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UNIVERSITY OF CALIFORNIA
Santa Barbara

Oversight in the Canon:
The Animals Issue Rekindled

A Dissertation submitted in partial satisfaction
of the requirements for the degree of

Doctor of Philosophy

in

Philosophy

by

Juliette Christie

Committee in charge:

Professor Christopher McMahon, Chairperson

Professor Mathew Hanser

Professor Hubert Schwyzer

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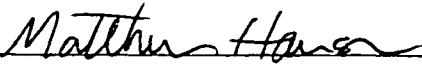
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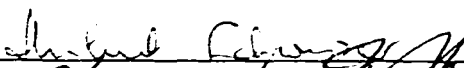
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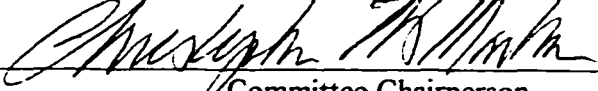
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The dissertation of Juliette Christie is approved







Committee Chairperson

June 1996

VITA

May 17, 1962 - Born - Bethesda , Maryland

1983 - B.A. , Princeton University

1984-86, High School Teacher, French & Spanish

1987-88 - Teaching Assistant, Department of Philosophy,
The University of Virginia

1988 - M.A., The University of Virginia

1989-92 - Teaching Assistant and Lecturer, Department of Philosophy,
University Of California, Santa Barbara

1991 - C.Phil., University of California, Santa Barbara

FIELDS OF STUDY

Major Field: Ethics

Alternative Approaches in Ethics

"Animal" and Environmental Ethics

Feminist Moral Theory

ABSTRACT

Oversight in the Canon: The Animals Issue Rekindled

by Juliette Christie

I take issue with an argument to the effect that because contractualism proves - both practically and theoretically - the philosophically superior moral theory, we have the result that nonhuman animals can have no, nor ought be extended any, moral standing. The combined argument belongs to Peter Carruthers, and appears in his The Animals Issue. My response involves demonstration that on careful analysis contractualism fares even less well than the two theories against which Carruthers compares it - rights and utilitarian. Furthermore, I offer a sketch of a theory which does not fall for reliance on a singularly problematic premise - a premise which plays pivotally in traditional contractualist, rights and utilitarian accounts. The upshot is that this "alternative rights theory" fares best in reflective equilibrium analysis as against not only those theories Carruthers decries, but contractualism as well. We are, it appears, drawn back to the nagging question of whether and how things nonhuman may matter morally. For, Carruthers conclusion is disallowed. That the alternative rights theory offers novel yet satisfactory means by which to account for moral motivation and knowledge, as well as differences in moral respect due morally relevant beings, is explored. That the theory avoids the troublesome pitfalls of intuitionism and supervenience further secures its frontrunning position - which, again, begins to indicate that and how more than solely humans are of moral relevance.

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I. Introduction

i. A Preliminary

There is a position which one bumps up against with surprising frequency in moral philosophy. It involves the general notion that nonhuman animals lack (full) moral standing, or that ultimately only humans are of real moral significance. Though one encounters this stance in conversation, in seminar, in comments on written work, and in perusing the literature, it is quite another matter to discover any full-fledged, rigorous, academic defense of the position. One wonders why such is the case. Is the issue at bottom taken to be so trivial, or frivolous, as to be unworthy of serious philosophic focus? Is it just possible that careful consideration might result in unwanted conclusions - conclusions which might demand practical change as well as theoretical? Is it that "real" philosophers cannot consider such matters for fear of philosophic derision? Whatever the reason for lack of defense of claims against the moral standing of nonhumans (animal and otherwise), I think it imperative that such a position be considered, or that the possibility be recognized as a lively one until proven otherwise. To so insist is only, after all, to insist in the spirit of philosophy. Given the rather sorry or confusing state of moral philosophy, it may behoove us to consider paths once ignored. That nonhumans have no (or categorically lesser) moral status is a possibility. And such a possibility will remain conjecture until we give it that rigorous philosophic attention it merits.

In this essay I intend to offer a first step in the general direction of focussing philosophic thought on one form of the argument that nonhumans simply do not have moral standing. The defense against which I argue is that offered by Peter Carruthers in his The Animals Issue: Moral theory in practice¹ Carruthers' is the only² book I

¹ Peter Carruthers, The Animals Issue. moral theory in practice (London: Cambridge University Press, 1992).

² There is Michael Allen Fox's The Case For Animal Experimentation - An Evolutionary and Ethical Perspective (Berkeley: University of California Press,

have encountered which attempts a serious and full defense of the position at issue. As such, it is the only substantial example there is to consider. Carruthers offers a contractualist argument, which turns out to be less than surprising given that rights and utilitarian theories can arguably encompass certain levels of nonhuman moral standing. (It will eventuate that the crux of my argument works as well against theories which admit only limited or categorically lesser moral standing to nonhumans.) Certain difficulties which beset Carruthers' case are of such significance that their combined force dictates the rejection of his claims - about the success of contractualism and the moral arelevance of nonhumans which he takes contractualism to dictate.

In a nutshell, Carruthers' intent is to argue that the most likely alternative theories (both of which do recognize the moral standing of at least some nonhumans) fail. One - Tom Regan's³ rights account - fails outright. The other - Peter Singer's⁴ utilitarianism (which Carruthers treats as a stand in for all utilitarianisms in terms of the negative outcome⁵) - falls short in comparison with that contractualist picture which Carruthers himself favors. Furthermore, Carruthers argues that by its very nature contractualism forces the moral irrelevance of all but humans. The theoretic upshot of all this is that the most promising, the best, moral theory supports the claim

1986). However Fox has since not only recanted, but has refuted his argument therein. See his "Animal Experimentation: A Philosopher's Changing Views" in *Between the Species*, vol. 3, Spring 1987.

³ Tom Regan, The Case For Animal Rights (Berkeley: University of California Press, 1983).

⁴ Peter Singer, Animal Liberation - A New Ethics For Our Treatment of Animals (New York: Avon Books, 1975). There is now a second edition of Singer's text which provides up-to-date facts and figures relevant to his utilitarian account. I rely on my ragged old copy for the philosophical argument whose nature remains unchanged.

⁵ See Carruthers, p.50.

that all and only humans are of moral relevance. Practically speaking, Carruthers claims, this fact entails not only that we moral agents not give nonhumans moral consideration, but that we act to put an end to those "animal rights" and "environmental rights" campaigns and attitudes intended to identify moral value in animals or the environment independent of humans (which currently serve only to deny humans - to cheat them of that moral attention they alone deserve).

Demonstration of Carruthers' failure will bring out an additional theoretic line along which the moral standing of nonhumans is recognizable. If I am correct as against Carruthers, we are not yet in position to claim that nonhumans are morally irrelevant - or even that they are of lesser relevance in any hierarchical or categorical sense. Perhaps nonhuman animals do have direct moral standing, as much as (and in the same manner) as anything may be said to have such status. That rights need not be intuitively grounded and that moral status may not be essentially of the individual will play importantly in the final stage of my response to Carruthers.

At any rate, in this work my aim is to set out an analytic philosopher's purportedly complete argument against the moral standing of nonhuman animals and to demonstrate its failure as well as the upshot of that failure. Before proceeding to the heart of my project, I offer an introductory sketch of Carruthers' plan (along with indications of my intent in its regard)

2. The Project at a Glance

Carruthers presents his argument as one whose primary force is to demonstrate the complete lack of moral standing of nonhuman animals. This is certainly his goal, however on inspection it becomes clear that a defense of contractualist moral theory is central to his project. In particular Carruthers attempts to show that contractualism just is the superior moral theory, such that we must accept its verdict on "the animals issue". It is true that Carruthers relies on the animals issue itself as testing grounds on which to determine the success and failure of contractualism, rights theory and utilitarianism. However, ultimately it must be because contractualism proves the

superior theory (with respect to intuition, as well as theoretic consistency and requirements) that Carruthers can claim the sole and singular moral standing of human beings.

Carruthers begins by setting out the criteria against which we are to measure moral theories - criteria which contractualism best meets. Carruthers ultimately argues that while rights theory⁶ fails to meet one criterion for success of a moral theory, utilitarianism fails (in the presence of contractualism, which is on measure a superior moral theory) given the manner in which it has difficulty meeting a second criterion. I will not here argue directly against Carruthers' dismissals of Regan's rights view or utilitarianism. I will explain how he describes their failures, as this argumentation is a step in his own attempted vindication of contractualism and further condemnation, as it were, of any purported nonhuman moral standing. (Although I will not disagree with Carruthers' general criticisms of Regan and Singer, I will correct what I take to be errors in his general assessments of the gravity of the failures he recognizes in their regard.)

There are three major tests which moral theories must meet according to Carruthers. In addition to these tests Carruthers insists that any theory which demands the truth of strong objectivism or strong subjectivism (that is whether there are agent-independent moral facts in the world or whether morality is up to the individual) must fail. That this criterion is contentious is apparent. Nor is it essential to Carruthers', or my, argument. Whether morality is objectively true or purely a concoction of the individual will not be a relevant concern here. As Carruthers recognizes (pp.15-20 & 22-23), even Regan's theory may be read as weakly rather than strongly objectivist. No theory under discussion need be understood to necessitate either position.

⁶ As my argument progresses, it will become clear that Carruthers' failure to consider any rights theory beyond that described by Regan constitutes a major failure in his own argument. It is an oversight which leaves hidden one damaging argument against his position

The first criterion Carruthers describes he sets out in Rawlsian⁷ terms. It is, he says, important that a moral theory be in "reflective equilibrium" with our common-sense moral beliefs. As Carruthers puts it:

We begin with our considered common-sense beliefs, having done our best to purge those beliefs of confusion, inconsistency, partiality, and prejudice. We then try to construct a plausible theory that will explain and give unity to those judgements. It may emerge, however, that the theory as proposed entails that some of those judgements are false. At this point we can either return to the theory and tinker with it until it delivers the right results, or we can give up an element of our common-sense belief. Which option will be more reasonable will depend upon details. ... The overall goal is to reach a position that we can, on balance, be satisfied with.

(pp.6-7)

It is from common-sense⁸ we begin our search for a moral theory, and it is with a final curtesy to common-sense that we conclude our assessment of the contenders. There is nothing philosophically unacceptable here. The procedure is commonplace.

⁷ John Rawls, A Theory of Justice (Cambridge: Harvard University Press, 1971). See especially p.20 (and footnote 7) where Rawls notes that the, "process of mutual adjustment of principles and considered judgements is not peculiar to moral philosophy."

⁸ I will use the following terms interchangeably: common-sense, common-sense intuitions, and pre-reflective intuition. I reserve "reflective intuition" for a distinctly different, a contrasting, purpose. (Notice that I avoid "intuition" unmodified.) This use of terms seems - otherwise - unremarkable. In general, I caution that "intuition" (and its cognates) alone really ought not to be confused with "reflective intuition".

The second test Carruthers describes he discusses in terms of "governing conception" (p.23). He points out that it is imperative that a moral theory provide a plausible and distinctive account of the source of our moral notions and knowledge as well as, again, a plausible and distinctive account of the basis of moral motivation. (By "distinctive" I take it that Carruthers expects a particular theory to offer a particular sort of explanation. There is, I offer, no reason to believe or insist that a theory must provide a unique account - one different from that offered by competing theories - just to be taken seriously. Herein lies a shadow of another of Carruthers' stumbles.)

The final test (again, p.23) Carruthers sets is that of the "basic normative principle". This is a familiar notion. That is, any successful moral theory must provide some principle(s) to which moral agents may appeal in order to conduct and legitimize their judgements and actions.

Perhaps quite rightly Carruthers pins utilitarianism's failure on reflective equilibrium. As many have argued (for a wide variety of reasons), utilitarianism really does appear to ask so very much so constantly, and in such fashion, of moral agents that it seems hardly reconcilable with our pretheoretical thoughts about morality. It might be that utilitarianism provides a better account than Regan's rights theory, since - as we shall see - utilitarianism's only failure is to be glaringly in conflict with our common-sense inclinations and beliefs, whereas Regan is charged with failure to provide an adequate governing conception. However, Carruthers contends that in light of the existence of contractualism which offers a fine governing conception, provides clear basic normative principles, and is far less at loggerheads with common-sense, utilitarianism must be set aside as a moral theory which does not meet the standards for success (as well as a competitor).

Where utilitarianism succeeds, Regan's rights theory fails. There are two ways in which we might read Regan as Carruthers sees it. Either way meets failure. There is the interpretation (p.17) on which Regan offers an intuitionist account of ethics and so his position falls to arguments of the likes of John Mackie's⁹ "argument from

⁹ J.L. Mackie, Ethics - Inventing Right and Wrong (New York: Penguin Books, 1979) 38-42.

queerness" and the difficulties of accounting for nonnatural values in the world which must somehow be got into our natural minds. Regan might alternatively be read as providing an itemized account of our pretheoretic, common-sense, moral intuitions in the form of moral theory. On first reading Regan's theory does not succeed in providing an adequate governing conception. Moral intuitionism does not yield satisfactory answers to the questions of origins and impetus in morality. On the other hand, if Regan is not read as an intuitionist, Carruthers contends that in theorizing Regan really can be doing no more than offering a list or account of our common-sense moral views, described in terms of rights. To take this tack is to fail completely to give an account of moral notions, knowledge, and motivation. It is mere enumeration, which amounts to theoretical vacuity in that theory says or offers nothing helpful. Such a project in effect amounts to verbal indication that, "this is our morality". It does nothing toward telling us why or how we have - and ought to have - the morality we do. So, Regan and (his) rights theory fail dismally. Intuitionism or no reply at all are simply unacceptable responses with respect to the test of governing conception.

In passing it is of interest and relevance to note the only glance Carruthers gives to further theories (above the now philosophically traditional quick and customary nod to approaches theistic) which might be in contention in our search for a (or some) proper ethic(s):

Many people will be tempted by the idea that some things (including human lives) possess intrinsic value, making claims on us that are objective and inescapable. Such views have been gaining increasing currency recently. This is especially so amongst members of the ecology movement, some of whom have seized on the idea of intrinsic value as providing a basis on which to argue that we have direct duties towards the environment. ... As we will see ... it is ill-advised to try to vindicate the ecology movement

in this manner, since the theory of intrinsic value turns out to be indefensible.

(pp. 14-15)

Just as Regan's rights theory cannot give us a governing conception, environmentalism fails.

I find it necessary to point out that Carruthers here displays two philosophically deplorable attitudes. One: he demonstrates immense disdain for a position over which he holds insufficient understanding. (Said lack is evinced in the very way in which he scorns the "ecology" movement - using a term wholly unfit to accurately describe the variety of positions he so dismisses.) Two: Carruthers chalks up and writes off environmentalism as intuitionist. He either blithely ignores or purposefully opts not to recognize that not all ethics which discuss the possible relevance of the environment and its individual parts need offer intuitionist (or vacuous) accounts. The relevance of the last point will resurface at the conclusion of this work.

At any rate, it is Carruthers' position that rights theory ("Regan's rights" being equivalent to "rights" in his view) and utilitarianisms provide the only viable alternatives to contractualisms. To a degree he is justified in reviewing just these theories¹⁰. Rights, utilitarian and contractualist theories are currently the "Big Three"

¹⁰ In the end, I think he is not justified. For there are other, quite different, approaches to ethics. One theory Carruthers surely cannot ignore is Aristotle's. (That he overlooks virtue theory is telling and important.)

From Amelie Rorty's edited collection, Essays On Aristotle's Ethics (Berkeley: University of California Press, 1980) p.2; we have her remark that:

Aristotle's perspective on the issues of moral philosophy is entirely different from the perspective of either Kantians or utilitarians. He writes the Nicomachean Ethics for those who have the traits, constitutions, and some of the habits that would enable them to become virtuous, for

of moral sport. However, a word is in order on this count, not as one might expect, to speak of the merits of virtue theory or more recent "feminist"-described accounts, but to comment on an item which will later provide the focus of an entire chapter's argument against Carruthers: his failure to even raise the possibility of a rights theory which is not intuitionist (ie. as opposed to a Reganesque account) . Perhaps this oversight truly does reflect the fact of Carruthers' ignorance with respect to theories of environmental ethics. Perhaps, as well, what this omission reflects is the inadequacy of Carruthers' own thinking about rights theory.

That Carruthers gives such short shrift to rights theory, that he believes he has completely and finally dealt with rights theory with his treatment of Regan, is a rather glaring failure in light of the pains he takes with contractualism. In the latter case Carruthers stresses the importance (p.38) of looking to another version of contractualism (in addition to Rawls') in order to avoid pitfalls or successes particular to Rawlsian contractualism - pitfalls or successes not necessarily predicated of all forms of contractualism. In this light he introduces T.M. Scanlon's¹¹ contractualism (which, it turns out, is a version with which Carruthers shares many sympathies). Surely it would only be analogously appropriate and philosophically savvy to insist that at least one alternative version of rights theory be considered. After all (p.38), "otherwise we may easily be misled in thinking that we are drawing out the implications of a [rights] approach to ethics, when in reality we may only be tracing out the consequences of a particular version of it."

One might well ask how Carruthers can so glibly fly over the above described problem. I suggest that at least part, but an important part, of a reply here is visible if

those capable of responsible action ...
His emphasis is on character and its proper
development rather than on the rules for
the propriety of the consequences of actions.

¹¹ T.M. Scanlon, "Contractualism and Utilitarianism," in Amartya Sen and Bernard Williams, eds., Utilitarianism and Beyond (London: Cambridge University Press, 1982).

we look between the lines (p.9) where Carruthers points only to Regan and Singer as examples of, "those philosophers who have been most vociferous in promoting rights of animals." Carruthers has read Regan and Singer, as many of us have. He has seen their names time and again as editors of texts, atop articles in widely-respected philosophical journals, referenced in other current "male-stream" analytic accounts of ethics, and more ... as have we all. To say one has read Regan and Singer is, in some philosophic circles, still - sadly - to purport to be abreast of all that is philosophically worthy where nonhumans and their ilk are concerned. I must, at this juncture, point out that Carruthers ignores (whether by choice or by blithe philosophic norm) the existence of a much wider and more varied assortment of "environmental theorists", many of whom neither accept the same basic principles as Singer and Regan¹² nor offer the same sorts of theories. The very modern history of moral philosophy with respect to the moral standing of nonhumans is not merely a footnote to Peter Singer and Tom Regan.

To complete the answer I have in mind to the question of how Carruthers can overlook these other, here unnamed, theories, I provide yet another question - in response to which I will again provide what I take to be a sensible and weighty reply. That is, if we ask how or why Regan and Singer have managed to be so vociferous, so omnipresent, I reply: publications and promulgations are clearly not solely up to the author of ideas, nor are they always a function of quality. Journals, editors, professors, etc. must see fit to further ideas - to pass them along to readers, students and fellows. And, as a matter of fact, we in philosophy rather lamentably stand guilty of charges of discounting, discrediting, and ignoring (even by refusal to grant

¹² That the view presented in Regan's The Case For Animal Rights is not Regan's final say on animal and environmental questions should be clear, though it is not clear that Carruthers so recognizes. Even toward the end of that work, Regan puzzles over issues such as species and eco-system relevance. That his philosophical musings and views have developed beyond those presented in the text here discussed is further demonstrated in his All That Dwell Therein - Animal Rights and Environmental Ethics (Berkeley: University of California Press, 1982). Carruthers challenges Regan's fully developed line as presented in the former.

sufficient time or space to) ideas which do not meet approval. "Meeting approval" may involve being understandable in terms of currently accepted discourse, fitting in with certain pictures of the world, or it may even mean not rocking the philosophical boat. Anyone who has ever tried to enter into the realm of the philosophically outcast theories from within the analytic tradition (or vice-versa) will understand this response. Many¹³ in feminist and environmental ethics have labored to express the difficulties involved. (Parallels with the difficulties of explanation and communication between continental and analytic philosophy may also prove insightful here.) I will not duplicate their efforts in this work. But I will go so far as to restate the upshot of my suggestion against Carruthers. Carruthers is able to argue that nonhumans have no moral standing because contractualism is the correct moral theory precisely because he ignores the nature and existence of alternative theories which cannot be dismissed in the same breath as Regan's rights and Singer's utilitarian theories. Philosophical parochiality is an unlikely route to moral success - either theoretic or practical.

