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The idea that some lives matter less is the root of all that is wrong in the world.
–Paul Farmer

Introduction

The dominant ethical theories in contemporary philosophical discourse are contractarianism, utilitarianism, Kantian ethics, and virtue ethics. This thesis aims to explore the moral relationship human beings have with animals, and therefore I will explore this relationship in light of these theories. I will specifically be investigating whether any of these theories have conceptual room to accommodate a philosophical framework of rights for animals. For the theories that can accommodate a framework of rights for animals, I will explore what type of framework they can support, and whether or not such a framework is satisfactory.

In this work, I will be discussing the philosophical notion of rights, rather than the legal notion of rights. The difference may seem too small to matter, but in reality, my focusing exclusively on philosophical rights changes the direction that this work ultimately takes. I am not proposing any policy changes in this thesis, nor am I presenting arguments that are to have an immediate effect within the legal realm. Rather, I am looking at an issue that comes into play prior to the involvement of the legal system. In fact, the philosophical notion of rights serves as a foundation to any legal understanding of rights we may have because it acts as a justificatory groundwork for the treatment of many different living beings that necessarily coexist in a given society. A stable and functioning legal understanding of rights can only arise out of a cohesive and consistent philosophical framework. Such a framework serves the purpose of justifying the necessity of implementing a system of protections that can then be applied to a practical and political model. While not all legal protections arise through extensive philosophical underpinnings, in the case of animal welfare, a philosophically grounded rights-based

approach is the only construct, which could grant sufficient protections to animals. A philosophical notion of rights alone does not grant protections, since it has no enforcement power. Legal protections however, are administered by the state and therefore have much stronger enforcement power. However certain legal protections, especially ones having to do with individual welfare often times require a robust philosophical justification for their existence in the legal system.

The topic of my thesis arose out of a set of observations I had while taking various courses in philosophy. Throughout my career as an undergraduate, I have been exposed to various moral and political theories that explore the idea of moral value. Most if not all of these theories have prioritized human rationality as the foundational source of value, and have sought to emphasize distinctly “human” abilities that arise out of rationality. The interesting thing is that most of these philosophies tend to focus on rationality exclusively, so much so that fundamental protections are only granted to rational beings. Philosophers who exclusively emphasize rationality as the basis for rights, and craft rights-based theories based on rationality have a tough time explaining their preoccupation with rationality alone.

An emphasis on rationality alone as the basis for granting rights is typically associated with theories that promote rights exclusively for human beings. Such theories assert that what differentiates human beings from other creatures is their rationality, and that by virtue of it, all human beings are entitled to the protections that arise out of possessing rights. At first glance, such reasoning makes clear enough sense. However upon further inspection, it is clear that such theories have significant trouble explaining why all human beings deserve protections even when rationality is not present. Many

groups of people simply do not possess the type of rationality needed in order for them to qualify as creatures valuable enough to possess rights. Intuitively however, we still want to grant those people rights and subsequent rights-protections.

In philosophy, the granting of rights serves as an important statement regarding the inherent value of a being. The method for determining what characteristics ought to grant beings rights has far reaching implications for the scope of protections granted under a given moral theory. Theories that are highly selective about what traits a being must have in order to be granted rights offer a comprehensive set of protections only to a select groups of beings, while theories that expand the rights-granting criteria are able to encompass a variety of beings under their protection. I have always found it difficult to justify extremely narrow definitions of rights-granting properties because such limitation seems to contradict too many of our intuitions regarding the value of beings who do not receive rights or protections under such theories.

I find it difficult if not impossible to successfully defend a rights-based view that only protects rational agents, because that seems to limit the scope of value quite severely. When we think of human beings, we often assign the most protections to those who need it most, and often those are people who are not even fully rational, such as children, ill people and the elderly. Rationality alone cannot account for the reason why we tend to believe that *all* human beings—even those with reduced or nonexistent rationality deserve—to have rights and protections.

Furthermore, as someone who loves animals, I have always found the exclusive attention to rationality as a basis for rights and protections problematic. We intuitively know that it is wrong to mistreat animals. The issue is how we justify the wrongness. Do

we merely say, “one ought not do that”? This does not seem to offer any inherently substantive protections. Assuming that animals by definition lack the rational capacities of humans, moral theories that focus exclusively on rationality as the basis of granting rights cannot extend rights to animals, which means animals lose out on subsequent protections.

Granting rights is one of the most reliable forms of extending protections to a given group. Once we conclude that a given being is entitled to a set of rights, then others beings (in this case other human beings) automatically are tasked with a responsibility to make sure that the given being’s rights are not violated. In other words, a being’s having rights simultaneously obligates those around it and offers the being immediate and inherent protection that is rooted in the being’s value. For every right a being has, others are tasked with an obligation. In some cases, that obligation is simply not to violate the right of the being in question, and in those cases, the being possesses negative rights. However in other cases, a being’s possession of a right obligates those around it to more than just non-interference. In many cases, a right *to* something means that others have an obligation to actively provide something to the being in question, and in those cases, the being has positive rights. A robust body of rights provides beings with both negative and positive rights, and this is exactly the type of network of rights I will be attempting to identify conceptual space for, in the various ethical theories I explore.

A major assumption driving this thesis is that animals possess inherent value, and that this value ought to grant them significant societal protections. I do not take myself to be exploring whether or not animals actually *deserve* to be granted rights, and subsequent rights-protections, since I take that to be a given. Rather, the topic of my inquiry is to

explore which philosophical theory—once we have already accepted the idea that animals are worthy of possessing rights—can best accommodate an effective system of rights for animals.

It has become clear to me that if animals are to be given substantively adequate protections, such protections must arise out of a rights-based approach to their welfare. It is not enough to simply expect people to show kindness to animals because real world examples prove that many people are not inclined to act kindly towards others if there are no rights considerations bearing on their actions. Interacting with a being that possesses rights leads to reasonable expectations regarding our behavior towards that being. When someone (or something) has rights, our actions towards that being become limited. We cannot act in a way that violates its rights, and this is because it has rights-granting properties that are worthy of protection. The value of the being exists independently of our desire not to harm. Rather, the value of the being arises when we recognize certain characteristics as being important enough to protect for their own sake. This thought manifested itself in the question that guides this thesis, namely “why can’t we extend to animals rights claims like we do for people, and if we were to do this, which moral theory could best explain and justify such an extension?”

Contractarianism and Kantian ethics are two major moral approaches to rights that I will be exploring in this thesis. Both theories emphasize the importance of rationality and identify rationality as a necessary and arguably sufficient rights-granting property. These two theories locate a being’s value in its capacity for rational thought and seek to develop moral paradigms of behavior around that characteristic. I will look at these views along with alternatives to them, such as Utilitarianism’s approach to the

notion of rights-granting properties, and whether the conception of rights-granting properties itself is even a coherent notion under Utilitarianism. I will also explore Martha Nussbaum's capabilities approach to the idea of rights. Ultimately, I will show that only a specific neo-Kantian view forwarded by Christine Korsgaard and Nussbaum's capabilities approach can feasibly accommodate a viable rights-based approach to animal welfare protection. Finally, I will argue that Nussbaum's view is able to accommodate a more robust account of animal rights than is Korsgaard's view. I will then outline some instances where Nussbaum's view can be expanded and amended to be even stronger than it is. Nussbaum simultaneously argues that all life is inherently valuable and that it should be protected, and that it is alright to kill animals for food and conduct research on animals. I will explore these claims to see if they truly are contradictory or whether at least some of them can coexist under a consistent and logically sound theory of animal rights.

Chapter 1: Contractarianism

Contractarianism is the philosophy that aims to show that making a self-interested, rational, yet mutually cooperative deal with one another is the best course of action for human beings. The view assumes that human beings by their very nature are intelligent, self-interested, individualistic beings that cooperate with one another because it is beneficial for them to do so. Instead of relying on natural law or divine law, contractarianism bases the law and human rights in the contract itself. The contract, however, is grounded assumptions about human nature and rationality. While there are different iterations of contractarianism, the foundational pieces remain the same throughout the spectrum of contractarianism.

Contractarian theories have many central characteristics in common with one another. First of all, they categorize humans as being rational and self-interested. Furthermore, before the creation of a social contract, they posit that human beings lived in the state of nature. Depending on which philosopher is describing the state of nature, the type of life the humans have in it will be somewhat different. However the main idea behind the state of nature remains the same: in the state of nature, the rational and self-interested humans will have to try to survive. They will have no laws, and there will be no system in place to protect anybody, so they will have incentive to figure out how to live together.

Some social contract theorists, like Thomas Hobbes, believe that human beings are inherently egoistic, and take no issue with killing one another within the state of nature to get what they want. Others, like Jean-Jacques Rousseau, see human nature as

being generally good, and see humans as being guided by feelings of pity. However, what all social contract theorists have in common is their subscription to the notion that humans are fundamentally rational and self interested. All social contract theorists and theories advance a position that necessitates human collaboration to escape the state of nature. The state of nature is a realm of existence prior to any human collaboration. It is supposed to symbolize what life is like for people if they live on their own without the use of any sort of teamwork. In the state of nature, life is supposedly “solitary, poore, nasty, brutish, and short”¹ and all humans want to escape it. Since every human shares a desire to escape the state of nature, they are motivated to make deals in order to start building a society together. Such a society arises out of self-interest, and a desire to exist away from the state of nature, but the society can only survive and grow if human beings commit to a system of mutual cooperation. Cooperation occurs because human beings are all relatively equal in their abilities to hurt one another, and rather than live in constant fear, they rationally decide to cooperate with one another and overall make their lives easier and better in the long run. They give up their freedom to kill, hurt, and steal from one another in order to gain a new type of freedom—a freedom to live without fear and with less pain and suffering.

Examples of cooperation include agreements not to kill one another, so that humans will no longer have to constantly worry about whether or not someone else is going to try to kill them. Humans agree not to steal from one another, not to assault one another, and they agree to institute a government to make sure everyone follows these rules. The main point of this agreement is that human beings recognize that it is better to

¹ Thomas Hobbes, *Leviathan* (Oregon: University of Oregon, 1999), 110.

give up their freedom to kill one another, hurt one another, and steal from one another instead to gain the freedom to actually live their lives without fear.

According to the general theory of contractarianism, human beings are all equal in their abilities to harm one another, and so it is necessary for them to create a social contract in order for them to have stability. In other words, human beings create the contract, and human beings are bound by the contract.

A newer version of social contract theory is John Rawls' theory of justice as fairness. Rawls deviates from the traditional conception of contractarianism by creating a unique thought experiment. The purpose of the thought experiment is to show which principles human beings would agree to in conditions of equality. In the social experiment, Rawls imagines human beings as being represented by parties whose task it is to negotiate a set of principles that the humans they represent will follow. This set up is called "the original position". In the original position, the parties exist behind what is called "the veil of ignorance," which is a special veil that prevents the parties from knowing any characteristics of the people they will be representing. The parties do not know their humans' gender, race, sexual orientation, socioeconomic class, religion, intelligence, beauty, or any other distinguishing features.² If they do not know what the characteristics of the people they represent will be, they will avoid principles that will favor one group over another. If there is even the slightest chance that one may end up being a woman, the parties will not agree to principles that will disadvantage women. The same reasoning applies to all random characteristics of human identity that ought not determine the rights and liberties they receive.

² John Rawls. *Political Liberalism* (New York: Columbia University Press, 1993), 22-23.

The idea of the veil is to make sure that morally arbitrary factors play as small of a role as possible in the procedure. The parties' deliberation behind the veil of ignorance is necessary so that the principles they agree to will be fairly applied to each member of the society. It is important to note that Rawls' original position is a thought experiment, and is not meant to be taken as a representation of *actual* deliberation or buying into an a contract. Rather, he uses the original position as a tool for showing which principles free and equal individuals would likely agree to under conditions of fairness.

According to Rawls, deliberation in the original position behind the veil of ignorance will result in the parties' agreeing to two principles of justice. The first principle will establish the same basic liberties for every citizen consistent with every other citizen having the same basic liberties. The second principle of justice regards inequalities in the society: any inequalities in the society are to benefit the least advantaged in the biggest way possible, and all offices and positions are to be open to every citizen. A similarity between Rawls' contractarianism and the contractarian theories mentioned earlier is that not only does Rawls believe human beings to be individualistic, rational, and self-interested, but his view depends on humans having such characteristics. The two principles mentioned above arise in part out of these qualities of human beings. Since the parties do not know whether the people they represent will be well off or disadvantaged, they will not want to take any risks with creating principles that will harm those they represent.

I have previously mentioned the veil of ignorance as the source of the parties' impartiality during deliberation, but I believe it is useful to go into more detail regarding the importance of the veil. The veil prevents the parties from choosing principles that will

specifically advantage the people they represent in the society to come. Given individuals' inherently self-interested nature, the veil is a necessary component of Rawls' original position thought experiment. He is interested in exploring which principles of fairness humans would come up with, but the simple reality is that they would not come up with fair principles if they already knew their own identities and how they are situated relative to others. We must be self-interested; otherwise, we would have never made the initial agreement to get out of the state of nature. It is human nature to privilege identities and characteristics known to us, especially ones we ourselves possess. What the veil of ignorance does is eliminate any prior knowledge and exposure of such characteristics. The people the parties represent have an equal a chance to be male, female, rich, poor, or have a slew of other various characteristics. Since the parties have no way of knowing which characteristics their people have, they cannot bargain for principles that will advantage those characteristics. This system gives rise to the impartiality needed for Rawls' account of justice as fairness to pan out.

It is important to understand exactly who is immediately covered under the auspices of Rawls' social contract. The social contract protects those who are able to agree to its terms and conditions, and the only beings that can agree to a social contract are rational and self-interested beings that are capable of acting morally. The moral capacities required to be included in the social contract are the capacities to act rationally and reasonably. The contract can also "cover" others, like children as well, but it does so by grounding their values in the interests of those parties able to agree to the contract. To be able to agree to the contract, human beings must be rational, in that they recognize their desired ends, and do what they have to achieve those ends. They must be reasonable

in that they are willing to cooperate with other human beings in order to live in a society that is beneficial for them as well.³

These two criteria make up the general category of beings that are protected under the social contract. The category is quite limited when we think about it. For starters, it includes only human beings, but when it is to be interpreted literally, it will exclude many human beings as well. According to the thought experiment, human beings agree to the contract because they are all able in roughly the same way to harm one another, and it is better for them to just agree to work together. This notion of human beings, however, does not accord with the practical reality of being an actual person. Contractarianism requires the humans involved in the agreement of the social contract to be individualistic to an extent that is simply unattainable for many people, and certainly is not feasible for any human to be all the time. Nobody is purely individualistic, and human beings go through many periods in their lives when they require the help of other human beings to survive.

Similarly to many non-rational human beings, animals cannot agree to a contract, nor can they be considered parties to the contract. While they may be rational in the sense that they value their own identities and care about their own wellbeing, they are not and can never be reasonable in Rawls' sense of that term. Structurally animals will not agree to a system of mutual cooperation in the way that is needed of them, and such an agreement can never be an agreement among equals if animals are involved.

