept of "moral rights" and its two different senses. I will do the former in this chapter, and the latter in the next chapter. Hopefully, this serves to clarify how I shall proceed in the course of my investigation, as well as providing an understanding of the key concepts and notions that lay at the center of it.

Moral extensionism: extending the circle for moral status

So, what is "moral extensionism"? In short, moral extensionism is a standard approach to environmental ethics, by which one seeks to *extend* the circle for moral status from humans to nonhumans (Gamlund, 2013, p.329-336). Thus, a simple way of putting the fundamental question to be assessed throughout this thesis is whether Rawls's theory may be taken to enable or allow for such an approach. Or, more specifically, whether one can use Rawls's contractarian theory as a basis for extending the circle for moral status from humans to nonhumans, such as nonhuman animals.¹

Of course, "the circle for moral status" is a somewhat figurative manner of speech. So, let us break down what this means before outlining how an extensionist approach proceeds. The concept of "moral status", then, will be here be understood in terms of Mary Anne Warren's definition, which holds that:

To have moral status is to be morally considerable, or to have moral standing. It is to be an entity towards which moral agents have, or can have, moral obligations. If an entity has moral status, then we may not treat it in just any way we please; we are morally obliged to give weight in our deliberations to its needs, interests, or well-being. Furthermore, we are morally obliged to do this not merely because protecting it may

¹I shall indeed pay exclusive focus to nonhuman *animals* in this thesis, and therefore neglect the issue of whether it is possible to extend the circle for moral status even further than this by reference to Rawls's contractarian theory.

benefit ourselves or other persons, but because its needs have moral importance in their own right (Warren, 1997, p.3).

So, in essence, the concept of moral status has to do with being *directly* morally considerable, in the sense of being an entity that moral agents may have moral obligations towards because its needs have moral importance *in their own right*. And a useful way of thinking about this concept, then, is to picture it as a “circle”, or a “moral sphere”, encompassing those who have this sort of status or standing. Indeed, I shall involve this way of thinking about this concept in what follows.

To put this notion in slightly different terms, an entity has moral status, or moral standing, if and only if it can be morally wronged (Sytsma and Machery, 2012, p.304). And entities that have this sort of moral standing, on the condition that they can be morally wronged, thereby deserve to be *directly* morally considered by moral agents in this way (Sytsma and Machery, 2012, p.304). For sake of convenience, I shall refer to such entities as “moral subjects”; which is to say that they are individuals whose needs and interests are to be recognized by moral agents in the course of their deliberations and actions, or to be included in “the moral sphere”, in virtue of having moral status or standing.

The source of moral standing: experientialism and logocentrism

Now, having elucidated the key concept, how does an “extensionist approach” proceed? Well, at the most general level, the question is what sorts of entities that have moral standing and are thereby to be included in the moral sphere. A first thing to note in that regard, is that it is generally taken as a fundamental assumption, or starting point, that humans have moral standing (see Curry, 2011, p.71-72). That is, an extensionist approach typically starts off by granting, rather than questioning, the fact that humans have moral standing and are thereby to be included in the moral sphere. And the way in which an extensionist approach proceeds from this starting point, then, is essentially by asking the following question: well, what is it that makes humans morally considerable? Or, alternatively put, one asks what the *source* of their moral standing is (see Sytsma and Machery, 2012, p.303-305).

To be sure, there are various views on what the source of moral standing may be, as portrayed in different sorts of ethical frameworks. Thus, there is no clear-cut answer to this question.

However, Justin Sysma and Edouard Machery (2012, p.305) make a useful distinction² between two traditional candidates figuring in philosophical theorizing about moral standing: 1) sentience, or experience; and 2) agency, or cognition. Sentience, on the one hand, can be defined as the capacity of an entity to have negative or positive affective states, such as the experience of pain and pleasure (Sysma and Machery, 2012, p.305). Agency, on the other hand, can generally be taken to include an array of rational capacities, such as the ability to consider reasons when one judges and decides to act (Sysma and Machery, 2012, p.305).

This distinction corresponds, more or less, to two different “foundational views” regarding this matter: “experientialism” and “logocentrism”. An experientialist view, on the one hand, essentially takes sentience to be the main source of moral standing, as it holds that “...all creatures with conscious experiences deserve our moral attention” (Gruen, 2017, p.91; see also Sysma and Machery, 2012, p.307). Or, alternatively put, an experientialist view holds that all sentient beings are to be included in the moral sphere in virtue of their sentient capacities. A logocentric view, on the other hand, essentially takes rational agency to be the main source of moral standing, as “... it is based on the idea that rational nature, and it alone, has absolute and unconditional value” (Wood, 1998, p. 198; see also Sysma and Machery, 2012, p.305). Or, alternatively put, a logocentric view holds that rational agents are to be included in the moral sphere in virtue of their rational capacities.

Depending on which sort of foundational view one assumes or operates with, the next, and fundamental, question an extensionist approach involves assessing is essentially whether the circle for moral status should be *extended* from humans to nonhumans on this sort of basis (see Curry, 2011, p.71-72). That is, after having elucidated what it is that allegedly makes humans “stand out”, morally speaking, an extensionist approach turns to assessing whether the same thing “stands out” beyond the human – hence meriting the extension of the same sort of standing. In essence, then, the guiding idea on moral extensionism is that what has been thought of as a solely human value, in terms of a given foundational view, is also true of nonhumans (see Curry, 2011, p.71-72).

² As will become clear as we proceed, it will be very useful for the purposes of this thesis, as it more or less encapsulates the sorts of views afforded by Rawls and Rowlands.

The general structure of an extensionist argument

To make this more palpable, a useful way of elucidating the general structure of an extensionist argument is to consider a formulation provided by Kenneth Goodpaster, which may be put as follows³:

For all X and all Y it is the case that X is granted moral status by Y if and only if X is F and Y is G, where G are the requirements for being a moral actor, and F are the requirements for having moral status.

What this formulation essentially suggests is that moral actors⁴ are to grant moral status to all sorts of entities who qualify the relevant requirements for it. All this amounts to, really, is to apply a given view or framework in a consistent, non-arbitrary manner. Thus, the general structure of an extensionist argument may be put as follows: if the possession of X is what makes humans worthy of moral standing in the first place, and X is possessed by a nonhuman entity, then that nonhuman entity is also worthy of moral standing. Hence, the circle for moral status is to be extended so as to include this entity in the moral sphere, or the circle for moral status, as well, for sake of consistency.

The debate regarding moral status, then, is concerned with what the relevant requirements are (Gamlund, 2013, p.335). And, of course, the answer one gives depends on what one takes to be the source of moral standing. In that regard, it is important to note a fairly obvious yet crucial point: not all sorts of frameworks allow for an extensionist approach, insofar as they operate with a view on the source of moral standing which suggests a requirement that does not figure in the case of nonhumans. That is, on some sorts of frameworks, there is a view on the source of moral standing which suggests a requirement for having moral status which solely figures in the case of humans. To illustrate this, let us fill out Goodpaster's formulation by reference to the two foundational views alluded to earlier: experientialism and logocentrism.

Let us begin with the experientialist view. As mentioned, this sort of view essentially takes sentience to be the source of moral standing. Hence, it merits a formulation of the following sort:

³ This is Espen Gamlund's way of summarizing the crux of it (See Gamlund, 2013, p.335).

⁴ Gamlund (2013, p.336) points out that "moral actors" are usually taken to be adult persons who can be held responsible for their actions, and I shall stick with this understanding throughout this thesis. The main issue here is what the requirements for having moral status (F) is, or should be, on Rawls's contractarian theory.

For all X and all Y it is the case that X is granted moral status by Y if and only if X is a *sentient being* and Y is a an adult person who can be held responsible for his or her actions.

Clearly, a consistent and non-arbitrary application of this formulation leads to extending the circle for moral status from humans to nonhuman animals. That is, it can serve as a basis for an extensionist argument or allow for an extensionist approach. This is so, since it seems relatively uncontroversial to maintain that (at least some) nonhuman animals are sentient beings.⁵ Hence, the circle for moral status should be extended so as to include nonhuman animals in the moral sphere on the basis of an experientialist view.⁶

Now, let us also fill out Goodpaster's formulation by reference to the logocentric view. As mentioned, this sort of view takes rational agency to be the source of moral standing. Hence, it merits a formulation of the following sort:

For all X and all Y it is the case that X is granted moral status by Y if and only if X is a *rational agent* and Y is a an adult person who can be held responsible for his or her actions.

Now, does this formulation allow for extending the circle for moral status from humans to nonhuman animals? Well, arguably not, for a fairly obvious reason: nonhuman animals are not rational agents – only humans are.⁷ Thus, if one adopts a logocentric view, and thereby maintains rational agency as the relevant source of moral standing, it seems the most consistent to *not* extend the circle for moral status so as to include nonhuman animals in the moral sphere.⁸ At the very least, it is not straightforwardly arbitrary to only extend the circle for moral status so as to include humans on the basis of a logocentric view, as only humans, it is supposed, are rational agents.

The debate between Rawls and Rowlands

So, in assessing whether Rawls's contractarian theory enables or allows for an extensionist approach with regards to nonhuman animals, there are essentially two related questions that we

⁵ Indeed, I shall simply assume that this is correct throughout this thesis.

⁶ For a more detailed illustration, see Gamlund's (2013, p.339-340) examination of Peter Singer's utilitarian view.

⁷ As will become clear as we proceed, this is assumed by virtually all thinkers whose respective views are taken into consideration in this thesis. And I shall, correspondingly, assume the same.

⁸ For a more detailed illustration, see Gamlund's (2013, p.336-339) examination of Kant's deontological view.

need to address: what sort of view on the source of moral standing does, or *should*, it operate with? And does this view allow for extending the circle for moral status from humans to nonhuman animals? Both of these related questions are, essentially, a matter of debate between Rawls and Rowlands. And, tentatively put, their “debate”⁹ revolves around two related aspects, which can be put in terms of moral extensionism.

The first aspect essentially revolves around what to take as the source of moral standing on Rawls’s contractarian theory.¹⁰ Rawls himself, on the one hand, emphasized rational agency as the relevant source or criterion in this regard, and thus adopted a logocentric sort of view. Rowlands, on the other hand, emphasizes sentience as the relevant criterion in this regard, and thus adopts an experientialist sort of view. As such, there is a sort of “theoretical tension” between Rawls and Rowlands, regarding what to take as the relevant source of moral standing on Rawls’s contractarian theory. Or, alternatively put, they differ on which sort of foundational view to adopt on the Rawlsian framework: a logocentric one, or an experientialist one?

The second aspect essentially revolves around whether or not one may extend the circle for moral status from humans to nonhuman by reference to Rawls’s contractarian theory. Rawls, on the one hand, withheld extending the moral sphere from humans to nonhumans, insofar as they are not rational agents¹¹, on the basis of maintaining a logocentric sort of view. Rowlands, on the other hand, grants extending the moral sphere from humans to nonhumans, insofar as they are sentient beings¹², on the basis of maintaining an experientialist sort of view. As such, there is also a sort of “practical tension” between Rawls and Rowlands, regarding how the two apply Rawls’s theory to the animal issue – which essentially follows from the more theoretical tension regarding what the source of moral standing is, or *should* be, on Rawls’s contractarian theory.

To be sure, this is very crudely and tentatively put, and we shall, of course, further examine the relevant positions in this “debate” in what follows. However, I take it that it is useful to have a rough idea of what the two competing accounts afforded by Rawls and Rowlands involve, and what distinguishes them, as we proceed from this stage. The main point here is simply that these

⁹ I want to emphasize here that I use the term “debate” in a completely heuristic sense, for analytic purposes. To my knowledge, Rawls and Rowlands never actually engaged in a debate on these issues. But I nevertheless think it is useful to construe it as such, as it allows me to put their differences a little more vividly, and thereby serves as an efficient way of operationalizing their respective positions in terms of moral extensionism.

¹⁰ That is, what to put in the place of “X” in terms of Goodpaster’s formulation.

¹¹ Which, again, nonhuman animals supposedly are not.

¹² Which, again, at least some nonhuman animals supposedly are.

sorts of issues are contentious in the literature on the topic of Rawls and the animal issue. And the way forward is, simply put, to assess what appears to be the correct way of relating Rawls's theory to the animal issue.

Summing up

To sum up, moral extensionism is an approach which seeks to extend the circle for moral status from humans to nonhumans. And the question I seek to assess is whether Rawls's theory enables or allows for such an approach with regards to nonhuman animals. In that regard, I have highlighted two related questions that we need to address: 1) what sort of view on the source of moral standing does, or *should*, Rawls's theory operate with; and 2) does this view enable or allow for an extensionist approach? As sketched in the final part of this chapter, both of these questions are, essentially, a matter of debate between Rawls and Rowlands. And their "debate" may be encapsulated in terms of two related tensions: 1) a theoretical tension, which has to do with what the source of moral standing is, or should be, on Rawls's contractarian theory; and 2) a practical tension, which has to do with whether or not one may extend moral considerability from humans to nonhumans on the basis of the former.

Chapter 2: Moral rights – direct versus indirect

As alluded at the beginning of the previous chapter, I shall now elucidate a concept that is very much related with the concept of moral status; namely, "moral rights". Furthermore, I shall also distinguish between two fundamentally different senses of moral rights: 1) "*direct* moral rights" and 2) "*indirect* moral rights". In connection with this, I shall employ an imaginary scenario, titled "The Case of John", as a way of making the fundamental difference between the two senses of moral rights more palpable. In doing so, I also hope to further underline why the question that motivates this thesis is a consequential to assess.

Moral rights

Let us begin by elucidating the concept of "moral rights". A simple way of doing so is to note a rather straightforward connection between the concept of moral standing and that of moral rights. The connection, then, is that to have moral standing is a necessary condition, and may be a sufficient condition, for the possession of moral rights (Sytsma and Machery, 2012, p.305).

In this way, having moral standing can be said to be inherently connected with the possession of moral rights, in the sense that having moral standing essentially is what generates a *moral claim* to be respected or morally considered by moral agents (see Sytsma and Machery, 2012, p.304-305; Gruen, 2010). Thus, to say that an entity has a “moral right” is, essentially, to say that it has a moral claim, or is *morally entitled*, to have its needs, interests or well-being respected, in virtue of having moral standing. Alternatively put, a “moral right” represents an entitlement on the part of moral agents to not treat a moral subject in just any way we please.

On my understanding, this somewhat general notion of moral rights can, more or less, be put in terms of the account employed by Tom Regan.¹³ In short, Regan’s account maintains that moral rights are: 1) valid claims to a specific commodity, freedom, or treatment, 2) made against assignable individuals who are capable of granting or withholding the commodity, freedom, or treatment, 3) where a claim is valid if it is backed or entailed by a correct moral theory (Rowlands, 2009, p.118). To generalize, this account thus identifies a string involving claims, assignable individuals or moral agents, and a correct moral theory, as elements in construing an understanding of what moral rights are and what it takes for them to be valid. And, in terms of Regan’s account of moral rights, this essentially what I shall argue: nonhuman animals may have valid claims to a specific commodity, freedom, or treatment, made against moral agents, entailed by Rawls’s contractarian theory.¹⁴ That is, I shall argue that nonhuman animals may be accorded moral rights by reference to Rawls’s theory.

Direct moral rights versus indirect moral rights

However, I shall not merely argue that nonhuman animals may be accorded moral rights in an *indirect* sense by reference to Rawls’ theory. What I shall argue, rather, is that they may be accorded moral rights in the *direct* sense by reference to Rawls’s theory – in line with what Rowlands has originally suggested and argued. As such, it is worthwhile to properly distinguish these two senses, so as to understand what this really amounts to and why it is consequential, before continuing our assessment.

¹³ This is the account of rights that Rowlands involves (see Rowlands, 2009, p.118), and I find it fruitful to involve it here as well.

¹⁴ The question of whether Rawls’s theory is “a correct moral theory” will, for fairly obvious reasons, have to fall outside the scope of this thesis. Working with the assumption that it is (if not correct, then at least plausible), the question simply is whether it can “back” or “entail” that the moral claims of nonhuman animals are valid.

One way of putting the difference between these two senses turns upon the way in which they are possessed. A *direct* moral right, on the one hand, is possessed by an individual if and only if this individual a) possesses this right and b) the possession of this right *does not* depend on the existence of rights possessed by any individual distinct from that individual (Rowlands, 2009, p.119). An *indirect* moral right, on the other hand, is possessed by an individual if and only if this individual a) possesses this right and b) the possession of this right *does* depend on the existence of rights possessed by an individual distinct from that individual (Rowlands, 2009, p.119). So, the difference between the two senses lies not in the possession of a given right per se, but whether the possession of the given right is dependent upon the existence of a right of another distinct individual or not. If it is, then it is indirect; if not, then it is direct.

Another way of putting the difference¹⁵ is to say that, if an individual possesses a direct moral right, then a moral agent has a moral obligation *to*, or *towards*, that individual. That is, an individual with a direct moral right has a valid claim that is to be *directly* morally considered by a moral agent. If an individual possesses an indirect moral right, in contrast, then a moral agent merely has a moral obligation *in regard to* that individual. That is, an individual with an indirect right has a claim that is to be *indirectly* morally considered by a moral agent, in relation to, or in virtue of, a valid claim possessed by another individual distinct from that individual.

The fundamental difference between these two senses of moral rights, then, may be put as follows. A direct moral right, on the one hand, is a moral right as such: it signifies or represents a moral obligation that holds directly between a moral agent *towards* a moral subject who has a valid claim. An indirect moral right, on the other hand, is not a moral right as such: it does not, strictly speaking, signify or represent a moral obligation that holds directly between a moral agent towards a moral subject who has a valid claim. What an indirect right represents, rather, is that there is a morally relevant *relation* between a given entity and a given moral subject who has a valid claim, which thereby signifies that the given entity is to be considered *indirectly*; that is, to be considered *in relation* to the moral obligation that holds directly between a moral agent towards a distinct moral subject who has a valid claim.

Thus, it should be fairly clear that the two senses of moral rights represent two vastly different ways of morally considering a given entity: to possess an indirect moral right means to be indirectly morally considerable, whereas to possess a direct moral right means to be directly morally considerable. To make this more palpable, and to see why the difference is a significant

¹⁵ See, for example, Regan, 2014, p.192.

one with regards to the animal issue, let us entertain an imaginary scenario which I have titled “The Case of John”.

The Case of John

The Case of John goes as follows: Martha¹⁶ has a companion animal, a dog named John.¹⁷ Martha also has a neighbor, Tom, who is by and large an assignable and respectable individual.¹⁸ However, Tom happens to be an eccentric advocate and performer of medieval vivisection on nonhuman animals. And one day, Tom finds John sitting in Martha’s backyard, and decides to lure him over to his house. There, Tom performs his medieval methods on John, leading to John undergoing an enormous amount of suffering and losing his four legs in the process. Later that day, Martha heads out to her backyard. When she does, Tom returns carrying her now severely vivisected companion animal under his arm and goes: “Hi there, I just borrowed John for a minute. Here you have him!”. And Martha responds by crying out loud: “what have you done to John?!”.

Intuitively, I think, Martha’s response seems fitting, as Tom’s action appears morally dubious. But on what basis? What is it that merits Martha’s outcry, more specifically? Well, the point is that this depends on whether one accords John direct moral rights or indirect moral rights. If one accords John *direct* moral rights, then what merits Martha’s outcry is that Tom has failed to respect his moral obligation *to* John in subjecting him to medieval vivisection. That is, Tom has morally wronged *John* in subjecting him to medieval vivisection, insofar as John possesses direct moral rights. But if one accords John *indirect* moral rights, then what merits Martha’s outcry is merely that Tom has failed to respect his moral obligation *to her* *in regard* to John in subjecting him to medieval vivisection.¹⁹ That is, Tom has morally wronged *Martha* in subjecting John to medieval vivisection, insofar as John merely possesses indirect moral rights in relation to Martha’s moral rights. In other words, to accord John moral rights in the direct sense means that John is to be directly morally considered by Tom, whereas to accord John

¹⁶ Here, Martha is assumed to be both a human and a moral subject who possesses direct moral rights.

¹⁷ Here, John is assumed to be a sentient being – and, of course, the fundamental question here is whether he is to be considered a moral subject with direct moral rights or not.

¹⁸ That is, Tom is a moral agent.

¹⁹ To be sure, there are many ways of meriting the possession of indirect rights in the case of nonhuman animals. But to illustrate all foreseeable ways in which this may be so here would be a tireless and needlessly lengthy endeavor. To illustrate the main point here, it suffices to focus on the three figures portrayed in the case of John: Martha, John, and Tom.

moral rights in the indirect sense means that John is only to be indirectly morally considered by Tom in virtue of rights Martha happens to possess.

Hopefully, this case serves to make the essential difference between the two senses of moral rights more palpable. Yet, it may not seem all that consequential a difference with regards to the animal issue at first glance. After all, both senses can, albeit for different reasons, serve to show that John is to be morally considered by Tom – either directly so, or indirectly so. Thus, insofar as we want to say that Tom has a duty to not treat John in whatever way he pleases, which seems intuitive enough to hold, both the direct sense and the indirect can render this supposition.

However, only the direct sense can render the supposition that *John's* interests have been infringed – and fully safeguard the intuition that Tom's action is morally dubious. To illustrate this fundamental point, let us stick with the case of John and the assumption that John merely possesses an indirect right in relation to Martha's moral rights, or valid claims. To repeat, what this entails is that the reprehensibility of Tom's action is completely dependent upon Martha's given claim regarding John – as John, in his own right, has no valid claims to speak of. On that note, let us entertain two vastly different claims Martha may have regarding John.

Firstly, let us say that Martha is deeply emotionally attached to John's well-being. If that is the case, then it is at least foreseeable that she may have a valid claim regarding John which consists in not subjecting John to tormenting treatments, such as medieval vivisection, since that inherently wrongs her needs, interests, or well-being. By having subjected John to medieval vivisection, then, it is thus foreseeable that Tom, being a moral agent, has infringed John's indirect right – since he has thereby infringed Martha's valid claim regarding John. However, that is only to say that Tom has morally wronged Martha, *not* John himself.

Secondly, let us say that, far from being emotionally attached to John, Martha vigorously hates John. Furthermore, let us even say that Martha hates John so much that she actually wants Tom to vivisect him in medieval fashion, as that would make for a win-win situation: Tom gets a research subject, and Martha thereby gets to exchange her “expendable commodity” for her neighbor's gratitude. Now, if that is the case, then it is not entirely evident that Tom has committed any morally blameworthy or reprehensible action. In principle, it may even be foreseeable that Tom has, in fact, committed a morally *praiseworthy* action, since his action has, in a way, served to respect Martha's claim regarding John: Martha's claim was to have her

commodity, John, vivisected, and Tom granted this claim and acted upon it – and both are, we can suppose, well-off in this exchange.

The general point to be appreciated, then, is that merely according indirect moral rights to nonhuman animals, such as John, effectively leaves them at the mercy of there being possessors of direct moral rights who actually take an interest in their needs, interests, or well-being – and forward valid claims regarding them. That is, to accord nonhuman animals moral rights in the indirect sense suggests conceiving our moral relations with nonhuman animals as worthwhile to consider only in relation to claims made by humans.²⁰ And to put the fundamental point here rhetorically: is this really a plausible way of conceiving our moral relations with nonhuman animals? Does it not seem more plausible to hold that Tom has committed a morally dubious action towards John himself, independent of his given relation to Martha, in subjecting him to medieval vivisection? That is, does it not seem more intuitive that one should accord John moral rights in the direct sense here?