Here I shall review my sketch of Carruthers' argument as it stands thus far. To determine the most successful moral theory, we must consider what each theory offers in terms of governing conception as well as how well it reaches reflective equilibrium with our common-sense moral intuitions. Finally, a successful theory must offer useful normative principles. Rights theory fails with respect to governing conception. Either it is intuitionist and so offers no account of origins of moral knowledge or intuition, or it merely provides a mirroring of common-sense which is again to fail to explain the origins of moral motivation and knowledge. Given its picture of moral agents as motivated by "the good" and of at least minimally other-oriented nature, utilitarianism can pass the test of governing conception. But utilitarianism demands

¹³ It is difficult to cite one text in support of this claim. It is rather more fitting to suggest that one who does not recognize the truth of what I say would do well to familiarize herself with feminist, environmental, or even continental, philosophy. But for a start, the introduction to Morwenna Griffiths and Margaret Whitford, eds., Feminist Perspectives in Philosophy (Bloomington: Indiana University Press, 1988) is helpful.

far too much of moral agents. It leaves no nonmoral space, it demands that moral agents do much more than is "commonly" believed to be demanded by morality. Carruthers is particularly appalled by what he sees as a utilitarian dictum, which is that all nonhumans must count equally with humans. (I discount the possibility that Carruthers is guilty of truly careless misinterpretation of utilitarianism. In order to see him in more credible a light I ignore the distinct possibility that he might actually take utilitarianism to claim, not that all are equal in meriting being brought into the calculus, but that to the calculus all bring equal weight.) A theory which claims that human lives and tribulations can in any way be equated with nonhuman lives and "experiences" is, as Carruthers sees it, far too extreme. And so, in the face of an alternative theory which surpasses utilitarianism on all other counts as well, utilitarianism fails. The theory which drives the nail in the coffin of utilitarianism is - of course - contractualism.

Before I proceed to completion of my preliminary sketch of Carruthers' position, I think it necessary to explain why I will do no more to directly discuss the fates of Regan and Singer at Carruthers' hands. (One might, for instance, want to know why I offer no attempt at vindication of one of the two positions.) I plan to attack Carruthers' contractualism - to demonstrate failures within that very theory. It is not with Carruthers' plan of action that I take issue. Rather it is with his outcome that I disagree. I am prepared to grant that intuitionist rights theories (as any starkly¹⁴ intuitionist moral theories) may bring with them too many questions and difficulties at this point in the progress of moral theory to seem most credible, most satisfactory. And, I readily agree with the suggestion that "vacuity" of a moral theory spells its doom. As for utilitarianism, I see nothing new (or immediately resolvable) in Carruthers' lambasting of the theory. Utilitarianism has, perhaps, had its heyday. It is certainly an important and interesting theory - one with relevance remaining. But, I

¹⁴ There is a distinct possibility that no moral theory goes wholly without reliance on intuition. It is reliance on highly speculative, controversial, or significantly less than unanimous intuition that troubles me (and, I take it, Carruthers). Hence my use of "starkly".

venture, Carruthers is at least correct in the nature of his arguments against this approach to ethics. Other theories fare better, though many borrow from it. The project I intend to follow will involve demonstration of the failure of contractualism as "best contender" in a moral monistic search for most successful theory. The very ways in which Carruthers' theory fails will serve to outline a better moral theory. As it turns out, on this alternative theory nonhumans (animal as well as environmental entities) have moral standing. That on more careful analysis, along the way, it will turn out that Carruthers' contractualist picture actually fares worse than utilitarianism and even than Regan's rights theory will be an interesting, though not critical, turn of events.

Contractualism fares most poorly in a reflective equilibrium assessment, and along with it goes its distinctive account of the (if any) moral relevance of nonhumans. For where traditional rights and utilitarian theories suggest that at least some nonhumans have some level of standing on their own merit, contractualism differs in that it completely denies such a possibility. According to contractualism nonhumans may matter only by remove, if at all. Carruthers' claim that contractualism is committed to the absolute denial of even derivative value for nonhumans deviates from better known versions of contractualism. Yet whether one denies all, or merely intrinsic, standing is one and the same in comparison with theories which acknowledge direct moral standing. With the failure of contractualism by reflective equilibrium comes significant affirmation of the likelihood of direct moral standing of nonhumans.

I turn, then, to a preliminary account of contractualism. Contractual machinery in hand, I will move on to Carruthers' own contractual argument and the rejection of nonhuman moral standing with which he takes that theory to leave us. Again, I do this in order to be in position to demonstrate just how dismally his project fails.¹⁵

¹⁵ Emphasis on the severity of Carruthers' failure is warranted, not in attempt to match the nearly obnoxious tone he disarmingly takes in the Animals Issue, but for the gravity of the success he would claim.

II. Contractualism - a general sketch & relevant remarks

1. Why Contractualism?:

nonintuitionist & motivationally explanatory

It seems there are generally two reasons which endear contemporary moral philosophers to contractualism. First, contractualism may be offered as the best (as most satisfactory) available of those moral theories from which we might choose for its nonintuitionist status. Second, contractualism is taken to provide a particular account of moral motivation - one which, through appeal to rational self-interest, describes a uniquely inescapable and binding morality. Certain theorists are more concerned, or taken, with one attribute over the other. That choice of emphasis flavors theoretic presentation and design, if not outcome, becomes obvious on comparison of the variety of contractualist theories available. All contractualisms purport to describe an inescapable morality. And no contractualism is taken to involve reliance on premises of problematic epistemic status. For both these reasons, contractualism may be regarded as a most worthy theory.

John Rawls, in the preface to his A Theory of Justice¹⁶ (p.viii) comments that the bright minds which brought us utilitarianism failed to offer competing schemas with which we might compare utilitarianism and the obvious difficulties it brings. Rawls (p.52) writes off intuitionism as "not constructive" and perfectionism as unacceptable. A contractualist theory (of justice) results, he offers, if we take from Locke, Rousseau and Kant what is best and so derive an alternative to those overly problematic nonconstructive and unacceptable theories which are otherwise our options. This is how Rawls sets the stage for his contractualist derivation of the principles of justice - a paradigm set of moral principles of immense import. In similar spirit, Carruthers rejects rights theory as intuitionist and argues that utilitarianism fares poorly on

¹⁶ John Rawls, A Theory of Justice (Cambridge: Harvard University Press, 1971) pp. vii-viii.

contractualism as best moral theory. While Rawls simply gestures at the respective failures of utilitarianism and intuitionist theories by way of preliminary, Carruthers' project is to demonstrate their failures and thereby illustrate the success of contractualism. That contractualism is the superior theoretic approach falls out of inspection of the contract machinery. (A general explanation of that machinery is forthcoming. A more complete account, as given by Carruthers, lies in my third chapter.)

Contractualist moral theory is also embraced - when it is embraced - for the singular account it provides of agent motivation. Jan Narveson¹⁷ and David Gauthier¹⁸ both describe theories which emphasize this aspect of contractualism. For Narveson morality can only have force if its description involves a picture of humans as rational egoists. Gauthier claims that we begin with an assumption against morality and must explain how humans, who begin to approximate "economic man", will be brought to accept moral precepts. In this regard, weight is placed on the fact that contract is made between rational (and so rationally motivated, by reasons of self-interest) parties who would not agree to be bound by those moral principles which issue from contract were it not for the benefit which such rational agreement will afford them. Contractualism is the preferable moral theory as it is the sole moral theory which can adequately explain how morality is at once inescapable and advantageous. Its inescapability lies in its advantage. Rational and self-interested as we are, we humans must (be able to) come to the recognition that we will only do best if we agree to and are bound by contractual moral principles.

Because it may not be absolutely essential that one deny alternative accounts of moral motivation as a moral contractualist, it is perhaps not necessary that as a contractualist one recognize only self-interest of the Narvesonian rational egoist sort,

¹⁷ Jan Narveson, "Morality and Violence: War, Revolution, Terrorism," in Tom Regan, ed., Matters of Life and Death - New Introductory Essays in Moral Philosophy (New York: McGraw Hill, 1993). See esp. sections 4-7.

¹⁸ David Gauthier, Morals By Agreement (Oxford: Clarendon Press, 1988).

or along the lines of Gauthier's nearly economic man. Rawls provides an example of a contractualist who does more than give lip service to the possibility that moral agents may do and be more than motivated solely from self-interest (however the fineries of such motivation are construed). That principles of justice are described in terms of self-interest does not preclude the likelihood of the moral significance of beings which cannot be accommodated on a strict contractualist line. (I have Rawls' recurrent remarks about nonhuman animals and the environment - pp. 17 & 512 - in mind here. Rawls is not immediately prepared to allot to them the mere derived moral status one might try to eke out of contractualism proper. That this propensity, or possibility, brings up issues of moral pluralism is an issue I will take up briefly at this chapter's conclusion.)

Carruthers identifies with both lines set out, although his approach is more nearly Rawlsian given the place of rejection of intuitionist theories in his overall project. Yet Carruthers does not deny the import of the contractualist account of moral motivation. For its reliance on rationality and self-interest, contractualism is a quintessentially human project. Contractualism will not yield unjust principles - no one in their right mind would agree to be bound by them. No more, it seems, does contractualism involve reliance on intuition or ontologically spurious value claims. Just how contractualism, in general, works is my next focus.

2. Contractualism in Brief

The summary I will offer draws most heavily on Rawls' (limited) project as Rawls' work provides the contemporary starting point for contractualist projects. In contractualist moral theory the norms of morality arise from, and do not predate, contract. (There is disagreement as to whether morality is absolutely a creation of contract or whether moral inclinations predate contract. Gauthier's¹⁹ account

¹⁹ Gauthier tells us (p.5), unlike Rawls, that, "We are committed to showing why an individual, reasoning from non-moral premises, would accept the constraints of morality on his choices." In fact Gauthier contends that his is a unique contractualist account (p.17): "No alternative account generates morals ... from a non-moral, or

exemplifies the first, and Rawls²⁰ the second, position. That the norms we follow must arise from contract is not an issue.) It is only when we rational agents recognize that we will do better individually - social animals that we are - if we agree to limit our actions if others do likewise, that the form and nature of moral principles is discovered.

Contract is mutual acceptance of mutually binding rules for socially and individually optimal benefit. For instance, if all individuals agree not to take what rightfully belongs to others, I will be obliged by relevant contractually determined principle(s) to not just take what I fancy of yours. This is limit. But, and here is benefit, none of (the multitude of) you may just take what is rightfully mine. In agreeing to be bound by those principles which careful rational thought dictates, each secures the highest level of individual safety and prosperity in that community - now a morally regulated community - in which each needs to live.

That we do best together (when regulated) is clear. To say that we are social animals is, at least in part, to acknowledge that we must rely on the work and help of

morally neutral, base."

²⁰ Rawls recognizes, to a degree, the place of moral predisposition. In concluding (pp.21-22) remarks to an initial description of the Original Position he explains that:

this conception is also an intuitive notion that suggests its own elaboration, so that led on by it we are drawn to define more clearly the standpoint from which we can best interpret moral relationships. We need a conception that enables us to envision our objective from afar: the intuitive notion of the original position is to do this for us.

That Rawls is drawn to cite Poincare is notable: "Il nous faut une faculte qui nous fasse voir le but du loin, et, cette faculte, c'est l'intuition." Poincare, La Valeur de la Science (Paris, Flammarion, 1909), p.27. Rawls is obviously on the lookout for materials in support of his position.

others to be born, to grow, to learn, and to reach any stable level of prosperity. (No sane philosopher denies that the human is a social animal.) Kantian strings in the contractualist melody are clear. (Onora O'Neill²¹ reminds us that Kant recognizes our limited human autonomy - autonomy which needs the help of fellow humans to reach its full, though limited, extent.) Our autonomy is linked with our capacity for self-interest, as both spring from rationality. Yet, self-interest and autonomy dictate that if we are to succeed we must come together. And, it is rationally clear (ie. it is reasonable) to us as individuals that in order to get along in and to get the most out of our social predicament, we must agree to principles to bind our actions so that each of us will have reason to - will stand to benefit by - the agreement.

From this contractualist account we can generate a litany of moral principles, principles which bind the interaction of rational agents. The foundational underpinnings of all principles will be the same, and will (for the same reasons) similarly reflect the heart, or bear the stamp, of contractualist moral theory. Every principle is rational. That is, each principle is one which it is reasonable to describe and adopt given what one knows (or is permitted to know) about one's self and the world. Every principle reflects each agent's best interests given his status as a social unit. No contractor would agree (even if bargaining for a total package of principles involves a bit of give and take) to a set of principles contrary to his well-being. No moral principle need exist prior to contract. No moral motivation need predate contract (though it might). Morality is here portrayed as the outcome of a rational process entered into by reasoning agents who recognize their socially bound plights and who are motivated by that (amoral) self-interest which rationality breeds. Moral principles are as morality itself, the business of interaction between contract-capable agents. In contract, moral principles agreed to will be described which restrict or prescribe agency with respect to agents and nonagents (agents' property, for instance). Nevertheless, moral principles must always reflect the desires of morally capable

²¹ Onora O'Neill, "Ending World Hunger", in Tom Regan, ed., Matters of Life and Death. See esp. section 21.

agents - of contractors - for it is from contractors' interests, concerns, cares and predilections, that agreement about moral principles will be reached.

Just as there is disagreement among contractualist moral theorists about the presence or absence of morality (or disposition toward morality) prior to contract, there is disagreement as to the particular design of the contract situation itself. The well-known Rawlsian veil of ignorance, designed specifically in order to facilitate generation of principles of justice (and which does thereby presume some measure of morality predating contract, if only moral inclination or intuition), is a theoretical tool. Rawlsian contract serves as an aid to philosophic, rationally guided, imagination and should not be taken to be actually, empirically, instantiable. The veil of ignorance serves as a cloak to deny contractors knowledge of post-contract items which might otherwise predispose them to lobby for principles of particular preference rather than those of justice. If contractors are ignorant of social status, intelligence, and sex, for example, they will not hope to secure principles which would perhaps unfairly favor their social status, intelligence, or sex. In rather stark contrast is Jan Narveson's contract, explicitly offered as against Rawls'. (Narveson²² goes so far as to doubt whether Rawls' theory is in fact a true contractualism as the Rawlsian contract is only imagined, theoretic, and describes people as they simply are not. As such Narveson charges, no one would ever agree to, or could ever actually, be bound by Rawlsian contractualist principles.) On Narveson's description, contract arises among people as they really are. Only in this way, he argues, will principles described in contract actually be adhered to post-contract.

Regardless of the sort of contract defended (or the version of the nature of the human animal relied on in support thereof), contractualist moral theory turns on contract. That this is a platitude does not dictate that it be left unsaid. Contract is

²² Narveson harbors purist and practical doubts about Rawlsian "Ideal Contract" pictures. The Rawlsian line, he says (p. 129), "has widely been regarded as a 'contractarian' account, but it is questionable whether it really is" He continues, "Why, we must ask, would ordinary people like you and me regard ourselves as bound by what we would agree to if 'we' had no idea who we are? ... the condition seems entirely unreal."

contract. That this is a platitude does not dictate that it be left unsaid. Contract is deemed the best method or description of moral norms because of the natures of the parties involved in morality.

3. Further Remarks

In chapters IV and V I will levy what I take to be the most appropriate arguments against contractualism itself, given my project. There are a number of interesting difficulties which arise for contractualism that I leave untouched as the outcomes in their regard are peripheral to my argument. That contractualism's strengths might be rescued and incorporated into a better moral picture or theory is a further, and distinct, possibility which I will also leave aside. What is critical to assessment of contractualism, and to consideration of Carruthers' claims in its regard, has been sufficiently outlined in this short chapter.

In chapter III, which follows, I set out Carruthers' contractualist argument and plan. That contractualism turns out to rely on intuition in the "worst way" will prove its downfall. What more needs to be said about contractualist theory in general will out in my description of Carruthers' particular contractualist line and in my argument of chapter V against contractualism. To say more at this point would be to launch into the upcoming chapters prematurely.

One precautionary note remains. It concerns a recently fashionable distinction - that between moral monism and moral pluralism. (Christopher Stone²³ may be most responsible for bringing the distinction to the mainstream spotlight.) A moral theory is monistic if it purports to handle all of the moral universe. To claim that monism is possible is to take the position that there may be one, unified, moral theory. Moral pluralism denies the possibility of moral monism. A pluralist account is one which insists that different moral theories must apply to different parts of our moral world.

²³ Christopher Stone, Earth and Other Ethics - the Case for Moral Pluralism (New York: Harper and Row, 1987).

It is possible that contractualism be taken as but one theory on a moral pluralist account. (In fact, it strikes me that this is the only satisfactory reading of contractualism.) However, for Carruthers' purposes and mine here - that is, for the purposes of "the animals issue" - we must judge contractualism as a monistic theory. To claim that contractualism is one part of a pluralistic account is to side-step the animals issue completely. For contractualism is a theory about the interaction of rationally sophisticated beings. (Notice that on a pluralist account we will need to discover whether any "rules" exist to govern moral agents' dabblings between moral realms, so the animals issue may not be wholly avoided. Pluralism is by no means an easy out.) If, as Carruthers intends, we are engaged in the process of assessing contractualism versus rights and utilitarian theories with an eye given to the animals issue, we must be dealing with monistic contractualism.

Because contractualists the likes of Gauthier and Narveson (as well as others who may not subscribe to contractualism but are in the habit of discussing it!) do appear to see contractualism in monistic terms, it is most decidedly not a wasted project to so consider the theory. That any serious proponent of contractualism really must be ready to consider a pluralist picture may be an upshot of the work - or rejection of the theory on monistic terms - I offer in this dissertation. At any rate, in speaking of contractualism I refer to monistic contractualism. Only where emphasis is appropriate, or mention of pluralism in order, will I modify the noun hereafter.

III. Carruthers' Argument - for contractualism
&
against nonhuman moral standing

I. Introductory Remarks

It will be helpful to set out the core of Carruthers' contractualist account in terms of the criteria he delineates according to which moral theories are to be judged. This done it will be clear why Carruthers fills out his theory with respect to nonhumans as he does. I turn first to the basic normative principles and governing conception of contractualism. Following this I will explain how Carruthers sees contractualism as falling nicely into reflective equilibrium with "our" common-sense moral intuitions - once a few points have been clarified concerning the place, status, and dessert of abnormal humans and nonhuman animals. I will conclude by way of explanation of possible contractualist accommodation of nonhumans which Carruthers considers, and rejects.

Again, it is philosophical common knowledge that contemporary contractualism finds a recent father in John Rawls. Carruthers acknowledges this influence as well as that equally familiar "father", Kant²⁴, whom he credits as (p.36), "the main historical exponent" of contractualism in his sense. A third important contractualist influence for Carruthers proves to be T.M. Scanlon²⁵ whose version of the theory (p.38), "is able to avoid many of the difficulties that have been raised against A Theory of Justice." Particularly significant in Scanlon's approach is that (p.39), "the only idealizations are that choices and objections are always rational ... and that all

²⁴ Immanuel Kant, Foundations Of The Metaphysics Of Morals and What Is Enlightenment?, trans. Lewis White Beck (Indianapolis: Bobbs-Merril, 1959).

²⁵ See T.M. Scanlon, "Contractualism and Utilitarianism".

concerned will share the aim of reaching free and unforced agreement." Of course both Rawls and Scanlon (who, as Carruthers notes - p.39 - may be seen as presenting a sort of Kingdom of Ends picture of rational, legislating agents) have Kantian origins and flavor. At any rate, we have in contractualism the idea of morality as arising from (some combination of) the needs and rationality of moral (ie. rational) agents. For Carruthers, as for Scanlon (whom Carruthers here paraphrases), it turns out (Carruthers, p.38; Scanlon, especially, pp.122 & 128) that, "moral rules are those that no one could reasonably reject as a basis for free, unforced, general agreement amongst people who share the aim of reaching such an agreement."

2. Carruthers' Contractualism: normative principles

From a position such as that described by the Rawlsian veil of ignorance or Scanlon's free and unforced contracting position, it does appear correct that one of the first and most fundamental rules selected will be one concerned with respect of autonomy. (Autonomy, and that rationality which affords it, is respected by means of principles of liberty. Principles of liberty might be variously described or encoded. Autonomy may not. Autonomy is or is not a fact.) Theoretical agents who lack knowledge of the particulars of their lot in society, or actual agents acting out contract in theory, will be first and foremost concerned to ensure that once in society they - each of them individually - are not disturbed in the pursuit of their passions, talents, and abilities. Contractualism begins with contracting individuals and very quickly yields a basic normative principle (p.40), "requiring that people should not, so far as possible, interfere with one another's plans and projects." Carruthers sees this as a point which garners strong intuitive appeal for contractualism. He may be on the mark.