Infants, children, elderly people, and disabled people (perhaps both physically but definitely mentally) are examples of groups of people who, according to the standards set

³ Rawls, John. *Political Liberalism* (New York: Columbia University Press, 1993), 48-50.

by the social contract, technically are not covered under the contract's protection. This can be so for various reasons. Either they lack the ability to agree to the social contract because their mental abilities are not developed enough, like in the case of children, many elderly people, and many mentally disabled people. Or, it may be because they are simply not self-reliant enough to offer anything to the notion of social cooperation, or even to constitute an initial threat to other human beings if seen as needing to be constrained by the social contract (such as the case with physically disabled people). The case of physically disabled people is less problematic because it can reasonably be expected that the veil of ignorance would screen out various levels of physical disability and therefore would scoop up physically disabled people under the contract's protection. However, even most healthy human adults go through periods in their lives when they are dependent on other humans for care. Social contract theories cannot reasonably assert that humans cooperate with one another because they can all harm each other and at the same time attempt to include people who actually cannot harm others due to a severe physical disability. Accommodating various human beings who are not individualistic or self-sufficient is a problem inherent to contractarianism, and one that contractarian theories typically have trouble remedying.

Before I continue, it should be noted what the stakes of granting and not granting rights to certain groups are. Human beings existing in a society but not under the protections of the social contract cannot be *owed* anything because they have no inherent protections in the first place—no rights that are protected by the contract. When I question whether certain people (such as people with severe disabilities) can be included

under the protection of a social contract, I am asking whether or not those people will be owed anything in the society by virtue of their identities.⁴

It is possible that we could potentially include children and elderly people in the social contract because it is the natural progression of human life that people will start out as children and will (hopefully) end up as elderly members of society. I am willing to grant that the parties could reasonably be expected to understand that the human beings they represent will start off as children and will hopefully become elderly. Such conditions are simply givens within human nature and could potentially be treated as such. Furthermore, Rawls argues that all the parties know is that they are part of the same generation as one another, but that they do not know what generation they will be part of, so it is in their best interest to make sure their principles protect members of future generations just in case they end up being members of a future generation.

A more important issue that arises out of contractarianism is including individuals with significant mental and physical disabilities under the social contract. Such individuals are simply unable to contribute to society in the ways that social contract theory necessitates. In other words, despite needing protection from the social contract, such individuals are unable to fully buy into the contract in the first place because their relationship with the contract will not be reciprocal—it can never be. While this does not seem to be problematic, it presents an issue to the core of contractarianism, which is rooted in human reciprocity. Contractarianism locates the origins of human society in a need to cooperate that stems from an individual sense of self-preservation and self-

⁴ Here I typically refer to people with mental disabilities, although I believe a compelling enough case could potentially be made to also question the protection people with physical disabilities would receive as well.

interest. It is in the best interest of humans to work together and to build a society in which they do not have to fear one another and in which they all work together to thrive more than any one of them could alone in the state of nature. Human beings only agree to help one another and work with one another because they can all relatively equally contribute to society. People who cannot contribute even relatively close to what others contribute seem to not be the types of people with whom social cooperation occurs, and by extension, they seem to be people who do not get protections (at least immediate protections) from the social contract.

Social contract theory has such significant problems including people with limited cognitive and physical disabilities because of what it sets as the foundation of rights. According to social contract theory, human beings are granted rights by virtue of both their capacity to buy into the social contract, and then their having actually done so. If they are unable to buy into the social contract for whatever reason, then they are not granted rights and are therefore not protected under the social contract. This claim, however, needs to be unpacked further because we need to understand what characteristics give rise to the buying in to the social contract in the way it is described by contractarianism. I have just explained how many members of our society are technically not protected under the social contract, and therefore not granted rights. This is because they do not possess the characteristics necessary to enter the social contract in the first place. If they do not possess these characteristics, they either will not think to enter the contract, or they will not be able to follow the necessary requirements once in the contract.

This basis of rights is problematic for the reasons illustrated above—namely that many human beings simply do not fit these criteria, and every human being goes through periods in his or her life that are characterized by the lack of these characteristics. How do we solve this issue? We will stretch the theory behind contractarianism too thin if we are to attempt to explain how we allow various people into the social contract because by the very definition of their impairments, they cannot contribute to the contract. However, not including various human beings into the contract is also problematic because it goes against our instincts to avoid extending rights to people who are not fully rational or self-sufficient. One may ask why it is important to include certain people in the social contract in the first place. It is possible to imagine granting certain protections based on certain considerations, instead of making it necessary that they actually be *part of* the social contract. This however is to over-simplify the idea behind the social contract. People included under the social contract are granted certain very important protections. When human beings exist under the social contract, they owe things to one another. They owe each other respect towards their rights, and when people do not respect each other's rights, the violators are sanctioned. Human beings existing in a society but not under the protections of the social contract cannot be *owed* anything because they do not have protections in the first place—no rights that are protected by the contract.

There is something deeply troubling with extending basic rights and liberties to some human beings, but not extending those same rights and liberties to other human beings. I believe this intuition exists because there is something fundamentally missing from the contractarian notion of rights, and that is that they are conditional. Rights are granted to those who have sufficient ability to agree to a contract of mutual cooperation,

and nobody else. If rights are conditional, then by definition they are not inherent to the beings to whom they are granted. This is precisely what causes the contractarian such trouble when she cannot cover certain beings within the contract and has to twist her theories in order to attempt to offer inclusion and protection.

All of that said, it is the case that anyone that is not included in the inherent protection of the contract under the auspices of rights can obtain later protections once the society has already been formed. Protections offered to any groups not included under the contract will arise out of principles of compassion rather than principles of justice since principles of justice only apply to those beings granted rights through the original position, and therefore through the contract itself. Such protections will have to arise out of principles of compassion because the existence of those protections and the degree to which they are granted will be completely dependent on the will of the citizens in society with the already existing rights. They will decide whether or not they want to allocate any additional protections to any other groups within the society, and if they choose to provide protections, they will not be appealing to their own self-interest as in the original position. Rather if they decide on granting protections to otherwise unprotected groups (which they also could decide not to do), then they will be appealing exclusively to their own kindness and sympathies.

If contractarianism has trouble offering many human beings rights and protections, then it certainly will not be able to successfully incorporate animal rights into the social contract. Under social contract theory, any protections we offer to animals will be granted to them through principles of compassion, rather than principles of justice. Under contractarianism, animals' wellbeing and protection will be derivative because it

will only be taken into consideration when humans decide to bring it in. This means that if people were to change their minds about animals, it would be perfectly acceptable under contractarianism to treat animals any way we please, and intuitively this is clearly wrong. There is something fundamentally problematic about subscribing to a moral theory that can allow for no protections or considerations to be granted to an entire category of beings (in this case, animals) simply because the initial parties to the contract fail to see the welfare of those beings as being important enough to protect.

Chapter 2: Objections and Responses to Contractarianism

Martha Nussbaum and Cass Sunstein identify key issues with contractarianism that make it impossible to include animals under its protection.⁵ The creation of the social contract arises in response to a situation in which beings of relative equal strength could fight with one another over resources and because the beings are relatively similar, they can just continue to kill one another and compete for resources. This is not the narrative we can tell between the relationship between human beings and animals because as Sunstein and Nussbaum argue, the asymmetry in our relationship with animals is too great. We do not compete with them over resources in a meaningful enough way. When they get in our way, we can and do just kill them. Furthermore, it is not mutually advantageous for us to create a contract-type agreement with animals in the same way it is mutually advantageous for us to create a contract with other human beings, since as mentioned before, it is just easier for us to kill animals who get in our way.⁶ It is just a matter of fact that animals could not make a deal with one another or with us arising out of mutual interest, and they could not hold themselves accountable to follow such a deal.

Sunstein and Nussbaum believe that the root of the inclusion problem is present in contractarianism. “Contractarian theories conflate two questions... Who frames the

⁵ Sunstein, Cass R., and Martha Craven Nussbaum. *Animal Rights: Current Debates and New Directions* (Oxford: Oxford University Press, 2004), 301.

⁶ *Ibid.*, 301.

principles? And for whom are the principles framed?”⁷ The assumption made by contractarians is that even though the parties create the principles of justice, human beings are the recipients of the principles. Since the parties are different from the recipients of the principles, it seems problematic to treat them as the same entities. One group creates the principles, and the other gains protections from them. Nussbaum finds it problematic to conflate the parties and the people they represent because they are fundamentally different. However we can treat the parties as part of the thought experiment. The parties themselves can be thought of as representing human beings that are shielded from knowing their own characteristics in a society. Rawls’ original position thought experiment is not made any worse by just assuming that the parties are human beings that exist in a veiled state, which prevents them from knowing their own characteristics in the society that is about to be built. If we assume this to be true, there is still a problem, namely if human beings create the principles of justice, then it is all the more likely that the principles should only apply to and protect human beings. We already intuitively find it problematic that social contractarianism excludes many people, and also animals from the protections it offers, but this is just because of the assumption Sunstein and Nussbaum highlight.

I mentioned earlier that contractarian theories cannot offer animals protections through principles of justice, and will instead rely on principles of compassion for any protections granted. This is a problem, and one that has major implications for animal welfare. Some may be comforted by the fact that animals may receive at least some protections or considerations under contractarianism, but the considerations they receive

⁷ Ibid., 301.

will not be nearly powerful enough to grant them the political protections they need. As Sunstein and Nussbaum point out, having compassion for something recognizes the being's ability to suffer and experience pain, but it does nothing to address issues of blame.⁸ This is crucial because when human beings under the social contract experience a wrong done to them by other members of the social contract, they have the right for compensation and for the wrong to be addressed and corrected. In other words, they have a right against being harmed and if someone violates that right, the violator will be blamed and will be held accountable for his actions. Animal considerations granted under a social contract theory will not have such protections because animals cannot be parties to social contracts. If a harm is done to an animal, perhaps the animal will be treated well and taken care of under considerations of compassion, but the individual who caused the animal harm will not be held responsible and will not be blamed for his actions against the animal in the way he would be held responsible for violating the rights of another member of the contract. This means that the animal will have no recourse against the person who harmed it, though oddly if the animal is a pet, its human owner would. This is because under the social contract, animals have no rights to be protected in the first place, and any harm caused to them, while it may elicit feelings of compassion and pity, will not warrant any response justified only in terms of the harm done to the animal itself. This is the case because the very structure of the contract necessitates our granting of rights protections to members of the contract. The contract grants them protections from certain harms and limits our actions to those that do not violate their rights. This protection however does not apply to those who are not parties to the contract. We owe no such

⁸ Ibid., 303.

commitments to animals (or people for that matter) that are not included under the contract.

Some theorists (such as Kimberly Smith) reject the assertion that contractarianism does not adequately protect animal interests. Smith argues that such objections misrepresent the underlying foundations of contractarianism. She claims that contractarianism does in fact have the capacity to incorporate animal interests into its protections and that social contract theory should be thought of as the preferred method for addressing issues of animal welfare because it allows us to limit the scope of animal protections to just animals “with whom we have a political relationship.”⁹ According to Smith, the social contract, specifically the Rawlsian conception of the social contract can in fact offer selected protections to *some* animals, which she cites as evidence in favor of contractarianism. Smith’s use of the phrase “political relationship” is rather vague, since almost all human actions have politically relevant implications that can affect most if not all animals around the world. For instance, the production of goods that we use everyday requires resource extraction, which affects animals’ habitats. If Smith is referring only to a proximal relationship to animals, then it is unclear why that would be considered a strength of contractarianism since proximity alone seems like an arbitrary measure of value.

She argues that the assertion that animals are not roughly equal in power (mentally or physically) and therefore are not included in the social contract is incorrect, since by that same criteria, many human beings are not included in the contract, either. Furthermore, when we look at individual beings, individual animals are often able to

⁹ Smith, Kimberly K. "Animals and the Social Contract." *Environmental Ethics* 30, no. 2 (2008), 195.

overpower individual humans, and since the contract's origins are rooted in the motives of self-interested *individuals*, we should not just look at species-specific domination, but should instead focus on the relationship between individuals as well. Furthermore, she questions the appeal to animals' inferior reasoning capacity as reason to deny them access to membership in the contract. She states that at least according to Locke, it is unclear that all animals are unequal in their reasoning capacities despite most of them not being able to "think abstractly."¹⁰ According to Smith, this difference in rationality coupled with various physical inequalities is insufficient to exclude a being from the social contract, because according to those criteria; many human beings would also find themselves unacceptably excluded, which contractarianism does not allow for.

Smith extends the contractarian notion of political and societal affiliation to include animals with which human beings have regular interaction in an attempt to override the typical contractarian aversion to allowing for cooperation with any being that cannot adequately contribute to society. She makes a move to replace the contractarian necessary condition of contribution within interaction, and therefore adds certain animals to the list of limited protection-worthy creatures. According to her analysis, our self-interest would motivate us to grant certain animals rights-based protections because those animals are able to think somewhat rationally, and in some cases are able to overpower individual human beings. This, however, still does not explain why it is not just easier for us as a group to exercise complete domination over animals that can overpower individual human beings. Isn't it the case that those animals would most likely at least in some respect contribute to the reasons why the state of nature is so terrifying for humans

¹⁰ Ibid.,198.

in the first place? Animals exist in the state of nature along with humans, and could under normal circumstances hurt individual humans. It is only once we humans as a species work together that we gain the power to dominate every other species of animal on the planet, so why would we owe those animals any considerations based on contractarianism?

Furthermore, Smith correctly finds the exclusion of various humans problematic, but does not do much to resolve the issue. Instead she simply asserts that it cannot be the case that contractarianism would exclude humans from rights protections simply by virtue of their lack of mental capacity, but it is unclear why this is the case. Why is it that contractarianism should necessarily accommodate and include all human beings under its protections when its basis for granting rights does seem to come at a mental cutoff?¹¹ Smith correctly identifies the exclusions from the contract problematic, but does not identify the origin of such concerns.

Exclusions from the contract are byproducts of the contractarian conception of rights. Smith is correct in finding the frequent exclusions problematic, but she is wrong in trying to offer inclusion by simply discounting mental and physical differences. An idea inherent to social contractarianism is that the parties agreeing must have comparable physical and cognitive capacities. The basis for rights under social contractarianism is the capacity to agree to the mutually beneficial terms of cooperation and then act on them. Beings who can meet these criteria are included in the agreement, and beings that cannot meet these criteria are excluded from the protections granted by the contract. They may

¹¹ The cutoff I am referring to is at least some sort of minimal level of rationality below which the contract would not or simply could not provide inherent rights and subsequent protections to an individual.

receive considerations once the contract has been made, but those considerations will not be as comprehensive as the rights granted to the agreeing parties, by virtue of their origins. The agreeing parties get rights and protections *because* they agree to the contract, because they set up the mutually advantageous system of cooperation, and in no small part because the two parties on both sides have equal strength. Beings that do not craft the cooperative system but rather are included by the creators themselves still may have protections, but those protections will be dependent on the motives of the creators of the system to justify the protection.

Smith's motivation to include (some) animals in the social contract is the fact that not including some animals means an inevitable exclusion of some human beings from the social contract. Smith's assumption that all human beings should all be protected under the social contract simply by virtue of their being human seems to violate contractarian conditions for inclusion in the agreement. Under contractarianism, being a human being does not grant someone automatic inclusion into the contract. To ignore this point, or to attempt to explain it away ultimately results in a theory that is no longer clearly contractarian. Parties agree to the contract out of a desire to gain more freedom through cooperation with one another. Such cooperation further decreases the level of fear humans have of one another because they gain protections against the actions of others in exchange for a promise that they too will not harm others. Beings for which humans do not have fear are not included under the contract because nothing is gained through cooperating with them in the way that a contract sets up cooperation, and also because they may not be capable of being held to a contract. Animals cannot be expected

to abide by the contract and not harm others simply because others promise to do the same in return.