Why the question is consequential to assess

To the extent that one shares this intuition, it should not be too difficult to see why the question that motivates this thesis is consequential to assess. To repeat, the question that motivates this thesis is whether one may use Rawls's contractarian theory to underwrite the notion that nonhuman animals possess moral rights in the direct sense, as opposed to in a merely indirect sense. As we have seen, to hold the latter suggests that nonhuman animals are morally relevant to consider only insofar as they stand in a morally relevant relation to human beings. Hence, if a given nonhuman animal does not stand in a morally relevant relation to a human being, then there is, at least in principle, nothing morally blameworthy with subjecting it to any sort of treatment – no matter how severe. Thus, to put it a little blatantly, what is at stake in our assessment is whether one may “save” Rawls's theory from yielding this rather unsatisfying way of construing our moral relations with nonhuman animals.

As suggested earlier, doing so inherently involves extending the circle for moral status from humans to nonhumans on the basis of Rawls's theory in the first place. That is, in order to accord moral rights to nonhuman animals in the direct sense by reference to Rawls's theory, one has to begin by including them in the moral sphere by reference to this theory. This is so

²⁰ Given the assumption that only humans have moral standing and possess direct moral rights, that is.

since having moral standing is a necessary condition for the possession of *direct* moral rights: in order to have a valid claim, entailed by a moral theory, one must necessarily be a moral subject according to that moral theory. And the question to be assessed in what follows, then, is whether this can be established on the basis of, or in terms of, Rawls's contractarian theory.

Summing up

To sum up, the concept of "moral standing" and that of "moral rights" (in the direct sense) are inherently connected: possessing moral standing is a necessary condition, and may be a sufficient condition, for the possession of (direct) moral rights. Thus, we need to assess whether there is a theoretical foundation for moral extensionism in Rawls's contractarian in order to give an affirmative answer to whether it may be used to underwrite the notion that nonhuman animals possess moral rights in the direct sense, as opposed to in a merely indirect sense.

Chapter 3: The social contract theory tradition

So, having elucidated the key concepts and notions in the previous chapters, I shall now begin the actual assessment of whether there is a theoretical foundation for moral extensionism in Rawls's contractarian theory. In that regard, I shall start by examining what sorts of theoretical elements that actually lay at the foundation of Rawls's theory to begin with. This is so as to see what sorts of ideas and concepts we may involve in the course of our assessment – which is what the next two chapters seek to clarify and elucidate. The plan here is to proceed as follows. In this chapter, I shall situate Rawls's theory in its proper theoretical context or tradition; namely, the "social contract theory tradition" more generally, and "Kantian contractarianism" more specifically. And in the next chapter, I shall outline Rawls's theory in further detail in continuation of this, with a particular focus on why and how it represents Kantian form of contractarianism.

Social contract theory: two basic forms

As a point of departure, let us begin this part of the investigation by stating the obvious: Rawls afforded a theory which falls within the tradition usually labelled "Social Contract Theory", or "contractarianism". If not entirely obvious, it was at the very least expressed by Rawls himself in delineating his overall goal with *A Theory of Justice* (see Rawls, 1999, p.10 and 14).

Moreover, it is commonly pointed out throughout various philosophical textbooks that his theory of justice figures as the canonical version of contemporary contractarianism – including the works by Rowlands (see Rowlands, 2009, p.118). Thus, Rawls’s theory is, unquestionably, a contractarian one.

Now, *having that said*, what is characteristic of a contractarian theory? At the most general level, what is characteristic of a contractarian theory is to make use of a “contract device” so as to give an account of morality as a sort of compromise agreement (Wolff, 2018, p.109). More specifically, the key characteristic of a contractarian theory is “...the postulating of an hypothetical arena whereby rational individuals decide which principles of justice or morality they can accept” (Garner, 2011, p.161). And the root idea is that “...morality consists of a set of rules that individuals voluntarily agree to abide by, as we do when we sign a contract (hence the name contractarianism)” (Regan, 2014, p.192). As we shall see in the next chapter, this is also characteristic of Rawls’s contractarian theory, at least to a certain extent. Or, more precisely, in a certain way.

Beyond this most general level, however, it becomes surprisingly difficult to give a precise and all-encompassing understanding of what a contractarian theory, such as that of Rawls, may involve. The reason for this is that there is very little that unites the social contract theory tradition as a whole, due to the fact that there are two basic forms of contemporary contractarianism which use the contract device for very different reasons (Kymlicka, 1993, p.188-196). In fact, they are “a world apart”, if not even opposite sorts of frameworks (Kymlicka, 1993, p.191). And the two basic forms of contemporary contractarianism, then, is “Hobbesian contractarianism” and “Kantian contractarianism” (Kymlicka, 1993, p.188). Of course, the former version is derived from the works of Thomas Hobbes, whereas the latter version is derived from the works of Immanuel Kant (see Rowlands, 2009, p.4-5; Cudd and Eftekhari, 2021). And they view morality, and thereby make use of the contract device, in fundamentally different ways.

Hobbesian contractarianism: morality as mutual advantage

Hobbesian contractarianism, on the one hand, views morality as *mutual advantage* (Kymlicka, 1993, p.189). That is, the Hobbesian contractarian views morality as nothing but a convention of mutually advantageous rules or precepts one needs to follow in order to get the benefits of social living (Rachels, 2019, p.84 and 91). Thus, for the Hobbesian contractarian, morality

essentially reduces to rational self-interest (Rowlands, 2009, p.4). And the general idea is that morality is something we have to “bargain” our way into for prudential reasons – which ultimately is explicated and expressed in terms of a hypothetical “social contract”.

The fundamental supposition underlying this Hobbesian view on morality is that there is nothing inherently right or wrong about the goals one chooses to pursue: “Whenever we try to find objective moral values what we find instead are the subjective preferences of individuals” (Kymlicka, 1993, p.189; see also Hobbes, 1998, p.35 and 85). As a result, Hobbesian contractarianism does not view individuals as having inherent moral rights or status (Kymlicka, 1993, p.189). Indeed, “...the whole point of the Hobbesian approach is that there are no natural duties to others...” (Kymlicka, 1993, p.190). That is, there is nothing *inherently* wrong with harming others on the Hobbesian outlook (Rowlands, 2009, p.123; see also Hobbes, 1998, p.84-85).

Notwithstanding this, Hobbesian contractarianism has a conception of natural equality which motivates why there should, nevertheless, be such a thing as a “moral code” that forbids harming each other at will; namely, that there is a natural equality of *physical power* between people (Kymlicka, 1993, p.188, 191; Rachels, 2019 p.85; Hobbes, 1998, p.82). Given that people by nature are roughly equal in physical power, then, it may be *imprudent* to harm others – insofar as they can harm you in return. And, in order to escape this rather unpleasant condition²¹, it is thus in the prudential self-interests of people to come to an agreement on a mutually advantageous convention, which in effect yields a moral code, prescribing certain rules of conduct. By doing so, one can safeguard or protect one’s own prudential interests – and live as well as possible in peaceful, cooperative social order (Rachels, 2019, p.84; Wolff, 2018, p.109).

And, as alluded to, the content of such conventions will ultimately be subjected to and fixed by bargaining – or by way of establishing a hypothetical “social contract” – on the Hobbesian view (Kymlicka, 189, p.189). For the Hobbesian contractarian, then, the contract device serves a *constitutive* function with regards to morality: the social contract both explicates and expresses the moral code it is in the prudential self-interests of people to adhere to – and is in that sense constitutive of right and wrong (see Rowlands, 2009, p.125-126). Thus, for the Hobbesian, the

²¹ Of course, Hobbes (1998, p.82-86) himself painted a grim picture of the human condition in a so-called “state of nature” in order to motivate this task or endeavor. To keep this section relatively short, though, I shall not go into further detail on this particular aspect of Hobbesianism.

social contract serves as a “moral artifice” which constrains what people are naturally entitled to do (Kymlicka, 1993, p.189).

As a result of maintaining this sort of view on morality, one should note that there inevitably are two necessary conditions for being morally considerable on the Hobbesian outlook: 1) “the equality of power condition” and 2) “the rationality condition” (see Rowlands, 2009, p.124-125). In short, the former holds that there is no rationale for contracting with those sufficiently weaker than you, as they are not in a position to help you nor to hinder you; and the latter holds that there is no rationale for contracting with those who are unable to understand the terms of the contract, as they cannot reciprocate in the ways required (Rowlands, 2009, p.124-125). In effect, then, those who do not satisfy both of these conditions are placed outside the moral sphere, as it were, on the Hobbesian outlook (see Rowlands, 2009, p.124-125 and p.147). So, although there is no inherent moral standing of persons on the Hobbesian view, it can be said to generate an *artificial* moral standing between those who are sufficiently strong and rational, given that it views morality as mutual advantage.

Kantian contractarianism: morality as impartiality

Kantian contractarianism, on the other hand, views morality as *impartiality* – not as mutual advantage (Kymlicka, 1993, p.191). That is, Kantian contractarianism, in contrast with Hobbesian contractarianism, does not view morality as something we have to “bargain” our way into for prudential reasons. Instead, it “...makes each person’s interests a matter of common or impartial moral concern”; and “...expresses a widely-held belief that impartiality is definitive of the moral point of view...” (Kymlicka, 1993, p.188, 192). And it is in this context it makes use of the contract device: not to ground morality, but to express the belief that impartiality is definitive of the moral view.

The reason for this essentially turns upon the endorsement of an entirely different conception of natural equality than that which figures, and must be presupposed²², on the Hobbesian outlook. Whereas Hobbesian contractarianism stresses a natural equality of physical power holding between persons, which ultimately yields the view of morality as mutual advantage, Kantian contractarianism stresses a natural equality of moral status – or a moral equality – holding between persons (Kymlicka, 1993, p.188, 191). Indeed, “... the whole point of Kantian

²² For more on this, see Kymlicka, 1993, p.190.

contractarian reasoning is that it substitutes a moral equality for a physical inequality” (Kymlicka, 1993, p.192).

The general idea on Kantian contractarianism, then, is to use the contract device in order to develop, rather than replace, traditional notions of moral obligations on the basis of the conception that we by nature are moral equals (Kymlicka, 1993, p.191). And instead of using the idea of a contract to ground morality, in the way the Hobbesian does, it simply uses the contract device to identify and express the principles in the moral code that we have in fact adopted (Rowlands, 2009, p.125). Thus, Kantian contractarianism portrays the idea that there is “... an at least minimal conception of moral truth or objectivity that is independent of the contract and the agreements reached by contractors” – which, in effect, is the “...contractarian echo of Kant’s notion of the *Moral Law*” (Rowlands, 2009, p.126).

Ultimately, this yields a way of making use of the contract device which is fundamentally different from that figuring on Hobbesian contractarianism. Whereas the contract device serves a constitutive function on Hobbesian contractarianism, it merely serves a *heuristic* function on Kantian contractarianism: the contract device simply *helps* us to identify or reveal what is morally right or wrong – independently of the contract itself (see Rowlands, 2009, p.125; Kymlicka, 1993, p.193). For example, the idea of the contract to can be used to express the inherent moral standing of persons²³ – rather than to generate an artificial moral standing between persons – which can render our judgements moral judgements more determinate, as well as more vivid, and dramatize our commitments to them (Rowlands, 2009, p.125; Kymlicka, 1993, p.191). Furthermore, it can be used to negate, rather than reflect, unequal bargaining power in terms of a hypothetical contractual situation on moral principles (Rowlands, 2009, p.125; Kymlicka, 1993 p.191). In this way, it ultimately allows us to see things more clearly from a moral point of view, by way of attending to the related ideas of equality, impartiality, and fairness.

This entirely different conception yields another noteworthy difference between the Hobbesian version and the Kantian version of contractarianism: whereas “the equality of power condition” and “the rationality condition” are fundamentally necessary conditions for being morally considerable on the Hobbesian version, these conditions play no essential role in the Kantian version (Rowlands, 2009, p.127). What matters on the Kantian version, rather, is what the moral

²³ Of note, this particular feature is one that will be very important to assess at a later stage of the investigation. The basic question is whether the contract should be used to express the inherent moral standing of all sentient beings – not just of persons – on Kantian contractarianism.

law says regarding what it is that actually counts morally (Rowlands, 2009, p.127). Of course, this follows from the fact that Kantian contractarianism substitutes a moral equality for a physical inequality – and simply uses the contract device heuristically. Thus, it is not given from the contractual situation that physical inequalities, such as one’s physical power or rational capabilities, are relevant for having moral standing. That takes an additional argument to settle on the Kantian version, depending on the content of the moral law (Rowlands, 2009, p.127-128). And it is precisely this aspect of Kantian contractarianism which lays at the center of the “debate” between Rawls and Rowlands – which we shall return to assess later.

Situating Rawls in the Kantian contractarian tradition

So, Hobbesian contractarianism and Kantian contractarianism are, clearly, “a world apart” – if not even opposite sorts of frameworks. Hobbesian contractarianism views morality as mutual advantage and thereby makes use of the contract device in a constitutive fashion. Kantian contractarianism views morality as impartiality and thereby makes use of the contract device in a heuristic fashion. Before outlining Rawls’s contractarian theory in further detail, then, we better have a firm sense of which sort of these opposing contractarian outlooks he subscribed to.

As expressed by Rawls (1999, p.10) himself, and as highlighted by both Kymlicka (1993, p.191) and Rowlands (2009, p.131), this is unmistakably the *Kantian* contractarian view. Furthermore, Rawls did appear to acknowledge the same distinction, as he explicitly sidestepped the Hobbesian view since it raises “special problems” (see Rawls, 1999, p.10). In other words, Rawls manifestly subscribed to the Kantian version of contractarianism – not to the Hobbesian. Indeed, John Rawls is the best-known exponent of Kantian contractarianism (Kymlicka, 1993, p.191). Thus, it is in this context one must situate Rawls’s theory. And, as we shall see, this has crucial bearings on how it is to be understood and construed.

Summing up

To sum up, it is certainly the case that Rawls’s theory is to be situated in the contractarian tradition. More specifically, though, it is to be situated in the *Kantian* contractarian tradition – not in the Hobbesian one. Given this, a useful way of elucidating Rawls’s theory is to see how it manifests elements that are figuring on the Kantian version of contractarianism. And this is what I shall do in the next chapter.

Chapter 4: Rawls's contractarian theory

Now, in continuation of the previous chapter, let us examine the general structure and key features of Rawls's contractarian theory, as portrayed in *A Theory of Justice*. In some sense, this part of the investigation is relatively straightforward, as it simply represents my best attempt at outlining Rawls's contractarian theory as such. In doing so, though, I shall pay careful attention to how the general features of Rawls's theory makes it a Kantian one – not a Hobbesian one. After this I shall examine Rawls's stated view on the animal issue.

A note on Rawls's aim

At the very outset, though, one should note what Rawls himself actually set out to do in developing his contractarian theory; that is, what Rawls's fundamental *aim* was. In short, and as suggested by the title of his major work, Rawls's aim was to develop a theory of *justice*. In other words, Rawls did not set out to develop a general moral theory (see Rawls, 1999, p.15). What Rawls set out to do, rather, was to develop a theory of “social justice” determining *the basic structure of society*; meaning, “the way in which the major social institutions distribute fundamental rights and duties and determine the advantages from social cooperation” (Rawls, 1999, p.6-7; see also Rowlands, 2009, p.131).

To acknowledge this particular aspect of Rawls's theory is very important given the purposes of this thesis. The reason for this is that I will follow Rowlands's proposal in using “... the contractarian idea in a somewhat broader sense as providing a general theory of morality; that is, as providing a framework for the assignation of moral rights and duties in general, and not just political rights of the sort discussed by Rawls” (Rowlands, 2009, p.131). This means, of course, that my assessment differs in scope from that of Rawls's theory: where Rawls spoke in terms of justice, I shall, following Rowlands, speak in terms of morality – and thereby assess Rawls's theory more generally, or construe it more broadly.

Needless to say, this is not entirely satisfactory: what Rawls had to say with regards to justice does not necessarily translate to what he would have said with regards to morality. And some thinkers have certainly stressed the point that one should preserve, rather than elide, Rawls's distinction between justice and morality.²⁴ Yet, as Rowlands (2009, p.132) points out, this more general application of the contract idea is by no means “idiosyncratic”, or peculiar. One way to

²⁴ See, for example, Abbey, 2007, p.5; Garner, 2011, p.163-165.

appreciate this point, I think, is by way of connecting it with an important remark given by Rawls himself. The remark is this:

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. Now for the most part I shall consider only principles of justice and others closely related to them; I make no attempt to discuss the virtues in a systematic way. Obviously if justice as fairness succeeds reasonably well, a *next step* would be to study the more general view “rightness as fairness”. But even this wider theory fails to embrace all moral relationships, since it would seem to include only our relations with other persons and to leave out of account how we are to conduct ourselves toward animals and the rest of nature. *I do not contend* that the contract notion offers a way to approach these questions which are certainly of the first importance; and I shall have to put them aside. (Rawls, 1999, p.15; italics are mine)

The way I see it, one may take it that this remark merits a more general application of Rawls’s theory. This is so for at least two reasons. Firstly, Rawls was blatantly clear that his theory of justice is *not* a complete contract theory – and that the contractarian idea *can* be further extended. Secondly, Rawls himself singled out a next step: to study the more general view “rightness as fairness”. Thus, it appears both possible and perfectly reasonable to assess Rawls’s theory in more general terms; that is, to assess it in terms of “morality” or “rightness”, not just in terms of “justice”. All this amounts to, really, is to at least approximate the wider theory “rightness as fairness” – which Rawls himself singled out as a way forward.

In addition, I think doing so with a particular focus on the animal issue is also merited, or at least motivated, by Rawls’s remark. Notwithstanding that Rawls expressed some initial skepticism and put the animal issue aside, he did not contend that the contract notion offers a way to approach the question of how we are to conduct ourselves toward nonhuman animals. And I shall suggest both why and how it can. In doing so, then, one could perhaps say that I am simply pushing Rawls’s theory into taking its “next step”, in order to approach a question which Rawls himself held to be of first importance. So, although it inevitably leads to a somewhat tentative and hypothetical endeavor, given that I will have to work with the assumption that much of what Rawls had to say with regards to justice also applies with regards to morality, the upshot is that it this more general application may be useful. At the very least, it is not idiosyncratic – and it is, I think, in Rawls’s spirit to do so.

The guiding idea: “justice as fairness”

For sake of clarity, though, let us present and examine Rawls’s theory here in terms of “justice” since that is the term Rawls himself used – and just keep in mind that one may replace these terms with “morality” or “rightness” for the reasons mentioned above.²⁵ With that said, let us begin by noting the guiding idea in Rawls’s contractarian theory. In short, this is what Rawls denoted “justice as fairness”, which is a way of regarding the principles of justice. And Rawls described it as follows:

...the guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement. They are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association (Rawls, 1999, p.10).

In essence, the guiding idea thus suggests that Rawls’s theory makes use of a contract device so as to give an account of justice as a sort of compromise agreement, holding between free and rational persons concerned to further their own interests. Of course, this manifests that Rawls’s theory of justice is an example of a social contract theory.

However, the guiding idea also suggests that Rawls sought to make use of the contract device in a very specific way, and that he thereby afforded a particular view of justice. More specifically, then, the guiding idea suggests a so-called *procedural view* of justice; that is, the view that justice is the result of following a procedure that is constructed in a *fair way* (Rawls, 1999, p.10-11; see also Kymlicka, 1993, p.191). This is so, as the agreement is made in an initial position of *equality* – in the Kantian sense of the word.

In other words, Rawls’s theory makes use of the contract device in a *heuristic*, Kantian fashion – not in a constitutive, Hobbesian fashion. This is so, as the contractual situation only represents a *reasoning procedure* to be conducted in deciding upon a set of principles – not a literal place of bargaining or negotiation between free and rational persons (see Rawls, 1999, p.120). To fully appreciate and understand what this means, let us closer examine the two parts of Rawls’s theory.

²⁵ A will become relatively clear in chapter 5, this is not entirely off the mark as far as Rawls’s stated view on the animal issue is concerned, at the very least. And I would also like to emphasize here that I am certainly not the first to deploy it in more general terms. A similar deployment has been suggested by Carruthers and Rowlands respectively (see Carruthers, 1992, p.37; Rowlands, 2009, p.132).

The first part of Rawls's theory: the initial situation and the problem of choice

The first part of Rawls's theory revolves around providing an understanding of the initial contractual situation and the problem of choice posed there (see Rawls, 1999, p.14). Beginning with the former aspect, Rawls (1999, p.11) understood this situation to be a *purely hypothetical* one, characterized so as to lead to a certain conception of justice. Furthermore, this situation is one of *equality* - meant to ensure impartiality or fairness (see Rawls, 1999, p.11). This is so, due to the fact that no one in this initial situation "...knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like" – not even one's conception of the good, nor one's psychological propensities (Rawls, 1999, p.11). This ensures that all contractors in the original position are, by necessity, situated as *moral* equals, as they are not in a position to exploit physical and social inequalities to their own advantage. And, of course, this emphasis on "moral equality" is a key feature of Rawls's theory which aligns with that of the Kantian version of contractarianism – in stark contrast with the Hobbesian version – as it serves to negate, rather than reflect, unequal bargaining power.

In connection with this, one should note that the conceptual tool which Rawls uses to dramatize this fundamentally Kantian equality-feature is the infamous "veil of ignorance". This tool excludes two sorts of particular facts to those situated in the contractual situation: 1) facts about one's class position and natural assets and abilities, and 2) facts about one's conception of the good, particulars of one's rational plan of life, and special features of one's psychology (Rawls, 1999, p.132). And this tool represents Rawls's solution to the Kantian concern, as it were, with nullifying the effects of specific contingencies which put persons at odds and tempt them to exploit social and natural circumstances to their own advantage (see Rawls, 1999, p.118). That is, the veil of ignorance is essentially developed into the original position to deny knowledge of particular facts to the contracting parties, so that the contractors are obliged to evaluate principles solely on the basis of general considerations (Rawls, 1999, p.118). This was important for Rawls develop so as to avoid the outcome of the procedure being biased by arbitrary contingencies (see Rawls, 1999, p.121). In this way, Rawls's infamous conceptual tool reflects some crucial Kantian elements or ideas – and emphatically suggests using the contract device *heuristically*.

Moving on to the second aspect, what is "the problem of choice posed there"? At the most general level, it is the problem of choosing a conception of justice. And this problem is precisely what the second part of Rawls's theory sets out to address. However, this hinges on there being

a sufficiently strong argumentative basis for choosing such a conception in the first place. And, of course, mere ignorance of a number of things deemed morally arbitrary does not, in itself, provide this sort of basis. So, what *does* one know behind the veil of ignorance, in the original position?

Rawls's answer to this question is displayed under the heading of "the rationality of the parties". There, Rawls (1999, p.123) maintains that contractors will know that one generally prefers more primary social goods rather than less; and that one must try to protect one's liberties, widen one's opportunities, and enlarge one's means for promoting one's aims – whatever these are. Rawls summarized this as a "mutually disinterested rationality"; that is, a view by which "... the persons in the original position try to acknowledge principles which advance their system of ends as far as possible, without having their interests sacrificed to others" (Rawls, 1999, p.125). Additionally, the parties are assumed to be capable of a sense of justice; that is, a willingness to act upon the principles of justice, to ensure the integrity of the agreement made in the original position (Rawls, 1999, p.125).