From this account of the formulation of one of (if not) the most important normative principles in a contractualist picture of morality, it is clear how further principles will be derived. I follow Carruthers in declining to attempt to offer a comprehensive list of contractualist normative principles. Paradigm normative principle in hand we may turn to questions of governing conception.

3. Carruthers' Contractualism: governing conception - moral knowledge & moral motivation

How does contractualism account for our moral motivation? What does it identify as the source(s) of our moral knowledge? On both counts the answer lies in the direction of circumstances of (theoretical) contract. Morality, explains Carruthers:

is viewed as constructed by human beings, in order to facilitate interactions between human beings, and to make possible a life of co-operative community. This is, indeed, an essential part of the governing conception of contractualism. It is crucial to its explanation of how moral notions can arise It is also presupposed by contractualist accounts of the source of moral motivation.

(p.102)

First, moral knowledge. Given that moral norms are the result of "proper" (where "proper" entails correct positioning behind a veil of ignorance, or being appropriately free, rational and unforced) communal deliberation (p.44), "contractualism presents us with a way of seeing what our morality should be, if the only constraints on it are rational ones." In other words, as we are equipped with the parameters and particulars of contract, we can easily discover what is or "ought" to be the moral case. Items of moral certainty are discoverable given that we know what contractors (real or theoretic) are like, and we know the conditions of their contracting. These items of certainty are moral knowledge. We know, for instance, that there is a principle of respect for autonomy given a contractualist account of morality.

The second aspect of the contractualist governing conception deals with moral motivation. Why, one might ask, should (or will) any actual morally capable agent be motivated to respect an item of moral knowledge such as a principle of respect for

autonomy? Here Carruthers diverges from a Rawlsian response (p.44, as Carruthers has it), which plays up the idea that we as individuals care about and are interested in fairness and the maintenance of society such that - for our individual benefits - we will wish to act as contractualism dictates in order to see fairness and society remain in existence. (Carruthers rather aptly captures Rawlsian talk of society as "a cooperative venture for mutual advantage," see Rawls p.126, for example.) What Carruthers tenders in answer to the question of moral motivation is a variation on Scanlon's theme (p.45) of the basic human need to "justify ... actions to one another in terms that others may freely and rationally accept." Where Scanlon sees this need as brought up and about via moral education, Carruthers offers (p.45) that it is more plausibly seen as an innate human capacity which gradually emerges with maturation. (Whether the two pictures actually differ substantially is not an issue here.) In support of this alternative account (still, p.45), Carruthers points out that much human cognition (including knowledge of basic principles of much human psychology) is innate. He further suggests that nothing could be more natural than the innateness of springs of basic human motivation. It is because we need to justify ourselves to each other in terms rationally and freely acceptable to each other that we have a contractualist picture of moral motivation. So claims Carruthers.

4. Toward Reflective Equilibrium

Thus far we have contractualism's primary normative principle: respect autonomy. Autonomy is that which rational, moral, agents most prize as it is what allows them to be what makes them moral agents - beings capable of externally unforced action. The contractualist governing conception is comprised of two parts. First, the source of moral knowledge is the (theoretical) contracting process. As rational agents, moral agents can abstract in the requisite manner in order to discover just what will make moral sense. We know x is a moral rule because contractors will select x. Second, moral motivation arises innately, over the course of maturation in moral agents. As rationality (and other elements necessary for moral agency) develop, so does the rational-cum-moral agent's need to justify her actions to fellow agents. To say that

such justification is free and rational is simply to say that it is the work of a moral agent.

Does contractualism so described fall into reflective equilibrium with our moral intuitions? Recall that Carruthers immediately discounts Regan's rights view for what he sees as its failure to provide any adequate governing conception - either because it is intuitionist and so cannot really explain how we know what is morally true, or because - as simple enumeration of our common-sense beliefs - it fails to give any real account of how we are motivated. Given that Singer's argument poses the only threat Carruthers sees for contractualism, and since it does not outright fail to provide either governing conception or normative principle(s), the question of whether contractualism falls into reflective equilibrium with our common-sense moral intuitions (and so proves itself a - the - worthy moral theory) becomes a matter of weighing the respective successes of utilitarianism and contractualism as against common-sense. Governing conceptions are not crucially at issue as Carruthers sees it. Rather (p.48), "...we are left with [contractualism], whose governing conception is at least as plausible as that of utilitarianism, but whose normative output is considerably more attractive."

As to whether or not utilitarianism best squares with common-sense with respect to morality, Carruthers is certain contractualism wins on this count:

There are a number of reasons for preferring contractualism to utilitarianism but the main argument against Singer is that, when properly worked out, utilitarianism entails a position on the animals issue that is far too extreme to be taken seriously ... we find it intuitively abhorrent that the lives or sufferings of animals should be weighed against the lives or sufferings of human beings.

(p.195)

Citing utilitarianisms' extreme dictums is neither an odd nor illicit tactic. Take for example another argument of Singer's²⁶ with respect to utilitarianism and the demands it apparently places on those who truly aim to be moral in face of issues of global wealth and food allocation. (Singer does not argue against utilitarianism. Although, his argument does seem to have the effect of making utilitarianism appear quite, if not overly, demanding.) There are on this count many widely discussed and rather discomfoting conclusions a utilitarian appears forced to accept (or fight hard to deny). Perhaps another theory can account for the tensions we feel in the resulting assessments and rejections (so plentiful in texts and journals) of utilitarianism given such issues while better explaining how and why we feel as we do, as well as offering a more plausible account of right action in relevant regard. Contractualism may in fact be a superior theory to utilitarianism in this light.

How does contractualism fare in thoughtful balance with "our" moral intuitions? Here is a sticky point. Reflective equilibrium, as one familiar with moral theorizing would suppose, is truly a matter of assessing - of weighing the merits of what theory dictates and what common-sense pleads. (Rawls²⁷ notes that the justificatory balancing which such equilibrium entails is not unique to moral theorizing.) For contractualism there is one salient divergence between what common-sense urges and what theory demonstrates. As one might guess, the thorny item involves the place of nonhumans in our world. In particular, it is the place of nonhuman animals (as opposed to nonhuman nonanimals, nonhuman nonindividuals and so on!) which offers pause. According to Carruthers and contractualism the moral world is divisible into moral and amoral realms, with moral agents capable of treading in both lands. Nonhumans are confined to the amoral realm.

²⁶ Peter Singer, "Famine, Affluence, and Morality," in James Rachels, ed., The Right Thing To Do - Basic Readings in Moral Philosophy (New York: Random House, 1989).

²⁷ In a footnote (#7, p.20), Rawls points out that, "The process of mutual adjustment of principles and considered judgments is not peculiar to moral philosophy," and cites Nelson Goodman's work in his support.

Carruthers' most heart-felt intuitions are repeatedly expressed over the course of his argument, and are well-captured early on when he comments that:

Our common-sense belief that human and animal lives cannot be weighed against one another appears to be particularly central to morality, or especially firmly held ... If we are to be forced to give up this aspect of common-sense morality, it will require, at the least a theoretical argument that is very powerful indeed.

(p.9)

Another expression of this same intuition is perhaps more forceful. In this instance (p.66), while discussing the near impossibility of reaching reflective equilibrium between utilitarianism and common-sense with respect to the issue of nonhumans, Carruthers refers to, "... the almost universal human belief [in] the contraries - for example, the belief that the interests of an animal count for practically nothing when set against the suffering of a human." A third related example reads (p.72), "...it is plain that most ordinary people do not seriously rate animal suffering at all, in comparison to the suffering of human beings." Contractualism, better than utilitarianism, meets our intuitive inclinations regarding the status of nonhumans.

5. Concern for Nonhuman Animals: misguided intuition

Animals do not count in comparison with human persons. This is the gist of Carruthers' understanding of common-sense morality in their regard. Yet he also points out (p.106) that, "many people have concerns for animals, and are deeply distressed at seeing an animal suffer." (It is just, we must realize, that as soon as human suffering moves into the picture, the actual insignificance of nonhuman plight is illuminated.) Furthermore (p.108), Carruthers acknowledges that, "it is also part of common-sense belief that cruelty to animals is wrong because of what is done to the animal, not because of any suffering caused to sympathetic human observers." So on

Carruthers' picture of common-sense, nonhumans appear to matter morally themselves but not at all in the particularly significant way in which moral agents themselves matter morally. Carruthers never actually puts the point succinctly. (This very item proves to be that tiny bit of common-sense which acceptance of contractualism dictates we discard.) As Carruthers has it, moral standing is all or nothing. Contractors will have no reason to provide moral status for those not wholly relevant.

What emerges is a picture of a theory which will deny moral standing to any but human beings (or, any but members of species whose normal members are themselves full-fledged moral agents) and so which will force those of us who may share intuitions about the moral significance of nonhumans to put such intuitions in the pile of morally bankrupt notions with the acceptance of contractualism as the morally preferable theory. Such a step, after all, involves only a slight bending of moral intuitions. Nonhumans were never truly believed to be in any sense commensurable with humans (as Carruthers would have it). And, quite importantly, Carruthers reaches this result by way of an explanation of the complete and full-fledged moral standing of abnormal humans. This explanation also, for Carruthers, serves to deflect possible charges of significant inadequacy with respect to "our" common-sense moral intuitions about such human "abnormals" as the senile, mentally and physically handicapped, and young children.

6. Regan's Concern; Carruthers' Reply

As Carruthers points out (pp.21 & 101), it is a fundamental part of Regan's argument in favor of the rights of (certain) nonhuman animals that one of our firmly held common-sense moral intuitions credits abnormal humans - humans themselves incapable of moral agency for their lack of sufficiently sophisticated or developed rationality - with full moral standing, as moral rights-holders. Because some nonhumans are sufficiently like these humans in terms of levels of mental ability and other mental-emotional capacities, Regan argues that as we insist on the existence of rights in the humans' regards, we must in all fairness, and by parity of reason, do the same for the relevantly capacitated nonhumans. Carruthers does not accept this

argument. He does, however, acknowledge a difficulty with respect to accommodation of "our" common-sense intuitions about abnormal humans. He remarks:

Since these attitudes are even more deeply entrenched in connection with nonrational human beings than they are in connection with animals, any attempt to brush common-sense beliefs aside, on the grounds of conflict with the theory of contractualism, will be correspondingly weaker.

(p.111)

The first step in avoidance of the looming dilemma is to accept the premise regarding "our" strong moral intuitions about abnormal humans. It is for Carruthers a fairly short philosophical walk to the conclusion that "all" members of the human species (save early stage human foetuses - thus allowing first trimester abortion; and hence my use hereafter of "all" in reference to humans), but no nonhuman animals, have complete and equal moral standing. Contractualism then sits rather more comfortably in reflective equilibrium with our moral intuitions. "All" humans count; no (other) animals do. Contractualism's sole counterintuitive claim regards absolute denial of any sort of nonhuman moral standing.

7. That Animals Matter: faulty intuition revisited

We have Carruthers' picture of contractualism and his two arguments intended to explain how, on the contractual line, "all" and only humans have moral standing. Carruthers is convinced that these two arguments further bring contractualism into reflective equilibrium with our moral intuitions. It is common sense that "all" humans have moral standing. I am now in position to turn to his final two steps in denying nonhumans any sort of moral standing. Carruthers' intent is to demonstrate that moral agents will do best to discard any beliefs, or intuitions, they may have about the likely moral status of nonhumans.

In fact Carruthers wants to say that a prevalent view that animal suffering has moral standing is (p.158), "not, properly, part of common-sense itself, but is rather a theoretical construction upon it." We, none too theoretically active or careful, moral agents have taken a basic moral intuition and enlarged upon it. The result is that we have theorized pre-reflectively and mistakenly decided that nonhuman animals do have moral standing. To the best of my calculations, this is what Carruthers intends. Moral agents are not so deeply theoretical (recall p.116), but they do theorize. And, when they do, at least where the moral status of nonhuman animals is at issue, they heap mistake upon pre-philosophically reflective mistake. Carruthers' suggestion is that contractualism, which denies any moral standing to nonhumans, is actually in accord with common-sense, since common-sense itself does not actually claim or entail moral standing for nonhumans. Any inference to the opposite reflects mistaken, illicit, thinking about common-sense moral intuitions. There are two possible avenues he considers (and rejects) for the moral accommodation of nonhuman animals. Nonhumans, it turns out, do not even merit indirect moral status.

8. Nonhumans as Private Property

Carruthers offers that nonhumans might have or deserve some sort of moral standing after all. If they do have such status indirectly, contractualism will budge common-sense nary a bit and so fit quite smoothly with it into reflective equilibrium. (Notice here, p.105, that Carruthers avoids further talk of the moral status of nonhumans as theoretical construction on, as opposed to itself being, actual common-sense belief. He is none too clear as to the practical possibility of this purported distinction.) Carruthers suggests what he takes to be (p.105), "Two obvious ways in which contractualism might accord indirect moral significance to animals...". The first, "would be to subsume animals under the rules dealing with private property...". The second would involve, "... treating them as a matter of legitimate public interest."

A property-rights account proves unsatisfactory on more than one count. The first problem Carruthers identifies with this option stems from the fact of the existence of the large number of unowned animals (whose treatment we would want to say matters as much as that of owned animals, if the latter matter at all). The additional fact that

we may do what we will to and with our own private property in privacy - inclusive of a litany of physically destructive acts - proves the property venue even less likely. We cannot, offers Carruthers, get far with an appeal to property rights toward reconciliation between contractualism and (what may be an illicit attempt at theoretical extension of) common sense. If nonhumans have indirect moral standing, it cannot be by such arbitrarily determined fashion. Such a position is no more in line with "common sense" than is contractualism's denial of any nonhuman moral standing.

9. Appeal to "Animal Lovers"

The remaining option for reconciliation involves appeal to affects on those who "love animals":

Since many people have concerns for animals, and are deeply distressed at seeing an animal suffer, this may place on us an obligation not to cause suffering to animals, except for powerful reasons. This would not be because needlessly causing such suffering would violate the rights of the animal, any more than someone who defaces a beautiful building violates the rights of the building. On this approach animals, like buildings, would have no direct rights or moral standing. Rather, causing suffering to an animal would violate the right of animal lovers to have their concerns respected and taken seriously.

(pp.106-7)

It turns out that on Carruthers' account not only are "powerful reasons" almost nonexistent, but that we moral agents have every reason to ignore nonhuman animals in favor of the plights of humans.

Consider (p.16): "Roughly speaking, the position to emerge from this chapter [ie.7] is that sensitivity to animal suffering is admirable when, and only when, it fails to interfere with purposes that are morally significant in a more direct sense." And:

There would be economic and social costs of placing further restrictions on our treatment of animals, particularly if factory farming and scientific experiments on animals were forbidden. But I do not wish to focus especially on these. More important is that the cost of increasing concern with animal welfare is to distract attention from the needs of those who certainly do have moral standing - namely, human beings. We live on a planet where millions of our fellow humans starve, or are near starving, and where many millions more are undernourished. In addition, the twin perils of pollution and exhaustion of natural resources threaten the futures of ourselves and our descendants. It is here that moral attention should be focussed. Concern with animal welfare, while expressive of states of character that are admirable, is an irrelevance to be opposed rather than encouraged. Our response to animal lovers should not be "If it upsets you, don't think about it", but rather, "If it upsets you, think about something more important".

(pp. 168-9)

Clearly, Carruthers sees feelings of sympathy for nonhumans as socially destabilizing. (In Narveson's terms, we would here say that such feelings are socially suboptimal and so ought not, would not, be properly chosen by contractors.) It is the case, Carruthers offers, that:

Increased feelings of sympathy for animals can only serve to undermine our judgements of relative importance, having the same moral effect as decreased concern for humans. So if contractualism provides us with the best framework for moral theory, as I have argued that it does, then we should wish to roll back the tide of

current popular concern with animal welfare.

(p.169)

10. Recapitulation

We have it: first, Carruthers' case for contractualism and, as a result, his case against the moral standing of nonhuman animals. To summarize: the contractualist governing conception involves (1) the theoretical contract process itself, from which moral norms are derived (such as that of respect for autonomy); and (2) an explanation of how moral agents come to know these norms, as well as how they are motivated to abide by them. Furthermore inspection of moral motivation reveals it to be essentially contractualist.

Finally, contractualism basically accords with common-sense (at least given the animals issue). Where contractualism dictates change, it does so by means of reliance on points taken to be even more strongly held by common-sense (points about the import and status of rational agents) and incorporated into the rest of the theory. "All" recognizably human beings have full moral standing in their own right. No nonhumans do. Rationality is (a) key. It is what enables us morally. It is what helps us, as contractors, to see and agree to our sole and unique moral relevance. As Carruthers has it (p.192), "the truth may be that it is our imperfect rationality that enables us to feel sympathy for animals at all." Pre-reflective intuitions about the moral relevance of nonhumans are shown to be quite misguided when checked by reason in theory-evaluation.

One might wonder at this juncture whether there are means overlooked for the moral accommodation of nonhumans by contractualist theories. Carruthers actually considers two such possibilities - two which do appear most likely to be credibly offered. He is on the mark in concluding that neither succeeds.

11. Contractors as Nonhuman Representatives?

First there is the possibility (described on p.99) that certain contractors be delegated to defend the moral fate of nonhumans. Carruthers points out that to posit such agents, however, is to make a move incompatible with contractualism. That is, it is to make a moral assumption (about the relevance of and need to respect nonhumans) prior to the "creation" of morality which comes out of, with or after, the theoretic contracting process. Only if we assume that (a particular sort or fact, over and above a mere "sense", of) morality exists prior to contract is the stipulation of "animal agents" who contract on behalf of nonhumans possible. Yet, given contractualist claims about the origins and nature of moral norms, such a stipulation is impossible. I would add that to counter that exclusion of nonhuman interests involves moral judgement prior to the existence of morality, is to demonstrate that the position from which one speaks is not a contractualist one. It is not to defend contractualism.

Recall (see my chapter II) that contractualism denies or significantly downplays the pre-contract existence of morality, and so of moral norms, formulated inclinations, and the like. The claim, made prior to contract, that nonhumans just must be excluded from consideration in the contractualist formulation of moral norms is as inimical to the contractualist account as is the claim that they must be included. In contractualism there are no moral norms - no more are there means by which to substantially identify who or what such guidelines might determine - prior to contract.

12. Species-to-Be as Precluded Knowledge

The second tack is one suggested by Regan (and discussed by Carruthers on p.101). Regan offers it as a claim for Rawls to consider. The idea is that species membership is as arbitrary as sex, character, and position in society - attributes which are on Rawlsian account items excluded by the veil of ignorance in order to ensure fairness of rules of justice. Regan's position is a bit more complex than Carruthers allows. However, it is not incorrect to see it as a charge on Regan's part as against Rawls to the effect that:

The only apparent reason the original contractors could have for judging the case of

animals differently is if we assume, as Rawls does, that those in the original position know that they will be human beings, whether agents or patients. But this is to be prejudiced from the start. To allow those in the original position to know what species they will belong to is to allow them knowledge no different in kind from allowing them to know what race or sex they will be. If knowledge of these latter details must be excluded by the veil of ignorance, in order to insure a fair procedure in the selection of principles of justice, then knowledge of the former details must be excluded as well.

(The Case For Animal Rights, p.171)

Knowledge of species membership (as opposed to knowledge about species characteristics) is and ought to be barred from the veil of ignorance. Contractors should know that they might be any morally relevant being - any being with "experiential welfare"²⁸. Reflected in Regan's response to Rawls is Regan's own conviction (supported by argument) that all mammals above the age of one year have moral relevance for their (if limited) rationality - for their experiential capacity. Regan shares Rawls' and Carruthers' Kantian roots, their insistence on the import and general place of rationality in morality. However, what he allows or identifies as (affectable) rationality is significantly different such that his analysis of contractualist treatment of nonhuman animals stretches the resulting contractualist picture farther.