Other similar defenses of contractarianism run into the same problem, namely the problem of wanting to include every being into the contract and by doing so, dismantling the very foundations of contractarianism. Brent A. Singer for example argues that it is possible to include some notion of animal rights under Rawls' social contract if the parties under the veil of ignorance do not have a conception of their own species membership.¹² His argument is that behind the veil of ignorance exist rational entities that deliberate on and agree to principles of justice. These entities, however, do not know what their rational, moral, or physical capacities will be in the society they create, meaning they do not know whether or not they will be an animal, or a human being with severe cognitive impairments (or just a typical, non-disabled human.)¹³ This set up will result in the parties creating a system of justice that will not exclude persons with mental and physical disabilities, and it will not exclude other animals.

Matthew Talbert similarly argues for the inclusion of animals in the social contract based on the fact that their rationality is not too different from the "rationality possessed by impaired human beings."¹⁴ He further argues that our placement in society is random, largely circumstantial, and ultimately a product of luck. Parties deliberating have just as much a chance to end up a healthy human being as an impaired human being

¹² Singer, Brent A. "An Extension of Rawls' Theory of Justice to Environmental Ethics." *Environmental Ethics* 10, no. 3 (1988), 222-223.

¹³ *Ibid.*, 223.

¹⁴ Talbert, Matthew. "Contractualism and Our Duties to Nonhuman Animals." *Environmental Ethics* 28, no. 2 (2006), 209.

or an animal, so they will likely choose principles of justice that will not exclude any one with a less than “normal” amount of rationality.

The strongest objection to Brett Singer’s view (and I believe Talbert’s view as well) is that under the traditional mode of contractarianism, rational beings are creating a set of principles for other rational beings. Some humans are not rational beings, and certainly other animals are not rational in the way contractarianism requires. Singer’s response to such an objection is that even rational beings have non-rational aspects to them, and the parties behind the veil of ignorance must take into consideration their own non-rational interests. Singer does not think that the parties would decide on principles that would completely disadvantage non-rational beings (such as disabled persons, and most animals) because such beings, despite being non-rational, share many of the same needs as rational beings, such as access to basic necessities like shelter, food, water, and many others.¹⁵ Talbert similarly believes that since non-human animals differ very minimally (if at all) from non-rational human beings, principles will be adopted that will benefit animals as well, since we must necessarily make principles that will benefit even non-rational, impaired human beings.

Singer and Talbert’s views, though admirable, run into the same problem as Smith’s view. Through changing the requirements too much for what it means to be a party in the original position, Singer and Talbert deviate too far from the original premises contractarianism sets up. Both Talbert and Singer play around with the ideas of chance and the veil of ignorance in regards to what beings we are born into and become. They both try to argue that it is possible that being born an animal can simply be

¹⁵ Singer, Brent A. "An Extension of Rawls’ Theory of Justice to Environmental Ethics." *Environmental Ethics* 10, no. 3 (1988), 226.

accounted for under the veil of ignorance. If that is the case, then it would theoretically solve our problems regarding whether or not to grant animals rights protections. If we do not know whether or not we will be born an animal, then we will not adopt principles that will disadvantage animals. The problem with these arguments is that they stretches the tenets of contractarianism too thin. This is the case because in order to be covered under the contract, a being must be reasonably expected to abide by the contract, or buy into it at least to some degree. Animals (and some severely mentally disabled humans) do not have the capacity to reasonably be held accountable for adherence to the contract. The veil of ignorance is supposed to screen out irrelevant characteristics from the principle-creation process; however the mental capacity needed in order to buy into the contract and the ability to be held to the contract are not irrelevant characteristics, and therefore would likely not be screened out by the veil.

At this point, despite this being a tangential matter, I think it is necessary for me to address the idea of physical disabilities as they pertain to the veil of ignorance. A physical disability would likely be screened out through the veil because a person's physical capacity for movement or other bodily functions plays no role in that person's *decision making process* when it comes to buying into and being held accountable for abiding by the contract. It seems to me that only mental disabilities would be problematic because they do actually impact a person's ability to reasonably hold himself or herself to a contract.

It is important to want to include animals under the social contract, but once we add all humans and animals despite their apparent inability to contribute to the contract, we are no longer in the realm of social contract theory. Smith, Singer, and Talbert all take

it as a given that impaired and non-rational human beings are already necessarily protected under the contract itself. It is far from guaranteed that mentally impaired humans are included under the protections of the contract since they are unable to fully understand and consent to the contract—and perhaps most important of all, they are unable to hold themselves (or others) to the contract. The protections they receive come *after* the contract is made and would likely be granted after the society is already formed.

Since mentally impaired humans cannot be included in the principles of justice, the citizens whose protections are a product of the contract will decide what protections such humans get. While it is possible that mentally impaired humans will end up with very good protections after the society is already formed, it is also possible that they will have little to no protections as well. Such inconsistency and range of possibilities is highly problematic because the protections afforded to mentally impaired humans should not be dependent on the beliefs and actions of other citizens. Rather, their rights and protections ought to restrict others from behaviors that threaten or harm them, even in the event that such actions do not violate any immediate principles in the contract. Strict contractarianism does not allow for the type of additions Smith, Singer, and Talbert advocate, either for impaired human beings *or* for non-human animals. According to Smith, contractarianism is a successful theory for incorporating animals because it limits the scope of our obligation to only animals with which we have a political relationship, but this does not resolve any problems regarding contractarianism's inability to accommodate animals.

Another objection to contractarianism arises from Clare Palmer's analysis of contractarian treatment of domesticated animals. In "The Idea of the Domesticated

Animal Contract,” Palmer argues that the idea of animals’ consenting to the social contract as “free and equal individuals, who understand and consent to the contract,”¹⁶ is simply inaccurate for two main reasons. First of all, there is not an equal amount of power between human beings and the animals they domesticate. Second of all, animals do not possess the cognitive capacities needed to understand the terms of our contract with them and then to consent to it freely. These two facts make it highly unlikely that animals would be viable parties to the contract because they are almost certainly less powerful, and because they have no way of being held to the contract since they cannot understand it.

Andrew Cohen attempts to solve this issue in his article “Contractarianism and Interspecies Welfare Conflicts” by arguing that under contractarianism, some animals can have direct moral status, which he defines as “the status an entity enjoys when moral consideration is owed not merely *regarding* it but also *to* it.”¹⁷ To attain direct moral standing (to possess direct moral status), an entity must either be a participating party in the creation of the original contract, in which case it has primary direct moral standing,¹⁸ or a contractor must insist on such standing and another party must agree to such standing, in which case they have secondary direct moral standing.¹⁹ Since animals cannot consent to the agreement, they cannot have primary direct moral standing. However, animals can, according to Cohen, have secondary direct moral standing. Cohen states that some contracting parties may have preferences that will lead them to want to

¹⁶ Palmer, Clare. "The Idea of the Domesticated Animal Contract." *Environ Values Environmental Values* 6, no. 4 (1997), 417.

¹⁷ Cohen, Andrew I. "Contractarianism And Interspecies Welfare Conflicts." *SOY Social Philosophy and Policy* 26, no. 01 (2008), 234.

¹⁸ *Ibid.*, 235.

¹⁹ *Ibid.*, 236.

extend moral standing to some animals, and cooperation with these parties will lead other individuals to agree to extending some animals moral standing. In other words, the only type of moral standing animals can have will be the product of “third-party demand.”²⁰ If no parties wish to extend moral standing to any or certain animals, then no moral standing will be extended. Nonetheless, Cohen is certain that at least *some* animals will always receive secondary moral standing because some parties will have sympathetic preferences towards those animals.

Cohen anticipates the previous objections I raise with respect to contractarian attempts to include animals. He categorizes the two objections as the contractarian objection and the non-contractarian objection. The contractarian objection states that secondary moral standing cannot be extended to animals under contractarianism because the contracting parties are too self-centered to consider giving other non-agreeing entities moral standing. Cohen’s response to the contractarian objection appeals to his preference argument—that self-interested rational individuals may have preferences that make them want certain animals to be protected (like pets, farm animals, and/or charismatic exotic animals), and they will still be acting in their self-interest when they decide to extend those animals secondary moral standing.

The problem with Cohen’s response using regarding secondary moral standing (and his view’s reliance on preferences) is clearer once we apply it to Rawlsian contractarianism. Under Rawls’ theory, animal rights would still exist derivatively from a contracting member’s much stronger rights. Animals would be granted considerations if and only if a contracting party decided it was important to her to include animals in her

²⁰ Ibid., 236.

deliberation process. Otherwise, animals would not be granted considerations. In other words, Cohen's view does not go far enough. Cohen finds a problem with the fact that only those animals that the parties deem worthy of moral standing will receive moral standing. Many could be left out, and thus would not be owed any ethical treatment. This would create arbitrary distinctions between certain animals, and would only allot protections to animals deemed important by humans.

The non-contractarian objection raises an important point regarding the nature of protections under contractarianism. Animals cannot consent to the creation of the contract, and so their protections will not arise out of the ability to agree. It is up to the parties' discretion whether animals will have protections, which animals will have protections and what types of protections those will be. Any protections that animals *do* obtain are the product of the parties' own self-interest, and if the parties do not choose to grant any protections, then animals are left without any protections at all. Contractarianism cannot grant animals any substantively secure protections because the protections granted are only dependent on the parties' self-interest and their own stronger and more fundamental rights.

Contractarianism does not have any room for a functional and stable conception of animal rights. Any possible protections are party-dependent, and can disappear if the parties wish not to create such rights or if they cannot agree to such rights. There is nothing inherent within animal nature that necessitates that the parties absolutely extend rights to them. Since animals cannot agree to the conditions of the social contract, they are not granted any initial or immediate consideration.

A contractarian system cannot extend foundational, non-derivative rights to animals. If animals are to be granted any rights or considerations under contractarianism, such rights and considerations can only arise out of two situations and neither of those situations allow for a non-derivative conception of rights. If animals receive any considerations under the immediate formation of the contract, those considerations will depend exclusively on the will of the contracting parties. These rights will derive their authority from contracting individuals and will owe their existence to them, rather than to any inherent qualities within the animals themselves. The only other option for animals to receive considerations is for them to receive those considerations *after* the contract has been formed, once the society has already been created. In this scenario, animals' rights will come into existence after the principles of justice have been created, and thus will arise out of principles of compassion. This will necessarily dilute the importance and the strength of such rights and will thus minimize their enforcement power especially when those rights conflict with the rights of the contracting individuals. In both manifestations of rights under the social contract, the protections allotted to animals are consistently inferior to those conferred upon the contracting parties.

Chapter 3: Utilitarianism

Utilitarianism is commonly seen as a view associated with animal welfare, especially Singer's brand of utilitarianism. Singer's *Animal Liberation* is described to be "one of the most cogent, influential, and *effectual* works of applied ethics ever published."²¹ Others go so far as to say that *Animal Liberation* is "the single most influential document in the history of recent movements concerned with animal welfare."²² Given its dominance in the literature of animal welfare, I must explore utilitarianism's conceptual space to see if it could potentially accommodate a more vigorous model of animal rights.

In *Animal Liberation*, Peter Singer lays out a cohesive argument against systematic cruelty to animals. Singer presents a utilitarian perspective on the suffering of animals, which ultimately leads him to advance a position in favor of animal research reform and vegetarianism. As a utilitarian, Singer believes that what is important in determining whether societal conditions are just is seeing whether or not those conditions lead to aggregate pleasure and happiness or pain and unhappiness. Given these criteria, Singer thinks that our society is unjust because it fails to account for the overall suffering of animals. Singer finds it highly morally problematic that human beings do horrible things to billions of animals and use animals as mere means to their ends. Whether we conduct painful experiments on animals that do not actually yield useful scientific data or

²¹ Llorente, Renzo. "The Moral Framework of Peter Singer's *Animal Liberation*", <http://www.ethical-perspectives.be/viewpic.php?TABLE=EP&ID=1168> [5/9/2016].

²² Tayler, Christopher. "A Life in Philosophy: Peter Singer." <http://www.theguardian.com/books/2009/may/23/peter-singer-philosophy-animal-welfare> [5/9/2016].

subject them to immense torture through the food industry, Singer believes our treatment of animals is unjustifiable.

The view that humans somehow deserve more protections/considerations simply by virtue of being human Singer calls speciesism. Singer believes that speciesism is at the heart of our problematic treatment of animals. Just like racism is the belief that people of different races are inferior and therefore do not deserve as many legal and social considerations, and sexism is the belief that women are inferior and therefore do not deserve as many legal considerations, speciesism is the belief that non-human beings are inferior and therefore do not deserve as many legal considerations as human beings. Sexism and racism are wrong because we tend to think that treating human beings differently because of sex and skin color is wrong. Every person is different and there are more likely to be more differences in abilities (whatever those may be) from individual to individual than between individuals of different races and genders.

Many people who believe that human beings do deserve more considerations than animals argue that humans deserve more consideration because of their rationality and resulting autonomy. This idea, however, is incorrect and Singer is quick to point out its weaknesses. First of all, human beings certainly are not equal in their capacities for rational thought. Babies, some very elderly people, and people with certain mental handicaps do not have the same capacities for rational thought as most normal human beings, but are still given the same considerations. This, as Singer points out, is because we tend to think that all human beings deserve to have their interests taken into consideration, regardless of their capacities for rational thought. Once we establish that it is not the abilities of human beings that render them worthy of considerations, we run

into a problem if we wish to exclude animals from the list of beings that deserve considerations. Rationality is not the relevant criterion for determining whether or not it is acceptable to harm another being; rather it is the ability to experience pain and to suffer that is the motivating force behind not harming beings. It is wrong to harm humans (and other beings) because physical pain and its resulting suffering are bad. Not all human beings are rational, but every human being experiences pain and can suffer (but this is also the case for animals). The fundamental issue here is that even though some human beings are more rational/able-bodied/better-endowed than others, their privilege does not grant them the right to exploit other human beings. According to Singer, if that is true for human-to-human relationships, then it must also be true for human-animal relationships as well. Just because animals lack the rationality we typically attribute to human beings, that does not mean we can use them as a mere means.

Singer quotes Jeremy Bentham in explaining why the ability to suffer means we have to take a being's interests seriously. Bentham writes: "Can they *reason*? Nor Can they *talk*? but, Can they *suffer*?"²³ A being's ability to feel pain and to suffer is a precondition to that being's having interests. If it has interests, then by utilitarian standards, those interests *must* be given the same account of consideration as other beings' interests because "if a being suffers there can be no moral justification for refusing to take that suffering into consideration."²⁴ As part of his argument, Singer introduces the principle of equality, which states that no factual differences between two people should justify "any difference in the amount of consideration we give to their

²³ Ibid., 7.

²⁴ Ibid., 8.

needs and interests.”²⁵ This principle of equality can easily be extended not just to human beings, but to animals as well. Just like racists violate the principle of equality by caring more about the interests of members of their race, and sexists violate the principle of equality by giving more consideration to members of their sex, so to do speciesists violate the principle of equality by giving more consideration to members of their own species.²⁶

Singer believes that most people are speciesists because we actively fund institutions and programs that promote incredible animal suffering for reasons that are fundamentally trivial to us. Many people justify their speciesists tendencies because they do not believe animals are able to suffer the same way humans suffer. Singer responds by arguing that animals react in much the same way to pain as humans do. They yelp, whimper, cry out, and attempt to get away from painful stimuli in exactly the same manner as humans. Furthermore, animals have nervous systems extremely similar to our own so we have to assume that their nervous systems function in very similar manners as ours. In fact, many if not most animals have far better developed senses than ours, and so their capacity to experience pain can surpass ours.²⁷ For example, animals with more advanced senses of hearing can experience more profound levels of hearing-related pain. However, while seemingly important, this point does not really matter in the scope of Singer’s claim. What matters is the sole fact that the being is capable of experiencing suffering in the first place, and the amount of suffering that is being experienced.