The second part of Rawls's theory: the set of principles

So much for the first part of Rawls's theory. The second part of Rawls's theory, then, essentially revolves around giving an answer to the problem of choice posed in the first part; namely, what set of principles which would be agreed to in this initial situation of equality (Rawls, 1999, p.14). On that note, we might as well start by listing the set of principles Rawls (1999, p.226-227) himself singled out in this regard:

First principle: Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Second principle: Social and economic inequalities are to be arranged so that they are both:

- a. To the greatest benefit of the least advantaged, consistent with the just savings principle, and
- b. Attached to offices and positions open to all under conditions of fair equality of opportunity

To be sure, Rawls's own reasons for this exact list of principles are both complex and extensive. The general line of reasoning for this conception, though, is the so-called *maximin rule*; that is,

a rule of rationality which holds that we are to adopt the alternative in which the worst outcome is superior to the worst outcomes of the other alternatives (see Rawls, 1999, p.133). And, of course, this line of reasoning is inherently connected with the “mutually disinterested rationality” of the contracting parties, portrayed in the first part of Rawls’s theory, which essentially provides the argumentative basis for accepting Rawls’s set of principles.

Given this, one should appreciate that the first and second part of Rawls’s theory are thereby inherently connected. This is so, since the principles singled out in the second part are to be accepted on the basis of a procedure laid out in the first part. In other words: when Rawls goes on to argue for a set of principles which would be agreed to in the initial position, this argument hinges on precisely the procedure marked out in the initial situation of equality, or the original position. And, as we have seen, the related ideas of equality, impartiality and fairness are the cornerstones of this procedure – which, again, suggests using the contract device in a heuristic, Kantian fashion.

The two arguments for the principles of justice

As a result of this fundamentally Kantian theoretical structure, one should also make sure to note that there are two mutually dependent and reinforcing arguments for Rawls’s principles – not, as is commonly thought, one (see Rowlands, 2009, p.133; Kymlicka, 1990, p.25). The first is the so-called “intuitive equality argument” – which is inherently connected with Rawls’s “principle of redress”. In short, this principle holds that “undeserved inequalities call for redress” (Rawls, 1999, p.86). More specifically, Rawls (1999, p.86) stressed that “since inequalities of birth and natural endowment are undeserved, these inequalities are to be somehow compensated for... The idea is to redress the bias of contingencies in the direction of equality”. And the argument which renders this may be put as follows (see Rowlands, 2009, p.133-134):

P1: If an individual A is not responsible for their possession of property P, then A is not morally entitled to P.

P2: If A is not morally entitled to P, then A is not morally entitled to whatever benefits accrue from their possession of P.

P3: For any individual A, there will be a certain set of properties $S=\{P_1, P_2, \dots, P_n\}$ such that A possesses S without being responsible for possessing S.

C: Therefore, for any individual A, there is a set S of properties such that A is not morally entitled to the benefits which accrue from possession of S.

More generally put, the intuitive equality argument holds that one is not morally entitled to benefits which accrue from the possession of properties that one is not responsible for; and it also has a corresponding negative form, holding that one should not be penalized for the possession of a property one has done nothing to deserve (Rowlands, 2009, p.134). This argument is what fundamentally determines the “thickness” of the veil of ignorance; that is, what sorts of properties that are deemed morally arbitrary and which, as a result, are excluded as knowable to occupants in the original position, for the purpose of maintaining a fair procedure (see Rowlands, 2009, p.139). In this way, this argument is inherently linked with the first part of Rawls’s theory and reflects a crucial Kantian-inspired idea.

The second is the so-called *social contract argument*. In essence, this argument holds that the contractors would choose to adhere to Rawls’s principles of justice because doing so is the most *rational* (see Rowlands, 2009, p.133). More specifically, they are the most rational principles of justice to adhere to, given the features of the original position in conjunction with the maximin rule and the mutual disinterestedness of the contracting parties. In other words, this argument serves to single out what sort of principles it would be rational to endorse in the original position given what is known and not known to its occupants. And, of course, Rawls argued that his set of principles would be the most rational to endorse given the conditions set up to ensure a fair reasoning procedure, in addition to the rationality of the parties. In this way, the social contract argument essentially works to tie the first and second part of Rawls’s theory together by using the contract device in a heuristic manner.

As alluded to, these arguments are mutually dependent and reinforcing (Rowlands, 2009, p.138-140). This is so, more specifically, as the intuitive equality argument serves to single out morally arbitrary features which ought to be excluded when exhibiting the social contract argument heuristically; that is, the social contract argument is dependent upon the intuitive equality argument in order to be conducted in a truly fair way. At the same time, the social contract argument is needed to actually single out the correct set of principles; that is, the intuitive equality argument is dependent upon the social contract argument for actually resulting in specific principles reflecting our intuitions, or considered judgements, regarding equality, fairness, and impartiality. They are also mutually reinforcing, in that the application of the one can inform the application of the other, and vice versa. Without going into detail, this is in many

ways the core of Rawls's idea of "reflective equilibrium" (see Rowlands, 2009, p.140-142; see also Vickery, 2013, p.25-26).

Summing up

To sum up, Rawls's theory consists of two main parts: 1) an understanding of the initial situation and the problem of choice posed there, and 2) a set of principles which would be agreed to in this initial situation. The first part essentially revolves around construing a hypothetical contractual situation, in which acknowledging fundamental moral principles such as equality and impartiality lays the foundation for a fairly construed reasoning procedure. This is a distinct Kantian contractarian feature, which Rawls was manifestly committed to incorporate into his contractarian theory. And the second part revolves around providing a set of principles which would be agreed to on the procedure marked out in the first part, by using the contract device in a heuristic manner. It does so, by showing how the principles of justice that it would be the most rational to adhere to match our considered judgements of what is fair, which the intuitive equality argument helps single out in advance. What Rawls provides, then, is essentially a theory which can dramatize or make vivid our commitments to moral principles by matching them with our considered judgements about fairness and the like – in true Kantian contractarian fashion.

Chapter 5: Rawls's stated view on the animal issue

So, we have now situated Rawls's theory in its proper theoretical context; namely, the social contract theory tradition more generally, and Kantian contractarianism more specifically. Furthermore, we have examined some of the key Kantian contractarian elements or ideas involved in Rawls's theory – and elucidated its fundamentally Kantian theoretical structure. As such, we have essentially laid down the basics of what its theoretical foundation consists in: it is a Kantian contractarian theory, which seeks to dramatize our commitments to moral principles on the basis of equality and fairness by way of using the contractarian idea heuristically. Now, having done that, let us delve further into the assessment of whether there is a theoretical foundation for moral extensionism in Rawls's contractarian theory; that is, whether one may use this particular theory to extend the circle for moral status from humans to nonhuman animals. In that regard, let us begin by examining Rawls's stated view on the animal issue.

Nonhuman animals omitted from the moral sphere

Now, did Rawls himself suggest that one may extend the circle for moral status from humans to nonhumans on the basis of his contractarian theory? No, on the contrary: Rawls effectively suggested that one is to omit nonhuman animals from the moral sphere on the basis of his contractarian theory. He did so, more specifically, in stating that our conduct towards nonhuman animals is not regulated by the principles his theory serves to single out (see Rawls, 1999, p.441). On Rawls's view, rather, we distinguish between mankind and other living things, and regard the constraints of justice²⁶ as holding only in our relations to human persons (see Rawls, 1999, p.441). In other words, Rawls maintained the view that only humans are to be included in the moral sphere, or encompassed in the circle for moral status, whereas nonhumans are to be excluded or omitted from it.

But why did Rawls maintain this view? What underlies this way of relating his contractarian theory to the animal issue? One way to motivate this question within the scope of Rawls's theory, I think, is to connect it with the following statement given by Rawls himself:

As far as possible, then, justice as fairness appraises the social system from the position of equal citizenship and the various levels of income and wealth. Sometimes, however, other positions may need to be taken into account. If, for example, there are unequal basic rights founded on fixed natural characteristics, these inequalities will single out relevant positions (Rawls, 1999, 83-84).

In all likelihood, Rawls was thinking about "human positions", as it were, when giving this statement. But given the rather ambiguous stating of "other positions", it does not seem entirely unreasonable or far-fetched to confront Rawls with the animal issue here. After all, it would certainly seem that one may forward at least a *prima facie* argument that there are unequal basic rights between humans and nonhuman animals precisely founded on fixed natural characteristics, such as one's given species membership.²⁷ Thus, should this not be taken to suggest that such inequalities will single out the positions of nonhuman animals as relevant to consider in the original position?

Presumably, Rawls's answer would be an unequivocal "no". At the very least, that is what his stated view quite blatantly suggests, in maintaining that our conduct towards nonhuman is not

²⁶ As alluded to earlier, and as we shall see, Rawls also suggested this with regards to morality or "rightness".

²⁷ The obvious examples would be the practices of factory farming and animal experimentation. For an overview, see, for example, Gruen, 1993.

regulated by the principles his theory serves to single out. However, that is not to say that Rawls neglected this issue. On the contrary, Rawls apparently acknowledged this issue in explicitly raising the following question: “On what grounds then do we distinguish between mankind and other living things and regard the constraints of justice as holding only in our relations to human persons?” (Rawls, 1999, p.441). In other words, Rawls did not simply beg the question when placing nonhuman animals outside the scope of his principles – he actually offered some grounds for doing so.

The basis of equality: “moral personhood” – or rational agency

So, what are the grounds that allegedly serve to distinguish between mankind and “other living things” on Rawls’s theory? The very fundament of Rawls’s view on this matter is what he denotes “the basis of equality”: “...the features of human beings in virtue of which they are to be treated in accordance with the principles of justice” (Rawls, 1999, p.441). Clearly, this phrasing suggests that there are certain features which effectively represent the relevant source of moral standing in the case of humans – and thereby distinguishes them from nonhuman animals with regards to morality – on Rawls’s theory. So, what is the relevant source of moral standing in the case of humans on Rawls’s view?

Most importantly, if not even exclusively, Rawls (1999, p.442) emphasized the possession of the capacity for “moral personhood” in this regard. In other words, the source of moral standing on Rawls’s view is to be a “moral person”. But what distinguishes moral persons as morally considerable, more specifically? Well, Rawls himself stated that moral persons are distinguished by two features:

first they are capable of having (and are assumed to have) a conception of their good (as expressed by a rational plan of life); and second they are capable of having (and are assumed to acquire) a sense of justice, a normally effective desire to apply and to act upon the principles of justice, at least to a certain minimum degree (Rawls, 1999, p.442).

In connection with this, Rawls (1999, p.442) explicitly maintained that “...equal justice is owed to those who have the capacity to take part in and to act in accordance with the public understanding of the initial situation”. In other words, Rawls emphasized that one has to be able to understand and give justice in order to be owed justice – and in that sense be worthy of moral standing, or moral status. And Rawls was clearly not of the opinion that nonhuman animals may be taken to possess this capacity for moral personhood.

But what does that really amount to saying? Well, arguably, it amounts to saying that nonhuman animals are not sufficiently *rational*. After all, to be a moral person is to have a conception of one's good, as expressed by a *rational* plan of life. In addition, and perhaps more importantly, to be capable of a sense of justice quite evidently requires a having a rather sophisticated level of *rational agency*, as one needs to be able to *apply* and to *act* upon the principles of justice to qualify as having this capacity. As such, the very capacity for rational agency seems to be what underlies, or fundamentally enables, both of the features that distinguish moral persons as entitled to equal consideration on Rawls's view (see Vickery, 2013, p.26-27; see also Bernstein, 1997, p.51-53). Thus, when Rawls speaks of "moral persons", one might as well take it that he speaks of rational persons, or *rational agents*, given that the capacity for rational agency is so inherently involved with both of the features that distinguish moral persons. At the end of the day, then, "moral persons" are nothing but "rational agents"; and "moral personhood" signifies nothing but "rational agency".

As such, Rawls virtually maintained the view that someone is to be morally considered in virtue of their capacity for rational agency. Or, alternatively put, Rawls virtually maintained a logocentric sort of view. To repeat, a logocentric view is based on the idea that rational nature, and it alone, has absolute and unconditional value – and thus what ultimately merits moral consideration. To be sure, Rawls did not explicitly endorse this verdict, as far as I know. But since his emphasis on moral personhood essentially reflects this sort of verdict, as possessing moral personhood ultimately means to be a rational agent, it thereby seems reasonable enough to ascribe this sort of view to Rawls's considerations. At least, it encapsulates the crux of it.

A puzzling view

On the face of it, Rawls's view on who or what is to be included in the moral sphere thus looks rather straightforward: if you are sufficiently rational, and thereby qualify as being a "moral person", then you are in; if you are not sufficiently rational, and thereby do not qualify as being a "moral person", then you are out. But, in truth, Rawls's view is far more ambiguously stated. Indeed, it is a rather puzzling view (see Regan, 2004, p.167-168).

What is puzzling about Rawls's view is that it involves statements which are difficult to compile or unify. On the one hand, Rawls (1999, p.442-443) stated that moral personhood is only a *sufficient* condition for being entitled to equal consideration – not a necessary one, nor a very stringent one. Without going into detail, this was important for Rawls to emphasize, so as to be

able to actually encompass virtually all human beings in the moral sphere – particularly infants and those temporary deprived of moral personhood (see Rawls, 1999, p.442-443).²⁸ On the other hand, Rawls also stated that “the only contingency which is decisive is that of having or not having the capacity for a sense of justice. By giving justice to those who can give justice in return, the principle of reciprocity is fulfilled at the highest level” (Rawls, 1999, p.447). So, what did Rawls actually maintain in this regard? Is moral personhood merely a sufficient condition for being entitled to equal consideration, or is it actually a necessary condition for being entitled to equal consideration?

Notwithstanding that Rawls certainly did seek to construe moral personhood as a merely sufficient condition, he nevertheless *treated* it as a necessary condition for being entitled to equal consideration – at least in the case of nonhuman animals. This is manifestly so, as Rawls (1999, p.448) ultimately stated that “...it does seem that we are not required to give strict justice anyway to creatures lacking this capacity”. At the very least, that is what he emphasized when saying that nonhuman animals are to be placed outside the scope of his theory – as well as in maintaining that it does not seem possible to extend the contract doctrine so as to include them in a natural way (see Rawls, 1999, p.448). So, although Rawls’s overall is rather puzzling, this much is blatantly clear: nonhuman animals are not entitled to equal consideration, and in that sense not to be granted moral status, since they lack the capacity for moral personhood or rational agency. This stance, if anything, clearly supports the supposition that Rawls, in effect, afforded a logocentric sort of view, by which only rational agents are encompassed in the moral sphere.

Rawls on duties regarding nonhuman animals

Nevertheless, one should appreciate the fact that Rawls (1999, p.448) did not think it follows that there are no moral requirements at all in regard to nonhuman animals. In fact, Rawls (1999, p.448) explicitly maintained that “the capacity for feelings of pleasure and pain and for the forms of life which animals live clearly impose duties of compassion and humanity in their

²⁸ Of note, Rawls (1999, p.446) admitted that the cases of “...those more or less permanently deprived of moral personality may present a difficulty”. And although he did not further examine that problem, he assumed that the “... the account of equality would not be materially affected” (see Rawls, 1999, p.446). I cannot go further into this particular problem here, but it would seem that Rawls was thereby willing to make exceptions in the most severe cases of so-called “marginal humans”. However, not all philosophers agree that this is the case (see, for example, Regan, 2004, p.164-165).

case”. That is, Rawls suggested that there are certain duties we have in regard to nonhuman animals, imposed on the basis of their capacity of feeling pleasure and pain – or sentience.

This is important to note for at least two reasons. Firstly, one should note that Rawls is talking in terms of morality here – not just justice. And he explicitly maintained that there clearly are certain moral duties we have in regard to nonhuman animals. Secondly, one should note that Rawls alludes to their capacity for sentience as relevant in that regard, as well as the forms of life which they live. Now, does that amount to saying that there is, in fact, a theoretical foundation for moral extensionism in Rawls’s theory? That is, was Rawls thereby suggesting that nonhuman animals may be granted moral status, after all, on the basis of their sentient capacities and their forms of life?

It is tempting to draw this conclusion here, simply on the basis of Rawls’s rather brief remark. Yet, doing so would clearly not fit very well with Rawls’s stated view in general. To begin with, Rawls emphatically placed nonhuman animals outside the scope of his principles – and he did not think it was possible to extend the contract doctrine in a natural way – at least as far as theory of justice, “justice as fairness”, goes. In addition, Rawls stressed the same point in his remark on the wider theory “rightness as fairness”, in stating that it “...fails to embrace all moral relationships, since it would seem to include only our relations with other persons and to leave out of account how we are to conduct ourselves toward animals and the rest of nature” (Rawls, 1999, p.15). In other words, Rawls manifestly did not think his contractarian theory could include our relations with nonhuman animals – neither in terms of justice, nor in terms of rightness. In both cases, it would appear that it is only our moral relations with other persons – or rational agents – that are to be included in the moral sphere.

But what sort of moral duties do we have in regard to nonhuman animals, then? Well, if we take Rawls’s stated view for what it is, then those duties must be indirect ones – not direct ones. That is, it must be the case that moral agents merely have duties *in regard* to nonhuman animals – which is precisely how Rawls framed it (see Rawls, 1999, p.448). Beyond the semantical evidence for this, it is also suggested by the fact that nonhuman animals are not the sorts of entities who are entitled to equal consideration, and in that sense to be granted moral status, on Rawls’s view. As such, one cannot have moral obligations *towards* nonhuman animals by reference to Rawls’s theory in the strict sense. One can, at best, have moral obligations *in regard* to nonhuman animals on Rawls’s view. In other words, Rawls effectively maintained that one may merely accord moral rights to nonhuman animals in an indirect sense – not in a direct sense. Thus, Rawls afforded a so-called “indirect-duty view” with regards to our moral relations

with nonhuman animals²⁹, which ultimately rests on his endorsement of a logocentric sort of view.

Summing up

To sum up, Rawls virtually maintained a logocentric sort of view – and omitted nonhuman animals from the moral sphere on this basis. He did so, by way of treating moral personhood, or rational agency, as the decisive criterion for being granted moral status in terms of his contractarian theory. At the very least, it was on this basis that Rawls emphatically placed nonhuman animals outside the scope of his principles – and maintained that it does not seem possible to extend the contract doctrine so as to include them in a natural way. As such, Rawls essentially suggested that there is not a theoretical foundation for moral extensionism in his theory, on the basis of maintaining a logocentric sort of view.

Chapter 6: Mark Rowlands’s extensionist argument

Yet, and as alluded to earlier, whether Rawls was truly consistent in maintaining this sort of view is a debated issue. At the very least, Rowlands holds that a truly consistent application of Rawls’s contractarian theory actually implies extending the circle for moral status so as to accord nonhuman animals *direct* moral status and rights – contrary to what Rawls himself argued (see Rowlands, 2009, p.118-119). And I shall now present and examine Rowlands’s effectively “extensionist argument”. I shall begin by outlining the crux of Rowlands’s argument and elucidate its general structure, before examining the relevant steps in further detail.

The crux of Rowlands’s argument

Rowlands’s (2009, p.122) key claim is that “... there is nothing in contractarianism per se which requires that the protection afforded by the contract be restricted to rational agents”. Rather, the protection afforded must include not only rational, but also non-rational, individuals. At the very least, that is the most consistent application of Rawls’s contractarian theory, Rowlands holds, given its so-called “Kantian core” (see Rowlands, 2009, p.128).

²⁹ For more on this point, see, for example, Regan, 2004; Regan, 2014; Carruthers, 1992; Dombrowski, 1998.

To put this claim into context, recall two things regarding Rawls's theory. Firstly, recall that the possession of moral personhood or rational agency is posited as the relevant requirement for being granted moral status. This is the crux of the logocentric view Rawls effectively operated with. Secondly, recall the two distinct, yet mutually dependent and reinforcing, arguments for Rawls's principles: 1) the intuitive equality argument and 2) the social contract argument. To repeat, the first singles out undeserved, and hence morally arbitrary, properties, which are to be excluded behind "the veil" for the purpose of construing a fair procedure. The second singles out specific principles that it would be rational to adhere to on precisely that fairly construed procedure, given the rationality of the parties. This is essentially what the "Kantian core" of Rawls's theory consists of, as these arguments reflect mutually dependent Kantian contractarian elements figuring on the theoretical structure of Rawls's theory.

And here is the crux of Rowlands's argument: the intuitive equality argument serves to single out rationality as an undeserved, and hence morally arbitrary, property (see Rowlands, 2009, p.148). This entails that knowledge of one's possession of it is to be excluded behind the veil of ignorance, for the sake of maintaining a fair reasoning procedure. And that again influences the social contract argument in a profound way: it no longer seems acceptable, or rational on the reasoning procedure, to adhere to principles which hold exclusively for rational beings, or moral persons (see Rowlands, 2009, p.150-151). This is so, since you must now consider the possibility of attending to the interests of nonrational beings also, for the sake of fairness, when choosing a particular conception of justice or morality. And that entails encompassing nonhuman animals in the moral sphere (see Rowlands, 2009, p.152).

The general structure of Rowlands argument, then, revolves around reconsidering the features of the original position by reference to the intuitive equality argument. And this, in turn, leads Rowlands to reconsider the application of the social contract argument. So, in essence, Rowlands's argument revolves around reconsidering both parts of Rawls's theory in due order: 1) the original position and 2) the set of principles and their scope – which are intrinsically connected on the Rawlsian framework, given its Kantian core. Let us now examine both of these steps in further detail.

Reconsidering the original position

As alluded to above, the first step of Rowlands's argument revolves around reconsidering the features of the original position by reference to the intuitive equality argument. More

specifically, Rowlands argues that rational agency is to be singled out as a morally arbitrary property by reference to the intuitive equality argument, which implies that it is to be bracketed as knowable to those situated in the original position. In order to see the line of reasoning for this implication, recall that the intuitive equality argument essentially holds that one is not morally entitled to benefits which accrue from the possession of properties that one is not responsible for. And do also recall its corresponding negative form; namely, that one should not be penalized for the possession of a property one has done nothing to deserve. Thus, if rationality is an undeserved property, in the sense that one is not responsible for it, then one is not morally entitled to benefits which accrue from the possession of it – nor may one be penalized for it. And if that indeed turns out to be the case, then whether or not you are in possession of it cannot be knowable behind the veil of ignorance: that would make for an unfairly construed reasoning procedure by which you could exploit this particular circumstance to your own advantage.

So, the fundamental question here is whether rationality is an undeserved property or not. And here is what Rowlands maintains:

... rationality seems to be an undeserved property if any property is. A person plays no role in deciding whether or not she is going to be rational; she either is or she is not. The decision is not hers, but nature's (Rowlands, 2009, p.148-149)

As far as I can tell, Rowlands's point appears reasonable enough: rationality does seem to be an undeserved property, in the sense that one is not responsible for it. And to see why it would seem that rationality is to be bracketed in the original position on this basis, we can illustrate the same sort of point by considering a property excluded behind the veil of ignorance by Rawls himself; namely, sex (see Rowlands, 2009, p.149). Of course, whether or not I happen to be born male or female is completely undeserved, precisely because I am in no way responsible for it: I just happened to be born that way. Hence, it is a morally arbitrary property. And I am thereby not morally entitled to whatever benefits which accrue from my possession of this particular property – nor may I be morally penalized for whatever sex nature “decided” to give me. This is what the intuitive equality arguments helps us single out, and which “the veil” helps us redress on Rawls's theory, since it clearly should not have any bearings on morality, justice, and the like. And, correspondingly, this influences the exhibition of the social contract argument, so that we do not end up with principles not matching with this considered judgement.