The real problem with Regan's suggestion is not that which Carruthers mistakenly describes. Rather it involves difficulties with post-contract adherence by rational agents to norms governing actions which affect those who turn out to be themselves incapable of moral agency. Contractualism is necessarily based on a very Kantian theme - a theme which traces the origin of morality to and through rationality. The

²⁸ See Tom Regan, The Case For Animal Rights, p.174.

result of attempting to read contractualism such that it directly includes nonhumans (with varying "levels" of rationality) is description of a theory which proves untenable. Contractors who turn out to be fully or highly rational will be hard-pressed to hold to principles agreed upon from behind the veil of ignorance where species was yet undecided. It is only if and because rationality is not regarded as an unknown quantity that contractualism works. (Rational contractors agree to principles to which they will continue to conform post-contract. One might, in contract, agree to respect species were species an unknown quantity. But, post-contract, a moral agent will have neither rational need nor rational motivation to directly respect species incapable of moral agency²⁹. No more will amoral species be capable of contractualist motivational reason to demand direct moral respect on their own behalf.) Regan does not ultimately intend (or need) to defend contractualism, and so his own position is unaffected by the failure of his reading of contractualism.

Carruthers' own misreading of Regan, however, is obvious (again, p.101): "[i]f agents were to be ignorant of the species into which they would subsequently be incarnated, when selecting basic moral principles, then, plainly, they would choose rules protecting the interests of members of all species equally." There is here an illegitimate move from a claim about barring knowledge of one's species-to-be to disallowing knowledge about species in general. In other words, contractors might know about the range and variety of species. To say that they should not know to which species they will belong post-contract is a separate matter. Regan demands the latter in attempt to guarantee proper principles of justice. He does not (and should not) insist upon the former. It would rather, on Regan's account of the veil of ignorance, be appropriate to know what species are like in order to most correctly design appropriate principles of justice which will concern our treatment of them.

²⁹ One might variously express the notion at issue here by noting that if moral motivation is a desire to justify oneself to others, it fails in the case of nonhumans animals. Justification is a two-way street. One cannot justify to a being incapable of comprehending the intending justification. I thank my advisor, Christopher McMahan, for calling this perspective to my attention.

However, it would not be correct to know one's particular species, for to have such knowledge might well predispose one to formulate or agree to principles favoring that particular species.

It simply is not clear why ignorance of one's species lot would (as Carruthers confusedly suggests) dictate that one contract for the equal moral status of all species. That this would be a maximizing strategy is demonstrated to be unlikely given that some species members will neither appreciate, recognize, nor otherwise be aware of their treatment. One must assume the post-contract capacity to care about one's plight for maximizing about one's post-contract state over all possible outcomes to be rational. Surely contractors would recognize (would be allowed, would have, to recognize) differences in capacities (rational, emotional, etc.) among species. The likely result, I offer, would be that contractors - not knowing their own species - would take care to agree to basic moral norms of respect fitted to the variously described and equipped species. That problems with adherence post-contract appear possible, if not likely, reflects contractualism's inescapable grounding in the notion of primacy of import of rationality.

To insist that species be an item precluded from the veil of ignorance situation is to speak from some other moral perspective. It is at least to have the inclination to believe that things other than rationality (which is particularly identified with the human species) may be of moral relevance. From the contractualist perspective it is thereby as well to rely on rather substantial moral notions to shape the veil of ignorance rather than to watch moral rules arise after that veil's amoral or pre-moral description.

13. One Last Shot: a speculative argument

In chapter 8 Carruthers sketches a further argument against the moral standing of animals. He repeatedly admits (see, for instance, concluding pages of chapter 8 and introductory remarks to chapter 9) that this argument, which involves the denial of

conscious mental states to nonhumans, is speculative³⁰. But he has hopes for it - both in terms of success and application. Although (p.192) he, "would urge caution ... [as] views presented in this [regard] are controversial and speculative, and may well turn out to be mistaken," Carruthers does devote an entire chapter to defense of an account of conscious experience which completely excludes nonhumans. Carruthers' suggestion (p.192) that wide acceptance of his views will entail that, "all psychological connections between our attitudes to human and animal suffering would

³⁰ Peter Carruthers, The Animals Issue (pp.193 and 190-191, respectively):

Mental states admit of a distinction between conscious and nonconscious varieties that is best accounted for as the difference between states that are, and states that are not, regularly made available to conscious (reflexive) thinking. Then since there is no reason to believe that any animals are capable of thinking about their own thinkings in this way, none of their mental states will be conscious ones. If this account were acceptable, it would follow almost immediately that animals can make no moral claims on us. For non-conscious mental states are not appropriate objects of moral concern.

On my account, the disappointments caused to a dog through possession of a broken leg, as well as its immediate pains, are themselves non-conscious in their turn. In which case it follows that if they, too, are not appropriate objects of our sympathy, then neither the pain of the broken leg itself, nor its further effects upon the life of the dog, will have any rational claim on our sympathy.

soon be decisively broken," and his final remark (p.194) in relevant regard that the position he describes is, "at the moment, too highly speculative," illustrate that he is inclined to believe that conclusive demonstration of the amoral status of nonhumans will ride on proof of their lack of (appropriate) conscious states. (In later argument the complete irrelevance of consciousness to determination of presence or absence of moral standing will come to light, insuring the irrelevance of the success or failure of this additional argument against the moral status of nonhumans.)

14. Summary

In a nutshell, Carruthers argues from the theoretic superiority of contractualism to the moral irrelevance of nonhuman animals. Contractualism is shown to provide a fine account of moral motivation and knowledge as well as a sensible means by which to generate the moral principles which guide us. Furthermore, contractualism proves highly compatible with common-sense, suffering only one apparent conflict (over the animals issue). The possibility that contractualism might yet be argued to indirectly accommodate nonhumans is discounted, and a final suggestion that further argument in support of nonhuman nonmoral status (for lack of relevantly sophisticated consciousness) is heralded as forthcoming. This is Carruthers' program. That, and how, it fails is mine.

IV. The Rationality Blunder

i. Introductory Remarks

A major portion of the argument of this chapter is not singularly relevant to Carruthers, although it strikes his position hard. Along with other contractualisms, Regan's rights theory and certain versions of utilitarianism (those³¹ which recognize higher versus lower pleasures) will also be seriously disabled, if not more drastically affected by the argument I will describe. It is because all of the aforementioned theories accept a uniquely indefensible claim about the nature of the moral value of rationality that - ultimately - none of the arguments in their support can ever be proven sound. (Perhaps no moral theory can ever stand on completely solid ground. Perhaps "perfect soundness" - if such a thing there be in moral philosophy - is unobtainable. More important is the fact of these theories' relative performance in comparison with the alternative theory I have yet to present. When I refer to unsoundness guaranteed by reliance on what I will call the "rationality premise", I do not refer to unavoidable and complete failure. It is when I compare theories which embrace such reliance to those that do not that I intend to illustrate fatal difficulties - "fatal", for reliance on a particularly troublesome premise, in a relative sense.)

All three of the theories under discussion come out of and work within a particular world-view - a world-view wherein, it appears, there is implicit acceptance of the categorical superiority (and hence categorically different or singular moral value) of rationality. This position remains generally undiscussed and unquestioned. My contention is that on careful consideration of the roots and nature of this very belief, it turns out that the premise is neither defensible nor available to us in the analytic

³¹ Unlike Singer and Mill, Jeremy Bentham does not accept a distinction between higher and lower pleasures for calculative purposes. Recall his widely paraphrased quip that, "Prejudice apart, the game of push-pin is of equal value with the arts and sciences of music and poetry. If the game of push-pin furnishes more pleasure, it is more valuable than either." See, Jeremy Bentham, *The Rationale of Reward*, in *The Works of Jeremy Bentham* (Edinburgh: Tait, 1838-43), II, i, p.253.

philosophic search for sound defense of a promising moral theory. (That a premise regarding the singular status of rationality might be incorporated into a theory by intuition or as a Rawlsian considered judgement is a possibility I will touch on here, but discuss more directly in chapter 9.)

Carruthers' defense of contractualism falls to the argument I shall levy not only in that it implicitly relies on the purported categorical superiority of rationality in order to explain the origin and nature of contractualism, but additionally for its further use of the contractualist process to defend that very purported superior status of rationality. The dance is invidiously circular and philosophically impermissible - particularly so given that the circle spins on an unsound claim.

In this chapter I will first offer a general description of the origins of the world-view which permits such a philosophical mishap as is instantiated in Carruthers' argument. My next step will be to provide an argument which demonstrates exactly how it is that the questionable premise about rationality must inevitably disadvantage any argument of which it is a part as it simply and irremediably escapes the status "true". This done, I will turn to Carruthers' reliance on the crippling premise and, by way of exposition of his position's reliance on it, demonstrate the analytic unacceptability of contractualism for the unsoundness of argument in its support. A brief discussion of a related matter concerning the necessary rejection of that common-sense intuition which on reflection is shown to be impervious to demonstration of truth in the process of reflective equilibrium will round out this chapter. So it will be that borrowing the notion of reflective equilibrium as Carruthers employs it, I will suggest that it is particularly imperative that we reject contractualism in the face of alternative theories which do not equally rely on the stated and ill-fated premise about rationality, and which otherwise prove at least as theoretically satisfactory.

2. "Our" World View

The world-view in which Western Analytic philosophy squarely sits and by which it has been amply influenced is a hierarchical one³². Though it may no longer wholly accept or openly admit its connection to this picture, the analytic tradition - particularly in ethics - very much reflects its roots. Critical to the hierarchical picture I have in mind, of course, is an account of a universe comprised of inanimate objects, lowly beings, higher beings, divine beings, and a God. It is an ordered picture of a world wherein things lie along a continuum of imperfection through perfection. Perfection is approached, and imperfection put at ever greater remove, as - by virtue of similarity of attribute - a thing or group of things nears in likeness to God who is deemed all perfect. James Rachels reaffirms this analysis as part of his introductory work in Created From Animals - The Moral Implications Of Darwinism³³:

Traditional morality depends on the idea that human beings are in a special moral category: from a moral point of view, human life has a special, unique value, while non-human life has relatively little value. Thus the purpose of morality is conceived to be, primarily, the protection of human beings and their rights and interests. This is commonly referred to as the idea of human dignity. But this idea does not exist in a logical vacuum. Traditionally it has been supported in two ways: first, by the notion that man is made in the image of God, and secondly, by the notion that man is a uniquely rational being.

³² Roderick Nash, The Rights of Nature, chapter 4, "The Greening of Religion" is informative here, as is recollective thought about standard religious and analytic philosophic thinking along these lines.

³³ James Rachels, Created From Animals - The Moral Implications of Darwinism (London: Oxford University Press, 1991).

(p.4)

It serves at this juncture to consider philosophers in our tradition who have subscribed to some version of this account of the world. Aristotle³⁴ is a fine example. He obviously precedes talk of a perfect God and divine hierarchy as we currently know it, but his account of an ordered universe (couched in terms of perfection - a perfection which culminates in the pure, and perhaps sole, workings of reason) was influential in shaping the general world-view here described. Clearly Aristotle's picture of the world (inclusive of man's place in it for our particular telos) has profoundly influenced both religion and philosophy. It is fair to say that the world-view we have inherited owes more than an insignificant curtesy to Aristotle³⁵. In his ethics Aristotle³⁶ offers an account of man's (and I do mean "man's") moral nature and the individual's moral odyssey which turns on Aristotelean division of the world and its contents in hierarchical terms where inanimate objects, animals, and humans are ranked according to their various sorts of being and abilities. The simpler are deemed less sophisticated - and, quickly, degree of sophistication is apportioned commensurate value. The pinnacle of value which is instantiated in well-functioning human rationality (which begins to approximate divine and pure rationality) is of the greatest value of earthly things.

Aristotle waffles between talk of truly human and divinely human flourishing. There is in man a tincture of the divine, unchanging, realm which reason can work to attain. It does seem (and I have argued elsewhere³⁷), however, that if we restrict our

³⁴ As explained in Jonathan Barnes, Aristotle (London: Oxford University Press, 1982). pp.62-64.

³⁵ Platonic influence is clear as well. (I thank Gordon Christie for reminding me of a philosopher whom I too often neglect, in favor of Aristotle.) I discuss Aristotle over Plato as Aristotle even more clearly describes that picture I am after.

³⁶ See 1097b21-1098a21 and 1176a1-1176b29, Aristotle, Nicomachean Ethics, Terrence Irwin, trans. (Indianapolis: Hackett Publishing Co., 1985).

³⁷ Specifically, I refer to a seminar paper entitled, "Against Nagel, In Favor of a

discussion to human beings, Aristotle can be most coherently taken to describe a complex human ergon. Only when the human animal transcends its humanity can reason rightly be said to be the unique ergon of the (no longer truly human) being in question. In support of this reading consider Jonathan Lear's thesis³⁸:

The ethical virtues focus on the fact that man is an enmattered being, living with his fellow-men in the natural world. This may be the human condition, and yet there is another sense in which the contemplative life is the most "human" life there is. But, then, what is "all too human" about the ethical life, such that, in transcending it, the contemplative life brings us to the highest realization of the human? The answer is that there are virtues which belong to our composite nature, and that from "the merely human perspective" the life of these virtues appears the best life for man to lead. But the philosopher comes to see that "the merely human perspective" is merely human. ... By realizing what is best in him man transcends his own nature: he no longer lives the life that is best for man to live; he simply lives the life that is best.

That which occasions morality is of, and so provides most, value. Thus human beings (certain humans, in fact, as Aristotle would have it) sit atop the empirical world for their moral ability. The arrival of religious traditions whose current our intellectual tradition has played in, has served to inculcate the unquestioned

Compound Human Ergon." The point of the paper was well-taken, thus my reference.

³⁸ Jonathan Lear, Aristotle, the desire to Understand (Cambridge: Cambridge University Press, 1988) 318.

acceptance of these Aristotelean notions. Descartes and Kant provide two further instances of philosophers who buy into what, following Aristotle (and Plato), has become the "human as nearly divine" world-view.

Consider the Cartesian insistence (lambasted ad nauseum in animal "rights" literature) that nonhuman animals are mere automata, that the cries of a dog nailed to a table for unanesthetized vivisection are mere mechanical responses from a soul-less machine. If "I" am anything, I am most certainly a thinking thing. The Cartesian res cogitans gives us man the rational animal - man the rational, be-souled animal. We, for our rationality, can know (if and when we are cautious in our employment of this rationality) our world and how different we are in it from all those arational things - things and creatures so below us in ability and capacity that they cannot merit moral consideration. (Though Descartes, as Father Copleston explains³⁹, did not complete what was to be the crown of his philosophical system - an ethics - it is clear from his metaphysics and epistemology where, and how, nonhumans would there fare.)

Kantian influence on contemporary, mainstream (even "malestream"⁴⁰ as feminist philosophers might aptly correct) analytic ethics is even more evident. (Whether the nonacademic person on the street is influenced to any significant degree by Kant, or any other philosopher matters. What concerns me most, however, is to gesture toward the really rather obvious heritage we in moral philosophy have as moral philosophers.) In his "Lectures on Ethics"⁴¹, also widely quoted of late, Kant points out what is wholly consistent with the work done in his Grundlegung, which is that what moral agents do to nonhumans can matter morally only insofar as it affects moral (ie. rational) agents. Our rationality - if it secures freedom from determinism⁴² -

³⁹ Frederick Copleston, S.J., A History Of Philosophy, Book Two - Volumes IV, V, and VI (Garden City, New York: Doubleday and Company, Inc., 1985) 142, vol. IV.

⁴⁰ "Malestream" is a now familiar term in feminist philosophy

⁴¹ Immanuel Kant, "Duties to Animals and Spirits," in Lectures on Ethics, trans. Louis Infield (New York: Harper and Row, 1963). pp.239-241.

⁴² Kant's ethic is contingent on the fact of our, "*possible* pure will" [my emphasis]. See p.7, Kant's Foundations.

enables us to be moral. It is this rationality, then, which deserves the respect that is expressed in being moral. There is, in Kant, a connection between the noumena and the inexplicable in ethics. Of course it is far too complex a matter to enter into fully here. For present purposes it suffices to point out that the Kantian framework is a hierarchical one - one where pure rationality sparkles "like a jewel"⁴³ in and of itself. The business of morality is, really, for rationality (inhering as it does in humans) to respect itself. As we humans happen to be the bearers or keepers of rationality, we are of value. Those who lack rationality lack any and all moral value. There is, at least, a three-tiered hierarchy where humans rank above those things in which no rational capacity resides. Humans, for their admixture of feelings, desires, etc. are not as purely valuable morally speaking as the good will itself. At any rate, Kant most certainly employs and perpetuates a hierarchic picture of the world in which rationality bestows value, and where humans partake of that value which escapes our fellow residents of planet earth.

Carruthers, hand-in-hand with his fellow contractualists, walks straight along this path as is evidenced in his claim (p.192) that, "... the truth may be that it is only our imperfect rationality that enables us to feel sympathy for animals at all." We humans, for our humanity, are misled into believing or feeling that things other than rationality share any (or some) level of value akin to that taken to obviously inhere in rationality. Pure rationality, rationality alone, can see its value - value not shared in like with anything else (whether or not any other sort of lesser moral value exists). In other words, imperfect or obstructed rationality is more perfect (and so more valuable) than none at all. Given that only rationality has (moral) value, for what it enables, humans stand above arational beings and things, yet below (the possibility of) pure rationality in a hierarchy of moral value. There is, I contend, a glaring and insurmountable difficulty here. For either the position which grants value to rationality (for what it

⁴³ Immanuel Kant, *Foundations* (p.10), "and if there remained only the good will ... it would sparkle like a jewel in its own right, as something that had its full worth in itself."

makes possible) must be grounded in a faith of sorts about the nearness or equality of rationality to perfection, or there must be proof of such status (for analytic philosophic satisfaction about the truth of any theory which depends on just this claim). The first possibility is (religiously) intuitionist. The second is necessarily beyond our reach.

Carruthers will certainly want to disassociate himself from claims to the effect that we "just know" rationality is of special value, or that rationality is divine (and so are we insofar as we partake in it), or the like. He, as most contemporary ethicists, is not overly pleased with the prospect of an ethic grounded in faith or some religious, or religious-like⁴⁴, "truth". (If "faith" turns out to be the answer, so be it. But in the meantime, philosophers tend to look and believe that, if attainable, answers lie elsewhere.)

The most favorable alternative left those whose theories stand on a premise which claims categorically superior moral value for rationality is to prove the superior value of rationality. This move is impossible, I think. That it is is a matter I shall soon demonstrate. The upshot is obvious. Contractualist theory rocks for its reliance on an implicitly accepted premise which illicitly involves the moral status of rationality. (Again, Carruthers' mistake is two-fold. Not only does he rely on the premise at issue to get his contractualist theory off the ground, but he later contends that contractualism - in whose creation or derivation this premise crucially figures - justifies that very premise.)

I shall take a moment here to clarify the nature of my comments of this section with respect to the historicity, in effect the historical determinism, I have briefly

⁴⁴ Carruthers (p.14) explains Plato's refutation (as it occurs in the *Euthyphro*) of, "the thesis that moral goodness reduces to what God approves of (or exemplifies)". The result (p.15) is that, "on the animals issue ... the primary question to be answered is whether or not our best secular theories of morality would accord moral standing to animals." God cannot be the answer. No more can faith. That is, Carruthers wants sound argument to convince us of the truth of a position in morality. If we discover unsupported intuition, "blind belief", or such underlying an argument, we lack reason to be convinced by that argument.

outlined. It is undeniable that our Western analytic tradition emphasizes rationality in a variety of ways. From Aristotle (and others) we have the notion of rationality determining human characteristics, as that which places us atop an ordered valuation of things. From Descartes we have man, *res cogitans*, as apart from animal given, again, our rationality and what it permits us. From Kant we have man, the free, the autonomous, the rational, the moral being. One might compile a list of well-known contemporaries from Joel Feinberg and David Gauthier through Peter Singer and Tom Regan in order to display the continuance of respected theories in malestream moral philosophy to singularly place rationality on a pedestal without sufficient philosophic reflection as to the nature of the implicitly accepted claims on which their positions rest. (Malestream theories reflect a decided tendency to believe morality can be got from rationality alone. My use of "malestream" is wholly apolitical, appertaining merely to the sort of distinction between moral perspectives suggested by Carol Gilligan⁴⁵ - a distinction since her work treated with greater philosophic care.) This is a mistake of no small stature.

My point here is not so much that it is an error, and a severely crippling one (whose damage has perhaps hindered the progress of moral philosophy for an amazingly long time) at that. Rather I want to make it clear how Carruthers can so blithely and securely walk the path he does. He is completely unaware that he treads philosophically thin ice. My primary concern is to offer a gentle invective to Carruthers and his (and our, and my) peers to think as is our wont. Perhaps I do intend to soften the blow of the argument I will soon levy. It is almost as if I offer the excuse of "determinism by tradition" on Carruthers' (among others) behalf. That I do mean to do this, however, in no way lessens my additional - and certainly primary - intent to demonstrate that Carruthers is absolutely wrong to rely in the fashion he does on a premise which claims the categorically superior moral status of rationality. To a degree I understand his oversight. I cannot overlook it.