²⁵ Ibid., 5.

²⁶ Ibid., 9.

²⁷ Ibid., 11-15.

Despite the simplicity and power of Singer's argument, not all philosophers working in the area of animal rights are convinced by his claims. Like a true utilitarian, Singer's motivation in arguing for better treatment of animals is to reduce the amount of suffering in the world. He believes that we currently do not take animal suffering into consideration when making our calculations about what the aggregate happiness is, and that is a huge mistake since animals are capable of suffering in many of the same ways that humans suffer.²⁸ Nussbaum rejects the utilitarian argument in favor of animal rights for several reasons. First of all, she argues that utilitarianism could justify enslaving or torturing a few for the benefit of the many, because the only concern of utilitarianism is aggregate happiness. Furthermore, utilitarianism can promote hedonism, and create overindulgence in pleasure, when some types of suffering are indicative of 'goodness,' such as acts of altruism and grief for loved ones (since they indicate a deeper sense of love and commitment).

Utilitarian theories can be identified through their move to increase the net amount of utility in a given society. This ethical view does not focus solely on the individual being, but rather on society as a whole. The actions that should be done are those that will increase the amount of utility in a society. An increase in utility can be attained in one of two ways. First, average happiness or pleasure can increase. Under this version of utilitarianism, those actions that increase the average amount of happiness should be adopted. The second version of utilitarianism maintains that the average amount of suffering should decrease. Under this version of utilitarianism, the actions that decrease the net amount of suffering should be done. Singer's branch of utilitarianism can

²⁸ Ibid., 15.

be categorized under the second version of utilitarianism because he is exclusively concerned with bringing down the net amount of suffering in the world

If we grant the utilitarian that his view regarding animal considerations is about minimizing suffering, rather than increasing pleasure, we can respond to Nussbaum's first objections. We do not have to fear the view leading to hedonism, and we will not choose to torture a few animals to increase the pleasure of everyone else because torture leads to suffering, and that is precisely what we would be trying to avoid. Focusing on diminishing suffering, however, does not solve all of the utilitarian's problems.

Nussbaum identifies some further objections to the utilitarian perspective.²⁹ She argues that under utilitarianism, it is still possible to have other considerations outweigh the suffering we are trying to prevent. Her examples include millions of people's happiness going down as a result of not being able to see a few circus animals perform anymore and she questions whether or not a utilitarian could actually justify enforcing strong enough protection against such instances and safe-guards in a way that satisfies the utilitarian principles of bringing down the net suffering. She is skeptical, and so am I.

Imagine the following scenario: three hundred people attend a circus to see three circus animals perform. The animals suffer as a result of being forced to perform in the circus, however, all of the circus goers gain happiness and pleasure from seeing the animals perform. We can reasonably assume that the animals experience a great deal of suffering as a direct result of performing in the circus, and we can also reasonably assume that the people in the audience at least gain at least some amount of pleasure from seeing the animals perform. Even if the three animals experience extreme suffering, a utilitarian

²⁹ Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*. (Cambridge, MA: Belknap Press, 2006), 345.

like Singer would have to prove that the animals' suffering somehow overshadows the pleasure of the people collectively gained by attending the performance. This is hard to do especially if we imagine a large crowd watching the performance, because it is hard to see how the suffering of three beings would outweigh the overall utility in the room given three hundred happy viewers. There are two situations we can compare to one another: in one, the audience attends the circus and each person gets some pleasure out of seeing the animals. Let us say that each person gains +10 utility units from watching the animals perform, which gets us +3000 utility units total if we multiply by each audience member. The animals really suffer by being forced to perform and let us say that each animal gets -100 utility units, which gets us to -300 utility units on the animals' side. When we add the two final numbers together, we still get a positive number +2700. In the second scenario, the animals do not perform and the circus-goers do not get to see a performance. In this scenario, each animal gets +20 utility units, which when multiplied by 3 gets us +60 utility units. Each audience member gets -5 utility units because they are upset that they missed out on seeing a performance. When multiplied by 300, the net number for the circus-goers becomes -1500 utility units. The net transaction value in this scenario ends up being -1440 utility units. The result is one in which a utilitarian such as Singer would end up having to endorse the situation in which the animals are forced to perform because the least amount of suffering seems to occur when the animals have to perform.

It just does not seem likely that the suffering of a few hundred circus animals will somehow outweigh the immense joy felt by millions of circus-goers, and it does not seem likely that the happiness of those circus animals will together outweigh the mild 'suffering' experienced by all of the people who will be disappointed in not seeing the

animals perform. Nonetheless, in order to protect the interests of animals, we need a view that is committed to bringing down animal suffering even when there may be backlash from unhappy humans.

Singer emphasizes the importance of taking animal interests into consideration, and he advocates for doing a lot more than we are currently doing to help reduce animal suffering. While this is hugely important, Singer does not want to talk about rights in his discussion of animal consideration. Like most utilitarians, Singer is hesitant to argue for an extension of rights to animals because he does not want to make the considerations so permanent, that other considerations could not outweigh them. Utilitarianism inherently values the fluidity of considerations and expects some considerations to outweigh others if such actions will increase the aggregate happiness or utility.

Human beings have many rights, and those rights are outlined in various documents such as the United States Constitution. These rights are popularly thought of as being inalienable, meaning they cannot be modified, taken away, or given away. We treat each other and build our society on the basic foundations these rights create for us because these rights outline what we can and cannot do to other human beings. We are punished when we violate other people's rights, and many institutions are set in place so that people are able to protect their rights. Singer's bold attempt to raise our awareness of animal suffering means little if the animals he advocates for do not gain actual protections. Protections for animals can only be formed if we decide that they, like us, are deserving of rights; otherwise, we cannot justify extending them more protections than they already have. (We arguably cannot even justify their current protections without an appeal to rights) Sure, it is conceivable that we could as a society decide to extend many

more considerations and protections to animals: however it would be extremely difficult to enforce such a change in cultural perception. If implementing changes that extend more considerations and protections to animals end up causing more total suffering, then the utilitarian would have a lot of trouble justifying the enactment of such changes. The changes Singer wants us to implement in regards to animal welfare cannot occur consistently through an exclusive appeal to utilitarian principles because such consistency is antithetical to utilitarianism.

If we just advocate for animal considerations to be taken seriously without changing the status of animals, we will never truly be able to justify curtailing human freedoms in order to create the changes we want to see. Singer advocates for adopting vegetarianism and ending cruel and unnecessary research practices, but how can he enforce those changes once they are put in place? Changing these practices in the way he wants would likely require very large attitude shifts. What justifies this? Is it utilitarian principles of minimizing suffering? If so, how are we to enforce it? If animal considerations “whatever that may practically mean” are to interfere with people’s considerations, then animal considerations will often times lose, and this is the real issue with Singer’s view. The policy and attitude changes that Singer advocates for are on point. Every bit of evidence he presents in his argument for decreasing the suffering of animals leads to the correct conclusion, but his inability to move past the language of “considerations” takes away any substantial enforcement powers.

All throughout his book, Singer expresses frustration at the fact that despite attempts to end cruel practices, nothing seems to change even after legislation is passed to curtail the problematic practices. But it is hardly surprising that attempts to stop animal

cruelty fail when they so clearly interfere with human capacity to conduct experiments or create factory farm environments that increase meat production quickly and cheaply. Unless we incorporate rights-talk into the equation, and unless animals are finally recognized as beings for whom (as individuals, not as sums) things can be good and bad—beings who can suffer, and as a result, beings with interests—nothing will change in their treatment. To see *real* change in animal welfare practices, we need to stop appealing to human kindness and power of will (as Kant and arguable Singer do) to stop cruel practices because this will not create change quickly enough and the change created will not be on the scale we need. Real change will not occur until animals are recognized as beings with interests that are important to protect through rights. I am not proposing anything new, because this is exactly what happened with other groups of humans in this country not too long ago. Not all human beings were presumed to have equal interests to one another, and it was the adoption of certain crucial rights that we began to recognize the inherent equality of all humans. Before such changes were made, some human beings were assumed to not have certain inherently human interests. For example, it was only once we as a society decided that human beings had fundamental rights not to be enslaved that we were able to adequately protect the relevant considerations possessed by people. If such rights did not exist, certain considerations would outweigh people's individual interests not to be enslaved, this resulting in a multitude of injustices. The reason we implement rights is because we recognize that some considerations fundamentally outweigh others, and must be protected even though average happiness or utility could be *increased* if those considerations were not always protected. This, however, is not something that utilitarianism can accommodate, because a central tenet of

the view maintains that only the actions that increase the average utility (or decrease average suffering) are just. This is the case even when such actions might disadvantage one individual for the benefit of many others.

Utilitarianism (at least Singer's brand of it) grants animals initial considerations based on the fact that they can suffer. Since animals can suffer in ways similar enough to the ways human beings can, their suffering will matter, and it will matter alongside human suffering. According to Singer, all beings that can suffer must receive consideration. But does receiving consideration mean that animals will be granted rights? Like many utilitarians, Singer is wary of granting any being rights since utilitarianism requires a great deal of fluidity to accommodate for changes in net happiness or suffering. At first glance, his willingness to grant seemingly equal considerations looks like a step towards the right direction, but as I discuss below, it does not go far enough. Utilitarianism can provide animals with considerations, but it cannot grant them rights. This proves to be problematic because considerations can be outweighed by other considerations, and thus such considerations offer no substantively permanent protections. Furthermore, individual beings are not protected by virtue of any special property they possess, but rather, by virtue of the fact that total utility (lack of suffering, according to Singer) is prioritized over any one individual being's considerations.

Chapter 4: Korsgaard's Kantian Ethics

Unlike utilitarianism, which seeks to increase utility in a way that also entails ruling out definite and lasting protections to individuals, Kantian ethics grounds moral value in an individual's capacity for autonomous action and seeks to advance this ability. The Kantian focus on individual autonomy allows for a more nuanced approach to providing protections to individual beings, as the Kantian is not committed to maintaining an aggregate level of happiness like the utilitarian is.

Christine Korsgaard adopts a Kantian approach to moral obligation. According to Kant, humans are ends in themselves because they create laws for themselves and act according to them. Once we are certain that we value our own individual humanity in this way, due to the publicity of reasons and for the sake of consistency, we must also value other people's humanity as well. Korsgaard argues that we can also be obligated by others to do things, not just by ourselves and to act on a given reason is "to act on a consideration whose normative force may be shared with others."³⁰

In her exploration of normativity, Korsgaard describes the process by which human beings justify any and all actions, and make up their own identities. Human beings are comprised of two "selves" that operate together—the acting self and the thinking self. The thinking self acts as a lawgiver unto the acting self. It provides reasons for the acting self to carry out certain actions that cohere with its identity, and by doing so engages in a process called reflective endorsement. One's active self continuously strives to adhere to

³⁰ Christine Korsgaard. *The Sources of Normativity*. (Cambridge: Cambridge University Press, 1996), 136.

the will of one's thinking self, because by doing so it maintains consistency with its other various identities. Morality arises when one takes one's identity as a human being, inserts that identity into the process of reflective endorsement, and then endorses it. We provide ourselves with reasons to act that cohere with our identities as human beings, and in turn we end up valuing our own individual humanity.

Since we value our own individual humanity, we must extend that value towards the humanity of other human beings as well. This extension ultimately grants our reasons normativity and moral weight. Korsgaard is able to make this extension from valuing our own reasons to valuing the reasons of others based on the public nature of language.

According to Wittgenstein, there is no such thing as private language because language by its very own nature is inherently shareable. By verbally addressing another human being, we automatically provide her with reasons for acting in a certain manner.

Korsgaard writes, "It is because I am a law to you. By calling out your name, I have obligated you. I have given you a reason to stop."³¹ Furthermore, when people are interacting with one another, they are not simply providing their own reasons, they are actively "reasoning together; to arrive at a decision, a single shared decision, about what to do."³²

Korsgaard believes that pain itself is shareable and therefore public because language and reasons are shareable and public. In fact, she introduces that idea in *Sources of Normativity* to show exactly how reasons are public. Pain, according to Korsgaard, is the perception of a reason, and since reasons are public, so is pain. Part of our nature means valuing our identity in a way that leads us to react negatively against sensations

³¹ Ibid., 140.

³² Ibid., 131.

“we are inclined to fight”³³ and pain is one of those sensations. In other words, the ‘badness’ of pain is found in our natural inclinations to fight the sensation. This explanation accounts for us treating physical pain and various types of emotional pain in very similar fashions. In a sense, they are similar because we are naturally inclined to “revolt against them”³⁴ in the same manner.

Korsgaard’s view of pain also extends beyond just duties towards other humans. Since animals can experience pain and we can perceive pain-behavior in them, when we see animals in pain, we are given reasons to try to alleviate their pain. Animals, just like human beings, value their own identity, and when something threatens their identities, they too experience pain as their alert mechanism. All living things care about their physical identities, and therefore have an interest to protect their physical well-being. The main difference between living things in general and human beings is that in addition to caring about their physical identities, human beings have practical identities³⁵, and in order to preserve those identities, they obligate themselves to act in certain manners. The difference between human beings and other animals, then, is that animals are *only* capable of “unreflective rejection”³⁶ of threats to their identities, while human beings are also capable of reflective rejection of threats to their identity through the process of

³³ Ibid., 147.

³⁴ Ibid., 148.

³⁵ Practical identities refer to the identities a person adopts based on her values, desires, and preferences. For example, a practical identity may be as comprehensive as being a college student, a professor, or a parent. However, a practical identity may also be something as simple as “someone who enjoys classical music.” We obtain and maintain our practical identities through engaging in repeated acts of reflective endorsement and rejection of actions and behaviors.

³⁶ Ibid., 150.

reflective endorsement.³⁷ Pain leads to a perception of a reason, and once we perceive the reasons and endorse it, we end up with an actual reason, since it is not the case that a being can experience pain without being aware of it. When a creature is feeling pain, it is aware that it is experiencing pain and that the experience is a negative one that needs to stop. In this sense, animals have reasoning abilities just like humans in that they recognize what is good for them and what is not good for them, though they do not recognize either in a reflective way. Since other animals are able to feel pain and suffering, and since pain is “intrinsically normative” for them,³⁸ animals should have moral standing. In the context of publicity, by virtue of our human nature, we should care that animals experience pain and suffering because their reasons transfer to us and act as reasons for us as well.

Korsgaard continues by saying that when we feel sympathy towards another living thing, the feeling is caused by a need to alleviate the suffering we are observing. In other words, pity or sympathy is the manifestation of a reason to help another living being when it is in pain. Korsgaard also appeals to the Aristotelian notion of what human beings are, which is the belief that morality is simply the form that human life takes³⁹ and

³⁷ Reflective rejection occurs when an action or behavior would violate a person’s practical identity. For example, a student would reflectively reject not doing her homework because not completing an assignment would jeopardize her practical identity as a student. Further, the student would reflectively endorse doing her homework because that would preserve and advance her practical identity as a student (assuming she takes this identity seriously, and cares enough to cultivate it.) An unreflective rejection of a threat to one’s identity only applies to threats to one’s physical identity, and can also be thought of as instinctual responses to painful stimuli. Unreflective rejection serves the function of protecting a being’s physical identity against harm.