Quite evidently, then, the same sort of point appears to hold with regards to rationality: it ought to be bracketed as knowable in the original position, in the way Rowlands maintains, since one is not responsible for the possession of this property (see Rowlands, 2009, p.149-151). And, almost needless to say, the same goes for species membership, as one has done nothing to deserve this particular property either (see Rowlands, 2009, p.151). By reference to the intuitive equality argument, then, the possession of these properties should not be knowable behind the veil of ignorance. If they are, then that would make for an unfairly construed reasoning procedure, as one is not sufficiently impartial when choosing a given conception. And that is not acceptable on the Rawlsian outlook, nor on the Kantian form of contractarianism more generally. Thus, it would seem the most consistent with the Kantian core of Rawls's theory single out rationality as a morally arbitrary property – and make sure to exclude it as knowable behind “the veil”.

Reconsidering the set of principles and their scope

With that said, let us proceed to examine the next step of Rowlands's argument in more detail: reconsidering the set of principles and their scope. In essence, this step revolves around reassessing how one is to apply the social contract argument on this fundamentally revised basis; that is, on the basis of having excluded rationality as knowable behind “the veil”. In that regard, let us begin by noting two crucial points which still stand.

Firstly, recall that the social contract argument holds that moral principles are to be chosen on the basis of being in one's rational self-interest to accept, given a fairly construed procedure. Of course, the procedure is construed fairly by reference to the features of the original position. And as we have seen, Rowlands has made some notable revisions to the original position; namely, that one cannot know whether one is rational, nor whether one is a member of the human species. Nevertheless, the argumentative basis for a given conception still involves assessing what it is in one's rational self-interest to accept – albeit behind “the veil”. Thus, a given conception will ultimately be chosen on the basis of what the contractors are incentivized to attend to when situated in the initial contractual situation, or the original position.

Secondly, it is important to re-emphasize that the original position does not represent a literal place of bargaining or negotiation – it only represents a heuristic reasoning process (see Rowlands, 2009, p.143). And this heuristic reasoning process goes roughly as follows: first, imagine that you do not have a particular property deemed morally arbitrary; second, entertain

the idea that you may have had another preference than you happen to have; and third, assess whether it would be rational to hold a given judgement on this basis (see Rowlands, 2009, p.143-146).

So, in essence, the question one is confronted with here is which conception, amongst a range of possible alternatives, that it would be in your rational self-interest to adhere to, given what is known and unknown when you are situated in the original position. And Rowlands (2009, p.151) maintains that "...if one does not know that one will be a rational agent, then, if Rawls is correct, one will, in the original position, inevitably formulate principles that take this into account. And at the very least, this would bring non-rational beings under the scope of the difference principle". In other words, Rowlands suggests that this revised basis implies extending moral consideration to nonhuman animals, as they are thereby brought under the scope of Rawls's principles by reference to the social contract argument. And if this is correct, the sphere of morality should clearly not be restricted to human beings. Rather, it should also encompass nonhuman animals.

In order to see why this would seem the most consistent with Rawls's theory, given Rowlands's revision of the original position, let us attempt to illustrate the general line of reasoning for this implication by means of Rawls's own terms. In that regard, recall, firstly, what Rawls had to say on the mutually disinterested rationality of the parties: "the persons in the original position try to acknowledge principles which advance their system of ends as far as possible, without having their interests sacrificed to others". That is, they are to follow the maximin rule, which holds that they are to adopt the alternative in which the worst outcome is superior to the worst outcomes of the other alternatives. Secondly, recall that they do so behind a veil of ignorance, and will therefore be unknowledgeable about facts regarding their natural assets and abilities, their conception of the good, and the special features of their psychology. Furthermore, they are even unknowledgeable about facts regarding their rational capabilities and their given species membership.³⁰ What they do know, however, is that they generally prefer more primary social goods rather than less, and that they must try to protect their liberties, widen their opportunities, and enlarge their means for promoting their aims – whatever these are. And their problem of choice, then, is which conception of morality to adhere to on this basis.

To illustrate the main point here, let us say that those situated in the original position only have two alternative conceptions available to them when faced with this problem of choice: 1) a

³⁰ Of course, this is what Rowlands's revision of the original position implies for the procedure.

conception of moral principles which forsakes the interests of nonhuman animals completely and allow for exploiting them in whatever ways deemed useful for the purpose of furthering the interests of rational agents, or humans; and 2) a conception of moral principles which attends to the interests of nonhuman animals and benefits them, as opposed to harming them, even though it may hinder furthering some of the interests of rational agents or humans.³¹ Now, if one is confronted with this problem of choice, then it would arguably not be in one's rational self-interest to choose the first alternative. Or, alternatively put, it would arguably not be in one's rational self-interest to restrict the beneficiaries of the protection afforded by the contract to rational agents or humans. Why not? Well, first of all, one has to imagine that one is not rational nor a member of the human species, as that is what the intuitive equality argument implies for the procedure. As a result, one cannot exploit that particular circumstance to one's advantage when choosing a given conception. Secondly, and as a result of the first, one has to entertain the idea that one may have the preferences of a non-rational, nonhuman being, such as a nonhuman animal. And, of course, it would be fairly irrational, or at least not very consistent with the maximin rule, to opt for the first alternative, rather than the second, on this basis. After all, you know you generally prefer *more* primary social goods rather than less; and, perhaps more importantly, you know that you must try to protect your liberties, widen your opportunities, and enlarge your means for promoting your aims – *whatever these are*. And if you entertain the idea that your given preferences or aims are those of a nonhuman animal, which you must do for the sake of fairness, then it would obviously not be in your rational self-interest to sacrifice them to rational agents or humans.

As such, it would seem the most consistent to extend the moral sphere from humans to nonhuman animals on the basis of Rawls's theory for two related reasons. Firstly, this is so since it does seem the most consistent with the intuitive equality argument to bracket rationality and species membership from the original position. As a result, one is to be unknowledgeable about the possession of these properties when exhibiting the social contract argument. Secondly, it thereby seems the most consistent application of the social contract argument to choose a conception of morality which grants protection to both humans and nonhuman animals. This is so, more specifically, as it seems the most consistent with the maximin rule to adhere to a conception which serves to protect the interests of humans and nonhumans alike,

³¹ For example, by yielding the implication that we cannot use them as we please across practices such as farming, experimentation, and the like.

since you have to entertain the idea that you may have had the interests or preferences figuring in each group.

Adopting an experientialist view

What this line of reasoning effectively amounts to is to adopt an experientialist view on the Rawlsian framework. To repeat, an experientialist view holds that all beings who have conscious experiences deserve our moral attention. That is, an experientialist view takes conscious experience, or sentience, to be the fundamental source of moral standing. And this is the sort of view which Rowlands finds the most consistent with Rawls's contractarian theory to adopt, as effectively suggested by the following statement:

The point, of course, is that on the contractarian approach developed here, the scope of morality is restricted to things that an occupant of the original position could rationally worry about being. I can, in the original position, worry about being at least certain sorts of non-human animals since there is something that it is like to be them (at least some of them). That is, non-human animals can, for example, suffer, and if I were one of them I wouldn't want this to happen to me. But if I were told that I was going to be a rock then I couldn't care less what happened to me (and rationally so). Therefore in the original position, I would not vote to include these under the scope of the principles of morality just in case I became one. The contractarian position, then, makes sentience the cut-off point for morality... (Rowlands, 2009, p.160)

Rowlands's fundamental point, then, is that sentience appears to serve as the more appropriate cut-off point for morality on Rawls's theory. This is so for the simple reason that one can rationally worry about being a sentient creature, whose interests and preferences may be benefitted or harmed, when situated in the original position. And one should do so, even, since that is what the intuitive equality argument implies for the procedure.

So, although Rawls himself maintained a logocentric sort of view, Rowlands finds it the most consistent with the Kantian core of Rawls's theory to adopt an experientialist sort of view. As such, it would seem that nonhuman animals do have moral status on Rawls's theory, after all, insofar as they are sentient creatures with conscious experiences and interests. And it is at the very least foreseeable that they are to be accorded moral rights in the direct sense on this basis, as that appears to be in accordance with the maximin rule.

Summing up

To sum up, Rowlands has arguably presented quite a compelling extensionist argument on the basis of Rawls's contractarian theory, once made truly consistent with its Kantian core. As we have seen, his case involves revising the original position by reference to the intuitive equality argument, which reflects a crucial Kantian-inspired idea figuring on Rawls's theory. And this step merits reconsidering the set of principles and their scope in a fundamental way, since the possession of rational capacities is to be excluded as knowable behind the veil of ignorance for the sake of fairness. Ultimately, this suggests adopting an experientialist view. And on this sort of view, all beings who have conscious experience deserve our moral attention, or moral consideration. Thus, Rowlands's effectively extensionist argument apparently serves to underwrite the notion that nonhuman animals possess direct moral rights, insofar as they are granted moral status in virtue of their sentient capacities.

Chapter 7: "Rowlands's problem"

So, we have now examined the competing accounts afforded by Rawls and Rowlands with regards how to relate Rawls's theory to the animal issue. In continuation of this, I shall now outline what I find to be a pressing problem for Rowlands's account; namely, what I shall refer to as "Rowlands's problem", which has to do with the basis for attending to sentience instead of rational agency on Rawls's contractarian theory. Of course, this is what Rowlands ultimately seeks to justify. But I will argue that this basis has to be strengthened for some quite fundamental theoretical reasons.

The debate simplified

In order to fully contextualize "Rowlands's problem", I shall begin by putting the "debate" or disagreement between Rawls and Rowlands in a simplified fashion. This also serves to sum up the main points elucidated in the previous chapters and will be useful to have in mind as we proceed. In that regard, recall Goodpaster's formulation:

For all X and all Y it is the case that X is granted moral status by Y if and only if X is F and Y is G, where G are the requirements for being a moral actor, and F are the requirements for having moral status.

So, in essence, the “debate” between Rawls and Rowlands revolves around this: what is the relevant requirement for being granted moral status on Rawls’s theory?³² And can one extend the circle for moral status from humans to nonhuman animals on this basis?

As we have seen, Rawls maintained that moral personhood, or rational agency, is the relevant requirement for being granted moral status. Hence, we can put the Rawls’s position in the following terms:

For all X and all Y it is the case that X is granted moral status by Y if and only if X is a *rational agent* and Y is capable of reasoning in line with the procedure marked out in the original position.³³

Thus, if “X” is a nonhuman animal, then it is not to be granted moral status since it falls short of the relevant standard. As a result, nonhuman animals can, at best, have indirect rights on this basis, as they are not encompassed in the moral sphere.

Rowlands, however, maintained that sentience, not rational agency, should be the relevant requirement for being granted moral status. Hence, we can put Rowlands’s position in the following terms:

For all X and all Y it is the case that X is granted moral status by Y if and only if X is a *sentient being* and Y is capable of reasoning in line with the (revised)³⁴ procedure marked out in the original position.

Thus, if “X” is a nonhuman animal, then it is to be granted moral status insofar as it is a sentient being. And this foreseeably leads to according direct moral rights to nonhuman animals, as the circle for moral extends from humans to nonhuman animals.

To put the basic issue here in simple terms, the question we are concerned with in proceeding is which of these formulations that one should adopt on the Rawlsian framework. Does Rowlands’s argument hold up in this “debate”? If it does, then it would, of course, suggest that one should adopt the latter formulation – and reject that afforded by Rawls himself – on the basis of the Kantian core of Rawls’s theory. That is, it would seem that one should adopt an experientialist view on the Rawlsian framework – and reject the logocentric sort of view

³² That is, what to put in the place of F in terms of Goodpaster’s formulation.

³³ What the requirement for being a moral agent (Y) actually is on Rawls’s theory is a little unclear, but I think this way of framing it suffices for our purposes. The main issue is what the requirement for having moral status is.

³⁴ This qualification is not really necessary, but serves, I hope, as a gentle reminder to the reader.

originally afforded by Rawls – on the basis of its Kantian core. At least, that is what Rowlands’s argument holds.

But is this necessarily the case, though? Does Rowlands’s appeal to the Kantian core of Rawls’s theory actually entail that one should adopt an experientialist view? In short, my answer here is “no, not necessarily”. And therefore, I contend, Rowlands’s extensionist argument has to be further strengthened, in order to say that there truly is a theoretical foundation for moral extensionism in Rawls’s contractarian theory. So, what is the problem? To tease out an answer to this, we first need to pay attention to a significant concession on the part of Rowlands, which comes from his assessment of a common objection to using contractarianism to underwrite the notion of animal rights. Once we have done this, we will be in a position to see that Rowlands’s account is confronted with a pressing problem.

Rowlands’s concession

The objection is this: “Once we start extending the scope of morality to include non-humans, there is, in principle, no limit to this extension. If we are willing to accord moral rights to non-humans, why not accord it to plants, even to inanimate objects?” (Rowlands, 2009, p.158). And here comes what amounts to a very consequential concession from Rowlands, in his attempt to substantiate the objection: “After all, in addition to rationality and species membership, sentience is also an undeserved property: whether or not we are sentient creatures is something over which we have no control over. Therefore, on the above argument [i.e. Rowlands’s argument], sentience should also be excluded behind the veil of ignorance” (Rowlands, 2009, p.158).

So, to clarify, the objection essentially suggests that one may use the general structure of Rowlands’s argument to undermine Rowlands’s extensionist case, in virtually the same sort of manner which Rowlands used it to undermine Rawls’s stated view on the animal issue. It does so, more specifically, by way of suggesting that the intuitive equality argument singles out sentience as a morally arbitrary property on par with rationality – which Rowlands concedes to (see Rowlands, 2009, p.160). Quite evidently, this would imply that one has to bracket sentience as knowable in the original position as well. And, of course, that would make it just as arbitrary to adopt an experientialist view as it would be to adopt a logocentric view: to restrict moral consideration to sentient beings when situated in the original position would, in principle, be just as arbitrary, or unfair, as restricting it to rational agents. As a result, it would, in principle,

be no limit to the extension of moral consideration, since it is unclear what the relevant criterion is or should be.

Rowlands (2009, p.158-159) himself singles out and responds to two distinct worries stemming from this sort of objection – which are worthwhile to note before we proceed. The first worry is that it makes no sense to extend the scope in this way, insofar as it would have to yield the supposition that you might turn out to be a rock or tree when situated in the original position. Of course, this supposition would be quite fanciful, and rather hard to seriously consider, and thus represent a seeming *reductio ad absurdum* of Rowlands’s argument. However, Rowlands argues that this particular worry is entirely misguided given the theoretical structure of Kantian contractarianism figuring on Rawls’s theory, and thus misses the point. As mentioned, numerous times already, the original position only represents a heuristic reasoning process – not a place where one can “be” in the literal sense (see Rowlands, 2009, p.159). Hence, “...talk of persons being ‘in’ the original position is metaphorical through and through. And, therefore, questions of identity of persons in the original position with those outside simply do not arise” (Rowlands, 2009, p.158-159). In other words, the first worry is entirely misguided, as there is nothing which actually would have to yield the rather absurd supposition that you might “turn out to be a rock or tree in the original position” – not even the fact that you would have to put properties such as rationality and sentience behind the veil of ignorance. At the end of the day, you are never “in” the original position: it only represents the idea that you have to reason *as if* your particular interests were different from the ones you actually happen to have, for the sake of fairness.

The second worry is that “... if we put so many properties behind the veil of ignorance, then it is unclear what the purpose of morality is any more” (Rowlands, 2009, p.159). More specifically, the worry here is that, if considering the possibility that you might not even be sentient, then too many things would seem to be included within the scope of moral consideration (see Rowlands, 2009, p.159). Rowlands (2009, p.159-160) argues that this worry is also misguided, though, since the possibility of being a non-sentient being has no foreseeable impact on one’s moral decision-making on the contractarian framework. In short, this is so as there are no relevant interests to attend to in the case of non-sentient beings. That is, non-sentient beings, such as rocks or trees, have no self-interests to speak of in a meaningful sense – and so it cannot be in precisely your rational *self-interest* to worry about anything in their case, even if you sincerely try to entertain the idea (see Rowlands, 2009, p.160). This leads Rowlands to assert that the contractarian position thereby makes sentience the cut-off point for

morality – “...and does so even though sentience is an undeserved property” (Rowlands, 2009, p.160). Hence, Rowlands (2009, p.160) maintains that “...there is no worry of extending the scope of the principle of morality beyond this limit”. Thus, it would seem that the second worry is not all that worrying either.

“Rowlands’s problem”

But it is – although in a way Rowlands apparently did not recognize. Again, the second worry was that, if we put so many properties behind the veil of ignorance, even sentience, then it is unclear what the purpose of morality is any more. And Rowlands’s response is that the contractarian position, at least in its Kantian form, makes sentience the cut-off point for morality – and so the worry appears misguided. But this response amounts to begging the question. This is because Rowlands simply *assumes* an experientialist view when he is, in fact, forced to take a stance on a rather essential question; namely, the question of what is to have impact our moral decision-making on this particular framework. This is what I take to constitute “Rowlands’s problem”.

The basic idea here is that Rowlands’s assumption, albeit plausible enough on its own terms, is not a given on Kantian contractarianism – which Rawls manifestly has subscribed to in developing his contractarian theory. In other words, it does not straightforwardly follow that it is the most consistent with the Kantian core of Rawls’s theory to adopt an experientialist view, which Rowlands favors doing. At least, it does not follow from the intuitive equality argument. To see this, let us note what appears to follow from Rowlands’s concession; namely, that even the capacity for sentience gets singled out as arbitrary by the intuitive equality argument. On my understanding, what follows from this is that the “debate” between Rawls and Rowlands only gets pushed down to a more fundamental level: if even sentience, in addition to rationality and species membership, is deemed morally arbitrary by reference to the intuitive equality argument, then what to hold as the source of moral standing on Rawls’s theory would seem to remain an open question. That is, the wider implication of the intuitive equality argument, which Rowlands concedes to, appears to yield the result that both rationality and sentience are equally morally arbitrary properties. Hence, Rowlands’s appeal to the intuitive equality argument does not actually yield the supposition that sentience is the relevant cut-off point.

Given this, it would appear that one is actually forced to reflect on *what* the purpose of morality is on the Kantian contractarian position suggested by Rawls’s theory, instead of simply

assuming it. It does not straightforwardly follow that one is to attend to either sentience or rational agency by appealing to the intuitive equality argument, and so the task of deciding which sort of view to adopt remains. And as it turns out, the fact that one inevitably is confronted with this task should come as no surprise. In some sense, the task of singling out the cut-off point for morality is prior to the application of the intuitive equality argument and follows from a central conceptual feature of Kantian contractarianism; namely, that it uses the contract device *heuristically*. As Kymlicka (1993, p.191) points out, the Kantian form of contractarianism uses the idea of the contract to *express* the inherent moral standing of persons. But the contract device as such does not settle what generates, or is the source of, this inherent moral standing: that represents, amongst other things, a major issue that has to be decided beforehand on Kantian contractarianism (see Kymlicka, 1993, p.193-194). That is, one has to decide or settle what it is that generates, or is the source of, moral standing, *before* construing the heuristic reasoning procedure in a way which serves to express this particular facet on Kantian contractarianism.

The point, then, is that the “debate” between Rawls and Rowlands ultimately turns upon what sorts of grounds they can give for adopting a given view on the Rawlsian framework, prior to construing the original position in a way which serves to express this. And in that regard, there may be compelling grounds for holding that the purpose of morality on the Rawlsian framework, which manifestly represents a Kantian contractarian position, actually is to attend to rational agency to a much larger extent. After all, this is the traditional view on the Kantian contractarianism – connected with the logocentric view afforded by Kant himself. And, as we shall examine in the next chapter, Rawls’s considerations very much align with those of Kant in virtually all significant respects. In other words, we shall further assess the Kantian core of Rawls’s theory – but this time with a particular focus on the Kantian theory of value that appears to have been involved by Rawls in developing his contractarian theory.

Summing up

To sum up, what I refer to as “Rowlands’s problem” is that Rowlands essentially begs the question when he is, in truth, faced with the problem of what it is that serves as the cut-off point for morality on the Kantian contractarian position. More specifically, he merely assumes an experientialist view, in holding that attending to sentience is what the purpose of morality is – and, correspondingly, that attending to sentience is what should influence our moral decision-

making – on the Kantian contractarian position suggested by Rawls’s theory. But this does not straightforwardly follow the way I see it. On the contrary, this appears to represent a major issue that has to be decided beforehand on the Kantian version of contractarianism – which Rawls, as we have seen, manifestly subscribed to. As such, it would seem that one actually has to reflect and provide more fundamental reasons for holding something to be the purpose of morality on this sort of framework. The fundamental question which remains to be addressed, then, is this: what is the purpose of morality on the Kantian version of contractarianism? Or, alternatively put, what is the cut-off point for morality on the Kantian contractarian position?

Chapter 8: Further assessing the Kantian core of Rawls’s theory

In this chapter, we shall involve Kant’s ethical theory in our assessment. The reason for this is to further assess what the Kantian core of Rawls’s theory appears to involve and what this suggests with regards to the problem I outlined in the previous chapter. As we shall see, Rawls’s stated view on the animal issue aligns with that afforded by Kant in virtually all significant respects. And this seriously aggravates “Rowlands’s problem”, as Rowlands’s appeal to the Kantian core of Rawls’s theory appears void – or at least questionable.

Kant’s indirect-duty view

Let us begin on a general note, by elucidating what sort of view Kant himself afforded with regards to our moral relations with nonhuman animals. In short, Kant, as Rawls, afforded a so-called “indirect-duty view” with regards to our moral relations with nonhuman animals; that is, the view that nonhuman animals, at best, can be granted indirect rights, which entails that moral agents may merely have duties in regard to them (see Regan, 2004, p.163-185). Indeed, Kant *epitomizes* the contractualist perspective that nonhuman animals, at best, can be granted indirect moral status and moral rights (Bernstein, 1997, p.49). And this effectively implies that the only moral engagements we can have with them are instrumental, in the sense that they are means to our ends, and that we can act morally rightly or wrongly towards nonhuman animals only in an attenuated sense (Bernstein, 1997, p.49).

This is both clearly and emphatically expressed in *The Metaphysics of Morals*. There, Kant (2017, p.206-208) describes what he considers to be an *amphiboly*, or ambiguity, in moral concepts regarding duties to nonhuman beings. This amphiboly consists in taking what is in

fact a human being's duty to himself for a duty to other non-human beings, such as nonhuman animals. Kant (2017, p.207) held that a duty *to* nonhuman animals is only a *supposed* duty, and fundamentally mistaken one, based on a conceptual misunderstanding. On Kant's view, there cannot be any moral duties *to* nonhuman animals in the strict sense – that only holds in the case of our moral relations with humans (see Kant, 2017, p.207).

Yet, that is not to say that there are no duties *in regard to* nonhuman animals. In fact, this was a crucial point to acknowledge for Kant:

With regards to the animate but nonrational part of creation, violent and cruel treatment of animals is far more intimately opposed to a human being's duty to himself, and he has a duty to refrain from this; for it dulls his shared feeling of their suffering and so weakens and gradually uproots a natural predisposition that is very serviceable to morality in one's relations with other human beings (Kant, 2017, p.207).

So, it is undoubtedly the case that we have *certain* duties with regards to nonhuman animals according to Kant, as he maintains that we are to refrain from violent and cruel treatment of them. Nonetheless, Kant's point is that these duties are merely *indirect* ones since they are based, not on a duty to the nonhuman animals themselves, but on a duty to oneself as a human being. Thus, there are no duties *to* nonhuman animals: there are only duties *in regard to* nonhuman animals – which, in truth, are duties *to human beings* (see Kant, 2017, p.207-208). Hence, the *indirect-duty* view with regards to our moral relations with nonhuman animal.