⁴⁵ Carol Gilligan, *In a Different Voice - Psychological Theory and Women's Development* (Cambridge: Harvard University Press, 1982).

3. The Rationality Premise

Obviously Carruthers is not alone in his philosophic reliance on the purported special nature of rationality. It is true, however, that not all theories (or theorists) rely on one and the same version of what I have thus far (in so many words) referred to as the rationality premise. I will continue to speak of "the" - as if it were unitary - premise throughout as it has no effect on the argument I present whether one subscribes to one or another version of the premise. In other words, whether one envisions rationality as all or nothing, or as admitting of degrees (and so perhaps as differently describing the moral machinery), is effectively irrelevant against my claim. Simply put, we (rational as we are) can in no way legitimize - can in no way prove true for the purposes of sound argument - the claim that rationality begets categorically superior moral value. Whether rationality in fact has value is a question whose answer is precluded us for our rationality.

That rationality affords a wonderful richness to a life is a point I grant willingly. Thinking, discussing, recollecting, playing soccer and baking pies are wonderful, rationally facilitated, activities. One might summarily conclude, then, that the richest life, the rational life, is really a best life. And as a best life is one to be most valued, the rational life shows itself to be the most valuable by a long shot - that is, categorically. The richness rationality affords us is a fine thing. This is, I suggest, the sort of train of thought which lurks rather unreflectively behind reliance on the rationality premise. Add to this line our philosophical tradition's long reliance on just such notions and it is simple to see how the rationality premise might sit unchallenged by rational thinkers for years, and years.

One might expect my tactic against this premise to involve demonstration of the claim that the richness that rationality affords us is a fine thing (a thing of utmost value), really screams to be finished, and that the concluding thought is, "to me, to us rational beings!" That is, I might press the line that richness afforded by rationality is valuable to its owners, those normally imbued with it. Similarly, I might continue, echo-location provides a richness and so describes a value for those lives which are

normally and naturally imbued with it. Rationality (if not a cetacean trait) is of no particular value to a dolphin. Nor is echo-location⁴⁶ particularly valuable to my daughter. Value is relative. What has value must have it with respect to something - a something which need not be able to recognize that that something is of value for its flourishing (the latter in the Aristotelean sense). I sketch this position precisely because it is not the one I will take up here. (That I do not take it up should not be perceived as a condemnation of the position on my part. I simply do not find it provides the best argument against the rationality premise and those arguments in which that premise lies.) To bear in mind the sort of position I do not intend to champion here may help one to see the response I do intend to describe - particularly for those who have already encountered, and so might be confused by, the sort of argument I just described and will not offer.

The argument I will levy comes in two parts. The first part has a sort of Humean ring to it. I do not mean that it is in any way an extension of Hume's ethics⁴⁷. I do mean that there is a flavor reminiscent of Hume's approach and answers to problems in philosophy in general⁴⁸. I will argue that rationality makes it such that we cannot

⁴⁶ John Lilly describes the intriguing communication made possible by echo-location in marine mammals in his Communication Between Man and Dolphin - The Possibilities of Talking With Other Species (New York: The Julian Press, 1978). What dolphins are able to perceive about their aquatic kin (human and cetacean like) draws impressively near what we would call psychic in humans.

⁴⁷ In this regard Annette Baier offers an interesting account of why it is that she is convinced Hume's ethics cannot provide a satisfactory way to accommodate nonhuman animals. See her, "Knowing Our Place in the Animal World", in Harlan Miller, ed., Ethics and Animals (Clifton Humana Press, 1983).

⁴⁸ I have in mind Hume's talk of the way in which human minds are constituted to work, the force of nature (what is natural for us, as parts of nature) from which we cannot escape. See David Hume, Enquiries Concerning Human Understanding and Concerning Principles of Morals, 3rd ed. (London: Oxford University Press, 1986). From his account of the origin of the concept (Humean "idea") of cause and effect, through his discussion of human and animal instincts, to his observations of our human predilection to hear of and believe the "miraculous", in his Enquiries, we have

but need, desire, and so value the autonomous life. That is: by nature we are rational. Part of being a normal, healthy human is to be rational. Rationality, which makes possible autonomy, forces us to desire and so value rationality and what makes it possible. To be rational is to be unable to shed this valuing of rationality. To put the point yet another way, that which engenders autonomy also engenders desire for what it engenders. Secondly, I will explain why rationality simply cannot provide a means to satisfactorily demonstrate its own value as it would have to for the rationality premise to be demonstrably true. This second point involves consideration of what is essential to being a judge.

The key to my argument against the demonstrability of the rationality premise lies in what I will call the inescapability of rationality. By the "inescapability of rationality" I at once refer to both of the qualities of rationality just set out: rationality's self-appreciative nature, as well as the fact that rationality is an essential feature of judging. This inescapability occasions demonstration of the rational unacceptability of the purported truth of the rationality premise. Precisely how rationality is inescapable is what I propose to discuss next. I take up the two features of inescapability in turn.

4. Inescapability: the self-appreciative nature of rationality

example aplenty of the place Hume gives to the inescapability of the construction of our minds, which, of necessity, shapes the very manner in which we use them. (Perhaps there is similarity to Hume's ethics in my claim that we cannot but value rationality as we do. The value we experience is, at least to a degree, a function of how we are constituted. I will say no more since to do so would require explanation and defense of my reading of Hume.)

I do not suggest that my talk of rationality's power to engender is in the least Humean. Whether rationality is that which Hume describes in talking of reason as passions' slave and nothing more is an interesting question which I will not venture into here.

How is it that I can claim that rationality brings us to, makes it such that we rational creatures cannot but want, need, and so value rationality? The proof I offer is in that very material which those who proffer rationality as key to categorically greater moral value provide in their attempts to demonstrate the greater value of rationality, or of that autonomy which rationality occasions⁴⁹. We see contrasted the rich lives of bright, healthy humans with the (often sadly) curtailed lives of the mentally enfeebled - abnormal, arational humans - and the normal lives of other (purportedly) arational animals. (That Carruthers extends moral standing to rationally impoverished humans is not grounds for rejection of the contrasts I enumerate here. Recall that part of his argument for abnormal's standing relies on their connection to paradigm humans - humans special for just what these contrasts demonstrate.) The arational life is a life devoid of self and second-order desires (or even, perhaps, as Carruthers has it, devoid of consciousness⁵⁰). Rational beings admire what rationality makes possible. We marvel at the richness of, the exquisite value in, human - rational - life. That we may take issue with the particular expressions of richness of a given life is beside the point. That even Hitler had a rich (a rationally described) life in the relevant sense is a fact. That his life was exceedingly poorly formed and directed is no claim against its richness.

⁴⁹ Again we might look to Kant. This time from his Foundations, consider his talk (pp.52-53) of rationality and what it makes possible:

Reason, therefore, relates every maxim of the will as giving universal laws to every other will and also to every action toward itself; it does so not for the sake of any other practical motive or future advantage but rather from the idea of the dignity of a rational being who obeys no law except that which he himself also gives.

Furthermore(p.54), "autonomy is thus the basis of the dignity of both human nature and every rational nature."

⁵⁰ See Carruthers' argument of chapter 8.

What those who rely on this valuing, and so the purported fact of the value of rationality, fail to recognize (and so to treat) is a notion easily described in the spirit of John Stuart Mill. There is implicit assumption that a competent judge will be able to decide between the quality of competing items. Mill⁵¹ insists that a qualified judge - one familiar with both, or all, items at issue - will always be able to determine which provides the greater pleasure or good. Those who unreflectively accept the rationality premise implicitly employ the concept of qualified judge, and so "determine" that such a judge will always find the rational life to be of a categorically greater value for the categorically different - more sophisticated, more complex - richness it imputes and involves.

I think it correct to suppose that a rational judge will always prefer the (or a) rational life. She will always see it as particularly richer and so more valuable. However, what those who rely on the truth of the rationality premise fail to see is that the rational judge is always an unfairly biased judge where rationality is in the balance. This is precisely because of the self-appreciative nature of rationality which dictates that one who is rational will simply be unable to ignore, let alone deny, desire for and appreciation of what rationality brings. That to be a judge one must be rational is a platitude. It is this very rationality one must have in order to be a judge which makes all judges ineligible to fairly compare the value of rationality as against arationality - of the rational over the arational life.

⁵¹ In his "What Utilitarianism Is", in John Stuart Mill, Utilitarianism in Utilitarianism. On Liberty. Essay On Bentham (New York: The American Library, 1974), p.261, Mill describes the competent judge from whose verdict, "there can be no appeal". He continues, "On a question which is best ... the judgement of those who are qualified by knowledge of both ... must be admitted as final." A bit later (pp.262-263) we have the rule for measuring, "being the preference felt by those who in their opportunities of experience, to which must be added their habits of self-consciousness and self-observation, are best furnished with the means of comparison." To be a judge one must be rational. One must also have experience of the things over which judgement is passed.

Rationality is biased in its own favor. There is no value-claim in this fact. There is simply recognition of the source of our natural human predilection for the rationally imbued human life. Taken alone this first feature of rationality may not suffice to dictate the rational rejection of the rationality premise. That is, it might be suggested that because we who are rational and so capable of morality cannot but value what rationality brings, there is reason to recognize the superior value of rationality. We might insist that the fact that rationality must value itself suggests the propriety of such valuation. This is a mistaken move.

For, in the fact of the self-appreciative nature of rationality there is no value. All that can legitimately be claimed at this juncture is that rationality is self-appreciative. This fact alone is insufficient to defend a theory which turns on the value of rationality. It is no more fitted to defend a theory which denies such value.

What the fact of the self-appreciative nature of rationality begins to discover is that claims about any purported value status of rationality appear to be beyond the reach of rational agents. Claims about the value of rationality are properly precluded us for the self-appreciative nature of rationality. We can never determine whether the appreciation (and conversely, the devaluation) to and by which we are drawn is morally, axiologically, proper or not.

That we might be tempted to rely on the rationality premise as intuitively true (or to regard its claim as a considered judgement) might seem plausibly defensible at this point. For, if we cannot but value rationality, even if we have no reason to do so, we might insist that we cannot but incorporate this valuation into our moral theory. (That intuition and considered judgement have a place in philosophy, and that the rationality premise fares poorly on either count is an issue I take up in chapter 9.)

The second prong of my argument from the inescapability of rationality will serve as a deterrent to such intuitive reliance. For here it will be shown that over and above the inescapable lure of the rational is the fact that rational agents are simply precluded from judging where arationality is in the balance. That we are drawn to prefer rationality is a fact on which we might hope to place some emphasis were it not for the relevant countervailing fact that we simply cannot judge over what must be considered if we are to fully defend claims of the superiority of rationality over arationality.

5. Inescapability: the rational judge

We come to the second aspect of the inescapability of rationality, which requires recognition of the fact that of necessity to be a judge is to be rational. Again, a competent judge must be familiar with both (ie. all) of the things over which judgment is passed. Here is the rub: In order to truly understand, to really be familiar with, the arational life one has simply got to experience it. Of course a good judge might try to experience through imagination (and this is often urged - consider the variations encountered on Mill's oft-repeated example concerning satisfaction, dissatisfaction, Socrates, and a swine⁵²). Such a tactic simply will not do. For, the arational life is - in the regard at issue - a life devoid of what rationality makes possible. No rational comparison can be made between the rational and the arational life because a judge cannot be competently familiar with arational existence at the same time as she is (that which she must be to judge) rational. To pretend, to imagine, even to try to remember, what it is to be arational will not do because one must maintain rationality to pass judgement⁵³. And, this is to retain the self-valuing aspect of rationality (as much as the judging capacity it makes possible).

⁵² J.S. Mill, Utilitarianism. The famous words (p.260):

It is better to be a human being dissatisfied than a fool satisfied; better to be Socrates dissatisfied than a pig satisfied. And if the fool, or the pig, are of different opinion, it is because they only know their own side of the question.

⁵³ Here it will not do to suggest that preference alone suffices such that I might simply prefer arationality over rationality. For judgement is needed, in a heavy sense, where determination of value for moral purposes is at issue. If we want accuracy, or truth, we must judge in our "scientific", our serious, and full-powered guise. (This is not to say that more is not needed. The claim is that judgement must be involved.)

A judge cannot be acquainted with an arational state. To be a judge is immediately to be disqualified from being able to pass value-judgements in regard to the rational versus the arational life, or rationality versus arationality. "Arational judge" is a contradiction in terms. Yet, a truly arational judge is just what would be needed were an accurate, an unbiased, value-comparison between the rational and the arational to be made (assuming, that is, that arationality does not somehow engender its own brand of inescapable partiality). If we hope to design or identify a moral theory which recognizes a value significance of rationality over arationality, we need do more than rely on the purported value of rationality⁵⁴.

Here it is the inability of a judge to be a judge over arationality which is emphasized. (In the first step of my objection the emphasis rests on the inescapable force or push of rationality - a force to want, to appreciate, to value, that which rationality makes possible.) What rationality is, what it involves, makes it impossible to at once be a competent judge and to accurately and unbiassedly identify any value, any quality, of an arational life. Rational agents cannot determine the comparative value of rationality and arationality. So it is that the weak claim that rationality values rationality - if taken in support of the rationality premise (as suggested in the previous section) - really gets us nowhere significant.

6. The Upshot of Inescapability

The upshot of my argument against the rationality premise and those who use it, then, is that such a position really is rationally indefensible as it can never be proven. I will, at the conclusion of this chapter, address a possibility which some may be driven to consider despite their wishes to discover firm, sound, rational argument in support

⁵⁴ One might suggest that just as rationality favors rationality, so arationality will "favor" arationality and thus we would require a stance outside both rationality and arationality to properly judge between them. Since there is no such position, and judging is a rational undertaking, we must come down on the side of rationality. The conclusion here is mistakenly drawn. Rather it must be that we must come down on neither side. This is the force of my argument.

of as much of their position as possible. In a nutshell, one might be tempted to suggest that there may be other ways of "knowing", and so attempt to avoid failure in the face of the inescapability argument as here rendered. This is an intriguing and worthy possibility - one originally hinted to me by Tom Regan in passing correspondence. Though I do not think it a line Carruthers or other contractualists likely to take, it is one worth consideration.

At this juncture it is important to be very clear about implications we are entitled to derive from failure of the rationality premise. It is true that we cannot judge nonhuman animals to be of no moral value for their lack of rationality. This fact does not entail their direct moral standing, however. The fact of the matter is that we are rationally entitled to base no claims to moral standing, or lack thereof, on the rationality premise. Whether anything has moral standing cannot, for us, be a matter dictated or demonstrated by the status of reason, for knowledge of such status is precluded of us by our rationality. (There is nothing to imply that other criteria of moral standing are beyond us or indeterminable. In fact, the alternative rights theory which I will present in due time begins to specify where we can successfully look to identify a variety of levels, degrees, and types of moral standing. The rational capacity is relevant in this venture, but not for any special value which it imparts.)

We are precluded rational recourse to claims of value in rationality for our rationality. Again, I do not suggest that there are no other ways to argue for the superior moral value of one sort of being, or capacity, over another. But I have, I think, demonstrated that any argument which turns on the superior value of rationality will stand seriously crippled when taken in comparison with otherwise satisfactory theories which do not so rely. Before I proceed to an explanation of just how my argument for the inescapability of rationality as tendered against the rationality premise damages contractualism, I will consider a number of likely objections to the inescapability argument itself. They do give pause, but prove quite resolvable.

7. Possible Rejoinders to the Inescapability Argument: preference for the arational

The first objection is raised by the suggestion that I as rational judge might actually prefer (find more valuable) an arational life. If this circumstance is possible, then surely my case against the rationality premise is weakened, as rationality itself does not of necessity engender a desire or want for itself and what it makes possible after all. With a bit of clarification it becomes evident that my case stands firm. What rationality engenders (in relevant regard) it engenders of necessity.

It is what one might believe one sees in a content cat's life that raises possible argument against the rationality premise. Only if I (in my capacity as judge) conceive of a content cat's life as a rational life will I as judge deem that kind of life a satisfactorily valuable one. Only, that is, if I see the cat's as a rational rather than an arational life will I assign it that (categorically different) value reserved for rational lives. Consider what is meant, what picture is painted, by the phrase "content cat". It is of a conscious being, a being who enjoys lying in a puddle of sunshine on the rug - a cat who opts to do this rather than, for instance, finish off the remains of the lizard it has just playfully toyed to death under a chair. It is a creature we envision to ourselves (rightly or no) as having a sense of self, of making choices with an eye to keeping itself content. This way of portraying a happy cat's existence to ourselves for consideration (for valuation) presents the feline existence as a rational (an autonomous) one.

Whether cats are rational (and so perhaps autonomous) is beside the point. What matters here is my claim that only if we identify features imparted exclusively by rationality (such as autonomy) in a life will we find that life attractive, or compelling. Rationality breeds respect for, attraction to, even desire of a life wherein it exists and is exhibited. (Of interest at this juncture is the common, and intended, response to that example often tendered against utilitarianism - that example which offers up the "plugged in and fully satisfied" life versus a more normal, though less immediately happy human existence. Rational agents rail against such possibility for the threat it poses rationality, or autonomy - a point recognized by Carruthers [p.92]. The inescapability of rationality, its self-appreciative force, provides our response here.) Most people do not speak (save poetically, perhaps) of the content life of a pill-bug or crocus. These lives are recognized to be arational for their failure to offer even inklings of characteristics and capacities generally exhibited by rational beings, and

thus they are taken as being of categorically lesser richness, and so of a categorically different (ie. lesser or nonexistent) moral value.

The first objection is dissolved. Only if a judge believes a life to be rational will that judge attach particular - categorically superior - value to the life in question. As such it will not be possible to charge that judges might prefer (ie. assign categorically greater or equal value to) arationality or arational lives over rationality or rational lives, whether or not they have reason to do so.

8. Possible Rejoinders to the Inescapability Argument:

levels of rationality

One might press a second, but related, objection. To wit, what if we demonstrate that rationality is not all-or-nothing? What if humans generally, normally, have more rationality than others, but other animals do exhibit rationality to lesser degrees⁵⁵? (This is a possibility Carruthers leaves open, as mentioned in the preceding chapter.

⁵⁵ Levels of rationality might be variously empirically instantiated. For instance we might recognize rational capacity in the nonverbal communicative abilities of pack animals - as they teach their young, divide up labor, and play. I have wolves and lions in mind, although examples abound. As apparently less sophisticated interactive and communicative animals we might consider crows, or rabbits. That wolves partake of a greater level of rationality than crows or rabbits (at least for purposes of example) is seen in the wider variety and intensity of mentally facilitated actions which shape their lives.

Levels of rationality might alternatively refer to the stages of mental growth through which individuals (as typical tokens of their type) pass. There are rather obvious plateaus of human mental (and mental/emotional) development. Those familiar with cats or dolphin, for example, will vouch for the same in other species.

Whether talk of levels of rationality is restricted to species or it is allowed that a given level may encompass a variety of kinds (all similar for their mentally enabled capacities), it is true that if we recognize the possibility of levels we must ask whether inter-level valuational comparisons are possible. Where the answer is significant it is no, for the very reasons of inescapability of rationality I describe.

Recall, it is not one to which he gives any real consideration as he believes it loses out against alternatives on the count of practicality of application.) Were this description of rationality and the world correct, might the rationality premise not be salvaged? Might we not disarm the argument against it by means of some sort of reliance on degrees of rationality and comparisons between them, for instance? The answer is no.

If there are degrees of rationality, humans will be "driven" or led by their level of rationality to value what it in particular brings. Certainly rationality of all levels, or at least those instances of a certain level of complexity, will seem recognizably valuable. However, one might attempt to maintain that the greatest rationality brings with it the richest life - for example, a truly autonomous life - and so a life of categorically superior value. If, as I have suggested, rationality prefers what it engenders, the richest rationality will certainly prefer the (rationally) richest life - that which it makes possible. So, even if we admit levels of rationality it appears we are stuck with the self-appreciative aspect of the inescapability of rationality. Furthermore, note that to judge between two levels of rationality a judge must be of the highest level of rationality under consideration. Again, this particular qualification for judging value based on rationality itself makes the judge wholly ill-fit to judge fairly, or to judge at all where a lesser complement of rationality is at stake⁵⁶.