³⁸ Ibid., 145.

³⁹ Ibid., 152.

even if animals do not have a system of morality, they have physical identities that they are essentially programmed to protect.

Korsgaard argues that even though we have obligations to animals, it seems as though they do not have obligations in the same sense to us because they do not “construct or endorse their identities”⁴⁰ and therefore are not able to reflectively endorse reasons we may present to them to act in the same way we do in the presence of reasons. However, the relationships we have with many domesticated animals seems to resemble very closely what Korsgaard defines as normativity, and from the first person perspective, such relationships are normative. For example, the relationship an owner has with her dog is one of normative obligation. When one is looking at the situation from an outside perspective, of course it seems to be just a power relationship, but to see the situation from the dog’s perspective (and from the owner’s perspective), the relationship is a normative one and it is essentially one in which the dog is following the owner’s law and the owner takes the dog’s reasons to be her own.

In her essay “A Kantian Case for Animal Rights,” Korsgaard attempts to argue that Kantian philosophy can actually be conducive to the idea of moral rights for animals. This task is difficult because Kant himself explicitly argued that animals are mere means to human ends. Furthermore, Kant believed that humans realized that other humans are to be treated as ends when we realized animals did not have to be treated as ends.⁴¹ Rationality is the “normative capacity, grounded in the unique human ability to reflect on the reasons for our beliefs and actions, and decide whether they are good reasons or bad

⁴⁰ Ibid., 157.

⁴¹ Christine Korsgaard, "A Kantian Case for Animal Rights - Harvard University." <http://www.people.fas.harvard.edu/~korsgaard/CMK.Animal.Rights.pdf> [5/7/2016], 4.

ones.”⁴² This is not the same as a higher degree of intelligence, so even the most intelligent animals on Kant’s account do not possess rationality, are not autonomous or free, and therefore are not ends in themselves.

Korsgaard nevertheless believes Kant’s philosophy lends itself to support the case for animals’ having moral rights. We are obligated not to interfere with other individuals’ rights to have control over themselves and we are not allowed to use other people as mere means to our ends,⁴³ which means we must treat people in a way that respects their autonomy and self determination. Rational beings, according to Kant, cannot decide to pursue an end until they themselves have decided it is a good idea to do so by reflectively endorsing the action,⁴⁴ and this is the self-consciousness that is necessary for a creature to possess the type of rational choice required to be considered an end in itself.⁴⁵ When a being is considered to be an end in itself, that means that the being in question has inherent value. So, according to Kant, a rational being’s capacity for moral choice is what makes her an end in herself. A person can regard another person as an end in himself in the active and the passive way.⁴⁶ Actively, you see the person being able to place you under an obligation. Passively, you have an obligation to treat the person’s ends/things that are good for them as good absolutely, meaning you must *also* endorse their reasons just as they would. This idea, according to Korsgaard, does not necessarily mean that rational choice presupposes that only humans are ends in themselves. In fact, it can just mean that rational beings in general are ends in themselves and have inherent value.

⁴² Ibid., 5.

⁴³ Ibid., 6.

⁴⁴ Ibid., 7.

⁴⁵ Ibid., 8.

⁴⁶ Ibid., 10.

Since we are not *just* rational beings, and animals are certainly rational in some capacities, we may be able to include them in the list of things (along with us) that deserve moral rights at least.⁴⁷

Korsgaard goes further to pose a question: are we valuable because we can will laws, or are we valuable because we are the types of beings for whom things can be good or bad? She thinks that Kant would choose the latter (as she does herself in *Sources of Normativity*), and if he does, then he absolutely would have to include animals as possessing value because animals are also creatures for whom things can be good or bad. We do not just passively want something and hope that it comes to us. When we want something, we take steps in getting it. When you choose to do something, you bind your future self to fulfilling that desire, which makes you an active agent. Animals, like people, understand when something is good or bad for them and they take measures to avoid bad things and go to good things. In this sense, they are different from other things we often associate with human ownership like cars or computers. For example, when a car is experiencing something detrimental to it, it cannot avoid the object that is causing it harm, and in that case it is simply a passive object.

For Kant, the duty to treat animals well is an extension of the underlying duty to human beings, and not a duty to animals themselves. This is the case because showing kindness and compassion to animals helps cultivate and refine these traits for use with human beings.⁴⁸ A person must act decently towards animals because she has a duty to act decently towards other humans, and chances are that if she does not treat animals well, she will be ill-prepared to treat humans well. Treating animals well is actually a

⁴⁷ Ibid., 10.

⁴⁸ Ibid., 14.

duty to other human beings because the treatment of animals trains one's character. Under Kant's view, the lack of duty to animals for their own sake results from the reciprocity argument, which states, "human beings have either no duties at all, or no duties of justice (i.e., duties associated with rights), to the other animals, because such duties depend on relations of reciprocity."⁴⁹ However Korsgaard thinks that we can interpret Kant's argument in another way. She reads it as saying that since we think all beings for whom things can be good or bad ought to be treated as ends in themselves, even if animals cannot directly force us "through their wills"⁵⁰ to treat them well, they can force us by virtue of their nature. This is the case because animals are creatures for whom things can be either good or bad. Since animals are creatures for whom things can be good or bad, and we must treat such creatures as ends in themselves, we must treat animals as ends in themselves. According to this idea, "every act of our own will commits us the view that such beings are ends in themselves, and as such are laws to us."⁵¹

According to Kant's own philosophy, it is not that humans are given the world to do with it what they please, but rather our membership in the human species arises out of the randomness with which we find ourselves situated on the planet. Korsgaard writes "The right to be where you are is an aspect of your right to control over your own body, since it means that in the absence of prior claims, no one has a right to force you to move on."⁵² The thing is, other beings such as animals are in the same exact situation as us. They end up on this planet by chance and they too have the right to be wherever they end

⁴⁹ Ibid., 16.

⁵⁰ Ibid., 18.

⁵¹ Ibid., 18.

⁵² Ibid., 23.

up—just like us. The earth is common ground not just for humans, but for other animals as well and although we may be the only creatures who “conceive of their situation in these normative and moral terms”⁵³ it does not follow that we are necessarily the sole beneficiaries of these types of rights. If anything, given our own rationality we must understand the opposite, namely that other animals are also entitled to rights that protect their freedom “to use [their] own bodies to carve out some sort of a decent life in the world where [they] find [themselves].”⁵⁴

According to this practical notion of rights, the world does not actually belong to anyone, and the relationship we have to animals is not “a form of rightful ownership.”⁵⁵ We simply hold a lot of disproportionate power over them. This power relationship should not just be accepted as is. It can and should be questioned because it relies upon what looks to be an arbitrary metaphysical or religious idea. Under Kant’s philosophy, such ideas cannot be blindly accepted. The power relationship we have with animals is one of “unilateral domination over the other animals.”⁵⁶ Korsgaard concludes her article by saying that in order to diminish such total control over animals, we must offer them some protections because they are beings (like us) for whom things can be good or bad and to whom “the world and its resources belong.”⁵⁷ Korsgaard believes that Kant’s philosophy lends itself to the idea that human rationality (despite being a sophisticated feature of humanity) does not mean we are to be the universally favored organism.

⁵³ *Ibid.*, 23.

⁵⁴ *Ibid.*, 23.

⁵⁵ *Ibid.*, 24.

⁵⁶ *Ibid.*, 24.

⁵⁷ *Ibid.*, 25.

Korsgaard explores a key similarity between human beings and animals, namely that they are both beings for whom things can be good or bad. Specifically, we are creatures for whom not only can things be good or bad, but who can also recognize the goodness and badness of our given predicaments. Just like human beings, animals that are suffering from emotional or physical distress actively try to end their distress through options available to them. When they recognize pleasurable stimuli, they, like us, recognize the goodness of their situation and they try to remain in a positive state for as long as possible. This is a contrast between the ways plants react to things that are good or bad for them. A plant does not have the same available mechanisms to react to things that are good or bad for them. If a plant is being cut down or damaged, there is little it can do to stop the harm.

This idea of beings for whom things can be good or bad and who can actively influence the course of their lives is similar to Nussbaum's idea of species-dependent flourishing. According to Nussbaum, different species require different needs to be met in order to live a dignified life. Korsgaard interprets Kant's philosophy in a way that allows it to accommodate better protections for animals under the notion that all beings for whom things can be good or bad should have certain freedoms that can only be protected through certain rights. Nussbaum has a similar view regarding animals rights in that she thinks that animals should have the right to be able to flourish according to their species-specific needs. This is analogous to Korsgaard's assessment of what it is like for something to be good for an animal. For example, animals requiring external heat to regulate their bodily temperature will (in the wild) look for spots that are hot enough for them to bask upon. Under Korsgaard's assessment, these animals recognize that a warm

environment is good for them, and they will seek it out. They know that very cold temperatures are bad for them so they will avoid them whenever possible. In captivity, animals that need external heat sources to survive must have those heat sources provided for them—it is their right because if they had their own way, the animals would go and find such heat sources. Nussbaum's approach would lead to the same conclusion because reptiles are unable to flourish and live a dignified life unless their needs for heat are met.

What we see from this discussion is that both Nussbaum's and Korsgaard's views regarding what qualifies animals protections lead to similar practical outcomes. It is clear that Korsgaard's theory could accommodate a practical conception of animal rights, even in a rudimentary sense. By addressing the possibility of individual beings possessing value worthy enough to merit certain protections, Korsgaard opens up conceptual room for a scheme of animal rights.

Chapter 5: Singer v. Korsgaard

At first it may seem that the difference between Korsgaard's theory of pain and Singer's utilitarian conception of suffering are not too different from one another. After all, both theories use pain and suffering as their foundation for extending some sort of consideration to animals. The important similarity appears to be that they argue for views that at the very least acknowledge the fact that animals can experience pain, and that their ability to experience pain means they can suffer and that this suffering matters and should matter to us.

As I have mentioned before, I believe that only two out of the four theories I explore have the room to accommodate a system of rights for animals. Those theories are Nussbaum's capabilities approach, and Korsgaard's Kantian ethics. So the crucial distinguishing question is if Korsgaard's theory is so similar to Singer's utilitarianism, why can Korsgaard accommodate a system of right for animals, while Singer is not able to extend that same accommodation?

Singer is a utilitarian, and as such believes that the correct actions are the ones that minimize the total amount of suffering. Utilitarian considerations may vary from theories that advocate maximizing utility (happiness) to theories that focus on decreasing the amount of suffering and pain. In Singer's case, he happens to choose the second option. He asserts that animals certainly are able to feel pain and are able to suffer in much the same way human beings feel pain and suffer.⁵⁸ Since animals are able to suffer, we must not forget to include their suffering under the net calculations of suffering that

⁵⁸ Singer, Peter. *Animal Liberation* (New York, NY: HarperCollins Publishers, 2002), 6.

exists in the world. Not including animals as beings that are suffering distorts the total amount of suffering in the world, and as a utilitarian, he has a problem with that. Furthermore Singer is a firm believer that not including animal suffering into utilitarian calculations of suffering amounts to speciesism, which just another form of problematic prejudicial treatment. Speciesism, like other forms of prejudiced treatment of certain beings, only serves to distort the numbers of beings that actually experience suffering. Singer's claim is that just because animals do not belong to the human species does not mean that they are somehow excluded from experiencing pain and suffering. This being the case, we must take into consideration their suffering as well. According to Singer, the simple fact is that animals suffer, and as beings who suffer, they experience suffering as a direct result of human actions—actions, that technically speaking do not increase utility as much as would be necessary to somehow offset the amount of suffering those human actions create in animals

The basis for Singer's argument is the fact that actions and policies should aim to increase the net utility (happiness) and decrease the net amount of pain and suffering. The process of calculating the net utility occurs by taking all of the individual amounts of pain and happiness, adding them together, and seeing whether we end up with a net positive or negative amount of utility. Singer's particular brand of utilitarianism aims to decrease the net amount of suffering. By virtue of that fact, he advocates for adopting and implementing policies that decrease suffering and increase utility and happiness.

Singer identifies two practices that he believes to be problematic in that they lead to an overall net increase of suffering. Those practices are the use of animals for many different and often obscure research procedures and factory farming practices. Singer

takes issue with using animals for all sorts of research because much of the research conducted on animals actually has little to no benefits for human beings.⁵⁹ Furthermore, many experiments that are conducted on animals do not actually produce results that are viable enough for scientists to learn anything from.⁶⁰ Singer cites a 1988 report issued by the Department of Agriculture that stated that experiments were conducted over 1,600,000 animals. These numbers did not include all species of animals used in such research (including no mention of mice or rats, which are used extensively) and further included that at least 90,000 of the animals continued to experience pain in these researches. For Singer, these numbers are extremely distressing. They are so problematic because he believes that the continual suffering inflicted on research animals does not outweigh the benefits that such research produces, and therefore, the result is net suffering.

Singer also believes that factory farming is wrong because the gains it produces are outweighed by the suffering such a system causes. “Over 100 million cows, pigs, and sheep are raised and slaughtered in the United States alone each year; and for poultry the figure is a staggering 5 billion.”⁶¹ He outlines in great detail the cruel practices of the factory farm industry. Ultimately Singer argues that human beings should make the individual decisions to stop eating meat for two important reasons. First, the industry inflicts a lot of suffering onto animals; and second (and a point that is inseparable from the first), the benefits gained from the industry seem not to outweigh the suffering faced by the animals. Sure, humans get to enjoy meat, but that enjoyment appears not to

⁵⁹ Ibid., 57.

⁶⁰ Ibid., 45.

⁶¹ Ibid., 95.

outweigh the suffering such a system inflicts on the animals we eat. In fact, our ability to continue engaging in such a practice occurs because we distance ourselves from the animals that die so that we can enjoy meat. We engage in speciesism and a sort of willful blindness in order to preserve the problematic system of factory farming.

Singer brings up valid points regarding the nature of animal suffering in the world. He proposes meaningful change in animals' favor. The problem with his view is the foundation upon which it is built. What exactly warrants the stopping of cruel research practices? Why should humans make the choice to stop eating meat? Is it because the animals have an inherent right not to be harmed? Not on Singer's view. It is because the practices we implement happen to create more suffering than they create happiness or utility. If they didn't, then presumably we would not have to change our practices. For example, if a group of humans enslaved a dairy cow and forced her to produce milk for them daily against her will and restrained her so that she could not escape, would the actions really be problematic? Maybe if there were only two or three humans. But how about ten or twenty? At what point would the utility they gain outweigh the suffering of the enslaved cow? Theoretically, if we could come up with a scenario where the humans' utility greatly outweighed the cow's suffering, Singer would have to allow it. If the research conducted on animals consistently produced outcomes that increased human utility so much so that it outweighed the suffering of the animal test subjects, such research would not be problematic.

The problem with Singer's theory is that while it focuses on total suffering, it focuses on it *exclusively*, a consequence of which is that he does not focus on the *individual* experiencing the suffering. While this does lead Singer to advocate for some

important reforms in terms of animal research and factory farming, it could just as easily lead another utilitarian to advocate for some very problematic practices. In other words, creative enough individuals could come up with scenarios and policies that decrease the amount of net suffering, while simultaneously allowing beings to exist in pain. Such can be the case in zoos. zoos need not contain large numbers of animals. If a few animals kept in zoos are beaten and starved into submission, or are not provided adequate care, does their suffering outweigh the pleasure experienced by the millions of people that eventually get to see them? It's hard to say, but the main point is that it is entirely possible that it wouldn't, and in that case, nothing would be fundamentally wrong with this situation from a utilitarian perspective, and therefore change would not be warranted. The problem ultimately is that utilitarianism, for all of its beneficial characteristics, still allows for some individuals to be sacrificed for the greater happiness of a larger group of others, and that even includes individual animals.