Kant on the source of moral standing

Now, as was the case when considering Rawls's view on our moral relations with nonhuman animals, the question when considering Kant's corresponding view is *why* this is so. That is, why is it that we can only have direct duties to human beings, and merely indirect ones with regards to nonhuman animals, on the Kantian outlook? What underlies this difference in moral consideration? The simple answer is that only human beings are considered moral subjects, with direct moral status or standing, on the Kantian view. This being so, they are the only entities a moral agent may have duties *to* in the strict sense. But, of course, that merely pushes the original question down to a more fundamental level: what is it that marks out humans as having moral status or standing on the Kantian view, unlike nonhuman animals? That is, we are now at the level of asking about what the source of moral standing is on the Kantian outlook.

In short, Kant held that the source of moral standing is rational agency (Sytsma and Machery, 2012, p.305-306). In other words, to be a rational agent, or a *person*, is construed as a necessary condition for having moral status on the Kantian view (Gamlund, 2013, p.336). And what marks out rational agents as having moral status, according to Kant, is their ability to make rational choices about their lives (Gamlund, 2013, p.336). This ability is usually referred to as *autonomy*, or having a self-legislating will, which to some extent echoes Rawls's emphasis on the first feature distinguishing moral persons; namely, to have a conception of one's good, as expressed by a rational plan of life. And it is this ability for autonomy which Kant claims gives rational persons a peculiar and fundamental *worth*, which essentially underlies their having moral status (Gamlund, 2013, p.336; Birch, 2019, p.1). Alternatively put, it is the ability to make rational choices about one's life that makes someone stand out as an "end in itself".

More specifically, Kant (2012, p.40) infamously held the following verdict on what or who is to be considered as an end in itself: "a human being and generally every rational being exists as an end in itself, not merely as a means for the discretionary use for this or that will, but must in all actions, whether directed towards itself or also to other rational beings, always be considered at the same time as an end". More generally put, this verdict reflects Kant's view that there is something about rational nature which marks out rational beings as goals worth pursuing as goals or ends, which is prescribed in terms of our moral code. Indeed, this is precisely what Kant's (2012, p.41) so-called "Formula of Humanity" of the moral law holds: "so act that you use humanity, in your own person as well as in the person of any other, always at the same time as an end, never merely as a means".

One should note here that the term "humanity" is used in a technical sense by Kant, meant to refer to the capacity to set ends according to reason and not a biological species (Wood, 1998, p.189). As such, it becomes clear that the Formula of Humanity essentially reflects Kant's view on what the source of moral standing is; namely, rational agency. And the ground for this view or principle, according to Kant (2012, p.41), is that this "...is how a human being by *necessity* represents his own existence...". The line of reasoning for why Kant construes this as necessary is brilliantly put by Korsgaard, and worth quoting at length:

Because we are rational, we cannot decide to pursue an end unless we take it to be good. Most of our ends, however, are simply the objects of our inclinations, and the objects of our inclinations are not, just as such, intrinsically valuable. So we need some further story about why we take them to be good. That further story is that we attribute to ourselves the power to confer value on our ends *by* rationally choosing them. In so

doing, we attribute a fundamental kind of value to ourselves. We attribute value to our own humanity, a property which Kant identifies with our capacity to determine our ends through rational choice. I summed this all up by saying that humanity is the unconditioned condition of all value, and as such, it must be valued. (Korsgaard, 2021, p.171)

So, Kant considers it necessary to attribute a fundamental kind of value to ourselves as rational beings in order to even take something as good or valuable in the first place – which again serves to provide the basis for grounding our moral imperatives. And the fundamental end whose value grounds this, on Kant’s view, is our rational nature (Wood, 1998, p.189).

In this way, the Formula of Humanity inherently involves the idea that humanity or rational nature is what has a moral claim on us (Wood, 1998, p.193). On Kant’s view, though, it does so only in the *person* of a being who actually possesses it – which Allen Wood refers to as the “personification principle” (see Wood, 1998, p.193). More specifically, then, the moral claim on us is to precisely respect a *person’s* right to autonomy or self-legislation (Gamlund, 2013, p.337). And this is a fundamental point to acknowledge for Kant, in distinguishing between having a “price” and having a “dignity” in a so-called “kingdom of ends” at a later stage in *Groundwork*.

In short, the concept of a “kingdom of ends” represents the systematic union of several rational beings through common laws (Kant, 2012, p.45). As emphasized by Kant (2012, p.45-46) himself, this is only an *ideal* scenario in which one abstracts the personal differences among rational beings, as well as the content of their private ends, and consider them as universally legislating members in virtue of their rational will only. What is relevant to note here is that Kant’s “kingdom” very much corresponds with Rawls’s “original position”, in that it also abstracts contingent features of members who are to follow a reasoning procedure in legislating moral principles or laws (see Rawls, 1999, p.226). That is, it represents the idea that one is to invoke the contract device in a heuristic manner on the Kantian outlook, as highlighted earlier. When doing so, however, Kant stresses that one has to attend to the difference between price and dignity. And Kant (2012, p.46) distinguishes these terms as follows: to have a *price* means being replaceable by something equivalent, whereas to have *dignity* means being elevated above any price and hence have no equivalent. More generally put, this distinction thus marks out a difference in consideration between entities involved in the course of our moral deliberations. Some entities have a price, which means that they are morally replaceable or

interchangeable; whereas some entities have dignity, which means that they are fundamentally morally valuable. And this is what Kant's heuristic use of the contract device intends to express.

Another way of putting this by way of saying that Kant distinguished between what he considered to be two distinct classes of entities with regards to morality: 1) persons and 2) things. Persons, on the one hand, are rational beings with absolute worth, and are thus "objective ends" morally speaking; whereas things, on the other hand, are non-rational beings with relative worth, and are thus mere "means" morally speaking (Kant, 2012, p.40-41). In other words, Kant maintained that persons are to be morally considered and respected in virtue of their rational capacities, since they have *dignity* in this way. Mere things, in contrast, are not, and may thus be treated as mere means since they merely have a *price* due to their lack of a sufficiently rational nature.

Kant's fundamental point, then, is that morality and humanity, insofar as it is capable of morality, is that which alone has dignity or inner worth (see Kant, 2012, p.47). And, as we have seen, to be capable of morality presupposes rational agency on the Kantian outlook, which the Formula of Humanity essentially serves to encapsulate. In other words, the ground of this inner worth or dignity is precisely one's ability for autonomy (see Kant, 2012, p.47-48) – which Kant (2012, p.51-52) considers to be the supreme principle of morality. As such, the entities to be directly morally considered on Kant's outlook are autonomous beings, or rational agents. And that is what his use of the contract device, as portrayed in the kingdom of ends, serves to express.

To put this in more general and familiar terms, Kant held that the condition for having moral status corresponds with that for being a moral agent (see Gamlund, 2013, p.336). This is so, as moral agents are essentially defined by having a self-legislating will which enables them to engage in moral reasoning – and it is precisely this capacity which alone provides an entity with dignity. Thus, fundamental worth, for Kant, goes with autonomy and moral agency, and his ethics therefore assigns fundamental value to rational beings only (Birch, 2018, p.1). In this way, his ethics reflects a logocentric view, in that it is based on the idea that rational nature, and it alone, has absolute and unconditional value (Wood, 1998, p.189).

So, to explicitly address the question which launched this examination, what underlies Kant's indirect-duty view is the claim that nonhuman animals lack this rational agency, or autonomy, and therefore cannot be granted moral status (see Gamlund, 2013, p.337). That is, Kant establishes our duties to other persons and excludes nonhuman animals from direct moral consideration on the basis of our "humanity", or rational nature (Altman, 2018, p.276).

Ultimately, Kant thus invokes the Formula of Humanity in providing the basis for the indirect-duty view (see Wood, 1998, p.191-192; see also Altman, 2018, p.276). According to this formula, then, nonhuman animals are mere “things” with only relative value or a price; and they may, therefore, be used as mere means to the ends of rational agents, or “persons”, who have absolute value or dignity (see Wood, 1998, p.189-190). Hence, nonhuman animals may, at best, be accorded indirect rights insofar as there are duties we may have *in regard* to them – which in truth are direct duties to persons, or rational agents.

Rawls and Kant in a striking alignment

It should be fairly clear that Rawls’s stated view thus appears to align with that afforded by Kant in virtually all significant respects. Firstly, it does so with respect to the more general view on our moral relations with nonhuman animals. This is so, as both Kant and Rawls maintain that nonhuman animals, at best, can be granted indirect moral rights. Secondly, it does so with respect to the more fundamental view on what it takes to be morally considerable in virtue of one’s intrinsic properties. As alluded to, both stress that only rational agents are directly morally considerable, precisely on the basis of their rational intrinsic capacities, or rational nature. Thus, they both maintain, at least in effect, a logocentric view on moral value. And it is precisely this view which again underlies their respective yet remarkably similar indirect-duty views with regards to our moral relations with nonhuman animals.

This being so, it seems reasonable enough to hold that Kant and Rawls can be taken to share the same sort of verdict with regards to the question of what is to have impact on our moral decision-making on the Kantian contractarian position. The verdict they share, then, is that it is on the basis of a sufficiently rational nature that someone has a moral claim on us. In other words, what they both hold is to have impact on our moral decision making, when conducting a heuristic contractarian reasoning process, is respecting, or morally considering, someone in virtue of their capacity for rational agency.

Given this striking alignment in views, it would thus appear that Rawls did not merely incorporate strictly conceptual features of Kantian contractarianism into his theory, such as using the contract device in a heuristic manner, and attending to ideas such as equality, impartiality, and fairness in doing so. Furthermore, it seems that Rawls may have incorporated more substantive Kantian features concerning moral value in general, and the crux of Kant’s view on moral standing in particular, into his theory as well. Indeed, Rawls’s Kantian

interpretation of “justice as fairness” is based upon Kant’s notion of autonomy, which informs Rawls’s theory at several levels (see Rawls, 1999, p.221). This being so, it seems reasonable to maintain the claim that the Kantian core of Rawls’s theory may be taken to include these latter aspects too, although Rawls did not make it entirely explicit.³⁵ That is, it appears plausible that the Kantian core of Rawls’s theory may be taken to include or suggest more fundamental reasons for holding a logocentric view.

“Rowlands’s problem” aggravated

If this is correct, then it certainly aggravates “Rowlands’s problem”. This is so, as it becomes clear that Rowlands’s appeal to the Kantian core of Rawls’s theory thereby “cuts both ways” – but more so on the part of Rowlands’s argument. Sure, one might argue that the intuitive equality argument, which certainly reflects some crucial Kantian-inspired ideas, may serve to single out rationality as an arbitrary property, which merits bracketing it as knowable in the original position. Of course, this appeal “cuts” against Rawls’s stated view, and lays at the center of Rowlands’s extensionist argument, as it thereby seems arbitrary to adopt a logocentric sort of view for conceptual Kantian reasons. However, the same sort of appeal certainly appears to “cut” against Rowlands’s argument as well since the intuitive equality argument serves to single out sentience as an arbitrary property too – which thereby makes it equally arbitrary to adopt an experientialist sort of view. As such, the result of Rowlands’s appeal to the Kantian core of Rawls’s theory yields a sort of “stand-off” regarding what to take as having impact on our moral decision-making on the contractarian position. This is so, since what the relevant requirement is does not straightforwardly follow from how the heuristic reasoning procedure is to be construed by reference to the intuitive equality argument and other conceptual features.

But, of course, one has to resolve this pertinent issue: something must, inevitably, be taken to serve as the cut-off point for morality on the Kantian contractarian position suggested by Rawls’s theory. And in that regard, it would certainly seem the most consistent with the Kantian core of Rawls’s theory to defend Rawls’s stated view, for the simple reason that it aligns with that of Kant himself in all significant respects. In other words, it would seem the most consistent with the Kantian core of Rawls’s theory to maintain that attending to rational agency is what is

³⁵ However, I think that much of this is implicit in Rawls’s theory of the good, which he dubs “Goodness as Rationality” (see Rawls, 1999, p.347-396), particularly given the Kantian interpretation of his conception of justice (see Rawls, 1999, p.221-227).

to have impact on our moral decision making – even though this capacity may be singled out as arbitrary by reference to the intuitive equality argument.

This may seem a little perplexing at first. But to make this fundamental point more palpable, let us revisit Rawls's original position to illustrate it. Furthermore, let us even grant Rowlands's revision; namely, that whether one is a rational agent, or whether one is sentient for that matter, is not knowable behind the veil of ignorance. This is what the intuitive-equality argument dictates. When exhibiting the social contract argument, though, one nevertheless has to choose a set of principles on the basis of what it is in one's rational self-interests to accept. Then, the fundamental question is what one is to attend to in this way; that is, what to take as having impact on one's moral decision-making when conducting Rawls's reasoning procedure. And if my analysis is correct, a defender of the Rawlsian position may reason as follows:

Okay, let us say that I would not know whether I am rational or not, nor whether I am sentient or not, when choosing a conception of morality. Now, if I were to entertain this idea, then I would still attend to what would be in the interests of a rational agent, or a moral person. After all, only rational agents have a moral claim on us, in virtue of their rational nature, as represented by their capacity for moral personhood. As such, I would have to say that rational agency serves as the cut-off point for morality. Therefore, I will only consider the scope of principles insofar as they extend to such beings.

Of course, this line of reasoning is rather stylized. Nonetheless, it serves as an example of a line of reasoning that seems viable by reference to the Kantian core of Rawls's theory – and certainly reflects the views afforded by Rawls *and* Kant.

Strengthening the argument for the orthodox view

One way to further appreciate the significance of this analysis is to examine how it foreseeably strengthens what Rowlands labels “the orthodox view” of contractarianism and animal rights. In short, this represents the view that nonhuman animals can, at best, have indirect rights on contractarian frameworks, since their possession of direct rights is thought to be incompatible with contractarianism. As we have seen, this is the sort of view which both Kant and Rawls

afforded. And Rowlands (2009, p.129) puts the underlying argument³⁶ for this sort of view as follows:

P1: According to contractarianism, moral rights and duties are dependent on the existence of an actual or hypothetical agreement.

P2: The framers of the contract and the moral rights and duties embodied therein have to be conceived of as rational agents.

P3: Therefore, the contract and its embodied moral rights and duties apply only to rational agents.

P4: Nonhuman animals are not rational agents.

P5: Therefore, the contract and its embodied rights and duties do not apply to nonhuman animals.

P6: Direct moral rights are possessed only by those individuals subsumed by the contract and its embodied rights and duties.

C: Therefore, nonhuman animals do not possess direct moral rights.

Without going into detail on the premises, what Rowlands (2009, p.129) stresses with regards to this argument is that there is a large jump from P2 to P3: “To claim that the framers of a contract must be conceived of as rational agents obviously does not entail that the recipients of the protection afforded by the contract must be similarly conceived”. As such, the argument can be rendered plausible only if some *justification* for the move from P2 to P3 can be provided (Rowlands, 2009, p.129).

In connection with this, Rowlands (2009, p.130) holds that “...all justifications found in the literature seem to presuppose a Hobbesian form of the contract”. Following this, he essentially emphasizes his key argument; namely, that “... if we are consistently Kantian about the contract, then there is no way of bridging the gap between P2 and P3” (Rowlands, 2009, p.131). The above analysis, however, renders the first claim misguided, and the second claim false. This is so, since there appears to be a justification for the move from P2 to P3 that can be provided – by precisely presupposing the Kantian form of the contract.

³⁶ Rowlands explicitly stresses that the argument is not deductively valid, but that it nonetheless expresses the orthodox understanding of the relation between contractarianism and animal rights (see Rowlands, 2009, p.129).

To be sure, this point has to be further qualified, as one may hold that there is a relevant difference between the conceptual features of Kantian contractarianism on the one hand, and Kant's more substantive verdicts, principles, etc. on the other hand. As far as the conceptual features of Kantian contractarianism go, there may not seem to be a justification for the move from P2 to P3. Indeed, this seems to be a point which Rowlands emphasizes, in holding that "... there is nothing in the concept of the original position which entails that non-human animals fall outside the sphere of morality" (see Rowlands, 2009, p.151). That may very well be true. Yet, as "Rowlands's problem" goes to show, there is nothing in the concept of the original position which entails non-human animals fall inside the sphere of morality either. Again, that seems to remain an open question as a result of the conceptual features of Kantian contractarianism generally, and the intuitive-equality argument more specifically.

This being so, the general point stands: one inevitably has to provide more fundamental, *substantive* reasons in settling this pertinent issue. And, as we have seen, a defender of Rawls's stated view may reasonably do so by reference to considerations going back to Kant himself – which it certainly seems that Rawls has very much placed at the center of his theory. In other words, there appears to be more substantive reasons in the Kantian core of Rawls's theory for only extending the circle for moral status to rational agents, or moral persons. Needless to say, that would appear to undermine Rowlands's extensionist argument; namely, that the most consistent application of Rawls's theory, on the basis of its Kantian core, yields the supposition that nonhuman animals have direct moral rights. On the above analysis, quite contrary appears to be the case. For Kant, rational agency, not sentience, is the relevant cut-off point.

Summing up

Having further assessed the Kantian core of Rawls's theory, then, it would seem that "Rowlands's problem" does represent a rather dire prospect for the essential claim of Rowlands's extensionist account; namely, to use Rawls's contractarian theory to underwrite the notion that nonhuman animals possess moral rights in the direct sense. After closer examination, it would appear that rational agency is the relevant cut-off point for morality on Kantian contractarianism, by reference to considerations going back to Kant himself. This being so, it seems reasonable to defend Rawls's original considerations and conclusions on the animal issue: to restrict moral consideration to "moral persons" does, in fact, appear nothing but consistent with the Kantian core of Rawls's theory.

Chapter 9: The two camps

With regards to the assessment of the “debate” between Rawls and Rowlands, then, it may seem the most consistent to adopt a logocentric view on the Rawlsian framework, on the basis of its Kantian core, after all: although there is nothing in the concept of the original position which entails that nonhuman animals fall outside the sphere of morality, there are, nevertheless, more substantive Kantian reasons for construing the original position in such a way. However, there may be more to the Kantian core of Rawls’s theory, as Kant scholars fall into two camps with regards to Kant’s view of animal ethics (Altman, 2018, p.275). On the one hand, there are expositors of Kant, who argue for the plausibility of Kant’s stated view that nonhuman animals are only indirectly considerable.³⁷ On the other hand, there are critics of Kant’s stated view, such as Allen Wood and Christine M. Korsgaard, who reject the indirect view and claim that they can justify there being direct moral duties to nonhuman animals on Kantian grounds. In other words, how to relate Kant’s ethical view to nonhuman animals is a debated issue. And perhaps the “critical camp” in this debate could single out a viable way of remedying the theoretical difficulties on the part of Rowlands’s argument? The main objective of the next three chapters is to show why and how this may be the case.

What motivates the debate

Let us begin by considering some aspects of Kant’s indirect-duty view which may motivate this debate amongst Kantians more generally. Firstly, some critics hold that Kant’s indirect-duty view is counter-intuitive (see Saugstad, 2000, p.143). More specifically, that it is counter-intuitive in holding that, when we do consider nonhuman animals morally, we do so only insofar as it affects humans.³⁸ As alluded to earlier, the flipside of this sort view is that, if any sort of conduct involving nonhuman animals does not affect humans, then there is virtually nothing to consider in the case of nonhuman animals – which seems an unsatisfactory stance. To be sure, this is so only *in principle* on the Kantian view, as Kant did maintain that conduct involving nonhuman animals does affect humans. More specifically, Kant maintained what is known as “the violence graduation hypothesis” in contemporary psychology, which goes roughly as follows: since nonhuman animals are like us in certain ways, one example being that they are sentient creatures with a capacity for suffering, treating them cruelly would coarsen our

³⁷ Indeed, I have taken it that Rawls may have been such an expositor.

³⁸ Of course, this echoes the same concern I expressed when commenting on “the Case of John”.

sensitivity to other people's suffering, and potentially erode our moral virtue (Altman, 2018, p.278). As we have seen, this is precisely what Kant emphasized in holding that there are certain duties *in regard* to nonhuman animals – and thus what his indirect-duty view essentially rests on.

However, this leads to a second aspect which may motivate the debate; namely, that Kant's position rests on fragile empirical claims about human psychology (see Altman, 2018, p.278-279; see also Wood, 1998, p.194-195). The problem this represents, then, is that Kant's view only applies to rational beings who happen to be psychologically prone to violence graduation. If one would have a different sort of response to animal cruelty, though, then it may be permissible to torture animals for the fun of it (Altman, 2018, p. 279). Furthermore, "...if it happened to be a quirk of human psychology that torturing animals would make us that much kinder to humans (perhaps by venting our aggressive impulses on helpless victims), then Kant's argument would apparently make it a duty to inflict gratuitous cruelty on puppies and kittens so as to make us much kinder to people" (Wood, 1998, p.194-195). However, that would certainly seem counter-intuitive, if not even downright repugnant (see Wood, 1998, p.195). So, if it seems more intuitive to hold that torturing animals is inherently wrong, that is, wrong in itself, then this wrongness should clearly not depend upon some contingent feature of human psychology (Altman, 1998, p.279) If it does, then the implications of Kant's view may point in any given direction, depending on the features of human psychology.

Thirdly, there is the aspect concerning strictly theoretical considerations, which may turn upon a wide variety of issues: whether the indirect view entails a problematic moral epistemology or not (see Altman, 1998, p.283-284), whether the indirect view depends on making use of empirical facts with what is supposed to be a formal approach (see Altman, 1998, p.279), the plausibility of the logocentric approach as such (see Wood, 1998, p.195-196), or the foreseeable charge of arbitrariness (see Dean, 2006, p.177-179). Furthermore, there is the more general issue of what the proper interpretation of Kant's theory of value is, and whether Kant himself applied his theory of value correctly with regards to the animal issue.

Of course, these aspects are complex, and they are very much related. Nevertheless, it seems safe to say that Kant does have an "animal problem" worthy of being addressed by both sides of the debate; in particular, that his view on our moral relations with nonhuman animals seems prone to depend upon contingent psychological facts (see Birch, 2019, p.1-3). As such, there surely are certain aspects of Kant's view of animal ethics which serve to motivate the debate between the two camps.

Considering the critical camp

For our purposes, I believe it is fruitful to consider the “critical camp” in this debate in more detail, as doing so may suggest a theoretical basis serving to alleviate “Rowlands’s problem”. This is so for a rather simple reason: proponents of the critical camp seek to reject Kant’s indirect-duty view – and they claim that they can justify direct moral duties to nonhuman animals on Kantian grounds. And if that is the case, then that potentially represents a viable way of remedying the theoretical difficulties on the part of Rowlands’s case. It does so, more specifically, since there, quite evidently, must be Kantian grounds for holding that there is something that “stands out” in the case of nonhuman animals, as well as in the case of humans, to merit this sort of claim. And the question I seek to investigate in what follows, is whether this can be involved to strengthen the basis for attending to sentience and downplay rational agency on Rawls’s contractarian theory, in the way that its Kantian core may need to be further revised. Perhaps there are substantive Kantian reasons for attending to sentience?