9. Possible Rejoinders to the Inescapability Argument:
erring on the side of rationality

⁵⁶ As it becomes increasingly tempting to distinguish between very slightly different types of rationality, it will become correspondingly difficult to make the difference(s) between them the basis of categorically different sorts of moral value. One might determine that a particular level of rationality (let us call it 100) could very closely approximate by way of imagination what it would be like to exist at level 99 rationality. Perhaps between levels 99 and 100, a competent judge really could decide. However, 99 and 100 are rationalities of very similar degree. The argument to exclude the arational from moral considerability will only "work" when the arational are truly arational (whatever rationality turns out to be), when they are truly of significantly different mental capacity.

There is a third discomfort (I hesitate to say objection) one might note against my demonstration of the inescapability of rationality and what it entails. The trouble, which might be regarded as a sort of objection by intuition, arises when we ask how we are to decide in a life-boat-like situation. I might state the position thusly: Ought we really not err on the side of rationality when it comes down to a decision which will positively affect either (in the disjunctive sense) a rational or an arational being? The idea at work here is that rational creatures are proven rights-holders (or otherwise worthy of moral respect), and arational creatures are not. So, if we err on the side of rationality in matters of rational versus arational conflict, we ensure that we - at least - err on the side of morality⁵⁷. This is an objection which will likely be raised against any argument whose result is to level the rationality premise, and so bring the question of nonhuman status squarely into the moral picture. The discomfort is easily answered. (Those inclined to suffer the itch of the discomfort I have in mind will likely continue to scratch - from a new discomfort - on hearing my reply.)

By way of response it is essential to note that it looks as if to make the claim that rational beings have rights is to separate - it is to recognize a relevantly important difference between rationality and arationality. If no such distinction is made, then the claim that rationality brings moral relevance really boils down to a claim which does not set it apart from arationality in that arationality brings (or does not preclude) moral relevance. That is, the claim really made is one to the effect that, for example, a being is of moral value in virtue of being alive (or some other feature which underlies rationality but does not exclude arationality). So we have no reason to "err in favor of rationality". "Rationality" simply serves here as a variable, to be variously replaced -

⁵⁷ If it turns out that arational creatures are morally relevant, it will be just as much erring against morality when we respect the rational over the arational. What I have argued here is that one very popular way of supporting the claim that arational beings are neither morally relevant, nor are of categorically equal moral relevance, is unlikely to succeed.

for instance, by arationality. The only possibility remaining - if the claim that rationality brings moral value is to make sense - is, again, to understand the claim to be that rationality as against arationality brings moral value. If the latter reading is the case, the discomfort which gives rise to the suggestion that we err in favor of rationality in moral dilemmas clearly falls to the very objections which I have levelled in this chapter in the form of the argument against the rationality premise.

In other words, when the suggestion is made that we might do best to err in favor of rationality, we are faced with two alternatives. Either this purportedly favorable erring does not presuppose a morally relevant difference between rationality and arationality, in which case to single rationality out as a morally decisive feature is groundless. Or, a morally relevant difference between rationality and arationality is assumed. If this latter position is the case, there can be no sound argument to support the claim.

The discomfiting question of what to do when faced with conflicts between rational and arational beings remains. Whatever we do, it is clear that there will be no sound argument which dictates erring in favor of, let alone knowingly acting in favor of (as opposed to erring), the valuable rational over the less valuable arational. If one does favor the rational, one cannot claim moral high ground through reference to the value of rationality by means of sound argument.

10. Summary

It is important to recognize the force of my argument against any and all arguments which employ the rationality premise. One way to underscore, or exemplify this force, is to point out that Regan's rights theory and Singer's version of utilitarianism are also both affected negatively by reliance on the rationality premise. As Carruthers aptly notes, Regan structures his argument around that value which rationality (or potential for the same) brings as he excludes all but mammals of one year or more from the sphere of those with moral standing. The best and surest case is made, he offers, in their regard. Insofar as Singer's is a utilitarianism which recognizes a distinction between higher and lower pleasures, and so that between what rationality and its absence allows, Singer too relies on the rationality premise.

(Not all utilitarianisms will so rely.) It is interesting that all the theories Carruthers considers as viable contenders employ the rationality premise. I offer this observation in further support of the historical-psychological account of the philosophic world view with respect to rationality in which we are fairly well entrenched, but from which we would (it appears) do well to extract ourselves, at least momentarily.

At any rate, I have demonstrated that any argument which does appeal to the "richness" rationality affords in order to prove that arational beings are morally inferior to beings equipped with rationality faces definite difficulties. For, rationality makes it impossible to be an unbiased judge of the very issue which would need to be judged in order to prove that point. Rationality, of necessity, by its very nature, breeds self-partiality. Furthermore, where the value of arationality is involved, rationality precludes even being able to be a qualified, an experienced, judge. Rationality is inescapable in precisely the ways it would need to be escaped from in order to determine whether its presence does afford a life of greater (moral) value than a life from which it is absent. (In fact, the inescapability of rationality serves to deny rational agents access to any rationally defensible claim about the value of rationality.)

V. The Rationality Premise and Contractualisms

I. Introductory Remarks

The rationality premise is both critical, as pivotal, and unavoidably essential to contractualism. Insofar as its difficulties affect contractualism, they affect Carruthers' argument. The project at hand is to demonstrate just how damaging⁵⁸ reliance on the truth of the rationality premise is to all contractualisms, and so to Carruthers' contractualist case. That monistic contractualism must either presuppose the truth of the rationality premise or offer no real information and so becomes useless as a moral theory (the latter a somewhat startling though no more pleasant alternative) is what I will now demonstrate.

In order to describe morality - to explain its origins, workings, and outcomes - contractualism of necessity involves the description of some sort of contracting position. That the situation may be variously described is also recognized. Recall, for examples, the differences in structure (and outcome) between the two contractualisms Carruthers discusses (see especially pp.38-39): the Rawlsian veil of ignorance and Scanlon's agreement between rational individuals who openly intend to agree to rationally chosen principles. Whereas Rawls employs a veil of ignorance to prohibit knowledge of particulars which might predispose agents toward certain norms or versions thereof, Scanlon's attempt at explaining the birth of fair and equitable moral

⁵⁸ The degree of damage done contractualism by its reliance on the rationality premise will come out most fully when a comparison is undertaken with a theory which does not so rely. However it seems fair, at this stage, to speak of the damage done - simpliciter - by incorporation of the rationality premise into a theory. I offer two reasons in support of this claim. First, it is a fact that the rationality premise guarantees unsoundness. And, regardless of the possibility that no moral theory is immune to some charge of dubious premises, those which rely on a premise such as the rationality premise are clearly, significantly, disadvantaged. Second, it should be clear that it is ultimately - ie. most significantly - in a comparative sense that the truth status of the rationality premise damages. (Moral theories are not sought in a vacuum.)

rules describes agents who are always and only rational (for contracting purposes), and who share the goal of free and unforced agreement. Scanlon's contractualist picture post-dates Rawls' and is intended to surpass Rawls' by avoidance of difficulties encountered given specifics of the latter. Carruthers discusses the situation on pp.35-45. Rawls' most focussed discussion of the veil of ignorance in A Theory Of Justice appears in a section of the same name (#24). pp.136-142. The first part of Scanlon's section II, pp.110-115, in his "Contractualism and Utilitarianism", presents his alternative to the Rawlsian veil.

My argument to the effect that contractualism either proves useless as a moral theory or falls for its reliance on the rationality premise hinges on the fact that regardless of the specific design of contracting position, all contractualisms must include one of three viable descriptions with respect to knowledge held by contractors concerning the value of rationality in the post-contract state. Two of these possibilities necessarily involve reliance on the rationality premise. If either or both of these possibilities hold, we have affirmation (by exposition) of the fact that in and of its very inception, contractualism presupposes the rationality premise. If the third and sole viable remaining alternative is true, contractualism is reduced to an unworkable, as useless, theory. In this case it can provide no helpful knowledge about post-contract morality, about the nature of moral rules upon which contractors will agree.

2. Knowledge in Contract

The knowledge to which I refer concerns the value of rationality. Obviously, there is some information contractors need to know - information they cannot be denied if the contractualist project is to work. Whether and how rationality matters is just such an item. That it is, is, oddly, precisely what leads to the problematic nature (or relative failure) of contractualism. Apparent confusion is alleviated if one considers the three possibilities open to a description of the contracting position. Either contractors will, (1) know that all rationality is (whether or not rationality admits of degrees) of equal value, (2) know that all rationality has value commensurate to its degree (of "sophistication"), or (3) have no knowledge, no idea whatsoever, whether rationality imparts - or will impart - value.

Actually a fourth possibility exists. But it is not a viable possibility where contractualism is concerned. This fourth possibility presents rational agents as having knowledge of the utter lack (or unavailability) of moral value of rationality in the post-contract state. (This state of affairs is, in fact, what the argument from the inescapability of rationality demonstrates. Its descriptive accuracy is the failure of rationally defensible contractualism.) This fourth alternative is completely inimical to contractualism which, in whatever form it takes, of necessity involves valuation of at least those themselves (or at very least, that individual himself) able to contract, thus ensuring adherence to contract. Option four claims for contractors the knowledge that rationality completely lacks moral value. Option four thus offers a contractualist contradiction in terms.

As Carruthers rightly points out (p.40), "A collection of rational agents choosing moral rules from behind a veil of ignorance would plausibly agree, most fundamentally, to respect one another's autonomy." Autonomy is rationality employed, rationality in action. (For the notoriety of this notion we may thank Kant⁵⁹.) Even if this respect is completely contrived, by way of agreement in contract, it forces the recognition of a (special) moral value to rationality post contract. Contractualism cannot work, cannot come into being, without some recognition of morally valuable things which, in virtue of their value, command respect. Another way to express the point is to note that were contractors to know that rationality had no value post-contract, they would of necessity agree to act as if it were valuable post-contract in order to ensure respect for (at least their own) autonomy and other contractualist rules described in their interests. At least all rational, contracting, beings will have valued rationality.

Whether as individuals contractors know that they will turn out to be rational, whether they remain rational, or some such question is not the point here. The matter I focus on is the question of whether or not contractors know the value of rationality

⁵⁹ Recall that the Kantian connection between autonomy and rationality is seen, for example, in Kant's insistence that morality is possible only if we are free - in which case it is rationality which fuels our freedom and our morality.

post-contract. The first two possibilities admit knowledge of the value of rationality into the contract process. Thus they both ride on the assumed truth of the rationality premise. Any contractualism which answers the question about knowledge of the value of rationality post-contract by means of either of these possibilities suffers as a result. The third possibility denies the relevant knowledge. Either contractors know, or they do not know, whether rationality will have value. There is no further possibility. Already we see the likely damage done to contractualism with respect to its potential success in a reflective equilibrium play-off.

It might be suggested that contractors do not know whether rationality will have any value post-contract. To take up this account of the contract situation is to avoid that immediate failure in the face of the indemonstrability of the value of rationality encountered by options one and two. It appears that alternative three leaves contractualism in a shambles. In a nutshell, alternative three so affects the outcome of contracting - and contract produced - that that contract which results is, for all practical purposes empty. Another way to state the difficulty here is to say that unless contractors know the value of rationality post-contract, they cannot derive a set of moral norms which can eventually guide them.

If the value of rationality is an open question, contractors will have to create parallel sets of rules wherever rationality is relevant - one member of each set of which will be adopted post-contract when the moral value of rationality is known. Such a measure will be unavoidable for the very nature of rules or norms generally taken to be described in or by contract (which are, in part, a function of the described nature of human beings). For instance (p.40), Carruthers recognizes respect for that autonomy which rationality engenders as one of the most fundamental of contractualism's dictums. If the moral value of rationality is truly an open question, contractors must create two possible governing principles: (a) respect autonomy as it is of value, or (b) if rationality has no value, one need not respect autonomy. (Recall that it is not a successful option to counter that, of course, contractors will agree to act as if (a) is true regardless of discoveries post-contract. Such a position is merely possibility [i] or [ii]. It is simply to agree to posit the value of rationality for compliance purposes.) If all that the contract process yields is sets of rules in the spirit of (a) and (b), contractualism does not get us anywhere useful. (That it gives us

indication of what moral concerns will be - in the form of sets of opposed pairs of rules - is interesting insofar as contract provides a sketch of where contractors' concerns may lie, but none too helpful otherwise.) It simply is not an option to withhold knowledge of the value of rationality from contractors. Such restriction is debilitatingly incapacitating to contractor and theory.

To say - as does alternative (iii) - that contract yields pairs of relevantly parallel rules is, of course, just to push a problem away rather than to resolve it. Either reliance on the rationality premise or, alternatively, denial of value of rationality lies in store post-contract. If the possibility (ie. iv) incompatible with contractualism is disallowed, we are left with the claim that rationality has post-contract value. But no one will have reason to believe that rationality is of (superior) moral value post-contract, thus (rational) contractors are driven to adopt all those versions of rules which claim the lack of value of rationality - or to run, screaming for a new theory! For contractors to contract in the face of rationality's nonexistent value is incompatible with contractualism (as demonstrated in discussion of alternative [iv]). We are faced with belief on whim (grounded in no reason) or blind belief (as divorced from reason as is whim) in the rationality premise. Neither is philosophically satisfactory. Alternative (iii) dissolves. It is disallowed.

3. A Possible Rejoinder Defused

In defense of the third alternative it might be charged that if contractors take themselves to be creating a morality for themselves alone, they need not be concerned with the value of rationality. Rather the concern is to know who is rational (and that is humans) such that one knows whom to respect as contract dictates. A claim to this effect from a monistic contractualist must implicitly involve reliance on the "fact" of rationality's singular value. For, such a position determines a morality whose description involves the denial of (direct) moral relevance for all but sufficiently rational creatures. If similar reply is made from a pluralist perspective, there is no claim to the effect that rationality is of any particular value. But then, it is no more to offer a moral theory which contends with the animals issue, or which can be fruitfully

compared with monistic rights or utilitarian theories. (See chapter 2 for further remarks about monistic versus pluralistic contractualist accounts.)

4. Recapitulation

As long as we insist that there is (special) value in rationality, and that the business of morality is to respect that value, and that moral theory is to describe how we do and ought to respect it, contractualism fares rather poorly. Consider: to describe why we ought to respect some value requires the use of reason, thus the use of reason to establish the value of rationality begs the question⁶⁰. But this is just what fuels the contractualist project. And, contractualism suffers a severe blow if rationality is known to lack moral value (as whim or blind reliance on the rationality premise do not make for a philosophically defensible position). We cannot make sense of the contract state with respect to knowledge and rationality. As a result of its reliance on the rationality premise, contractualist moral theory cannot deny a looming weakness. It is grounded in a rationally indefensible claim. That this claim might at best be defended as intuitive, or as a considered judgement, is a possibility whose likelihood will no doubt be less than appealing for a theory which is heralded precisely for its absence of reliance on intuition.

By way of conclusion it will be useful to explain how it is not the case that my presentation of the four alternatives has just the same effect as the argument from the inescapability of rationality. It is, rather, the case that the four alternatives serve to demonstrate how reliance on the rationality premise is an essential feature of contractualism. Contractualism cannot be described without inclusion of the premise. The four alternatives as a group set out the only possible ways in which contractualism might "rely" on the critical premise. I say "rely" here as alternative four offers the possibility that contractualism excludes reliance on said premise. That this state of affairs is precluded contractualism dictates that one of the first three

⁶⁰ For this particular, succinct, statement of my intent I thank to Christopher McMahon. (I speak in similar vein elsewhere.)

alternatives must hold. If so, contractualism is either empty or relies on an indemonstrable claim. If it is meaningful, contractualism is an intuitionist theory. (And, that intuition on which it relies is a philosophically troubling one. I have more to say on the count of troublesome intuitions in section 6 of this chapter, as well as section 5 of chapter IX.)

5. The Case Against Carruthers

If I argue that contractualism faces foundational difficulties, I obviously argue that Carruthers' contractualist position suffers the same. Earlier I suggested that the demise of Carruthers' position is two-fold. First, his contractualism must stumble at the hurdle posed by knowledge of rationality in the contract state. Carruthers' second tumble occurs when he argues that the contractualist theory itself proves his claim that only humans have moral value. The argument to which I refer is his argument from practicality for the moral standing of "all" and only humans. (Carruthers, like Kant, might admit "higher" rational beings to the moral sphere. To do so would be, historically speaking, quite consistent with a hierarchic picture of moral value. To include beings who sit atop humans is in no way to provoke or promote a dangerous downward slide.) Those who, like Carruthers, find themselves convinced by the argument from practicality (I intend no slur on arguments from practicality in general), may do so in part because of its accordance with the rationality premise. Recall that the practicality argument offers one version of respect for rationality which Carruthers presents. Contractors will agree to give equal moral respect to "all" humans for the rationality of paradigmatic humans. This is said to be the practical, the wisest and safest, thing to do - given the intelligence and nature of "ordinary" people⁶¹. Rationality (as instantiated by general species behavior and attitudinal patterns) deserves moral respect. On this contractors will agree. The moral rule of respect is born.

⁶¹ See Carruthers, pp. 114-116. I discuss the argument from practicality in greater length shortly.

Carruthers certainly cannot point to pre-contract knowledge of the value of rationality in order to support the value upon which his contractors agree. Such "knowledge" reveals in its foundational structure the rationality premise, and so its inadequacy. (Recall Carruthers' insistence that contract makes morality in what is an amoral state. See p.36.) It is quite impossible for Carruthers to offer his practicality argument (and its intended outcome) in order to support any prior claim to the effect that contractors actually know the value of rationality.

Simply put, Carruthers relies on the truth of the purported fact of the (superior) value of rationality as part of the organizational materials for the contracting position. Here is (implicit) reliance on the ill-fated rationality premise. From this teetering position he proceeds to offer an argument intended to reiterate - even support - the claim that "all" and only humans are of moral value. That is, for and from practicality Carruthers argues that contractualism dictates the sole and singular moral standing of "all" humans. Carruthers moves from contract to practicality argument and back again, yet fails (as he must) to demonstrate the truth of the special status of rationality on which his position relies.

I suggest that monistic contractualism will always be plagued by the difficulties I have pointed out surrounding knowledge in contract. Carruthers' contractualism, which additionally purports to derive (rules concerning) the sole and superior status of the human rational animal, suffers a second failure - one which is (for contractualism's unavoidable difficulties) - describable in terms of circularity. Where else but in his proof of the special status of human rationality might Carruthers garner philosophically satisfactory support for his claim? The answer is, nowhere. And so Carruthers marches in circles.

One might point to the degree to which rationality is valued pre-reflectively in attempt to offer some level of support for Carruthers. I do not immediately discount such a tactic. After all, rationality really does come highly recommended. Yet given the force of my argument to the effect that the rationality premise cannot be proven sound, those of us who look for good reasons and sound argument in support of theories and explanations would ultimately do best to regretfully set aside any such intuitions we might have or recognize. To do just this is to admit the inadequacy of contractualism (particularly in light of the existence of theories which do not rely on

such a premise, and which otherwise fall nicely into reflective equilibrium, as Carruthers would demand).

6. Concluding Remarks

Two relevant digressions demand attention. It is a truism in philosophy that intuition should be used as a guide. And, it appears that Carruthers draws dangerously near overstepping the boundary of guide, and rather upholds common-sense, or pre-reflective intuition, as nearly irreproachable standard. The process of reflective equilibrium he describes is a healthy one. However, it will not do philosophically to become so wed to or enamored of any intuition that we cannot recognize its inadequacy. Sadly, I think, Carruthers is guilty of such error. It is explicable, and perhaps to a degree forgivable, that one might continue on in blind acceptance of the unquestioned intuitions of one's traditions - giving them (even if unrecognized) primacy of place in one's theories (See my comments of chapter 3 in this regard). However it is philosophically unforgivable to recognize difficulties with, and yet continue blithely in, adherence to dubious intuitions. Carruthers' intuition about the superior value of rationality is no longer one to which any moral philosopher worth their salt can blindly cling. Other philosophers challenge it in philosophic terms. Other cultures, and even subcultures within our own wider culture, offer as deeply held counter-intuitions (often with long tradition to back them up too). The rationality premise, along with those intuitions it echoes, deserves attention. If we give it that, moral theoretic progress may be made.