Despite arguing for the termination of cruel practices such as unnecessary research and factory farming, Singer cannot advocate for an extension of rights to animals because the farthest a view like his can go is to advocate for an extension of due consideration. Singer relies on only one principle to make his conclusions. "The conclusions that are argued for in this book flow from the principle of minimizing suffering alone."⁶² This principle is not concerned with the particular individuals that are suffering, but rather in net overall suffering. If one hundred children could be made happy by seeing one polar bear in a zoo animal despite its suffering, it is very hard to see what problem a utilitarian like Singer would find with this policy. Sure, if there were one

⁶² Ibid., 21.

hundred animals performing in the circus, then he would argue that their suffering would outweigh the displeasure of the children. Instances such as the ones outlined above can occur under Singer's utilitarianism (and indeed, under utilitarianism in general) because such a view does not attach any weight on the individual being, but rather only to the suffering itself (as it is situated in an overall landscape of all beings capable of suffering.)

Korsgaard's view, despite also focusing on pain and suffering as the starting point does not exclusively prioritize the suffering itself. Rather, Korsgaard cares about suffering and pain insofar it is a public phenomenon. According to her theory of normativity, pain provides us with reasons to act. The important thing is that it does not matter what type of pain and what being the pain belongs to. When we see human beings exhibiting pain behavior, we are motivated to act in a way that alleviates their suffering in much the same way as when we see an animal exhibiting pain behavior.

Human beings are different from other animals in that our rationality allows us to engage in a process of reflective endorsement. This process allows us to create and maintain our practical identities. By reflectively endorsing our own actions, we choose those actions that will best cohere with the identities we choose to have. Other animals are incapable of such reflective endorsement because they only have physical identities to worry about. Animals unreflectively reject⁶³ threats to their identity to which they are alerted by pain. Humans do this too, but they also can override and reason past some apparent threats to their identities. Further, they have added practical identities they must protect as well (through engaging in reflective endorsement).

⁶³ Christine Korsgaard, (*The Sources of Normativity*. Cambridge: Cambridge University Press, 1996), 150.

When a person experiences pain, she is immediately aware of a perception of a reason to do something that will likely alleviate the pain. Pain exists as a signal that alerts an individual that something is wrong and that her physical identity is in danger of being harmed. Pain triggers a “*perception that you have a reason to change your condition*”⁶⁴ and in that case, all pain is normative. Normativity dictates reasons for why we ought to do things, and when pain makes us perceive a reason to stop the pain, it acts as a normative force on us. For this reason, we feel as though we must change our condition to alleviate our own pain when we experience it (unless we have countervailing reasons to keep our condition as it is.) When we see other human beings in pain, we are provided with a reason to stop their pain. Finally, when we see other animals in pain, we are also provided with a reason to act in such a way that alleviates their pain. The reason Korsgaard is able to make the stop from us caring about our own pain to caring about the pain of other humans and animals is because our shared valuing of our physical identities is what allows us to see other beings’ pain as reasons to help them. We intuitively feel sympathy for other humans *and* animals that we identify to be in pain because we take their pain as a reason for us to change the beings’ predicament in a way that will lead to an alleviation of its pain.

Korsgaard believes that by virtue of sharing our need to protect our physical identities with animals, we are provided with reasons to alleviate their suffering when we see evidence of it since their pain provides us with reasons to act. By valuing our own physical identities, we also value the physical preservation of animals and when they exhibit pain behavior, because we know their physical identities are at risk.

⁶⁴ Ibid., 148.

Korsgaard's theory allows for an accommodation of a theory of animal protections and even the possibility of a theory of rights because she already believes we have reason to value animals' physical identities. Seeing suffering animals and feeling as though we must help them is an indication that there exists something inherent to the animal that is valuable enough that ought to be protected. Unlike Singer's view, which focuses exclusively on the minimization of suffering as a whole, Korsgaard uses the idea of suffering as a way to highlight the way in which we value the identity of other beings. She can accommodate a conception of animal rights because the normativity of pain will always give human beings strong perceptions of reasons to alleviate the pain, even if we then choose to reject those reasons. Singer's account of suffering only mandates that we minimize suffering in the net amount, while Korsgaard would find the infliction of suffering in any circumstance wrong, even in scenarios where that suffering was overshadowed by the happiness and utility it brought. Suppose we take the zoo example from earlier. Recall that in this example, we have one zoo animal being kept in inhumane conditions, but one hundred children get to enjoy seeing the animal. I argued that according to Singer's utilitarianism, we could potentially end up in a situation where no problem would be found with the zoo even though one animal was suffering, because there would not be a net amount of suffering. The considerations granted to the children and their increased happiness would drastically outweigh the suffering inflicted on the animal performing, and so the situation would not be problematic. By comparison in Korsgaard's view, the suffering of the animal would serve as an immediate reason for people to change the situation in a way as to provide relief to the animal, because the animal's valuing of its own identity would normatively affect us human beings. Other

secondary reasons must be provided to then ignore the animal in pain, but the first immediate reaction would be to try to help the animal out of a recognition that pain in an animal that experiences pain the way we do is bad for them the same way it is bad for us, even though the net amount of utility in the zoo scenario described here may greatly outweigh the animal's pain.

Korsgaard's theory can accommodate a system of rights and protections for animals because it acknowledges the importance that an individual animal places on its own physical identity. An animal values its own physical identity and that value is normative for us because we value our own physical identity in the same way. Her view, unlike Singer's, accounts for the feelings of pity many humans have towards one suffering animal even though they could just as easily go on with their lives and outweigh the animal's suffering with their collective happiness. Her view shows that there is something intrinsically motivating about an animal in pain, and it is not just the suffering itself, but rather the effect that the suffering has on the individual animal (which has an intrinsic value in virtue of its valuing itself) that is the problem in need of being addressed.

Chapter 6: Nussbaum, Capabilities

Unlike Contractarianism and Kantian ethics, the capabilities approach grounds value in a being's having both "deep needs and abilities"⁶⁵ rather than in specific cognitive functions, such as rationality. This approach to animal welfare maintains "there is a waste and tragedy when a living creature has the innate, or 'basic,' capability for some functions that are evaluated as important and good, but never gets the opportunity to perform those functions."⁶⁶ The approach's foundational dogma holds that "there is something wonderful and wonder-inspiring in all complex forms of animal life"⁶⁷ and that each being should be allowed to "flourish as the sort of thing it is."⁶⁸ According to the capabilities approach, obligations to other beings arise out of the recognition that those beings are "subjects who have entitlements to flourishing and who thus are subjects of justice."⁶⁹ The capabilities which all beings are entitled are outlined below.

Ten Capabilities:

1. Life
2. Bodily Health
3. Bodily Integrity
4. Senses, Imagination and Thought
5. Emotions
6. Practical Reason
7. Affiliation
8. Other Species
9. Play
10. Control over One's Environment

⁶⁵ Cass Sunstein, Martha Nussbaum, *Animal Rights: Current Debates and New Directions*. (Oxford: Oxford University Press, 2004), 305.

⁶⁶ *Ibid.*, 305.

⁶⁷ *Ibid.*, 306.

⁶⁸ *Ibid.*, 306.

⁶⁹ *Ibid.*, 307.

1. *Life*

The capabilities approach mandates that all animals be “entitled to continue their lives, whether or not they have such a conscious interest.”⁷⁰ Nussbaum adds that all *sentient* animals have a right not to be killed for unwarranted reasons, such to be used to create “luxury items.”⁷¹ She includes fur as an example of such a luxury item. I am inclined to expand the category of “luxury items” to include the testing of cosmetics on animals when the outcome of such testing leads to the animal’s death. However insofar as cosmetics testing does not result in death but rather illness and permanent disability, such testing will still be found problematic under capabilities 2 (Bodily Health) and 3 (Bodily Integrity).

Nussbaum finds it problematic to include insects and other non-sentient creatures under this capability for several reasons. First of all, their ability to suffer may be limited and there are often times good reasons for getting rid of them (since they can damage crops and can hurt other animals)⁷²

Nussbaum argues that “painless predation” would be allowed under this capability because the alternative may be worse for the animals in question. It may be better for the overpopulated animals to die quickly and painlessly rather than through starvation or by being “torn to bits.”⁷³ Nussbaum thinks that down the line, sterilization may be a better

⁷⁰ Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*. (Cambridge, MA: Belknap Press, 2006), 393.

⁷¹ *Ibid.* 393.

⁷² *Ibid.*, 362.

⁷³ Cass Sunstein, Martha Nussbaum, *Animal Rights: Current Debates and New Directions*. (Oxford: Oxford University Press, 2004), 315.

alternative to painless predation. This however would still prohibit hunting for sport of animals that do not have an overpopulation problem.

The same sentiment applies to euthanasia of sick animals whose health will not improve. Since the animals are likely suffering and since their illness will eventually kill them, ending their suffering through euthanasia would be more humane than making them suffer. However, euthanizing an animal for reasons other than the one mentioned above would most likely be prohibited under this capability. Many people choose to euthanize their pets when they can no longer care for them or when treatment becomes too expensive,⁷⁴ and shelters often euthanize animals because of space restrictions or behavior problems.⁷⁵ It seems that under the capabilities approach, such euthanasia would be considered highly problematic. Nussbaum however does not offer alternative solutions for people and shelters in those situations. If the quality of life that will be provided to the animal will be severely diminished as a direct result of somebody's inability to care for it, then how do we determine whether or not euthanasia would be more humane towards the animal? Perhaps this question can be answered through an exploration of the other capabilities.

Nussbaum argues that the "life" capability would ideally lead to the end of using animals for food. This, however, would have to be the final step in a series of moves since simply banning the consumption of animals would be too massive a change to implement all at once. Nussbaum suggests first prohibiting all forms of cruelty to animals

⁷⁴ Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*. (Cambridge, MA: Belknap Press, 2006), 385.

⁷⁵ *Ibid.*, 385.

(including those used for food) and then gradually moving towards a direction in which the consumption of “the more sentient”⁷⁶ animals is also not allowed.

This capability looks straightforward, but it is not. In fact, it is the most general out of all of Nussbaum’s capabilities. It protects animals’ right to life in cases where they would not be dying from other causes (such as overpopulation or illness). It also calls for the gradual shift away from consuming sentient animals. One question this capability does not necessarily answer is what we are to do with invasive species of animals that are considered to be sentient. We saw that Nussbaum did not see a problem with killing insects that are considered pests, but many times insects are not the only animals that are classified as pests. The United States Department of agriculture lists some snake species, boars and birds as invasive species. These animals are sentient and can experience pain and suffering much more than insects can. The only justification to kill them would be if they were getting overpopulated. However if they are simply disrupting the ecosystem, it is hard to see what good basis we have for depriving them of their lives.

2. Bodily Health

This capability is pretty clear. It mandates that animals’ lives are to be healthy. Nussbaum states that when people directly control animals, the capability’s requirements are straightforward. Cruel treatment and neglect is forbidden. Animals must be provided food and water, must live in clean environments, must be provided medical care when ill and cannot be physically or mentally abused. Nussbaum further specifies that “working animals”⁷⁷ cannot be treated harshly and cannot be overworked to the point of causing illness. This applies primarily to zoo animals and circus animals especially given the

⁷⁶ Ibid., 395.

⁷⁷ Ibid., 394.

recent controversy surrounding SeaWorld's® use of killer whales for entertainment.⁷⁸

Nussbaum argues that the laws to enforce this capability already exist, however they are enforced more strictly in regards to pets than they are with other animals. For animals used for food and in research, the existing laws are less strictly enforced and if this capability is to be realized, such “asymmetry”⁷⁹ in law enforcement must end. Nussbaum even goes so far as to say that laws enforcing this capability must be “closely modeled on laws dealing with parental responsibility to children.”⁸⁰

3. *Bodily Integrity*

This capability ensures animals the right to have their bodily integrity protected against violations through “violence, abuse, and other forms of harmful treatment—whether or not the treatment in question is painful.” (Nussbaum, 395) Some of the more obvious implications of this capability are already encompassed by the previous two capabilities, -namely that physical and mental abuse of animals is prohibited. Other implications of this capability include the prohibition of declawing cats and other mutilations for aesthetic purposes (even if those procedures are done in a painless manner). Nussbaum argues that the declawing of cats is prohibited under this capability because such a procedure severely limits the cats’ ability to “flourish”⁸¹ as a cat. A central characteristic of cats is that they use their claws to climb and to scratch. If they are unable to do either of those things, their quality of life is impacted in a way that fundamentally limits them.

⁷⁸ Cass Sunstein, Martha Nussbaum, *Animal Rights: Current Debates and New Directions*. (Oxford: Oxford University Press, 2004), 394.

⁷⁹ Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*. (Cambridge, MA: Belknap Press, 2006), 394.

⁸⁰ *Ibid.*, 395.

⁸¹ *Ibid.*, 395.

The reasoning mentioned above is the same reasoning behind the prohibition of animal mutilation for aesthetic purposes. People are not allowed to treat animals as property, which means they cannot be unjustly disfigured for individuals' selfish purposes. This is to be contrasted with various forms of training animals. Nussbaum provides examples of how training certain animals, though at first forced allows animals to excel at their capabilities. She discusses horse training as one such instance of animal training that would not be prohibited under this capability. While horses do not find their bridle enjoyable at first, and will often protest their training, Nussbaum argues that such training allows the horses to flourish their already existing capabilities. She compares horse training (and other forms of animal training) to the mandatory schooling of children. While most children think of having to school every weekday as an annoyance, such practices help them reach their intellectual and social potentials as human beings.

One major difference between the implementation of this capability between humans and animals is that for humans, this capability also gives rise to the right to be able to reproduce when one so chooses. For animals, this right is not as solidified. She argues that for many male animals, castration leads to an overall flourishing of capabilities rather than a limitation of capabilities. Male animals that are not neutered are often more aggressive towards other members of their species (primarily other males) and such aggression leads to fighting with causes injury. In the human case, there is something deeply problematic about castrating a violent individual. We expect human beings to have a bigger capacity for behavioral modification than animals, and so an aggressive person is expected to change his behavior on his own. However, according to Nussbaum, this reasoning is not to be applied to all animals in every situation and is to be

done on a “case-by-case basis.”⁸² Nussbaum believes that sterilization of female animals too would most likely not be problematic because such sterilization would not impact the animal’s life in a way that would negatively affect its other capabilities. It is irresponsible to not to consider matters of overpopulation when deciding whether or not to sterilize a pet. If an owner cannot afford to take care of her animal’s babies, then she is doing a disservice to the animals that get brought into the world that do not have anyone to care for them. Sterilization is a temporary violation of an animal’s immediate bodily integrity that in the long run, allows the animal to live a more fulfilling life.

4. Senses, Imagination, and Thought

This capability offers protections that are derived from the other capabilities mentioned above. First and foremost, animals are not to be abused or neglected. Abuse and neglect hinders animals’ ability to have a meaningful range of imagination and thought. If an animal is constantly thinking about its own fear, or hunger it’s intellectual capacities will be obstructed.

According to Nussbaum, this capability means animals must be guaranteed access to “free movement in an environment that is such as to please their senses.”⁸³ This means hunting and fishing just for sport should be prohibited since such practices “inflict painful deaths on animals.”⁸⁴ For wild animals, this capability means living in a habitat conducive to their flourishing. This means we also have a duty to protect the environment for the sake of animals living there.