Summing up

To sum up, what Kant’s ethical view actually implies with regards to nonhuman animals is a debated issue, and there are two camps in this debate: the expositors and the critics. The expositors argue for the plausibility of Kant’s stated view that nonhuman animals are only indirectly considerable, whereas the critics reject the indirect view and claim that they can justify there being direct moral duties to nonhuman animals on Kantian grounds. The purpose of this chapter was to highlight what motivates this debate amongst Kantians and suggest a way forward; namely, to consider the critical camp in more detail. And in the next chapter, we shall examine the accounts of two proponents of the critical camp: Allen Wood and Christine M. Korsgaard.

Chapter 10: Seeking a justification for attending to sentience on Kantian grounds

So, we shall now examine the accounts afforded by Wood and Korsgaard. As we shall see, their respective accounts both revolve around interpreting Kant’s theory of value in way which suggests extending moral consideration from humans to nonhuman animals on the basis of their sentient capacities. They should be firmly distinguished, however, as the two of them do appear to disagree on how to best interpret Kant’s theory of value (see Wood, 1998, p.209). Indeed, they appear to rely on opposite sorts of strategies in this regard. Wood’s strategy, on the one

hand, involves accepting Kant's logocentric view but rejecting his so-called "personification principle". Korsgaard's strategy, on the other hand, involves accepting the personification principle but rejecting full-fledged logocentrism in favor of an experientialist sort of view. Nevertheless, "...both Wood and Korsgaard conclude that animals are deserving of direct moral consideration" (Altman, 2011, p.24). And what unites them in this regard is that they both elucidate Kantian grounds for attending to sentience.

Wood's account

Let us begin by examining Wood's account. As alluded to above, Wood's account involves accepting Kant's logocentric view as such (see Wood, 1998, p.189-191). In other words, what Wood finds problematic with Kant's view on the animal issue is not his endorsement of the logocentric view. In fact, Wood holds this view himself (see Wood, 1998, p.195-196). What Wood maintains, rather, is that Kant's argumentative strategy goes fundamentally wrong in accepting the personification principle.

To repeat, Kant's logocentric view is based on the idea that rational nature, and it alone, has absolute and unconditional value. Thus, on Kant's theory of value, only rational nature has a moral claim on us. And the personification principle, then, involves the idea that rational nature has a moral claim on us *only in the person* of a being who actually possesses it. In other words, only rational persons are to be morally considered according to this principle, in conjunction with Kant's logocentric view. And the indirect-duty view with regards to nonhuman animals straightforwardly follows from this, as nonhuman animals are not rational persons, or rational agents (see Wood, 1998, p.194).

According to Wood (1998, p.194-195), however, this argumentative strategy does not seem very convincing for reasons alluded to in the previous chapter; namely, that Kant's position rests on fragile empirical claims about psychology. Nonetheless:

... this strategy is actually forced on Kant by purely theoretical considerations. For Kant's logocentric principle requires him to ground all duties in the value of humanity or rational nature, and his personification principle compels him to regard every duty as a duty to some rational being or beings. Hence duties regarding nonrational nature must be either a duty to others (promoting the happiness of other human beings), or else on a duty to ourselves (promoting our own perfection) (Wood, 1998, p.195).

And although Kant may have made the best of a bleak situation, "...the features of his ethical theory which forced a bad choice on him are still open to criticism" (Wood, 1998, p.195).

And the feature of Kant's ethical theory which Wood criticizes, then, is Kant's endorsement of the personification principle. On Wood's (1998, p.197-198) analysis, Kant may have endorsed this principle as a concession to critics who object that that the saying "I should respect *rational nature* in your person", which essentially reflects Kant's idea that rational nature has a moral claim on us, somehow means that I do not really have to respect *you* – only rational nature in the abstract. In some sense, this would suggest a rather funny-looking indirect-duty view with regards to *humans*, by way of essentially representing the idea that humans are only to be indirectly morally considered in relation to claims made by rational nature in the abstract. By accepting the personification principle, though, Kant effectively renders this sort of criticism harmless, if not even entirely misguided. This is so, as it explicitly yields the supposition that one should respect rational nature only in the *person* of a being who possesses it – not simply in the abstract.

Yet, this is an ill-considered concession which Kant should not have made, according to Wood (see Wood, 1998, p.198). On Wood's view, we should do both if we maintain a logocentric view; that is, we should respect rational nature in persons, which clearly must mean respecting persons *themselves* in virtue of their rational nature, *and* respect rational nature in the abstract (see Wood, 1998, p.198). Doing the latter, that is, to respect rational nature in the abstract, entails respecting fragments of it or necessary conditions of it, such as sentience and preference-autonomy, even where these are not found in fully rational beings or persons (Wood, 1998, p.198-200). If doing so, though, then one must clearly reject the personification principle.

And although Kant manifestly did the opposite, Wood essentially argues that this amounts to a contradiction in terms. In short, Wood's argument here revolves around assessing what Kant would have wanted to say on the problem of marginal cases, on the basis of his logocentric principle (see Wood, 1998, p.198). Crudely put, the problem of marginal cases involves how to merit moral consideration in the cases of marginal humans who ultimately fall short of the relevant standard. In the case of Kant's value theory, then, the problem is how to include those humans who, for various reasons, are not sufficiently rational to qualify as being rational agents, or persons.³⁹ And Wood's fundamental point is that it would show contempt for precisely

³⁹ Without going into detail, the same sort of problem applies to Rawls's rather puzzling view on this matter too, as alluded to in chapter 5.

rational nature to disregard the fragments or potentiality for it in such cases (see Wood, 1998, p.198-199). In this way, Kant's logocentric principle inherently involves placing absolute and unconditional value on some nonrational beings also – who by definition are “non-persons” – which is the exact opposite of what the personification principle holds. Hence, holding the logocentric principle actually commits Kant to reject the personification principle – not to accept or endorse it – according to Wood.

The upshot of this argument is that one may then respect rational nature in non-persons as well as in persons. And this calls for applying Kant's logocentric view to the animal issue in a profoundly different way than Kant himself did. More specifically, it allows one to recognize, solely on the basis of Kant's logocentric principle, that there are duties regarding nonhuman animals which are not derived from any duties toward rational beings (Wood, 1998, p.200). Rather, they are owed to nonhuman animals themselves. This is so, insofar as nonhuman animals do possess recognizable fragments of rational nature, such as sentience and preference-autonomy, although they may not possess rational nature itself:

They have capacities which we should value as the infrastructure, so to speak, of rational nature. Many animals have desires and they experience pleasure or pain. To frustrate an animal's desires or to cause it pain maliciously or wantonly is to treat with contempt that part of rational nature which animals share with human (Wood, 1998, p.200).

In this way, it would seem that Wood has found a justification for attending to sentience on Kantian grounds. The justification, then, is that this is so since sentience, in addition to preference-autonomy⁴⁰, is a fragment or necessary condition of rational nature, which merits respect or moral consideration on the basis of Kant's logocentric principle. In some sense, this would appear to suggest that Wood's analysis implies that there is a convergence between logocentrism and experientialism on the Kantian outlook, as the latter essentially is subsumed under the former. In other words, Wood's analysis goes to show that, if one adopts Kant's logocentric view, then one should also be prepared to grant moral status to sentient beings with conscious experiences – not just to rational agents who possess rational nature itself.

That said, one should note that Wood (1998, p.202) explicitly stresses that the view he is maintaining falls considerably short of saying that nonhuman animals have *rights*. As such, Wood appears to be an exponent of the view that, while moral standing is necessary for the

⁴⁰ Of course, it is noteworthy that Wood highlights this capacity as morally relevant as well, but I shall not pay attention to this particular aspect since it does not figure on Rowlands's argument.

possession of rights, it is not sufficient for the possession of rights.⁴¹ Furthermore, Wood (1998, p.202) states that he does not know how to decide in general when the welfare of nonrational beings should prevail over the ends and interests of rational beings. Nonetheless, the general point stands: his account implies that nonhuman animals are to be morally considered insofar as they are sentient, on the basis of Kant's logocentric principle. And although the aspects of Wood's account alluded to above certainly are noteworthy, I find it reasonable to take Wood's account at face value and see where it leads. As we shall see, it foreseeably leads to lending itself to Rowlands's argument. At least, that is what I shall suggest in the next chapter.

Korsgaard's account

But before doing so, let us also take Korsgaard's account on board. As mentioned earlier, Korsgaard's account should be distinguished from that of Wood. One reason for this, which Wood (1998, p.209) alludes to, is that Korsgaard's argument is "more Kantian" than his, in that she effectively accepts the personification principle. Given this, Korsgaard must clearly find a different Kantian ground for justifying direct moral duties regarding nonhuman animals than appealing to Kant's logocentric view. Now, how does she do that?

Crudely put, Korsgaard's strategy involves rejecting, or at least fundamentally revising, the full-fledged logocentric view originally suggested by Kant's considerations. More specifically, she interprets Kant's theory of value in a way which suggests adopting more or less an experientialist view – at least as far as nonhuman animals are concerned. This is so, as she argues that most nonhuman animals are "fellow creatures" who share the same sort of animal or sentient nature which we also confer value to as the source of legitimate normative claims on a Kantian outlook. And this, in turn, suggests that we owe duties to nonhuman animals directly, since they thus share what amounts to the relevant source of moral standing on Kant's theory of value. And although her argument for this implication is rather complex, we should at least try to emphasize some of the key ideas involved in her account.

A useful point of departure in this regard is to examine how Korsgaard construes the fundamental nature of nonhuman animals; that is, what sort of beings nonhuman animals are. Of note, Korsgaard explicitly states that nonhuman animals really are not rational beings (see Korsgaard, 2004, p.82). This being so, it is worth repeating the point that her argumentative

⁴¹ For an overview of this view, see Sytsma and Machery, 2013, p.304-305.

strategy clearly cannot be to maintain both Kant's personification principle *and* his logocentric principle. If she did, then the indirect view would straightforwardly follow, since the conjunction of these principles implies that only rational persons have a moral claim on us. Yet, having said what animals really are not on Korsgaard's view, it is nevertheless crucial to note what she does maintain that they are, in order to understand how she develops her argument.

What Korsgaard (2004, p.83) does maintain, then, is that nonhuman animals are *living* things capable of perception and emotion. Furthermore, they are *self-maintaining* living things, with two relevant tasks: 1) forming a conception of their environment, or *belief*; and 2) guiding themselves around in the environment, or *action* (see Korsgaard, 2004, p.83). With regards to the latter, that is, action, Korsgaard (2004, p.83-83) relies on Kant's own conception of the term. On Kant's conception, then, action involves the interaction of *incentive* and *principle*. An incentive, on the one hand, is a kind of motivationally loaded representation, produced by perception or thought, which makes it occur to an agent to act. A principle, on the other hand, determines what the agent does or tries to do when confronted with an incentive. In the case of nonhuman animals, then, their principles are their *instincts* – not self-conscious assessments, as in the case of rational beings (see Korsgaard, 2004, p.83-86).

So, the reason why nonhuman animals really are not rational beings, then, is that they cannot act on self-conscious assessments as principles. However, to say that a nonhuman animal acts on instincts as principles is not morally irrelevant on Korsgaard's account. This is so, since acting on instincts means acting "... on the basis of an established connection between a certain kind of representation (the incentive) and a primitively normative response..." (Korsgaard, 2004, p.83-84). In this way, nonhuman animals respond *normatively* to the incentive; that is, the incentive represents an action as called for or appropriate in their case. And, on Korsgaard's (2004, p.84-85) view, every nonhuman animal is born equipped to make some of these instinctive normative connections. Furthermore, some may even be intelligent, in the sense that they have the ability to learn from their experiences in this way. That is, they may be *conscious of the ground* of their action, insofar as they are intelligent beings in this sense. Nevertheless, they are not conscious of this ground *as a ground* for action: that only holds in the case of rational beings, who are defined by their capacity for normative self-government, or autonomy (see Korsgaard, 2004, p.85-86).

Now, having said how Korsgaard construes the nature of nonhuman animals, we may go on to examine the next step in her argument. In essence, this step turns upon assessing what has fundamental value on the Kantian outlook. As we have seen, it is this capacity for normative

self-government, or autonomy, which is required for being a *moral agent* on the Kantian outlook. And, as it turns out, this capacity is also required for having *moral status*, according to Kant himself. However, Korsgaard does not find the latter to be quite so evident on a Kantian outlook. Rather, she finds Kant's attitude about the moral status of nonhuman animals puzzling (see Korsgaard, 2004, p.88). What she finds puzzling, more specifically, is why we do not owe duties to nonhuman animals directly on Kantian grounds (see Korsgaard, 2004, p.91). On her account, or interpretation of Kant, this may be the case.

In connection with this, Korsgaard (2004, p.92) alludes to the important fact that Kant manifestly stressed the capacity to obligate and its bearings on the assignment of a certain kind of moral value. However, it is very important to see in what way this is so for Kant, in order to fully understand the crucial claim Korsgaard goes on to make. On Korsgaard's (2004, p.93) reading, then, Kant maintained that we do not desire things because they are valuable. Rather, we take them to be valuable because we desire them. Yet, as rational beings, we must find our desires, or ends, *worthy* of pursuit. And the way we must do this, according to Korsgaard (2004, p.93), is "...that we take our own interest in something to confer a kind of value upon it, sufficient to make it worthy of rational choice. And that means that we accord a kind of value to ourselves". That is, we regard ourselves as "sources of value" in this regard. And by doing so, our ends are worthy of pursuit, precisely since we are taken to be the sources of value.

But on what basis do we take ourselves to be the sources of value? Well, what Kant did was to connect this conception with the idea that we have legislative wills, or are autonomous (see Korsgaard, 2004, p.94). And this represents the idea that obligation and value arise together from acts of the legislative will (see Korsgaard, 2004, p.94-95). This being so, only sufficiently rational beings are "ends-in-themselves", according to Kant, since only they have the ability to obligate or "give the force of law to their claims" (Korsgaard, 2004, p.95). However, Korsgaard (2004, p.95) maintains that Kant, by holding this assertion, conflates two slightly different conceptions of being an end-in-itself figuring on his theory of value. One sense is that one is an end-in-itself in virtue of participating in moral legislation or is autonomous. A second sense, though, is that one is an end-in-itself in virtue of being the source of normative claims. Now, quite evidently, Kant himself connected these two senses. That is, Kant considered someone to be the source of normative claims in virtue of being autonomous. And, to repeat, that does not allow for nonrational animals to be considered as sources of obligations, since they cannot participate in moral legislation (see Korsgaard, 2004, p.95).

Korsgaard's (2004 p.96) crucial claim, however, is essentially this: a nonhuman animal may be an end-in-itself in the second sense, without having to connect it with the first sense. That is, it may be the source of legitimate normative claims, without participating in moral legislation, or without being autonomous. In other words, Korsgaard suggests that these senses of being an end-in-itself are distinct and thus may not have to be connected in the way Kant did. On the contrary, there may be another way of being a source of normative claims, which does not have to presuppose autonomy. The question is: *How, and in what way?*

With regards to *how* this may be the case, Korsgaard's (2004, p.99) suggestion is "...that reflection on the argument for the Formula of Humanity can show us why we have obligations to the other animals". That is, she suggests that reflecting on the Formula of Humanity may provide a way of disconnecting these two senses of being an end-in-itself. And this may, in turn, suggest an alternative *way* of being an end-in-itself, in the sense of being a source of legitimate normative claims, which applies in the case of humans *and* nonhuman animals.

To see this, let us examine Korsgaard's reflection on the argument for the Formula of Humanity. As alluded to, the argument for the Formula of Humanity appeals to the fact that we take our choices to confer value on their objects, such as our interests and concerns. And Korsgaard (2004, p.99-100) "reflection", then, is that we do not do so only insofar as the interests and concerns in question are those of autonomous rational beings. On her reflection, the fact that we are autonomous rational beings only puts us in a position to make the demand that our interests and concerns represent legitimate moral claims – but it is not the *reason* for this demand. The reason for demand, rather, is the content of our choices – in particular, in choosing to pursue our so-called "natural good" (Korsgaard, 2004, p.102).

In order to understand how Korsgaard's argument proceeds from this stage, I take it that this notion of "natural good" has to be explained. In short, then, a natural good, according to Korsgaard (2004, p.102-103), is whatever enables an entity to function at all – and to function well. To be sure, this sort of good may come in varying degrees, and thus merit distinguishing between different senses of something as a good. The most relevant verdict on Korsgaard's account, though, is essentially this: nonhuman animals have a natural good in a rather deep sense, since they have the capacity to experience and to act and pursue what is naturally good or bad *for them* (see Korsgaard, 2004, p.102-103). That is, they have the ability to take something as good from their point of view, given their fundamental nature, as alluded to earlier. And this goes for all animals – nonhuman as well as human (see Korsgaard, 2004, p.104).

Korsgaard's crucial point, then, is that it is on the basis of having this sort of natural good that we confer normative value when we value ourselves as an end-in-itself. As such, it really is our animal nature, rather than our autonomous nature as such, that we take to be an end-in-itself on the Kantian outlook (Korsgaard, 2004, p.104). Therefore, we do have duties *to* other animals on the Kantian outlook. This is so, since they are "fellow creatures" who share the same sort of animal nature which we confer value to as the source of legitimate moral claims.

To put this in more general and familiar terms, Korsgaard's account effectively amounts to holding an experientialist view, at least as far as nonhuman animals are concerned. This is so, since what she ultimately means by "animal nature" is *sentient* nature (see Birch, 2019, p.6). And this is very important to appreciate. After all, if she simply accepted Kant's logocentric principle, as well as the personification principle, then the indirect-duty view would straightforwardly follow. Thus, accepting both the logocentric principle and the personification principle cannot be Korsgaard's strategy. And, as we have now seen, it manifestly is not. Instead, her strategy is to present an argument for downplaying full-fledged logocentrism and give precedence to an experientialist sort of view on Kantian grounds. By doing so, Korsgaard suggests that it is on the basis of one's sentient or animal nature, not merely one's rational nature as such, that someone is to be morally considered. In this way, she effectively finds a justification for attending to sentience on Kantian grounds.

Summing up

To sum up, both Wood and Korsgaard provide accounts that offer distinct justifications for attending to sentient nature on Kantian grounds. Wood, on the one hand, does so by rejecting the personification principle yet maintaining Kant's logocentric principle, which entails respecting rational nature in the abstract. On this basis, then, one is encouraged to respect, or morally consider, not only persons who possess rational nature itself, but also non-persons who possess recognizable fragments of rational nature – such as sentience. Thus, it implies that one is to morally consider nonhuman animals on Kantian grounds too, insofar as they are sentient. Korsgaard, on the other hand, relies on an opposite sort of strategy: to accept the personification principle but reject full-fledged logocentrism in favor of holding more or less an experientialist view. On this sort of view, then, nonhuman animals are "fellow creatures" who share the same sort of sentient nature which serves as the source of value, given that they also take something

to be good from their point of view in virtue of their sentient capacities. Thus, they are to be morally considered on Kantian grounds as well, insofar as they have this sort of sentient nature.

Chapter 11: Alleviating “Rowlands’s problem”

In this chapter, I seek to involve the two accounts just examined in order to alleviate “Rowlands’s problem”. That is, I will argue that the accounts afforded by Wood and Korsgaard can be involved to address the problem which I have maintained is a pressing one for Rowlands’s extensionist argument. I will do so by going through three steps: 1) repeat what “Rowlands’s problem” revolves around, 2) highlight in what way Rowlands’s fundamental aim and claim with regards to Rawls’s theory correspond with those of Wood and Korsgaard with regards to Kantianism more generally, and 3) show why and how the relevant accounts may thereby be taken to justify Rowlands’s emphasis on sentience with regards to Rawls’s contractarian theory.

The problem repeated

Let me begin by repeating what “Rowlands’s problem” revolves around, so as to help contextualize and concretize what I am seeking to alleviate in what follows. I will do so in slightly different terms than previously used; namely, by highlighting 1) what *underlies* the problem, 2) what *generates* the problem, and 3) what the problem essentially *consists of*.

What *underlies* the problem, then, is that Rawls and Rowlands disagree on what the relevant requirement for having moral status, or what the source of moral standing, is on Rawls’s contractarian theory. Rawls, on the one hand, emphasized moral personhood, or rational agency, as the relevant criterion, which amounts to holding a logocentric sort of view. Rowlands, on the other hand, emphasized sentience as the relevant criterion, which amounts to holding an experientialist sort of view. And the fundamental question to be assessed, given the nature of this debate, is thus which of these sorts of views, afforded by the competing accounts, that is the most consistent to ascribe to the Rawlsian framework: a logocentric one, or an experientialist one?

What *generates* the problem, first and foremost, is what amounts to a significant concession on the part of Rowlands; namely, that sentience, in addition to rationality, gets singled out as arbitrary by reference to the intuitive equality argument. As a result, both capacities taken to be

the relevant source of moral standing on the views afforded by Rawls and Rowlands would have to be excluded as knowable on Rawls's reasoning procedure for conceptual reasons. And that left us in a rather precarious situation: if both capacities are excluded as knowable, then it is unclear what the purpose of morality is, and what to include within the scope of moral consideration, on the basis of this particular framework. In other words, it would seem an open question what one is to attend to, or take as having impact on our moral decision-making, on Rawls's contractarian theory.

And the problem *consists*, then, in the fact that Rowlands merely assumed an experientialist view when, in truth, confronted with this sort of task. That is, Rowlands essentially begs this rather fundamental question, as maintaining an experientialist sort of view does not seem to straightforwardly follow on Rawls's theory on closer examination. On closer examination, rather, "Rowlands's problem" was argued to be *aggravated*. This was so, due to the fact that Rawls's emphasis on rational agency, as well as his more general view on the animal issue, align with the view afforded by Kant himself in virtually all significant respects. As such, this appears to be part of the Kantian core of Rawls's theory as well. And, as a result of this, it would thereby seem the most consistent with the Kantian core of Rawls's theory to take rational agency – not sentience – as the cut-off point for morality. And this would again appear to undermine Rowlands's extensionist argument, since it suggests that Rawls's application of his theory may have been truly consistent with its Kantian core, after all.

Corresponding aims and claims

But, as we have now seen, what Kant's theory actually implies with regards to nonhuman animals is a debated issue. And there are two prominent proponents of the critical camp in this debate who have offered distinct justifications for attending to the sentient nature of nonhuman animals on Kantian grounds: namely, Wood and Korsgaard. And although their accounts should be firmly distinguished, as they interpret Kant's ethical theory in different ways and rely on opposite sorts of strategies in this regard, they clearly share some crucial aims and claims. And I will argue that these aims and claims they share with regards to Kantianism more generally very much correspond with those of Rowlands's account with regards to Rawls's contractarian theory. As such, one may take it that they partake in the same sort of enterprise, which suggests a plausible way of alleviating "Rowlands's problem".

With regards to the aims Wood and Korsgaard share, the most prominent example is this: they both aim to reject Kant's indirect view, which holds that moral agents merely have moral obligations *in regard to* nonhuman animals. And, conversely, they both aim to provide a justification for why nonhuman should be *directly* morally considered on Kantian grounds. This, in turn, serves to validate the supposition that moral agents may, in fact, have moral obligations *to* such beings – not just in regard to them – on a Kantian outlook.

With regards to the claims they share, the most crucial one is this: nonhuman animals may be directly morally considered on Kantian grounds on the basis of their sentient nature. As we have seen, they do rely on opposite sorts of strategies, and so they provide distinct Kantian grounds in support of this claim: Wood construes this as implied by accepting Kant's logocentric principle but rejecting Kant's personification principle, whereas Korsgaard construes this as implied by effectively accepting Kant's personification principles but rejecting a full-fledged logocentric view in favor of an experientialist sort of view. Nevertheless, both strategies go to show that nonhuman animals may be granted moral status on a Kantian outlook, on the basis of their sentient capacities.