I do not claim that with my argument contractualism as a theory is now and forever lost to moral philosophy. My claim is far less aggressive and far less large. I do think that my argument by means of the rationality premise serves us warning as to the (or a) weak spot in contractualism. Dependence on rationality, and all it entails, seems to be the contractualists' Achilles' heel. Contractualism remains a theory which deserves consideration. Just as, I think, intuitionist theories ought not be discarded outright in the face of arguments the likes of John Mackie's argument from queerness and the purported oddity of human-independent natural values. (Intuition may stand up to scrutiny.) What I do see in the argument of this chapter is one significant charge

against Carruthers and monistic contractualism when taken up as against contending moral theories.

In regard to the force of my argument against the rationality premise, it might be suggested that other ways of knowing may be possible. This suggestion proposes that the truth of the value of rationality might be had in some fashion other than via demonstrability by sound argument. If so, we might once more take up - or take up with greater confidence in the accuracy of - theories such as contractualism (or Regan's own rights view). The possibility is intriguing, and not (at all) one I wish to deny outright. It is true, however, that the reliability, accuracy, and sort, of this as of yet undescribed other kind of certainty would need to be explicable in terms communicable to analytic philosophy were our tradition to be able to understand, to register, and to react to its existence as well as what it may philosophically - analytically - allow.

A final point is in order. Recall that as a preliminary move in The Animals Issue Carruthers rejects Regan's rights approach for its failure to supply an adequate governing conception. This charge boils down to the claim that Regan's must be read as an intuitionist theory. Whether or not, as Carruthers leads us to suppose, Regan is forced to posit epistemically odd entities is beside the point here. Instead I draw attention to Carruthers' charge that this is how we are led to read Regan, and so (again) to reject all rights theories. The success of my argument against the rationality premise occasions an interesting dilemma for Carruthers. That is, my argument serves to demonstrate the intuitionist value claim inherent in the rationality premise. There is, there, a claim to the effect that rationality brings with it categorically superior moral value. The origin, nature, and accessibility of this purported value is as open to skeptical argument as any intuitionist claim.

I suggest that it just may be the case that over and above a position which contends that many things in the world have value in and of themselves, Carruthers' position which posits value in one kind alone demands even greater stretch of the philosophic imagination to see true. How and why is it, to put the point simply, that only (the highest level of) rationality has value in and of itself? Why not echo-location? Why not permanence? It appears that Carruthers will have not only to defend the purported existence of an intuitively recognized value, but will have in

addition to offer argument as to its singularity and uniqueness in having independent value. It may be philosophically less demanding to accept that many or all things, or no things, have value than that just one thing (one kind) does. At any rate it turns out that Carruthers does not escape culpability at the hands of that very charge he levels at Regan. It is, as Carruthers has it, a philosophically weighty charge. And it is a matter to which I will return.

In the next chapter I attend to the difficulties which plague Carruthers' own attempt to bring contractualism more nearly into line with common-sense such that it enters reflective equilibrium in the best light possible.

VI. The Arguments From Slippery Slope & Social Stability

1. Why Slippery Slope & Social Stability

Thus far I have pointed out an inescapable difficulty which faces monistic contractualism. That the theory in fact relies on rationally indefensible intuition does not prove its utter inadequacy, although it is a serious drawback. In the end, I think, the intuitive difficulty which besets contractualism suffices to insure its relative loss in reflective equilibrium assessment. However, some may disagree. And it is in light of such potential disagreement that I offer the current chapter.

Where Carruthers takes the two arguments I will discuss to bolster contractualism's strong front-running position, I contend that we are not even entitled to claim its theoretic superiority in their regard. In other words, we cannot proffer practicality or psychological facility in defense of singular human moral standing. No more can we cite them in favor of contractualism and its likely restriction of moral standing to humans.

Carruthers' claim that "all" and only humans have moral standing finds support (see especially pp. 114-118 and remarks pp. 160-164) in two arguments: one from slippery slope, and the other of social stability. I begin with slippery slope as it is itself a part of the argument from social stability.

2. Slippery Slope: the argument

"The strategy," (p. 115) of Carruthers' slippery slope argument, "depends upon the fact that there are no sharp boundaries between a baby and an adult, between a not-very-intelligent adult and a severe mental defective, or between a normal old person and someone who is severely senile." He continues, "the argument is then that the attempt to accord direct moral rights only to rational agents (normal adults) would be inherently dangerous and open to abuse." By "lack of sharp boundaries" Carruthers intends us to see (p. 163) that human infants, the mentally deficient and the senile, "share human form, and many human patterns of behavior, with those who are rational agents." There are (p. 164), "immense similarities of appearance and behavior that

exist among all human beings, whatever their intellectual status... ." More bluntly (p. 160), Carruthers pins psychological separability, "between attitudes to animal and human suffering [and moral relevance]," on, "the obvious differences of physical form between humans and nonhumans." It is (p. 160), "because most animals look and behave very differently from humans that it is easy to make and maintain a psychological distinction between..." them.

Carruthers' intent is to draw a sharp, black, line between humans (who, generally speaking, look and act, "pretty much like this") and nonhumans (who do not look and act "pretty much like this"). Slight physical and mental aberrations which appear in individual humans do not push them out of the human - and so morally relevant - category. The flip-side of this position is that no nonhuman animal will ever have enough human characteristics (none will even begin to approach a severely "defective" human) to jump the black line separating the group of humans from nonhumans.

The final step of the slippery slope argument is suggested in the earliest quote above where Carruthers refers to potential dangers and abuses. To refuse rights to all but rational humans - all but actual moral agents - would, as Carruthers has it, endanger those very rights themselves. Resultingly (long quotations are in order here!):

Rational contractors who are trying to agree on rules that will assign basic rights and duties should therefore be aware that any attempt to draw distinctions within the category of human beings may have psychological effects that would prove morally disastrous. They should then agree to assign basic moral rights to all human beings, irrespective of their status as rational agents. For suppose that they were to agree on a rule excluding mental defectives from possessing moral standing, and were thus to allow that there is no direct moral objection to killing or hurting such a being. This rule would clash powerfully with our natural impulse of sympathy for the sufferings of all who share human form, and may cause the latter to be

undermined. If so, then our duties towards rational agents would also be endangered. In contrast, no similar dangers attend the exclusion of animals from possession of moral standing. ... For there is a large gulf, both of physical form and modes of behavior, between human beings and even their closest animal cousins. A dividing line drawn here, being clear-cut, and appealing to features that are strikingly salient, may therefore be a stable one. For it will then be easy to create and maintain a psychological distinction between one's attitude towards suffering in the two cases.

(pp. 164-5)

There really is a sharp boundary between human beings and all other animals. Not necessarily in terms of intelligence or degree of rational agency, of course - a chimpanzee may be more intelligent than a mentally defective human, and a dolphin may be a rational agent to a higher degree than a human baby. But there is not the same practical threat to the welfare of rational agents in the suggestion that all [nonhuman] animals should be excluded from the domain of direct moral concern.

(p. 115)

The argument basically claims that, given human nature - ie. that of morally capable agents - and the clearly recognizable distinction between humans and nonhumans, it will prove most rational to draw the line of moral relevance to include "all" humans and exclude all nonhumans.

Part of what fuels Carruthers' conviction in the truth of all this, is his belief (p. 116), "that most people are not deeply theoretical," and that abuse and misuse of any alternative to full moral standing for "all" humans, given that this group is so

observationally identifiable would be too risky in practical terms. Carruthers admits (pp.114-5) that it would not be incoherent to describe a theory which accords moral standing in degree, corresponding to level of rationality. His point against adoption of such description is a practical one. "The claim must be," (p.115), "that it is in application of these theories in the real world that the danger lies. The idea is that such theories would be inherently susceptible to abuse by unscrupulous people, and ought therefore not to be adopted."

So if we combine the purported fact of sharp boundary between the set of human species and all others with the claim that any other complication or division would be practically speaking impossible, along with the realization that contracting agents will want and see a need for protection of their own rights-to-be from potential slippery slope dangers, Carruthers claims we get the result that "all" humans deserve the same. There is one noted exception: the first trimester foetus.

Before completion of the first trimester, the foetus (though human) will not have moral standing (see pp.117 & 165). It provides the solitary case of a class of members of the species human which really sits quite apart in terms of both behavior and appearance from normal or paradigm humans. The existence of the foetus as exception illuminates a significant feature of Carruthers' argument from slippery slope. In fact, it is crucial to understand Carruthers' stance with regard to the first trimester foetus in order to see precisely how his argument from slippery slope works. It is appearances along with psychological factors about rational agents which enable Carruthers to provide one pillar in his contractualist argument against the moral standing of nonhumans (p.55): "It is [also] the case that species membership, together with the similarities of appearance and patterns of behavior with which it is associated, is not morally irrelevant under contractualism ...". Carruthers ignores potential for practicality; he denies connection or relationship in favor of degree of observable similarity. Simply, the early human foetus is nonhuman on Carruthers' moral usage of the term.

Were it Carruthers' position that it is species membership which grants or merits moral standing, the first trimester human foetus would have moral standing. Such is not the case. Carruthers use of "species" is novel. It is a subset of the "species human" which Carruthers identifies as having moral standing. To have moral standing

one must be human and share characteristics which are used to describe what it is to be human. The first trimester human foetus is more a tadpole for Carruthers' purposes.

3. Slippery Slope: the two-fold reply

Carruthers emphasizes that this argument from slippery slope is one which will convince contractors given practical necessity (as opposed to the more practically dangerous theoretical alternatives which, for example, propose making identifiable levels of rationality the key to correspondingly recognized levels of moral standing - see p.114). The argument I intend to levy against him is one of logical and biological possibility. But it also meets Carruthers' argument at the practical level. And it is exactly there, at the practical level, where Carruthers believes his position to garner its strength. Carruthers claims to have identified an easily discernible dividing line. My contention will be that Carruthers' line is not as dark or as secure, as solid or as infrangible, as he supposes (and needs). As such not only is the distinction he proposes clouded (or dangerously cloudable), but the facility which it purportedly simply secures falls with the failure of that very purported simplicity.

There are actually two arguments I will offer as against Carruthers here. I am prompted to a second response by what I take to be his likely reply to the first - and, I think, philosophically most compelling - of the two counter-arguments. My first objection is one from possibility. It offers a theoretical possibility which, as I shall explain, ought to give any clear-thinking philosopher reason to reject the argument from slippery slope. I predict Carruthers, and those like-minded, will counter by reiteration of claims of practicality. As simplicity dissolves, so does his case for identification of species membership along with behavioral characteristics and appearance as the defining characteristics of moral standing.

It is accepted practice amongst analytic philosophers to offer counter-arguments which read like modern day comic books or fictitious flights of fancy. We are, for example, often urged - as against utilitarianism - to consider what a doctor would do faced with five seriously ailing patients (all in need of a different vital organ) and one perfectly healthy patient "just in for a check-up." By way of explication of Kantian

ethics we are often brought to recognize the fact that were extra-terrestrials of rational powers similar to (or greater than) ours to come into contact with us, no matter what physical (if any!) form they might take, we must acknowledge their full moral standing. Mere logical possibility makes and breaks moral theories. The argument with which I here challenge Carruthers offers just such a challenge. It is a challenge whose form and process cannot be ignored by an analytic philosopher of the tradition in which Carruthers squarely sits. (Were he inclined toward or influenced by feminist approaches, for instance, I might suggest the possibility that Carruthers could legitimately cry "foul" against an argument of the likes I intend to levy. He is not so inclined. I will not so suggest.)

It is, I contend, both logically and biologically possible⁶² that the two criteria Carruthers combines in an effort to clearly distinguish those of moral from those of amoral standing be confused or elided. Species are, of course, human-created categories. I do not deny their usefulness. I do deny the impossibility - through future evolution, genetic engineering, or sheer imagination - of a species so nearly human that we cannot decide whether, for instance, the creatures involved are human or chimpanzee, or neither. Furthermore, there are scientific disagreements with respect to other species demarcation lines, why not the human? The "new" creature I present for imaginative consideration lays a heavy cloud of confusion over Carruthers' sharp line of moral standing. Perhaps, like androids, these beings are not at all genetically human (being "robots"), but act and appear human. In this case we will, as Carruthers has it, be tremendously hard-pressed to consistently exclude creatures described for their appearance and behavior (as they are in Do Androids Dream of Electric Sheep?⁶³ or its silver screen counterpart, "Blade Runner"⁶⁴) given the general

⁶² It is in offering possibility - possibility of a startling flavour - that analogy holds between the above-presented cases.

⁶³ Philip K. Dick, Do Androids Dream of Electric Sheep? 1968.

⁶⁴ "Blade Runner", The Ladd Company, Warner Brothers, 1982. Featuring Harrison Ford and Daryl Hannah. (This multiple-award-winning film is, for sci-fi buffs and perhaps ethicists, a must!)

human inability to or disinclination for careful theoretical musings. Or perhaps a new creature might share %99.999 (just a shade above what chimpanzees claim) of our species' genetic make-up, yet look more like great apes and less like paradigm humans than do most humans (hence the .001% difference). Here - one would think - the creatures ought to be contractors alongside their rationally capable paradigmatically and actually human counterparts, but are precluded for appearance (and, at least to a degree, facial expression and bodily movement) and behavior. (One thinks, again waxing Hollywoodish, of "Planet of the Apes"⁶⁵ or perhaps confederation-friendly Klingons of "Star Trek, the Next Generation"⁶⁶, or even Spock of the original "Star Trek"⁶⁷, half-Vulcan, half-human as he is.) These beings are neither genetically nor specifically human, but by all relevant abilities they are our equals.

What Carruthers attempts is to claim that the human species is special for that particular sort or level of rationality of its paradigmatic members which enables contracting and the birth of morality. Since not all humans are actually actively rational (read: able to contract) and because contractors recognize that simplicity of rules is essential if rules are to be followed, it is not rationality (at a certain level) which becomes the post-contract earmark of moral standing, but rather those visibly discernable features which rational, paradigmatic, humans share with their "abnormal" fellow humans.

My first objection to this line amounts to the quite real possibility of "creatures" whose existence (if only in daydreams and movies thus far) would so cloud the line at

⁶⁵ "Planet of the Apes", Franklin J. Schaffner, director. Featuring Charlton Heston and Roddy McDowall. 1968.

⁶⁶ "Star Trek, the Next Generation", Gene Roddenbury, producer. Syndicated 1987.

⁶⁷ "Star Trek", Gene Roddenbury, producer. One might see the film, "Star Trek", Paramount Productions, 1980, featuring (as the t.v. program) William Shatner, Leonard Nimoy, and DeForest Kelly, if wholly in the dark as to the content to which I refer.

issue that Carruthers will be forced to abandon his position. Were there beings who shared either our human rationality or our behavioral patterns and appearance (but not both traits), I suggest, Carruthers would have to immediately reconsider his rule for determination of moral standing. It is unclear whether Carruthers would intend to exclude or include androids and Klingons from the realm of moral standing. If Androids - clearly genetically nonhuman - are included, Carruthers will need to defend such inclusion, all the while maintaining insistence on genetic and behavioral criteria for moral standing otherwise. One half of his criteria for moral standing will be severely challenged. If Spock, who appears (particularly internally) and behaves in rather distinctly nonhuman fashion (as Dr. McCoy makes clear at the end of nearly every old "Star Trek") while sharing human genetic make-up (Vulcans and Humans, apparently, can reproduce), is accorded moral status, it appears the human foetus would need to be recognized to have moral standing on Carruthers' line as well - for its genetic make-up, and despite its appearance. Yet, as Carruthers has it, to open the door of moral standing to the human foetus is to open it to all arationals, even if lacking in human appearance and behavior. Confusion reigns. As a result of biological and logical possibility we see that that line Carruthers relies on to be infrangible and dark at once unravels and fades.

In the end it seems that rationality is key, as Carruthers admits early on in citing his Kantian roots. However, it becomes ever more clear that Carruthers' attempt to draw in the relevance of behavior and appearance is debilitatingly artificial. And, it is success of just this move which Carruthers relies on to include "all" humans, while excluding all nonhumans in the set of those with moral relevance. No contractualist worth their salt, I suggest, will agree that contractors would or should adopt the position Carruthers offers. The very possibility of challenges to such a position too clearly demonstrates its arbitrary nature.

At this point I fully expect Carruthers would offer the rejoinder that mine is a theoretical challenge whereas his is an argument from practicality. Practically speaking, that is, there are neither androids, nor Klingons, nor nonhuman challengers to his line. Just the opposite, there is a clear division between humans and nonhumans which can easily be expressed in terms of a combination of species membership and basic human appearance and behavior. I disagree. My second argument arises here.

If we take the time to actually consider examples on the edge, which Carruthers fails to do, I think it becomes clear that not only is it the case that people simply do not always see the divisions Carruthers sketches, but it is also true that given our difficulties with the severely disfigured and mentally retarded, Carruthers' division loses its claim to simplicity or practicality.

Consider the "Elephant Man"⁶⁸. Consider your own reactions to severely retarded or disfigured people whose paths you may have crossed. Consider the recent American sitcom "Life Goes On"⁶⁹ which features Corky, a young man with Down's Syndrome, and the related difficulties he and his family face. When the Elephant Man terrifyingly and poignantly cries out, "I am not an animal", he decries those - the majority, I fear I must admit - of us who have denied him human, and even moral, standing. For many, many humans it is neither easy, nor simple, nor practical, to look at an Elephant Man and see in him a companion in moral standing. Whether he is - as he of course is - truly morally relevant is beside the point here. What matters, and matters very much, is that the existence of the Elephant Man and others like him - as well as of "Corkies" whose physical differences are rather minimal but whose mental capacities are less than average (though by no means wholly lacking) - poses a severe challenge to Carruthers. If we must work hard to see in such persons beings of full moral standing, if we must take great pains to teach our children and fellows the same, as it seems we must, then it is no longer most practical in the sense of simplicity to follow Carruthers' suggestion.

The Elephant Man was surely a moral agent. He was fully rational, not to mention highly emotive, caring and thoughtful. His case demonstrates the impracticality (the utter absurdity, really) of making appearance a criteria of moral standing for the purported practicality it offers. Cases of Down's Syndrome children and young adults are equally distressing (if for slightly different reasons). Here we have - in severe cases - near absence of rationality accompanied by a fair (though by no means

⁶⁸ "The Elephant Man", the film, directed by David Lynch, featuring John Hurt, 1980.

⁶⁹ "Life Goes On", syndicated t.v. program, early 1990's.

extreme) amount of disfigurement which often sadly induce more than discomfort in other humans. Mental and physical retardation (even over and above simple ugliness) provoke reactions far more painful, and certainly more immoral, than name-calling, silent treatment or denial, rude stares or ostracism. Paradigm humans, I contend, are as a matter of fact not readily able to contend with abnormal humans. (If children are - or have been - regarded as members of the class of abnormal humans, it may be the case that they are exceptions here. I am inclined to observe that their fate is much like that of their fellow "abnormals", even on this count, despite what one might wish or hope.

Children are not always treated with that moral respect which, I think, is their due. There is supporting evidence for my claim here if, as I will later suggest, there is truth in the notion that moral education is an integral part of being moral.) We have much difficulty relating to those who lack full rationality or whose behavior or appearance is perhaps, if only at times, more "nonhuman" than that described by paradigmatic humans. Often such persons are regarded in worse light than, and treated at least as callously as, nonhuman animals. It is not easy to look at all humans and see similarity. (I will only mention racial tensions here, though certainly one might draw out the analogy I am after in alluding to this ugly human tendency at this juncture.) It is easy to look at humans and see differences - to see those who are not "whole", who cannot do or be as the observer or the majority. Ostracism is as likely as inclusion. Even if it is slightly less likely (which is not necessarily my suggestion, but is possible) Carruthers cannot deny its existence.

The claim that what I loosely term ostracism is so unusual that it cannot pose the threat to Carruthers I suggest it does is one whose defense must be made. As against it I offer the ugliness we witness daily and personal experiences with the mentally and physically handicapped. (In my own case, I think of a mentally and physically challenged aunt and a best friend's sister in the same sort of severe situation.) The burden of proof (to demonstrate the contrary) is on Carruthers. Again, if we must practice and teach ourselves and our fellows to see similarities, to include rather than exclude, we have crossed the boundary from simplicity to complexity. We have shifted into an area where the theoretical is inescapably essential and weighty, and the practical - in terms of both simplicity and deep thought - slips away.