⁸² Ibid., 396.

⁸³ Ibid., 396.

⁸⁴ Ibid., 396.

For humans, this capability gives rise to many rights, such as the rights to education, freedom of speech, freedom of religion and freedom of artistic expression.⁸⁵ While many of these rights are not applicable to animals, some are. For example, there are certain animals that should be trained. Nussbaum argues that certain dog breeds and horses are done a disservice or are even abused if they are not trained and domestic animals that are not toilet trained are also abused since it is shameful for animals to live in their own filth.⁸⁶ Many dog breeds, like Border Collies (as mentioned by Nussbaum) must be trained for their full capabilities can be recognized and a Border Collie that is not trained is being neglected as a Border Collie.

5. Emotions

Animals are able to feel a number of emotions. Nussbaum argues that all sentient animals feel fear. The more intelligent a species is, the greater their emotional capacity. Animals have a right to have meaningful interactions with other beings (either other members of their own species, other species or other humans). These interactions should not be stifled by “enforced isolation or the deliberate infliction of fear.”⁸⁷ It means that social animals should not be kept alone, and it means providing enough stimulation for animals living in captivity so as to combat boredom and loneliness. Nussbaum offers a few examples of violations of this capability. Such examples are zoos not taking into

⁸⁵ Ibid., 396.

⁸⁶ Ibid., 397.

⁸⁷ Ibid., 397.

consideration the “emotional needs of animals”⁸⁸ and research animals being kept all alone despite them being social animals (such as rats and primates.)⁸⁹

6. *Practical Reason*

Nussbaum argues that there is no clear animalequivalent to the human version of this capability. She believes we need to determine to what degree the animal in question can “frame goals and projects and...plan its life.”⁹⁰ Nussbaum’s analysis of this capability is rather vague when applied to animals. For animals that are unable to plan their lives, a respect for this capability will be fulfilled under the fourth capability (Senses, Imagination, and Thought.)

7. *Affiliation*

Nussbaum argues that this animal capability is extremely similar to the human version of this capability. Just like people, animals should be able to form attachments in the way characteristic of their species. This extends to the relationships that animals have with people. Animal-human relationships have to be rewarding, and mutually respectful. Animals must not live in fear of the people who take care of them, and they deserve, as Nussbaum puts it, “to live in a world public culture that respects them and treats them as dignified beings.”⁹¹

Nussbaum extends this capability quite a bit. She argues that animals must be protected from being humiliated which means that there must be laws and policies put into place that require the treatment of animals with dignity. She then extends it even

⁸⁸ Ibid., 398.

⁸⁹ Cass Sunstein, Martha Nussbaum, *Animal Rights: Current Debates and New Directions*. (Oxford: Oxford University Press, 2004), 316.

⁹⁰ Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*. (Cambridge, MA: Belknap Press, 2006), 398.

⁹¹ Ibid., 398.

further arguing that humans must in some cases intervene in animal societies to prevent animals from treating each other in horrible ways. She argues that we must protect weak animals (including infants, sick, disabled and elderly animals) from abuses by other animals. Nussbaum says that it is probably impossible for humans to intervene in all cases of animals committing injustices against other members of their species, so intervention will be limited to just the most serious cases of animal-on-animal cruelty.

In cases of domestic animals bullying one another, I think it is appropriate for human intervention. However, interference on the level Nussbaum suggests seems inappropriate for wild animals since they have different social orders and “rules” regarding cooperation. If a person happens to spot an injured or sick animal, then she should offer it help. However Nussbaum’s explication of this capability makes it seem as though humans have a duty to uphold cooperation between animals that may not be natural to them.

8. *Other Species*

Here Nussbaum writes that this capability “calls for the gradual formation of an interdependent world in which all species will enjoy cooperative and mutually supportive relations.”⁹² She says that since nature is not conducive to such an interdependent world, we must replace nature with “the just.”⁹³

I am not quite sure what Nussbaum means to say in regards to this capability and I think the implications are highly implausible. Such an interdependent system would require intense cooperation and expecting such cooperation from all animals is unrealistic to say the least. What I take this capability to mean is that we have a duty to protect

⁹² Ibid., 400.

⁹³ Ibid., 400.

endangered species and make sure that environments and ecosystems do not die out.

Anything more would require too much from both humans and animals and would likely not even have a positive outcome.

9. Play

This capability is rather simple to outline. All animals that are capable of play must have sufficient means for play. Ways of implementing such means are already outlined under previous capabilities. Animals are to have adequate housing, lighting and for social animals, and access to other members of their species. Typically animals will be able to meet this capability if their other capabilities are also met.

10. Control over one's Environment

Nussbaum says this capability has two aspects to it for humans. There is a political realm of control over one's environment, which includes the right to participate in political processes. The material aspect refers to the right to own property. The animal version of this capability also has political and material aspects to it. Animals deserve to live in a world that respects their autonomy and wellbeing. Nussbaum says that this means humans must be willing to go to court on behalf of animals in the same way they do for children and incapacitated people. The material aspect of this capability has already been expressed in previous capabilities. It requires that humans protect the environments in which wild animals live. For domestic animals, this capability requires that domestic animals be kept in clean conditions.

Taken together to form a cohesive whole, the ten capabilities establish a philosophical theory that dignifies the individual flourishing of living beings. By assigning specific value to the various capabilities of diverse living beings, Nussbaum's capabilities

approach makes the endorsement and protection of animals' needs and abilities an issue of justice. If animals are owed the chance to fully fulfill their species-specific capabilities, then human beings have an obligation not to negatively affect the animals' capabilities-specific pursuits.

Chapter 7: Korsgaard v. Nussbaum

To recap, I have shown that, of the theories explored, only Korsgaard and Nussbaum have demonstrated any conceptual room for a potential extension of rights to animals. In the following chapter I will show why Nussbaum's capabilities approach can better accommodate a more comprehensive account of animal rights. I will do this by outlining the main points of both Korsgaard's and Nussbaum's views, and by then introducing several objections to each view. I will then explore the various ways in which Korsgaard and Nussbaum would potentially respond to such objections. This methodology will allow me not only to assess the relative strengths and weaknesses of each view, but will show the directions in which each view can be extended. This in turn will demonstrate the limits of each view with regards to its ability to incorporate a system of animal rights.

Earlier in this work, I showed how Korsgaard's theory of pain could serve as the basis for generating a conception of animal rights while Singer's utilitarianism centered on suffering could not. In this chapter however, I will illustrate that Korsgaard's theory of pain, despite its success over utilitarianism, ultimately falls short when compared to Nussbaum's capabilities approach. The very same thing that gave Korsgaard the tools for surpassing Singer is ultimately what leads me to reject her view here. Her commitment to Kantian ethics prevents her from extending her view, and that limits the scope of protection she can grant to animals.

Korsgaard's theory of pain as being normatively motivating depends on pain being ultimately shareable and public by nature. Objections to such an account of pain threaten to challenge Korsgaard's conception of pain and of normativity in general. One

such objection maintains that pain is not as public of a phenomenon as Korsgaard would like to think. Korsgaard describes those presenting this objection as thinking that “pain is a sensation and that it is in the mind and therefore that what it is to be in pain is to have a sensation in your mind.”⁹⁴ This is an objection to her Wittgensteinian theory of pain because it follows that there could potentially be a feeling of pain that would be felt by the individual, but that would be indescribable to others either because of the sensation’s uniqueness or because there simply were no adequate words to describe the feeling accurately. Furthermore, such an objection also opposes the notion that one can be incorrect in her feeling of pain. Since pain is a sensation in the individual’s head or body, the individual can never be wrong about experiencing pain or about the type of pain she is experiencing. However if pain is public rather than private, as Korsgaard believes it to be, then one *can* be wrong about experiencing it.

Korsgaard responds to this objection in the following way. She argues that we can in fact be wrong about our experiencing pain just as we can be wrong in our assessment of what it is like to ‘see’ a color. When someone says she sees ‘red’, she can be mistaken about what is actually occurring. There is a whole chemical, neurological, and biological process happening, which elicits in her the *sensation* of seeing red. Furthermore, even a person who says she is experiencing the sensation of red is not actually describing the condition itself. The same is true for pain. When a person says, “I am in pain”, she is not just reporting on her condition, rather she is telling others around her that she wants her condition to change.

⁹⁴ Christine Korsgaard, *The Sources of Normativity*, (Cambridge: Cambridge University Press, 1996), 145.

She argues that those who believe pain to be a private phenomenon are mistaken in their belief. It is very tempting to assert that pain is private because it seems to be something we experience in our own minds. This, however, does not necessitate its privacy in the way the objection claims it does. Pain can always be communicated to others, and it *always* presents us with reasons to act. As soon as we see someone (or something) exhibit pain behavior, we immediately have a perception of a reason to alleviate their pain. Not acting in a way to ease the pain of others requires an *additional* reason—one that comes *after* the initial reason to help. This is the case because pain is inherently public, shareable, and thus normative. When we see pain in others, we recognize that the pain they are feeling is pain that we can be feeling, and through valuing our own identities, we value their identities and thus we immediately value their pain as well.

Korsgaard's successful defense against the anti-Wittgenstinian objection opens her up to another deeper objection about the nature of her own body of work. Korsgaard identifies herself as a Kantian, which means she adopts Kant's belief that one should act only according to that maxim by which she can at the same time will that it should become a universal law. In *Sources of Normativity*, Korsgaard specifically focuses on Kant's first formulation of the categorical imperative, which dictates that one should act only according to that maxim by which one can at the same time will that it should become a universal law. In order to determine whether a maxim qualifies, one must 1. Take that maxim in the form of a hypothetical imperative (if I want X, then I should do Y), 2. Imagine a world in which everyone follows that maxim. If steps 1 and 2 can be simultaneously willed without contradiction, the maxim is permissible and can be

followed. If however, following step 1 *and* 2 results in a contradiction, the maxim is contrary to our duty and it is therefore wrong. For Korsgaard, this is the basis for her assertion that human beings ought to follow general rules that they set for themselves and for others, rather than making exceptions for themselves while still holding others accountable. The right laws are the ones that are not self-defeating. In practicality, this assertion ends up looking exactly like Kant's second formulation of the categorical imperative, which states that one should act to always treat humanity not just as a means, but also always as ends. For Kant, humanity, by virtue of its inherent rationality and autonomy, is an entity that must always be treated with moral consideration. Human beings, because they are capable of being laws unto themselves, *deserve* to be treated morally. The issue arises because Kant himself believed that such moral consideration could not be extended to animals, and that humans did not actually have any obligations towards animals. In fact, Kant believed that human beings could use animals as means to their own human ends.

This is problematic for Korsgaard because her normative view of pain directly contradicts the Kantian notion of what type of beings deserve moral considerations. For Kant, only beings capable of following categorical imperatives deserve moral consideration. This is the case because under Kantian theory, only human beings are capable of possessing the rationality required for treating their own selves as ends. In her explanation of the publicity of pain, Korsgaard shows how animals view themselves as ends, and how their pain necessarily and immediately gives human beings reasons to act. Since it is indisputable that animals experience pain, and since according to Korsgaard

“pain is intrinsically normative,”⁹⁵ then animals provide us [humans] with reasons to act the same way other humans provide us with reasons to act. This in turn means that we cannot *just* use animals as means to our ends as Kant says we can, but rather we must extend them some moral considerations and treat them as ends in themselves too. If this really is the view Korsgaard is advancing, then she cannot really call this her position a Kantian one, as it directly contradicts Kant’s understanding of what characteristics are necessary for a being to deserve “moral standing.”⁹⁶

Korsgaard would likely respond to this objection by stating that despite not sharing Kant’s theory on animals specifically, her view is still Kantian in its nature. However in order for her to make the assertion that her view is still Kantian, she would have to argue that her view does not actually advance the belief that we must treat animals as ends in themselves, since they lack rationality, and therefore are not autonomous. Sure, we must take their pain into consideration and they will provide us with reasons to act, but that is ultimately still different from treating them as ends in themselves. She would argue that it is simply impossible to treat animals as ends in themselves in the same way we treat other human beings as ends in themselves, because animals lack certain crucial capacities in order for us to view them as ends in themselves.

Any duties we have towards animals arise because those are the laws we set for ourselves. As Mary Leukam writes, “Korsgaard recognizes that pursuit of the good is not limited solely to rational creatures”⁹⁷ and that animals find themselves and their desires to be important. Leukam, quoting Korsgaard writes “it is therefore our animal nature, not

⁹⁵ Ibid., 145.

⁹⁶ Ibid., 145.

⁹⁷ Leukam, Mary. "ScholarWorks @ Georgia State University," http://scholarworks.gsu.edu/philosophy_theses/89/ 5/7/2016], 19.

just our autonomous nature that we take to be an end-in-itself.”⁹⁸ By finding our own animal nature to be important, we find the animal nature of other animals important and therefore normative when they are in trouble. This argument however is simply not strong enough, because it is exclusively human-centric. Our considerations for animals arise out of our valuing our own nature. In other words, it is not that we find animals important because of anything inherent to *them*, but rather because of characteristics we see as important in *us*. Furthermore, Korsgaard can only argue for a vague extension of moral considerations towards animals because their considerations cannot outweigh our own. We may have to refrain from causing animals any direct harm, but we likely will not have any positive duties towards them.

We may have an obligation not to harm animals because doing so goes against our own sense of self-preservation, since we must value their nature in order to maintain consistency with our own values. According to the first formulation of the categorical imperative, we must only follow maxims that we can at the same time will to become universal law. If we take the valuing of our nature (which includes our animal nature) to be categorically imperative, we must also value the animal nature of other animals; otherwise we are acting in a way that is inconsistent with our own identity. This, however, does not mean that we will treat animals themselves as ends, and therefore the protections we extend to them will not be the same as they would be for human beings. We can realistically still treat animal nature as important by only refraining from causing them harm, but not helping them once they are already harmed. This however is a distinction that Korsgaard could reasonably eliminate if she were to choose to extend her

⁹⁸ Ibid., 20 (quoting Korsgaard “Fellow Creatures: Kantian Ethics and Our Duties to Animals.” *The Tanner Lectures on Human Values* (2004), 104).

theory to be more accommodating to animals. However if she were to extend her view any further, she would be jeopardizing her commitment to being Kantian. If Korsgaard were to attempt to extend her argument any further to include definitive obligations on behalf of animals, she would be deviating quite significantly from her Kantian framework. This is the case because any further extensions would oppose the Kantian emphasis on rationality and autonomy as the basis for value and dignity. Since animals are not rational in the same way humans are, they would not be worthy of the same level of rights, and Korsgaard has to respect that fact if she wishes to stay true to her Kantian roots.

To understand why Nussbaum's view better accommodates a body of animal rights, it is necessary to explore some objections to her view. In his article "Martha Nussbaum on Animal Rights," Anders Schinkel aims to prove that Nussbaum's beliefs regarding certain treatments of animals do not cohere with her own theory regarding animal welfare. He argues that Nussbaum's view that we owe something to animals⁹⁹ requires different responses from Nussbaum on the issues of eating animals for food and of using animals for experiments and research. According to Schinkel, a theory that explains why we ought to treat animals morally in terms of what they are owed (such as Nussbaum's theory) must invariably commit to certain forms of behavior towards animals. It must argue against the eating of animals for food, and it must aim to protect animals' bodily integrity more than Nussbaum's view does. A theory like Nussbaum's that argues for a more moral treatment of animals *must* also be committed to advocating for certain types of treatment and against others, because otherwise it is engaging in

⁹⁹ Schinkel, Anders. "Martha Nussbaum On Animal Rights." *Ethics & the Environment* 13, no. 1 (2008), 41.

inconsistency. One cannot simultaneously argue that animals deserve certain rights and protections and at the same time condone the eating of animals and other similarly immoral and highly problematic practices. Schinkel describes Nussbaum to be a neo-Aristotelian because she combines “rights-based views and views based on an idea of capability and functioning.”¹⁰⁰ Nussbaum’s capabilities approach closely resembles Aristotle’s theory of forms, and what is good for a being. According to Nussbaum, human and non-human animals have things that are good for them and ways they can optimally exist, which should be protected.