And the fundamental point to note, then, is that these aims and claims that Wood and Korsgaard share with regards to Kantianism very much correspond to those of Rowlands with regards to Rawls's contractarian theory. As we have seen, Rowlands's essential *aim* is to argue that one may use Rawls's contractarian theory to extend moral considerability from humans to nonhumans and involve it to validate the claim that nonhuman animals have direct moral rights – contrary to what Rawls himself maintained. In other words, Rowlands's aim is to reject the indirect-duty view which Rawls originally maintained and, ultimately, suggest that a truly consistent application of Rawls's theory yields according direct moral status and corresponding moral rights to nonhuman animals. In connection with this, the fundamental *claim* Rowlands presented was that it appears the most consistent with the Kantian core of Rawls's theory to take sentience – not rational agency – as the cut-off point for morality.

Thus, Rowlands's aim and fundamental claim with regards to Rawls's theory very much correspond with those of Korsgaard and Wood with regards to Kantianism. It does so, more specifically, since they all share the aim of extending moral consideration from humans to nonhumans by reference to elements in the Kantian tradition – and they all claim that it seems the most consistent application of the relevant Kantian elements to do so. Furthermore, they all highlight the sentient nature of nonhuman animals as morally relevant in this regard.

only relevant difference, as far as I can tell, is that Wood and Korsgaard did so with regards to Kantianism more generally, whereas Rowlands did so with regards to Rawls's contractarian theory on the basis of its Kantian core. Nevertheless, I take it that this difference is not all that consequential since Rawls's theory emphatically, and unquestionably, represents a *Kantian* form of contractarianism – which, of course, is precisely what the Kantian core of Rawls's theory reflects. As such, one may take it that the accounts of Wood, Korsgaard, and Rowlands essentially are parts of the same sort of enterprise: extending moral consideration from humans to nonhumans by reference to elements in the Kantian tradition – although Rowlands, of course, does so in the context of Rawls's contractarian theory. But they are very much connected.

Reassessing "Rowlands's problem"

Given this connection, let us reassess "Rowlands's problem". To repeat, "Rowlands's problem" consists in that Rowlands begged a fundamental question to be decided upon on this sort of framework: what is to have impact on one's moral decision making on the contractarian position; or, alternatively put, what is "cut-off point" for morality? Rowlands's claim was that it is sentience which serves as the cut-off point for morality on the contractarian position suggested by Rawls's theory. But the problem is that this claim does not straightforwardly follow from its Kantian core. On the contrary, it would appear, at least at first glance, that rational agency serves as the cut-off point for morality on the Kantian contractarian position, by reference to considerations going back to Kant himself. Thus, Rowlands's fundamental claim appears misguided, as there appears to be no actual Kantian basis for extending the circle for moral status from humans to nonhuman animals in the first place.

The fundamental point I have tried to elucidate, though, is that the accounts of Wood and Korsgaard may be taken to provide this sort of basis. They both provide precisely substantive Kantian grounds for attending to the sentient nature of nonhuman animals. As such, it would seem that Rowlands does not have to merely assume an experientialist view, or beg the question, when suggesting that sentience serves as the cut-off point for morality on the Kantian contractarian position. Rather, it appears that there are compelling reasons for adopting an experientialist sort of view on the Kantian contractarian tradition – which actually addresses the question – provided by the accounts of Wood and Korsgaard.

So, in essence, my suggestion here is that the accounts of Wood and Korsgaard alleviate "Rowlands's problem" for the following reason: if the Kantian grounds they provide are

plausible, and one involves them in support of Rowlands's verdict, then Rowlands no longer has to beg the question. That is, when confronted with the task of deciding what the purpose of morality is, one may take it that Rowlands was correct in emphasizing that sentience serves as the cut-off point for morality on the Kantian contractarian position suggested by Rawls's theory. There are substantive Kantian grounds in support of this claim, provided by Wood and Korsgaard.

Summing up

To sum up, I take it that the accounts afforded by Wood and Korsgaard serve to alleviate Rowlands's problem. This is so, as they both provide substantive Kantian grounds for attending to the sentient nature of nonhuman animals – and humans for that matter. As such, it appears that Rowlands does not have to beg the question of what the purpose of morality is on the contractarian position, in maintaining that one is to attend to sentience on Rawls's fundamentally Kantian contractarian theory. On the contrary, there are substantive Kantian reasons for maintaining this supposition.

Chapter 12: Is there a theoretical foundation for moral extensionism in Rawls's contractarian theory?

Having alleviated "Rowlands's problem" in the previous chapter, I now turn to the fundamental question of this thesis: is there a theoretical foundation for moral extensionism in Rawls's contractarian theory? And the plan is as follows: I will begin by repeating what the two tensions in the debate between Rawls and Rowlands are, before resolving these in due order on the basis of what has been discussed up to this point. In the course of this, I hope to clarify why I think there *is* a theoretical foundation for moral extensionism in Rawls's contractarian theory – which I will attempt to put as clearly as possible in the final section.

The two tensions

So, let me begin by repeating what I have taken the debate between Rawls and Rowlands with regards to the animal issue to revolve around. In essence, I have highlighted two noteworthy "tensions" between their competing accounts: a practical one, and a more fundamental theoretical one.

The practical one revolves around how to apply Rawls's contractarian theory to the animal issue, and may be put in the terms of the following practical question: can one use Rawls's contractarian theory to underwrite the notion that nonhuman animals possess moral rights in the direct sense, as opposed to in a merely indirect sense? Of course, this is the question which motivates this thesis. And the practical *tension*, then, is that Rawls and Rowlands give opposing answers to this question. As we have seen, Rawls maintained the position that nonhuman animals, at best, may possess indirect moral rights, and so effectively answers the question in the negative; whereas Rowlands maintained the position that nonhuman animals, in fact, may possess direct moral rights, and so answers the question in the positive. Thus, to assess the practical question which motivates this thesis inherently involves addressing or "resolving" the practical tension between Rawls and Rowlands. Simply put, then, the question is which position that is the correct one to hold on the basis of the Rawlsian framework.

In connection with this, though, we must also address or "resolve" the more fundamental, theoretical tension, which essentially underlies the practical one; namely, the disagreement between Rawls and Rowlands on what the relevant, or the most suitable, criterion for granting moral status is on Rawls's contractarian theory. To repeat, Rawls highlighted moral personhood, or rational agency, as the relevant criterion in this regard, whereas Rowlands highlights sentience as the relevant criterion in this regard. And, as a result, they effectively hold different sorts of foundational views on what has moral value and ultimately merits moral consideration: Rawls, on the one hand, effectively maintained a logocentric sort of view, whereas Rowlands, on the other hand, effectively maintains an experientialist sort of view. As such, the theoretical tension consists in what sort of foundational view that it is the most consistent to adopt on the Rawlsian framework: a logocentric one, or an experientialist one?

Given the way in which these tensions are related, then, I take it that the most useful way of going about the assessment of this "debate" is to start by resolving the theoretical tension, before returning resolving the practical question and considering what it implies.

Resolving the theoretical tension

So, let us begin by addressing or resolving the theoretical tension between Rawls and Rowlands. As alluded to above, the theoretical tension consists in what sort of foundational view to adopt on the Rawlsian framework: a logocentric one, or an experientialist one? That is, should one

take it that the relevant requirement for having moral status on Rawls's contractarian theory is rational agency, or is the relevant requirement in this regard sentience?

Well, insofar as one seeks to make Rawls's theory consistent with its Kantian core, there appear to be compelling Kantian grounds for adopting an experientialist sort of view – albeit with a logocentric ring to it. At the very least, it does not amount to question-begging to maintain that the purpose of morality involves attending to the interests of all sentient beings on the Kantian contractarian position – which Rawls's theory is a canonical contemporary expression of. As the accounts of Wood and Korsgaard go to show, it would appear that Kant's stated view is a little too crude in restricting moral consideration to rational persons, or rational agents, only. On Wood's account, Kant's personification principle, in conjunction with his logocentric principle, forces Kant into a rather unconvincing argumentative strategy which fails to embrace the full reach of Kant's logocentric view; namely, that one should also respect rational nature in the abstract, which entails respecting fragments or necessary conditions of it, such as sentience. In essence, this suggests that an experientialist sort of view is subsumed under Kant's logocentric view. On Korsgaard's account, Kant's full-fledged logocentric view appears to suggest but one of two viable ways of being an “end-in-itself” – the other is being a “fellow creature” with the sort of sentient nature that we confer value to as the source of legitimate moral claims. As such, this also represents the idea that an experientialist sort of view is suggested by Kant's theory of value.

And my point is that, if one inserts this implication of Kant's theory of value into the context of Rawls's contractarian theory, on the basis of its Kantian core, then it seems inconsistent to maintain that rational agency is *the* relevant requirement for having moral status on the Rawlsian framework. That is, it seems inconsistent with the Kantian core of Rawls's theory to take rational agency as the sole cut-off point for morality. It would seem more consistent with the Kantian core of Rawls's theory, rather, to say that sentience serves as a more reasonable *cut-off point* for morality – as Rowlands originally did – since this reflects what Kant's theory of value appears to entail.

That is not to say that the possession of rational agency is irrelevant when it comes to the question of who or what has moral status on the Kantian contractarian position suggested by Rawls's theory. Of course, there clearly are substantive Kantian grounds for highlighting this capacity as *a* relevant source of moral standing on the Kantian contractarian position – which Rawls himself did. But to hold that it is the exclusive source of moral standing on the Kantian contractarian position seems misguided. That is, to restrict the sphere of morality so as to only

include moral persons, or rational agents, does seem arbitrary. This is so, as it completely overlooks or neglects the fact that sentience also figures as a relevant source of moral standing on the Kantian view.

So, my suggestion here is that it is not consistent with the Kantian core of Rawls's theory to maintain a full-fledged logocentric view; that is, to construe rational agency as *the* cut-off point for morality. To put it figuratively, that would amount to setting the bar too high. It seems more consistent with the Kantian core of Rawls's theory, rather, to maintain an experientialist sort of view, albeit with a logocentric ring to it; that is, to maintain that sentience, in addition to rational agency, is a relevant requirement for having moral status. In other words, it seems much more reasonable to say that the cut-off point for morality on the Kantian contractarian position suggested by Rawls's theory is sentience. As such, my proposal is that one should resolve the theoretical tension by saying that Rowlands's verdict, not that of Rawls, appears correct. This is so, since Rowlands's verdict acknowledges what Rawls's verdict fails to appreciate; namely, that sentience, not just rational agency, figures as a relevant requirement for having moral status on the Kantian contractarian position.

Resolving the practical tension

Now, let us assess what this again implies with regards to the practical tension; namely, whether one can use Rawls's contractarian theory to underwrite the notion that nonhuman animals possess moral rights in the direct sense, as opposed to in a merely indirect sense. As far as I can tell, the answer to this question should be "yes": one *can* use Rawls's contractarian to underwrite the notion that nonhuman animals possess moral rights in the direct sense – not merely in an indirect sense. And I think it is possible to render this implication in at least two ways: a straightforward one, on the basis of what it means to have moral status; and more detailed one, on the basis of a truly consistent application of Rawls's reasoning procedure.

The straightforward way of rendering this implication, then, is as follows: if the possession of moral status inherently involves possessing moral rights in the direct sense, and nonhuman animals possess moral status on Rawls's contractarian theory, then this inherently involves that nonhuman animals possess moral rights in the direct sense on Rawls's contractarian theory. Of course, that nonhuman animals possess moral status on Rawls's contractarian theory, insofar as they are sentient beings, is what I suggested above in resolving the theoretical tension. And I have simply invoked this point in terms of the definition of moral rights elucidated earlier. To

be sure, this represents a very minimal conception of moral rights, which only amounts to saying that nonhuman animals *are* to be respected or morally considered in virtue of having moral status on Rawls's contractarian theory – not *how* they are to be respected or morally considered in virtue of having moral status on Rawls's contractarian theory. Nevertheless, it does serve to underline a crucial point in terms of Warren's definition of "moral status"; namely, that nonhuman animals should be taken to be entities *towards* which moral agents have or can have moral obligations – since one is morally obliged to give weight to *their* needs, interests, or well-being – on the basis of Rawls's contractarian theory. In other words, it would seem inconsistent with Rawls's theory to say that we are morally obliged to give weight in our deliberations to the needs of nonhuman animals merely because protecting it may benefit ourselves or other persons – and thereby accord them rights in the indirect sense – since this fails to acknowledge that they have moral status too.

So, notwithstanding that this certainly represents a very minimal conception of rights, it should suffice to illustrate my main point: nonhuman animals should be taken to possess moral rights in the direct sense on Rawls's contractarian theory, in virtue of the fact that they should be taken to possess moral status on Rawls's contractarian theory. That is, Rawls's contractarian theory should be taken to entail that moral agents have moral obligations *to* nonhuman animals – not just moral obligations with regards to nonhuman animals – since nonhuman animals have a valid claim to be respected or morally considered on the basis of their sentient nature. That appears to be the most consistent application of Rawls's theory, at the very least, given its Kantian core.

Now, let me also render this implication in a more detailed way, by putting it more explicitly in terms of what I think amounts to a truly consistent heuristic reasoning procedure on Rawls's theory. In that regard, let us begin by situating ourselves in the original position: Imagine that you are a free and rational person, concerned with furthering your own interests, confronted with the task of choosing a set of moral principles. At first, you may be tempted to exploit your particular social and natural circumstances to your own advantage, so that the set of moral principles you choose will further your own given interests as far as foreseeably possible. But this turns out to be virtually impossible, as you quickly realize that you find yourself behind a "veil of ignorance" where you are ignorant of your class position, as well as your natural assets and abilities. Furthermore, you are even ignorant about your conception of the good, the particulars of your rational plan of life, the special features of your psychology – and your species membership and rational capabilities. Thus, you find that you cannot exploit your

particular social and natural circumstances to your own advantage, for the simple reason that these particular facts are not known to you. What you do know, however, is that you prefer more primary social goods rather than less. Furthermore, you do know that you must try to protect your liberties, widen your opportunities, and enlarge your means for promoting your aims – although you do not know what these actually are in more detail. As such, your task essentially is to acknowledge principles which advance your foreseeable system of ends as far as possible, without having your interests sacrificed to others.

To be sure, this is a rather complex task, and thus involves a rather lengthy reasoning process. At some point in this process, though, let us imagine that you ask yourself the following question: well, what if my foreseeable system of ends will turn out to be those of a nonhuman animal? For all you know, that may be the case since you are ignorant of your particular natural assets, the special features of your psychology – and your rational capabilities and species membership. Thus, you are in some sense forced to entertain the idea that you may have the preferences of a nonhuman animal when you are situated in the original position.

On that note, let us imagine that you consider two alternative conceptions of moral principles. On the first conception, there are moral principles which merely serve to accord direct moral rights to rational persons, or humans⁴²; and, at best, indirect ones to nonhuman animals. In essence, this would imply that only humans would have a valid claim to have their needs and interests respected, and that nonhuman animals would merely have a claim to have their needs and interests respected insofar as they relate to those of humans. On the second conception, though, there are moral principles which serve to accord direct moral rights to humans *and* nonhuman animals – which would imply that both humans and nonhuman animals have a valid claim to have their needs and interests respected. So, the question is: which of these alternative conceptions would you choose, so as to further your foreseeable system of ends as far as possible without having your interests sacrificed to others?

The decision is fairly intricate to make. On the one hand, it would seem the most “safe” or rational to hedge here and go for the second alternative; that is, to make sure that, whatever sort of entity you may happen to be, you do have a valid claim to have your foreseeable system of ends, or your needs and interests, respected. For example, if you would turn out to be a bear,

⁴² I shall equate “rational persons” and “humans” here for sake of simplicity. But it is worth noting and repeating that it remains unclear whether the full-fledged logocentric view afforded by Rawls and Kant actually implies doing so, since there clearly are some humans who, for various reasons, are not rational agents or (moral) persons in the strict sense.

then your interests and needs would thereby have to be respected or morally considered in their own right by choosing the second alternative. On the other hand, it is relatively clear to you that choosing this alternative would restrict your foreseeable system of ends as a human being. For example, if you would turn out to be a human being whose interests and needs involves hunting bears for sport, then choosing the second alternative would clearly restrict your foreseeable system of ends – and have you sacrifice this particular interest for the sake of bears.

Notwithstanding that this certainly complicates your problem of choice, you have to decide which alternative to adhere to, and make sure that you are comparatively well off in doing so.⁴³ When doing so, it would seem that the second conception is the most rational one to adhere to, given what is known and unknown to you. Sure, if you would happen to be a human being, then it would be the most rational to opt for the first conception. After all, what is there to lose in choosing this alternative, if you know that your foreseeable system of ends will be that of a human? But the point is that you do not know this for a fact when you are situated in the original position – and it thereby represents a significant risk to your foreseeable system of ends if you happen to be wrong in that regard. At worst, that would leave you without any valid claim to have your interests and needs respected – and have you sacrifice virtually all your interests for the sake of others. By choosing the second alternative, in contrast, you would, at worst, be left with a valid claim to have your basic interests and needs respected – although some of your particular interests as a human would have to be sacrificed for the sake of nonhuman animals. But it is fairly clear, as far as I can tell, that doing so would leave you comparatively well-off – and thus the conception which you should adhere to.

Notwithstanding there is a lot more to be said on how one is to apply this sort of Rawlsian reasoning procedure with regards to our moral relations with nonhuman animals, since there obviously will be many foreseeable conflicts of interests that must be entertained, I think my main point here should be fairly acknowledgeable. My main point here, then, is that it is a foreseeable outcome of following the heuristic reasoning procedure, suggested by a Rawlsian theory which is truly consistent with its Kantian core, that nonhuman animals are to be granted moral rights in the direct sense – not in a merely indirect sense. To put the argument as explicit as it gets: this is so since that seems the most rational supposition to accept, given that the reasoning is construed in a truly fair way. And what seems to be the fairest way of construing this reasoning process, then, is to make sure that one attends to the interests of all sentient

⁴³ Since you are to follow the maximin rule.

beings. This is so, on the basis of the experientialist view, albeit with a logocentric ring to it, which it seems the most consistent with the Kantian core of Rawls's theory to adopt.

As such, I believe it is reasonable to suggest that the way to resolve the practical tension between Rawls and Rowlands is to hold that Rowlands is, once again, correct. As we have seen, to grant that nonhuman animals may have direct moral rights is certainly foreseeable on the reasoning procedure provided by Rawls's contractarian theory. Hence, the answer to the practical question is "yes": one *can* use Rawls's contractarian theory to underwrite the notion nonhuman animals possess moral rights in the direct sense, as opposed to in a merely indirect sense.

A theoretical foundation for moral extensionism in Rawls's contractarian theory

If my assessment is correct, and I have resolved the "debate" between Rawls and Rowlands in a reasonable manner, then I think we are in a position to answer the question raised in the title of this thesis in the positive: there *is* a theoretical foundation for moral extensionism in Rawls's contractarian theory. That is, there appears to be compelling theoretical reasons for extending the circle for moral status, or moral consideration, from humans to nonhumans on the basis of the Rawlsian framework. As such, one may take it that Rawls's contractarian does allow for, or enables, an extensionist approach. More specifically, I take it that there are two related reasons for doing so.

The first reason is that extending the circle for moral status from humans to nonhumans seems the most consistent with the Kantian core of Rawls's theory. At the very least, there are plausible Kantian grounds for taking it that the cut-off point for morality on the Kantian contractarian position, which Rawls's theory is a canonical contemporary version of, is sentience – not just rational agency in the full-fledged logocentric sense. As such, this should have crucial bearings on how one makes use of the contract device in a heuristic fashion on Rawls's fundamentally Kantian form of contractarianism. To use the contract device to merely express the inherent moral standing of rational agents, or persons, seems too restrictive, arbitrary, or unreasonable. It seems much more reasonable, rather, to use the contract device to express the inherent moral standing of *sentient* beings, including humans and nonhuman animals, on this sort of framework. Not doing so fails to appreciate the full reach of Kant's value theory, as it overlooks or neglects the fact that nonhuman animals share the same sort of sentient nature which serves as the source of moral standing. As such, the idea that the circle

for moral status should be extended from humans to nonhumans lays at the foundation of Rawls's theory, given its Kantian motivation and methodology.

The second reason is that Rawls's theory provides a theoretical structure, and a range of useful analytic tools, that can make dramatize, or make vivid, this idea that the circle for moral status should be extended so as to include nonhuman animals. For one, the fact that Rawls's theory makes use of the contract device in a heuristic fashion is important in this regard. Given this, one does not have to withhold extending the moral sphere so as to include nonhuman animals, on the basis that they cannot engage in moral deliberations, or "bargain" on what the moral principles are going to be, in the first place. To be sure, Rawls himself did emphasize that this was decisive. But I have hopefully been able to show that this should not really have to be construed as decisive on his contractarian theory. On the contrary, I hope to have shown, in line with what Rowlands originally suggested, that one should substitute a moral equality, which extends from humans to nonhuman animals, for this sort of inequality – and express this when using the contract device in a heuristic fashion. This suggests construing a procedural view that does acknowledge that we must attend to the interests or preferences of humans and nonhuman animals. And the most prominent example of a useful analytic tool in this regard Rawls's "veil of ignorance", which can, and I think *should*, serve to nullify the effects of this particular contingency when choosing a conception of morality.

Summing up

To sum up, let me put my fundamental point more generally. I believe one should acknowledge that there are compelling reasons for construing Rawls's procedural view in a profoundly different way than Rawls himself did with regards to the animal issue. To construe it in a way which only attends to the interests of rational agents, persons, or human beings, seems too restrictive, even unreasonable, on a Kantian contractarian position. It seems much more reasonable, or fair, to construe it in a way which also attends to the interests of sentient beings, such as a number of nonhuman animals. Given their sentient nature, and that they thereby have conscious experiences of how they fare, the needs and interests of nonhuman animals should be taken to have moral importance in their own right. As such, it does not suffice to say that nonhuman animals may, at best, have indirect moral rights. They should, on the contrary, be accorded direct moral rights. And Rawls's contractarian theory can validate the claim, I think,

by expressing the inherent moral standing of all sentient beings when using the contract device heuristically.

Chapter 13: Foreseeable objections and remaining challenges

In this final chapter, I shall raise and comment on some foreseeable objections and highlight some remaining challenges. Needless to say, the argument I have developed throughout this thesis does not offer a definitive nor decisive answer to the question of whether there is a theoretical foundation for moral extensionism in Rawls's contractarian theory. It only maintains that it *seems* the most consistent with the Kantian core of Rawls's theory to adopt an experientialist sort of view, albeit with a logocentric ring to it, by which nonhuman animals are to be granted moral status and accorded moral rights in the direct sense. And there are certainly steps in this argument which may be questioned, and challenges that remain.

Questioning the Kantian grounds

Let us begin by noting a rather obvious feature of my argument: it hinges on the accounts afforded by Wood and Korsgaard. Ultimately, it is their interpretations of Kant's ethical theory that I use to address "Rowlands's problem" – and their Kantian grounds for attending to the sentient nature of nonhuman animals I insert in the context of Rawls's contractarian theory on the basis of its Kantian foundation. Thus, a foreseeable objection to my argument could simply be that these accounts are not all that plausible – or only Kantian in the very broadest sense.