Among the central capabilities for both humans and animals are life, bodily health, and bodily integrity. Combined together, the three capabilities make it very clear that killing a being that possesses such capabilities is wrong. The killing of an animal not only violates the first capability (life), but it also violates capabilities 2 and 3 as well. Furthermore, it prevents the animal from pursuing the rest of its capabilities. However Nussbaum specifically states that in cases of using animals for food, the main concern is not the killing of the animals, but the torture and pain that accompanies said killing.¹⁰¹ Furthermore, she does not believe it is necessary to end all uses of animals for research. We must rather determine whether the research is “necessary for a major human capability”, use fewer sentient animals if we can (since their harms will be smaller), remove “psychological brutality”¹⁰² from experimentation, and work to use alternative experimenting methods, such as “computer simulations.”¹⁰³

¹⁰⁰ Ibid., 44.

¹⁰¹ Cass Sunstein, Martha Nussbaum, *Animal Rights: Current Debates and New Directions*. (Oxford: Oxford University Press, 2004), 315.

¹⁰² Ibid., 318.

¹⁰³ Ibid., 318.

Schinkel's main problem is with Nussbaum's treatment of eating animals and using them for research purposes, but he also finds her eighth capability problematic. I will tackle this latter problem first, because I think it can be remedied rather easily depending on how we choose to interpret the capability. Capability 8 states: "if human beings are entitled to be able to live with concern for and in relation to animals, plants, and the world of nature," so too are other animals, in relation to species not their own, including the human species, and the rest of the natural world.

This capability, seen from both the human and the animals side, calls for the gradual formation of an interdependent world in which all species will enjoy cooperative and mutually supportive relations with one another. Nature is not that way and never has been. So it calls, in a very general way, for the gradual supplanting of the natural by the just.¹⁰⁴

Schinkel finds this capability to be highly problematic because it calls for absolute human control of the animal kingdom, in which human beings prevent predators from harming prey, and essentially "police nature."¹⁰⁵ Schinkel thinks that this capability should just focus on the "flourishing of species"¹⁰⁶ rather than of individual animals. I however, believe that we can even dilute the issue further by interpreting it as a call for environmental protection. Human action causes many of the problems that affect other species in the world. Furthermore, nature itself can be cruel and allow species to vanish. Through our ability for rationality and invention, human beings have a duty to animals to keep the planet we share inhabitable and healthy.

The more important objections stand in relation to Nussbaum's views regarding using animals for food and for research. Nussbaum defends the position that the only

¹⁰⁴ Ibid., 317.

¹⁰⁵ Schinkel, Anders. "Martha Nussbaum On Animal Rights." *Ethics & the Environment* 13, no. 1 (2008), 50.

¹⁰⁶ Ibid., 50.

problem with eating animals is not actually eating them, but rather, the horrible treatment they endure before they are eaten. Nussbaum classifies using animals for food as an instance of a “very difficult case”¹⁰⁷ (Schinkel 51, Nussbaum 2004, 315). Other examples of difficult cases include the use of animals for research, and population control.¹⁰⁸

Unlike Nussbaum, I do not believe that eating animals presents a difficult case-or at least it shouldn't. It is only difficult because for some reason, she is very committed to the idea of eating animals. However if she is to follow her own theory, she must abandon this commitment. As Schinkel correctly notes “it is [also] hard to see how an *entitlement* of animals to continue their lives is to be compatible with a justification of killing for food.”¹⁰⁹ Nussbaum writes “it seems unclear that the balance of considerations supports a complete ban on killings for food.”¹¹⁰ For her, it is much more important that animals being used for food be killed in relatively painless fashions, and that their lives up until their point of death be happy. The eating of animals for food presents a difficult case to Nussbaum because it is unclear what the effects of not eating meat will be on humans. There are a lot of unknown potential outcomes for eliminating meat eating, and it is likely that such outcomes could be negative. The greatest uncertainty for Nussbaum is the way a fully vegetarian diet would affect starving people all over the world because she is worried it might potentially lead to more hunger and malnutrition.¹¹¹

¹⁰⁷ Ibid., 51 (quoting Nussbaum 2004, 315).

¹⁰⁸ Cass Sunstein, Martha Nussbaum, *Animal Rights: Current Debates and New Directions*. (Oxford: Oxford University Press, 2004), 317.

¹⁰⁹ Schinkel, Anders. "Martha Nussbaum On Animal Rights." *Ethics & the Environment* 13, no. 1 (2008), 51.

¹¹⁰ Cass Sunstein, Martha Nussbaum, *Animal Rights: Current Debates and New Directions*. (Oxford: Oxford University Press, 2004), 315.

¹¹¹ Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*. (Cambridge, MA: Belknap Press, 2006), 402.

To Schinkel, and to myself however, it seems very clear that the balance of considerations *does* support a ban on killings for food. If human beings can survive without needing to kill animals for their food, then it would make sense that an animal's right to life would trump a person's desire to eat meat. In fact, beings *can* survive without eating meat, and as it turns out, not eating meat would allow us to feed more hungry people around the world. Switching our farming practices from industrial meat farming to vegetables and grain would be more beneficial for humans.

Oats produce more than twenty-five times as many calories per acre as beef...an acre of broccoli produces twenty-four times the iron produced by an acre use for beef, and an acre of oats sixteen times the same amount of iron. Although milk production does yield more calcium per acre oats, broccoli does better still, providing five times as much calcium as milk...if Americans were to reduce their meat consumption by only 10 percent for one year, it would free at least 12 million tons of grain for human consumption—or enough to feed 60 million people.¹¹²

Schinkel correctly points out that if Nussbaum commits herself to the idea that it is permissible to eat meat, then all of the capabilities she assigns to animals must be ended with the sentence "...until we eat them"¹¹³ The solution to this problem seems to me to be quite simple. Nussbaum must shed her commitment to the using of animals for food. If animals have the right to live their lives and continue living their lives "whether or not they have such a conscious interest,"¹¹⁴ then we can in no way justify the use of animals for food, and this is okay. What is not okay (as Schinkel points out) is to simultaneously advance a view in favor of animal rights where the first protection is the right to life

¹¹² Singer, Peter. *Animal Liberation* (New York, NY: HarperCollins Publishers, 2002), 166.

¹¹³ Schinkel, Anders. "Martha Nussbaum On Animal Rights." *Ethics & the Environment* 13, no. 1 (2008), 53-54.

¹¹⁴ Cass Sunstein, Martha Nussbaum, *Animal Rights: Current Debates and New Directions*. (Oxford: Oxford University Press, 2004), 314.

while remaining committed to the idea that even painless killing and eating of animals ought to be permissible. Nussbaum need only to abandon the second half of her contradictory statement, and she can regain consistency on this point and undercut the objection.

Another issue Schinkel locates within Nussbaum's argument is her commitment to the use of animals in research. He cites her when she says that such instances are examples of tragic situations. She defines tragic situations as situations "when each of the available alternatives for action involves serious wrongdoing, or put the other way around, when none of the alternatives open to the actor is "free from serious moral wrongdoing."¹¹⁵ However in the case of using animals for research, it is unclear whether or not it can be called a tragic situation given the definition Nussbaum herself assigns to it. Schinkel argues that while conducting research on animals definitely constitutes a "serious wrongdoing,"¹¹⁶ he questions whether *not conducting* research on animals actually constitutes a wrongdoing at all. He writes "there is a moral obligation to help the sick, but is there also a moral obligation to make animals suffer to help the sick?"¹¹⁷ Furthermore, "the animals stand to gain nothing, because their good is not initially in play, and once it is, it is so in another way than the human good."¹¹⁸ He questions Nussbaum's assumption that there are any "goods at stake"¹¹⁹ in the case of animal research because in such examples, we are simply using animals as means to *our* ends. If we do not conduct research on them, we commit no injustice on their behalf, and

¹¹⁵ Schinkel, Anders. "Martha Nussbaum On Animal Rights." *Ethics & the Environment* 13, no. 1 (2008), (quoting Nussbaum 2000b, 1005).

¹¹⁶ *Ibid.*, 56.

¹¹⁷ *Ibid.*, 56.

¹¹⁸ *Ibid.*, 57.

¹¹⁹ *Ibid.*, 57.

arguably no injustice on the behalf of sick human beings because we are not making those humans any worse off: we are simply not making them better off.

I find Schinkel's attack of Nussbaum specifically in regards to animal experimentation as not giving her enough credit. Nussbaum explicitly says that testing cosmetics on animals and conducting other testing that is not "necessary for a major human capability" (Sunstein and Nussbaum, 318) should be prohibited. Furthermore, the types of medical tests that are done on animals for diseases provide information that does not *just* improve human capabilities. Many of the diseases we need cures for also affect non-human beings, like cancer and certain viral infections,¹²⁰ and as we have already seen, human beings have the same types of capabilities as animals. Finding the cures for diseases both human beings and animals can be afflicted with seems at least intuitively like a decent reason to conduct such research. Furthermore, biomedical research always uses human patients after animals have already been used to see the affects of the drugs manufactured or procedures developed.¹²¹ But we recognize that it is necessary to proceed in this manner. Overall, I think that the case of using animals as research subjects does constitute a tragic situation because all living creatures get sick—animals and humans alike. In order to be able to treat ourselves and other animals, we must first discover the treatment. However, once we have available treatment, we tend to share it with animals that need it. We take our pets to the veterinarian when they are sick, and the vet prescribes them medication that has most likely been tested on other animals, and

¹²⁰ "Zoonotic Diseases," <http://www.health.state.mn.us/divs/idepc/dtopics/zoo/> [5/8/2016].

¹²¹ "Regulatory Science." <https://regulatory.usc.edu/consulting/resources/drugs/preclinical/> [5/8/2016].

(often) at some point on other human beings. Animal testing for diseases *is* tragic because the fact of the matter is that every living creature gets ill, and once they are ill, the illness itself serves as an ‘agent’ that violates some or all of the animal’s (and humans’) capabilities. Serious illnesses like the ones we try to cure cause immense suffering and often times prevent both animals and humans from accessing their capabilities in a meaningful way. It is tragic because in order to prevent and limit the harm such diseases cause, we *must* conduct some research. We conduct it on animals, but we also use human subjects once the animal trials have shown to be effective.¹²² This argument, however it is made must address the fact that we will inevitably cause animals harm when conducting research on them, and we must address the fact that we are violating their capabilities and that such violation may further be a violation of Nussbaum’s theory.

However such recognition is more respectful to animals’ capabilities and resulting dignity rather than an attempt to cover up such blatant violations of animals’ rights. Furthermore, such a recognition will drive us to treat the research subjects with more care and dignity by doing exactly what Nussbaum says we must do, such as providing them with clean and comfortable living spaces, and creating soothing environments for the animals who are sick and dying as a result of such research.

Nussbaum’s theory can accommodate a robust body of animal rights because it derives a being’s claim on rights through the fact that the being “possesses both deep needs and abilities.”¹²³ Animals ought to have rights because they are capable of existing

¹²² Ibid.

¹²³ Cass Sunstein, Martha Nussbaum, *Animal Rights: Current Debates and New Directions*. (Oxford: Oxford University Press, 2004), 305.

in a way that is characterized through a “rich plurality of life activities.”¹²⁴ Whether those activities are closely related in nature to human activities is not the important thing. It is the fact that animals possess the ability to engage in such activities that gives them inherent dignity and value. Unlike Korsgaard, whose extension of granting animals considerations depends on human beings recognizing the similarity between themselves and animals, Nussbaum is able to advance a view that does not rely on the unrealistic assumption that rationality is the basis for assigning beings value. Human rationality, according to Nussbaum is just one of the many capabilities human beings are capable of, and therefore is not to be treated as a foundational pillar of rights extension.

While there are issues with Nussbaum’s view, it provides the only feasible foundational account of what an animal rights approach would look like. This is the case because it blurs the imagined line between human rationality and animal reasoning, and includes many more capacities into the realm of what it means to possessing inherent valuable. Nussbaum and Korsgaard’s theories share many conceptual similarities, but their ultimate differences produce radically different paradigmatic conditions for animals.

If Korsgaard is correct, then either animals have value because they value themselves, and valuing oneself is nothing more than what animals do, or valuing is what humans do and animals exhibit an attenuated version of valuing. If the former is true, then much of Korsgaard’s view seems superfluous and human-centric. If the latter is true, then animals are only allotted rights in a thinner sense. This point sounds plausible. If animals really are only capable of exhibiting a ‘lesser’ form of valuing themselves, then it

¹²⁴ Ibid., 305.

can reasonably be argued from Korsgaard's perspective that they deserve only reduced rights-considerations. This is precisely the outcome that Korsgaard's theory leads to.

If Nussbaum is correct, then to say that animals' way of valuing themselves is somehow 'lesser' is problematic at best, and incoherent at worst. For Nussbaum the only necessary condition for being inherently valuable as a being is to value oneself. The form such valuing takes is secondary to the possession of value and only serves to inform the degree to which each capability applies to the being in question. The difference between Nussbaum and Korsgaard boils down to this: According to Nussbaum, humans and animals value themselves in different ways, but those different ways of valuing are not themselves to be valued differently. According to Korsgaard, the animal's way of valuing itself is inherently inferior to human valuing.

Conclusion

In this thesis I have argued that a moral theory can accommodate a functional and enforceable system of animal rights only if that theory values diverse manifestations of consciousness. The exclusion of animals and many humans from rights-protections occurs when theories draw indefensible distinctions between what characteristics should and should not be counted as rights-granting properties. Such distinctions lead to outcomes that consistently oppose our intuitions, and require eventual reassessments and amendments to the same theories that give rise to those very distinctions.

Much like Copernicus shifted our understanding of planetary motion by placing the sun rather than the earth at the center of our solar system, we must shift our understanding of what it means for a living being to possess inherent value. Instead of placing human rationality and autonomy at the center as does Kantian ethics, the ability to agree to and hold oneself and others to a contract at the center as does Contractarianism, or the reduction of suffering at the center as does Utilitarianism, a more intuitive ethical model must be embraced in order to accurately represent the reality of our place in the world and our moral obligations to others. Nussbaum's capabilities approach offers a foundational bridge away from the "human"-centric, rationality-centric model of ethics to a more comprehensive one. The capabilities approach enters the paradigm of inclusivity by breaking away from theoretical frameworks that require artificially constructed distinctions, which only serve to maintain power and meaning.

Such a shift though it may seem inconsequential, significantly impacts the nature of our collective consciousness and invariably affects the way in which we conceptualize our relationship with animals. Society's principles arise out of philosophical doctrines,

which often influence the course of our political and legal relationships to one another. A philosophical theory grounded in fundamental inclusivity among all living creatures inevitably creates ripples within the sociopolitical framework of society. These ripples of shifting perception eventually lead to waves of cultural and political change, which ultimately affect the legal relationship we have with each other and with the animals with which we share this world with.

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