For example, Wood's account holds that Kant goes wrong in accepting the personification principle in conjunction with his logocentric principle. But, at the end of the day, Kant did hold both principles – and maybe more can be said in defense of this?⁴⁴ Furthermore, Wood claims that Kant's logocentric principle, once disconnected from Kant's personification principle, entails that one should also respect fragments or necessary conditions of rational nature, even in the case of those who do not possess rational nature itself. But does it really make sense to fragmentize rational nature itself in this way on the Kantian outlook? Even if it does, one may worry that this "... takes us a long way from Kant" (Altman, 2011, p.25)

⁴⁴ See, for example, O'Neill, 1998; Saugstad, 2000.

And with regards to Korsgaard's account, one may raise a similar sort of concern: what is Kantian in attending to the natural good and the sentient nature of nonhuman animals, given that they really are not rational beings? To repeat, Korsgaard essentially argues that there is a way of disconnecting two senses of being an "end-in-itself" on Kant's ethical theory: the first is being an autonomous, rational agent, and the second is being a "fellow creature" with the same sort of animal or sentient nature that we confer value to as the source of legitimate moral claims. Yet, Kant himself clearly did not disconnect these senses of being an "end-in-itself" in this way. Rather, Kant maintained that only autonomous, rational agents are "ends-in-themselves", and manifestly suggested that nonhuman animals are to be categorized as "things" and not "persons" in terms of morality.

To put it more generally, one may worry that Wood and Korsgaard in some sense jettison something that is central and foundational to Kant's moral theory as a whole. This worry has at least been voiced by Matthew C. Altman, who alludes to Kant's "anthropocentrism" in this regard. Altman (2011, p.26) asserts that: "Wood and Korsgaard claim that animals are directly morally considerable because they are like us, but Kant contends that we are moral agents with dignity precisely because we are *not* like animals... The 'infrastructure' or 'conditions' of reasoning are not important for their own sake, but as means to the only thing that is an end in itself: our humanity". Thus, notwithstanding that "Wood and Korsgaard are Kantians, or at least they try to remain Kantians", one may, nevertheless, maintain that their "...approaches are Kantian only in the very broadest sense" (Altman, 2011, p.26).

Of course, there is much more to be said on this particular matter. Obviously, not all Kantians share the sort of view afforded by Wood and Korsgaard. On the contrary, many expositors of Kant defend his stated view on the animal issue; namely, the indirect-duty view.⁴⁵ And although I cannot assess this debate in its entirety, for obvious reasons, I would like to highlight three general points in support of the accounts afforded by Wood and Korsgaard.

Firstly, notwithstanding that the accounts Wood and Korsgaard afford may not represent "traditional" interpretations of Kant's theory of value, in the sense they simply exposit and defend Kant's stated view, I for one do believe that they are *plausible* interpretations of Kant's theory of value. More specifically, I believe they are plausible in this regard since they emphatically involve interpreting elements that certainly lay at the center of Kant's theory of

⁴⁵ See, for example, O'Neill, 1998; Saugstad, 2000; Altman, 2018.

value. Simply put, their accounts are thus Kantian enough to “do the trick”, as it were, in that they unquestionably relate to Kant’s theory of value in a rather direct manner.

Secondly, and in continuation of the first, I believe it is worthwhile to emphasize a fairly obvious point: the fact that these accounts may not represent *traditional* interpretations of Kant’s theory of value, obviously does not entail that they thereby are automatically wrong or implausible interpretations of Kant’s theory of value. Clearly, it is an entirely reasonable philosophical undertaking to interpret whether Kant was truly consistent in providing his logocentric view and affording an indirect-duty view with regards to nonhuman animals on this basis. Thus, the respective accounts of Wood and Korsgaard should certainly not be disregarded at the very outset. Far from it, I think they should be seriously regarded as interpretations that may have improved on an apparent deficit figuring on Kant’s stated view.

This connects with my third and final point. It seems fairly clear to me that Kant’s stated view has an “animal problem”; namely, that it seems prone to depend upon contingent psychological facts.⁴⁶ Should our moral relations with nonhuman animals really have to depend on the contingent psychological fact that we humans are prone to violence graduation? To be sure, many expositors and defenders of Kant would presumably be prepared to bite the bullet here – or forward a much more qualified defense of Kant’s indirect-duty view. For example, many Kantians do stress the point that Kant clearly was able to accommodate at least some of our moral relations with nonhuman animals by affording the indirect-duty view, and that one should not fail to appreciate this.⁴⁷ After all, Kant did not hold a “no-duty view” with regards to nonhuman animals, and it would be unfair to construe Kant’s view as such. Nevertheless, I for one believe that the principle that underlies Wood’s and Korsgaard’s respective accounts, namely, that Kant’s indirect-duty view appears to have “an animal problem”, is reasonable – and calls for an assessment. And the fact that both Wood and Korsgaard address this concern outright within the scope of Kant’s theory of value represents, at least on my understanding, a significant strength – not a deficit. But, again, that is not to say that there are no alternative ways of addressing this concern within the scope of Kant’s indirect-duty view.

So, to put it more generally, I readily admit that one may question the Kantian grounds I have involved in my assessment on multiple foreseeable levels. How to relate Kant’s ethical theory to nonhuman animals is a debate issue, and there is much more to be said in that regard.

⁴⁶ To repeat, this is a point I have taken from an article from Birch, who highlights that this was emphasized by Wood. See Birch, 2018, p.7.

⁴⁷ See, for example, O’Neill, 1998.

However, I hope to have highlighted that the Kantian grounds I have deduced from the accounts afforded by Wood and Korsgaard at least are plausible – and that they should be seriously regarded. At the *very* least, I hope to have suggested that they offer an alternate way of construing the Kantian contractarian position.

Too much Kant?

Now, let us assume that the accounts of Wood and Korsgaard do hold up in the debate amongst Kantians more generally. Again, my argument hinges on this, as I have deduced their Kantian grounds for attending to the sentient nature of animals and inserted them in the context of Rawls's theory since it has a Kantian core. In other words, let us say that my argument is successful in deducing Kantian grounds for attending to the sentient nature of nonhuman animals. Am I thereby justified in inserting these in the context of Rawls's theory since it has a Kantian core? Are the theories of Kant and Rawls really *that* tightly connected?

The foreseeable objection here, then, is that I have read *too much Kant* into the Kantian core of Rawls's theory. One thing is to say that Rawls's theory has a Kantian *core* – which it certainly has. But in placing so much emphasis on its Kantian remnants, and turning my attention to Kant's ethical theory in doing so, one might worry that I am stretching things way too far. Ultimately, my argument may lead to viewing Rawls's theory as nothing but a Kantian theory. And one may argue that this is misleading – and in effect amounts to stripping Rawls's theory of its distinctiveness and uniqueness.

To some extent, this is a reasonable concern: I have indeed connected the views afforded by Rawls and Kant rather tightly. And although I hope to have justified this stance, I do agree that it does seem somewhat peculiar to suggest that, if Kant's theory of value can be shown to suggest that X has moral status, then Rawls's contractarian position must thereby make sure to express that X has moral status too. It seems more plausible, perhaps, to say that Rawls should be entirely free to decide how he wishes to construe his own contractarian position.

In response to this sort of foreseeable objection, I can do no more than re-emphasize why I have chosen to connect the theories of Kant and Rawls as tightly as I have. The chief reason for doing so, then, is that Rawls's view aligns with that afforded by Kant in virtually all significant respects: both with respect to the more general view on our moral relations with nonhuman animals, namely, the indirect duty-view; and with respect to what the relevant source of moral standing is, namely, rational agency. And the verdict they both share, as a result of this, is that

rational agency serves as the cut-off point for morality. And that is precisely what they both make use of the contract device to express: that there is an inherent moral standing between *persons* – which thereby distinguishes them from “non-persons” with regards to morality, and only merits an indirect-duty view with regards to nonhuman animals. As such, connecting these positions is merely to say that they express the same contractarian view; namely, what Rowlands refers to as “the orthodox view”. And my point, given this, is actually fairly simple: to the extent that there are grounds for reconsidering Kant’s “orthodox view”, those grounds appear reasonable to insert in the context of Rawls’s theory as well. This simply amounts to push Rawls’s notion of fairness into being more consistent with its clear Kantian foundation at the more substantive level – in addition to its more conceptual level.

Nevertheless, I readily acknowledge that it is more to be said on how “Kantian” Rawls’s theory actually is. And although I believe it is fairly reasonable to suggest that Rawls’s theory is Kantian to a large extent, the exact extent is an interesting question worthy of being further addressed. As such, this too represents a remaining challenge.

A recasting of Rowlands’s argument?

Another foreseeable objection may come from those familiar with Rowlands’s works: is my argument simply a recasting of the argument originally developed by Rowlands? Notwithstanding that there may be a few twists in my argument, and some subtle differences in what sorts of terms that are invoked, what have I actually provided that Rowlands’s argument does not?

In response, let me begin by re-emphasizing that I certainly have both involved and taken inspiration from Rowlands’s approach to a very large extent; in particular, Rowlands’s argumentative strategy of appealing to the Kantian core of Rawls’s theory. And I also want to emphasize that I think Rowlands’s case goes a very long way in yielding the same implications that my argument serves to elucidate. Thus, to the extent that one is merely interested in what the implications of my argument are, much of the same can be found by consulting Rowlands’s argument. In that sense, I have not provided anything that Rowlands’s does not: I have indeed endorsed and forwarded the crux of Rowlands’s argument in this thesis.

Yet, that is not to say that my argument simply is a recasting of Rowlands’s argument. There is a fundamental difference. Rowlands’s argument largely revolves around appealing to Kantian elements that lay at the *conceptual* heart or core of Rawls’s theory – so as “to exorcise Rawls

of his Hobbesian demons” (Rowlands, 2009, p.128). My argument, in contrast, also revolves around the Kantian elements at the more *substantive* heart or core of Rawls’s theory – so as “to push Rawls closer to the better angels of his Kantian nature”, to put it in terms of Rowlands’s metaphor. In other words, my argument turns upon assessing an entirely different aspect of Rawls’s theory than that of Rowlands does. Whereas Rowlands’s argument is fundamentally concerned with purging Rawlsian contractarianism of its unnecessary Hobbesian elements (see Rowlands, 2009, p.174), my argument has, to a much larger extent, been concerned with further assessing its fundamental Kantian elements – even at the more substantive level.

So, to put it more generally, I readily admit that I have built on Rowlands’s argument – but I am not recasting it. I have built on in it, in the sense that I both endorse and forward the crux of Rowlands’s argument. But I am not recasting it, since my argument adds a dimension which pushes Rawls’s theory into being more consistent with its substantive Kantian core, not just its conceptual or structural Kantian core.

What sorts of rights should be accorded?

Another foreseeable objection may be that my argument, at the end of the day, amounts to saying very little of consequence for nonhuman animals themselves. Assuming that is correct, then it merely goes to show *that* nonhuman animals can be accorded direct moral rights on Rawls’s contractarian theory since they are to be included in the moral sphere. But what sorts of direct moral rights can they be accorded, more specifically? To say that nonhuman animals may be entities towards which moral agents have, or can have, moral obligation by reference to Rawls’s theory is one thing. A different thing, and perhaps the more important one, is what sorts of moral obligations moral agents actually would have towards nonhuman animals by reference to Rawls’s theory according to my argument.

In some sense, one could say that Wood’s reservation more or less serves to encapsulate this challenge:

To say that Kantian ethics allows us to value nonhuman living animals and their welfare for its own sake does not, of course, determine in detail how they are to be treated. The view I am defending falls considerably short of saying that animals have rights. I do not know how in general to decide when the welfare of nonrational beings should prevail over the ends and interests of rational beings (Wood, 1998, p.203)

Thus, one may put the relevant challenge here roughly as follows: to say that Rawls's theory allows for an extensionist approach does not, of course, determine in detail how they are to be treated. The view I have developed thereby falls considerably short of saying anything about what sorts of particular rights nonhuman animals are to be accorded on the basis of Rawls's theory. When should the needs and interests of nonhuman animals prevail over the ends and interests of humans on Rawls's theory? Is not that the more important question?

In response to this, let me begin putting my fundamental takeaway point as explicit as it gets: this question *is* important and should be seriously considered and pondered on the basis of Rawls's theory. A truly consistent application of Rawls's theory cannot, I think, confine itself to set aside this question. And although I have to concede that I have not actually provided a sufficiently good or elaborate answer to this question myself, I hope to at least have suggested how it may be done by reference to Rawls's theory.

The main idea is rather simple, much thanks to the efficient analytic tools developed by Rawls: imagine that you do not know what sort of sentient being you actually are⁴⁸, entertain the idea that your needs, interests, or preferences happen to be those of a given animal⁴⁹, then assess whether it would be rational⁵⁰ to hold a given judgement. Of note, the "given judgement" to be assessed in this way can, foreseeably, target a wide variety of things. For example, it can target what conception of justice that should regulate "the basic structure of society", as Rawls's own work is a brilliant and obvious example of. But it may also target specific principles, practices, and maybe even particular actions.⁵¹ Of course, it is a remaining challenge to actually work this out in further detail. Nevertheless, the point is that it is foreseeable that there are many sorts of appeals one can make by reference to Rawls's theory in reflecting on the question of when the needs and interests of nonhuman animals should prevail over those of humans, and vice versa.

So, to put it more generally, I concede that my argument does not offer a sufficiently good or elaborate answer on what sorts of direct moral rights nonhuman animals can have on the basis of Rawls's theory. Yet, that they can have such direct moral rights by reference to Rawls's theory is a considerable point itself – and the one that I set out to develop and defend in the first place. Nevertheless, it is worthwhile to highlight two related and important challenges that

⁴⁸ That is, situate yourself behind the veil of ignorance.

⁴⁹ Either human and/or nonhuman.

⁵⁰ That is, in accordance with the "maximin rule".

⁵¹ See, for example, Rowlands's case vegetarianism on such a Rawlsian approach (Rowlands, 2009, p.162-174); or Julia Tanner's rather interesting perspective regarding animal experimentation on such a Rawlsian approach (Tanner, 2011).

still remain: to work out in further detail what sorts of appeals one can make on the basis of Rawls's theory regarding our moral relations with nonhuman animals, and to apply this theory across various practical issues regarding our moral relations with nonhuman animals.

Summing up

To sum up, I readily acknowledge that there are many foreseeable objections and remaining challenges regarding my argument. Foreseeable objections may concern the Kantian grounds that I have involved in my assessment, whether I have read too much Kant into Rawls's theory, and what my argument actually adds to the existing literature on the topic of Rawls and the animal issue. There is also the crucial question of what my argument actually suggests with regards to the sorts of rights nonhuman animals can be accorded on the basis of Rawls's theory, and what sorts of moral obligations moral agents can have towards nonhuman animals as a result. There is much more to be said on all of these issues, and thus many challenges that remain. Yet, I hope to have said at least this much: there is at least a rather strong theoretical foundation for moral extensionism in Rawls's theory – and there is a viable way for this theory to underwrite the notion that nonhuman animals have moral rights in the direct sense.

Conclusion

The argument I have set forth throughout this thesis suggests that there is a theoretical foundation for moral extensionism in Rawls's contractarian theory. Given its clear Kantian foundation, there are compelling theoretical reasons, laying at the very core of Rawls's theory, for saying that the circle for moral status extends from humans to nonhuman animals. Ultimately, to adopt an experientialist view, albeit with a logocentric ring to it, appears to be nothing but consistent with the Kantian core of Rawls's theory. There are no clear conceptual Kantian grounds which invalidate encompassing nonhuman animals in the moral sphere – and there are substantive Kantian grounds in support of this.

What this implies is that one can use Rawls's contractarian theory to underwrite the notion that nonhuman animals possess direct moral rights. All it takes to render this is to acknowledge that the circle for moral status extends from humans to nonhuman animals on the basis of their sentient nature – and use the contract device to express this. If one does so, then according direct moral rights to nonhuman animals becomes not only conceivable: it becomes

fundamentally feasible. As such, Rawls's theory does not have to set aside the animal issue. On the contrary, it can, and I think should, be construed so as to address this issue.

As much as this implication contravenes Rawls's stated view, as well as the orthodox view of the relation between contractarianism and nonhuman animals more generally, it does not, I think, annihilate anything that is deeply central to the Rawlsian framework. Its fundamentally Kantian motivation and methodology remains the same: to use the contract device heuristically, in order to express the widely-held belief that impartiality is definitive of the moral point of view – and elucidate moral principles on this basis. There is nothing in my argument which precludes this. Ultimately, the only revision to be made on the Rawlsian framework according to my argument is this: to not only invoke the contract device to in order to express the inherent moral standing of persons, but to also invoke it so as to express the inherent moral standing of sentient beings – be it humans or nonhuman animals. And the main objective of this thesis was to motivate why this should be the case.

Yet, there are a wide range of issues that remain. To begin with, the question of how much there is to the Kantian core of Rawls's theory is a difficult one to fully settle. Although Rawls's motivation and methodology is fundamentally Kantian, and they afforded virtually the same logocentric position, there could, of course, be non-Kantian features in the Rawlsian framework that have failed to fully appreciate. Thus, my argument is certainly not definitive, as there may be more to Rawls's contractarian theory than its Kantian core appears to suggest. Similarly, there is also much more to be said with regards to its Kantian core, as the topic of Kant's ethical theory and how to relate it to nonhuman animals is a debated one. Thus, my argument is not decisive, as there clearly are alternate ways of conceiving what the Kantian core of Rawls's theory entails regarding the very question of moral status and to whom this concept applies.

But if my fundamental point, namely, that there *is* a theoretical foundation for moral extensionism in Rawls's contractarian theory, does hold up, then the remaining issue above all is this: to work out what sorts of moral rights nonhuman animals should be accorded on the basis of the Rawlsian framework. What should nonhuman animals be morally entitled to? And when should the interests of nonhuman animals prevail of those of humans? Those are the sorts of questions that I think both can and should be addressed by reference to Rawls's contractarian theory – and what I would ultimately encourage proponents of Rawls's contractarian theory to do moving forward.

Bibliography

- Abbey, R. (2007) Rawlsian Resources for Animal Ethics. *Ethics and the Environment*, 12(1), p.1-22.
- Altman, M.C. (2011) *Kant and Applied Ethics: The Uses and Limits of Kant's Practical Philosophy*. Malden: Wiley-Blackwell.
- Altman, M.C. (2018) Animal Suffering and Moral Salience: A Defense of Kant's Indirect View. *The Journal of Value Inquiry*, 53, p.275-288.
- Bernstein, M. (1997) Contractualism and Animals. *Philosophical Studies*, 86, p.49-72.
- Birch, J. (2019) The Place of Animals in Kantian Ethics. *Biology & Philosophy*, 35(8), p.1-11.
- Carruthers, Peter (1992) *The Animals Issue: Moral Theory in Practice*. Cambridge: Cambridge University Press.
- Cudd, A. and Eftekhari, S. (2021) Contractarianism, in *The Stanford Encyclopedia of Philosophy*. Available from: <https://plato.stanford.edu/entries/contractarianism/>
- Curry, P. (2011) *Ecological Ethics: An Introduction*. Second Edition. Cambridge: Polity Press.
- Dean, R. (2006) *The Value of Humanity in Kant's Moral Theory*. Oxford: Oxford University Press.
- Dombrowski, D.A. (1998) Rawls and Animals. *International Journal of Applied Philosophy*, 12(1), p.63-77.
- Gamlund, E. (2013) Ethiske perspektiver på dyr og natur, in Sollund, R., Larsen, G. and Tønnesen, M. (ed.) *Hvem er vildest i landet her? Råskap mot dyr og natur i antropocen, menneskets tidsalder*. Oslo: Scandinavian Academic Press, p.329-352.
- Garner, R. (2011) Rawls, Animals and Justice: New Literature, Same Response. *Res Publica*, 18, p.159-172.
- Garner, R. (2013) *A Theory of Justice for Animals: Animal Rights in a Nonideal World*. Oxford: Oxford University Press.
- Gruen, L. (1993) Animals, in Singer, P. (ed.) *A Companion to Ethics*. Malden/Oxford: Blackwell Publishing, p.343-353.

Gruen, L. (2010) The Moral Status of Animals, in *The Stanford Encyclopedia of Philosophy*. Available from: <https://meinong.stanford.edu/entries/moral-animal/>

Gruen, L. (2017) Conscious Animals and the Value of Experience, in Gardiner, S.M and Thompson, A. (ed.) *The Oxford Handbook of Environmental Ethics*. Oxford: Oxford University Press, p.91-100.

Hobbes, T. (1998) *Leviathan*. Oxford: Oxford University Press.

Kant, I. (2012) *Groundwork of the Metaphysics of Morals*. Revised Edition. Cambridge: Cambridge University Press.

Kant, I. (2017) *The Metaphysics of Morals*. Revised Edition. Cambridge: Cambridge University Press.

Korsgaard, C.M. (2004) Fellow creatures: Kantian ethics and our duties to animals. *Tanner Lectures on Human Values*, 24, p. 77-110.

Korsgaard, C.M. (2021) Valuing our Humanity, in Dean, R. and Sensen, O. (ed.) *Respect: Philosophical Essays*. Oxford: Oxford University Press, p.171-191.

Kymlicka, W. (1990) *Contemporary Political Philosophy*. Oxford: Oxford University press.

Kymlicka, W. (1993) The social contract tradition, in Singer, P. (ed.) *A Companion to Ethics*. Malden/Oxford: Blackwell Publishing, p.186-196.

O'Neill, O. (1998) Kant on Duties Regarding Nonrational Nature: Necessary Anthropocentrism and Contingent Speciesism. *Proceedings of the Aristotelian Society, Supplementary Volumes*, 72, p.211-228.

Rachels, J. (2019) *The Elements of Moral Philosophy*. Ninth Edition. New York: McGraw-Hill Education.

Rawls, J. (1999) *A Theory of Justice*. Revised Edition. Cambridge/London: Harvard University Press.

Regan, T. (2004) *The Case for Animal Rights*. Berkeley/Los Angeles: University of California Press.

Regan, T. (2014) The Case for Animal Rights, in LaFollette, H. (ed.) *Ethics in Practice: An Anthology*. West Sussex: Wiley & Blackwell, p.192-197.

- Rowlands, M. (1997) Contractarianism and Animal Rights. *Journal of Applied Philosophy*, 14(3), p.235-247.
- Rowlands, M. (2009) *Animal Rights: Moral Theory and Practice*. Second Edition. London: Palgrave Macmillan.
- Saugstad, J. (2000) Et Kantiansk syn på dyrs moralske status, in Føllesdal, A. (ed.) *Dyreetikk*. Bergen: Fagbokforlaget, p. 140-161.
- Sytsma, J. and Machery, E. (2012) The Two Sources of Moral standing. *The Review of Philosophy and Psychology*, 3(3), p.303-324.
- Tanner, J. (2011) Rowlands, Rawlsian Justice and Animal Experimentation. *Ethical Theory and Moral Practice*, 14(5), p.569-587.
- Vickery, T. (2013) Where the Wild Things Are (Or Should be): Rawls's Contractarian Theory of Justice and Non-Human Animal Rights. *Macquarie Law Journal*, 11, p.23-38.
- Warren, M.A. (1997) *Moral Status. Obligations to Persons and Other Living Things*. Oxford: Oxford University Press.
- Wolff, J. (2018) *An Introduction to Moral Philosophy*. New York/London: W.W. Norton & Company.
- Wood, A. (1998) Kant on Duties Regarding Nonrational Nature. *Proceedings of the Aristotelian Society, Supplementary Volumes*, 72, p.189-210.