That very practicality upon which the argument from slippery slope rests melts away upon inspection. The distinction Carruthers makes is there to be made. But it must be identified, practiced and taught. This is not a simple matter. Nor will it be a simple project. As such, alternative accounts of moral standing, which Carruthers rejects for practical reasons (though he openly admits them to be of equal theoretic merit and plausibility), are as choice-worthy as that which he prefers. We might, then, insist that (p. 114), "only rational agents have rights, leaving a large range of cases in which possession of rights would be indeterminate. Or we could insist that possession of rights itself should be a matter of degree ...". If I am on the mark in my argument against Carruthers here, there remains the open possibility that on a contractualist account only some humans have (full) moral standing or that some nonhumans do. Neither proposition pleases Carruthers. The truth of either might well lead him to reject contractualism for reasons of reflective equilibrium.

4. Social Stability: the argument

Carruthers gives the argument from social stability quite quickly:

This is an argument from social stability. One thing that rational contractors should certainly consider, in framing a basic set of principles, is whether those principles would have the desired effect of facilitating a stable, co-operative, community. In this they should have regard, among other things, to the known facts of human psychology. One such fact is that human beings are apt to care as intensely about their offspring as they care about anything, irrespective of age and intelligence. A rule with-holding moral standing from those who are very young, very old, or mentally defective is thus likely to produce social instability, in that many people would find themselves psychologically incapable of living in compliance with it.

(p.117)

Contractors, of course, share the aim of a stable community. Carruthers' contention is that to deny moral standing to what I have (lamentably) termed abnormal humans is to make possible, or even to promote social instability. Again his argument is based, in part, on what he sees as a flaw or weakness in human character. (This step is not necessarily a weakness, but it does bear mention. Recall Carruthers' earlier cited remark to the effect that the general populace simply is incapable of deep theorizing. Moral theory must be simple for rational though we are - the most of us - we cannot or do not use our rational capacity carefully or fully.) The key claim in the argument at hand is that people simply could not psychologically comply with rules which demanded the exclusion of abnormals from direct moral standing. The psychological reasons Carruthers intends remain unclear. It is likely he gestures toward feelings of discomfort grounded in that recognition of similarity (of "species-hood", or something to that effect) discussed in conjunction with the argument from slippery slope.

Alternative moral approaches for abnormal humans would not serve. This is an important claim for Carruthers. He is quick to point out (p.118) that rational agents could not - on a contractualist line - agree only that abnormal humans matter morally for their significance and import to full-fledged moral agents. This would be to reduce humans to private property. Private property has no moral status in and of itself. What moral agents do to private property matters morally only insofar as their actions affect those of moral standing. In no sense is it correct to equate a human with private property. Here Carruthers offers the example of a child. One could not accept the destruction of a child, as one could of private property (in an emergency, for example). Carruthers is convinced that "all" humans must equally be rights-holders (of, I assume, basic human rights).

Carruthers is likely on the mark when he points out that humans probably care as much for their children as they do anything else. And, this caring, this love, does for the most part appear to ignore age, intelligence, and appearance. Carruthers' error is in jumping from the likely psychological fact of attachment to one's own children to a

far more contentious extension of this attachment to all other "abnormal" humans, let alone children in general. (That it is a motley crew in this "abnormal" or "other" category is not a new claim. Feminist philosophy has brought recognition of the fact that children, like women, have often been lumped into the group of "other" without any careful consideration of the particular characteristics which these "others" do and do not share.⁷⁰) Clearly not all people are as attached or attracted to others' children as to their own. Sadly it is even a larger stretch to claim that attachment to the senile and mentally and physically retarded is not only akin to but arises from the same strong and universal human psychological characteristics.

Furthermore, were Carruthers' claims about psychology with respect to all morally incapable humans correct, there would remain the question of what he really intends - and what we might understand - by "social instability". How, for example, will society be affected if those actually positively psychologically attached to the group in question (or individuals thereof) simply deal with them in "pseudo-moral" ("pseudo" for extension of moral behavior to things which, technically speaking, do not of necessity merit it) fashion? Would this not simply yield supererogatory acts? The best response I am able to mount on Carruthers' behalf is suggested by what he has to say, finally, with respect to those he terms "animal lovers" on completion of his argument for contractualism:

But in fact, much of the moral energy currently spent in defense of animals has been diverted from other domains. Amongst those who campaign actively on behalf of animals, indeed, the feelings of sympathy that motivate their actions have ceased to be morally admirable, precisely because those feelings have been allowed to get in the way of concerns that are more directly morally significant. Moreover, there is no way

⁷⁰ Judith Hughes, "The Philosopher's Child", in Morwenna Griffiths and Margaret Whitford, eds., *Feminist Perspectives In Philosophy* (Bloomington: Indiana University Press, 1988).

in which we can, as contractualists, tell ourselves a plausible story in which increased concern for animals will be morally beneficial. For we ought to be able to see clearly that it is only the suffering of humans that have moral standing, and that have direct moral significance irrespective of facts about character. In which case, increased feelings of sympathy for animals can only serve to undermine our judgements of relative importance, having the same moral effect as decreased concern for humans.

(pp.168-169)

As Carruthers sees it, to "demote" humans - actually, observably, obviously humans - to nonhuman status would be to drain moral energies and to confuse easily confused moral agents.

The argument from social stability seems to rely on the unstated premise that extending concern and sympathy to entities which are not truly of immediate moral relevance simply does deny actually morally relevant beings some of that moral concern they (completely) deserve. And such a state of affairs is morally intolerable. In effect, society will not fare well if we have moral agents running around wasting their moral energies on morally irrelevant creatures. Since moral agents cannot but consider and treat abnormal humans as as morally relevant as themselves, rational contractors will have to agree - for the stability of society - that "all" humans have full moral standing.

My contention is that Carruthers is generally apt in his remark about children, but from there he is only entitled to proceed to a connection between the moral mistreatment of children (and only "healthy" ones at that) and social stability. Carruthers has yet to tender supporting empirical evidence for the purported parallel cases of "abnormals" who are not, or are no longer, children. It just is not clear that people in general really do see, treat, and respect abnormals as they do themselves - where they "themselves" belong to and help comprise the paradigm.

It is not open to Carruthers to counter that what actually happens is beside the point, that what matters is - in theory - that of which we humans are capable. Carruthers' is an argument from psychological facility. Facility is lost when appreciation (and recognition) of arguably or potentially identifiable similarity must be taught and practiced. The argument from social stability fails.

Not only does the argument from social stability fall in and of itself, but its failure is reflected in that of the argument from slippery slope. Just as that from social stability, the slippery slope argument relies for its success on the purportedly immediately and actually recognized similarity of "all" humans for their behavior, appearance and rationality. As I have suggested, humans simply are not so quick to view themselves and "all" their fellows as similar in such terms. Rather, people appear very much inclined to fracture their vision of others along lines of appearance and behavior unless otherwise taught. (That teaching plays a role in fostering human propensity to appreciate will figure prominently in argument to come.) We are quite capable of feelings of a universal humanhood. We do not, however, come to such a vantage point without moral education, practice, and guidance. The arguments from slippery slope and social stability both fail for the dissolution under scrutiny of that practicality they require. The argument from slippery slope also fails for the possibility of beings who challenge the sharp line on which the very practicality which must defend the argument relies.

5. Where All This Leaves Carruthers

Carruthers is not entitled to claim the success of the two arguments here discussed. As such he cannot claim, for contractualism, the moral standing of "all" and only human animals. The effect of this fact on his case in The Animals Issue should not be understated. It is only because, he argues, contractualism is able to accommodate the moral standing of "all" humans while simultaneously precluding such standing from nonhumans that Carruthers sees in contractualism a moral theory which best lies in (or begins to best lie in) reflective equilibrium with our common sense moral intuitions.

It bears reiterating that the failure of Carruthers' slippery slope argument will only damage contractualism's standing in reflective equilibrium for those who share his

convictions as to the singular status of humans and his reading of contractualism as a theory which in the end can only accommodate such standing. (My inclinations lie against the first and with the second claim.) The argument from slippery slope (as that from social stability) merits attention if only because, I think, Carruthers is not alone in these convictions. Although it is actually the rationality premise which lays contractualism low, regardless of what intuitions one holds, the arguments from slippery slope and social stability figure prominently in Carruthers' case and do merit attention for that support they might be taken to lend contractualism.

Recall (p.195) that Carruthers points to utilitarianism's weighing of humans versus nonhumans as highly counter-intuitive: "... we find it intuitively abhorrent that the lives or sufferings of animals should be weighed against the lives or sufferings of human beings." And, given that contractualism does offer an account which denies the necessity of such comparison, utilitarianism may be the acknowledged loser in a sort of battle by reflective equilibrium. As Carruthers contends (p.195), "... we can be more convincing in resisting the claim that theoretical considerations should be allowed to over-ride our common-sense beliefs if we have some alternative approach to offer."

Notice the effect of this chapter's claims against the arguments from social stability and slippery slope. I have, in effect, returned utilitarianism to a less outrageous position in the balancing stand-off between that theory and contractualism with respect to what Carruthers identifies as our common-sense moral intuitions. In other words, contractualism has not been successfully proven to necessarily (or practically) accord "all" and only humans moral standing - quite the opposite. It remains a possibility in the face of contractualisms that (at least some) nonhumans need be granted moral standing by rational contractors. It may also be the case, for example, that highly rational chimpanzees should be accorded an amount of standing commensurate with their level of rationality. A further possibility is that - for reasons previously discussed - monistic contractualism is committed to the denial of moral standing for all but those wholly rational, which would effectively deny moral standing of a number of humans. The upshot of all this is, on the count at hand, to recognize as a lively possibility just what Singer's utilitarian argument for the moral standing and

consideration of nonhuman animals claims: Some animals do matter morally, for the very reason(s) that their human counterparts do.

Furthermore, there is the - for Carruthers - highly counter-intuitive possibility that contractualism denies moral standing completely of some humans, and identifies only limited standing for others. It is possible (refer again to pp.114-5) that, "possession of rights itself should be a matter of degree...". Given the revealed lack of practical argument for the adoption of Carruthers' claim that "all" and only humans have moral rights (or moral status of any sort), we must demand theoretical argument in support of this position over the alternatives. We may suppose that Carruthers cannot supply such an argument as he does not. (To omit any account he did have to this effect would certainly be philosophically fool-hardy. One wants to offer as much support for one's position as possible. In book-length works, at least, philosophers do not hide trumps up their sleeves.) Contractualism, then, is left in the position of variously being interpreted as denying any rights to some humans or (if this is a viable possibility, given difficulties with adherence to contract post-contract) as extending rights to some nonhumans while denying the same to some humans. For Carruthers either state of affairs puts contractualism in very poor standing.

Only if Carruthers were to reassess his analysis of common-sense intuition could he renew faith in the likely success of contractualism. I doubt that this move is an open possibility for him. Consider closely the following remark (p.195): "For the beliefs in question are so deeply embedded in our moral thinking that it might be more reasonable to do without any theory of morality at all, than to accept one that would accord animals equal moral standing with ourselves." One might press that Carruthers really could do with a full dose of empirical medicine. "Just look at the world, Carruthers!," we might urge, "See what and how people feel and you may rethink your position!" I believe he has a ready (though ultimately unsuccessful) response:

In reply, it may be said that many people have in fact found it quite easy to lose this intuition, and have embraced with enthusiasm the thesis of the equal moral standing of animal suffering, but without especially adopting a utilitarian standpoint. This is true. But so,

too, and in the same sense, have people managed to lose their belief in the physical world. In both cases the basic form of the argument is sceptical. Those who have lost their belief in physical reality have done so because they doubted whether there is anything that justifies belief in a world of physical objects, given that it is possible for our experiences to be a gigantic hallucination, or to be caused by an evil demon working directly on our minds. Similarly, many of those who have lost their belief in the differential moral standing of human and animal suffering have done so because they doubted whether there is anything that justifies belief in the difference. But, in common with many other philosophers, I believe that scepticism about physical reality is answerable. ... In both cases the sceptical argument is initially attractive (not to say seductive), hard to answer, but ultimately unsound.

(pp.68-69)

In other words, Carruthers is convinced that we need not take leave of our search for a satisfactory moral theory which accords with what are - at least - his very, very deeply held common-sense moral intuitions. For, there is a theory which soundly supports the accuracy of those common-sense intuitions. Contractualism must claim the moral standing of "all" and only humans. What I have shown here is that this is precisely what contractualism does not demonstrate. That is to say that given the failure of the arguments from slippery slope and social stability, Carruthers is left with contractualism as a theory which might, in all consistency, have at once to embrace the moral standing of (some) nonhumans and reject the moral standing of (some) humans. For Carruthers this is anathema. He must either rethink or reject contractualism, or turn to some other moral theory - one, such as virtue theory, which he does not even deem worthy of consideration in the text under review.

It is unlikely that Carruthers will ultimately opt to accept no moral theory at all (consider his tone in regard to skepticism and his obvious desire to discover some level of truth in ethics). So, he is left with the challenge of rethinking his arguments in support of a contractualist account of the moral standing of "all" and only humans. The route most obviously open to him will be to challenge those very alternative criteria for moral standing to which he does not deny equal theoretical possibility.

Neither on the count of practicality nor psychological facility does contractualism garner a better post-position for reflective equilibrium assessment. In the next chapter I defuse yet another of Carruthers' attempts to set contractualism above the alternatives.

That Carruthers believes contractualism needs the successes of his slippery slope and social stability arguments to garner favor in reflective equilibrium assessment does not, of course, make it so. Contractualists might - despite further difficulties of theoretic consistency - be pleased or nonplussed by demonstrations of this chapter. Contractualism's intuitionist difficulties suffice for its comparative failure. I have considered Carruthers' additional arguments here in order to defuse attempts at downplaying of intuitionist failure by way of emphasis of purported contractualist successes.

In the following chapter I demonstrate that moral motivation is not singularly contractualist.

VII. Moral Motivation Is Not Essentially Contractualist

i. Carruthers' Argument

In this brief chapter I take issue with Carruthers' claim that a very promising account of moral motivation offers support of, and ultimately only of, a contractualist moral theory. As Carruthers has it:

[The] hypothesis is thus that the contractualist concept may form the core of all the different moralities that human beings have endorsed. At any rate, this is sufficiently plausible to make contractualism, when taken together with the appeal of its normative output, a very strong contender overall for the title of most acceptable moral theory.

(p.46)

Carruthers does not intend this of his suggestions to stand alone in support of the truth of contractualism. He does take it to provide strong supplemental support alongside his other arguments in favor of contractualism. My first intent, then, is to demonstrate Carruthers' failure on this count. I will argue that from conceptual conflation Carruthers mistakenly offers a promising account of moral motivation as one which is essentially contractualist. It is not. Second, I shall identify the foundation of a compelling account of moral motivation - one to serve in the alternative rights theory with which I shall conclude my larger case against Carruthers.

Recall the criteria Carruthers sets out by which we are to assess moral theory. One of the standards he describes (p.22) is that, "a good moral theory must [also] give us a plausible picture of ... the source of moral motivation." In fact, Carruthers actually goes so far as to insist that part of the governing conception of a particular moral theory will be (p.23), "a distinctive picture of the source of moral notions and moral knowledge, and of the basis of moral motivation." Not only must a moral theory

provide an account of moral motivation, it must provide one fitting to its unique characteristics as a distinct theory. In other words, Carruthers denies the possibility of a moral theory-independent theory of moral motivation. On Carruthers' view we cannot offer a complete psychological account of moral motivation external to or exclusive of moral theory. Furthermore, for Carruthers moral motivation is actually contractualist. It is essentially contractualist. Thus an account of moral motivation is an account of contractualist moral motivation.

Carruthers is rather taken with Tim Scanlon's account of moral motivation. Scanlon, he explains (p.45), "maintains that the solution to the motivation problem is simply to postulate that human beings have a basic need to justify their actions to one another in terms that others may fully and rationally accept." Carruthers continues:

Scanlon supposes that the requisite desire to justify oneself is produced and nurtured by moral education. I think it might more plausibly be maintained that it is innate (inborn), in such a way as to emerge gradually at a given stage in maturational development. The case for believing that a good deal of human cognition is innate, including knowledge of the basic principles of human psychology, is a powerful one. What more natural, then, than that the basic springs of characteristic human motivations (including moral motivation) should be innate also? Certainly one would expect such an innate feature of human beings to have considerable survival value, given that we depend crucially for our survival upon co-operative modes of living.

If the desire to be able to justify oneself to others in terms that they may freely and rationally accept were innate, however, one would certainly expect it to be universal. Yet, it may be objected, there have been many communities in the course of human history that have not conceived of their morality in anything like contractualist terms. We may note in reply that what someone may rationally accept will depend, in part, upon their

background beliefs. If you believe that the world is ruled by a benevolent and just God, for example, who watches over us as his children and who wishes us to arrange our lives along the hierarchical lines of feudal societies, then you might freely and rationally accept the rules that assign you your role as serf in such a society.

(p.45)

I doubt whether Carruthers' correction of Scanlon's account really involves any essential difference of account. They are certainly not incompatible. (Moral) education may well bring out what is innate. (The Meno⁷¹ springs to mind.) At any rate, it is a conflation of ideas Carruthers has taken from Scanlon, and not a conflation with which I charge Scanlon, upon which I shall focus argument.

2. The Error (and what it reveals)

It is tempting to describe the springs of moral motivation as at least in part innate (as part and parcel of the normal human psychological baggage) along with other characteristics which together give us our "human predicament" - the struggles over good and bad, questions of motivation, the possibility of knavish activity and so forth. However, it is a fact that Carruthers gives no argument to the effect that such motivation is of necessity tied to moral contractualism. Nor do the few thoughts he offers in passing support that claim - which is a claim he relies upon in stating his overall case in favor of contractualism.

The most glaring error I see in Carruthers' brief treatment of moral motivation as contractualist by nature involves a crippling and illicit conflation. It originally appears

⁷¹ The Meno, as translated by W.C.K. Guthrie, in The Collected Dialogues of Plato. Including the Lectures, Edith Hamilton and Huntington Cairns, eds., (Princeton: Princeton University Press, 1961).

in the second paragraph of the long excerpt from his text just quoted. As will become clear, the conflation is between free, unforced, and rational rule-acceptance on the one hand, and free, unforced and rational justification on the other. Carruthers identifies free and rational (I omit "unforced" for brevity and as it seems slightly redundant) justification (of behavior, compliance, etc.) with contractualism in the first two sentences of the paragraph just cited. In effect he there says that it may be suggested that this justification is not (universally conceived of as) contractualist. His immediate rejoinder to this suggestion is to press that that conception may be misleading. That is, what people conceive justification to be is not necessarily correct or may variously affect outcome of contract. And in fact, the connection between moral motivation and contractualism stands firm. The connection is there to be discovered, despite superficial appearances to the contrary. The second step in the conflation occurs in the example he offers of apparently divine motivation (which, see p.46, he goes on to explain away by reference to underlying conceptions, "put to work in the context of different social practices and metaphysical beliefs"). Here Carruthers talks of free and rational acceptance of rules. Talk of free and rational justification has switched to talk of free and rational rule-acceptance. The conflation is made.

When (p.46) Carruthers says, "my hypothesis is thus that the contractualist concept may form the core of all different moralities that human beings have endorsed," he makes a claim to which he is not entitled. He wants to argue that at heart all motivation really is contractualist. Truth of this claim would certainly speak in favor of contractualism. However, Carruthers only skips from talk of innate, psychological, predisposition to freely and rationally given justification of actions, and then on to talk of free and rational acceptance of rules. The latter may be contractualist by nature. The former is most certainly not. For instance, the innate psychological predisposition to freely and rationally give justification might be expressed in utilitarian or virtue theoretic ways. I might decide, and explain why I so decide, to do a particular act because it furthers the general good, or because to do so is to act within a particular mean. That utilitarianism and virtue theories are normative and so can be described in terms of the dictates they describe (or propensities to comply they might foster) does not make them contractualist theories in disguise. There is no necessary connection to rule-making or acceptance of a specifically

contractualist nature here. Rationality is used here to explain what one feels and how or why one acts. It is not used to convince for purposes of binding agreement. To give rational justification is not to use rationality contractually. That contract (rational process which it is) involves rational discussion, give and take, and eventual agreement does not make it equivalent with justification. Justification may play a role in contract. Both are rational businesses. They are not reducible the one to the other.

All Carruthers has provided, then, is an interesting preliminary sketch of human moral motivation. We may be driven to justify by (some of) those very features and capacities in us which make morality possible. We are (for practical purposes) free and rational, and so we can see and assess the world and possibilities therein ourselves. Morality is, temptingly and (at times) damnably, there. To offer that contractualism is there one must be prepared to offer further (perhaps impossible) argument.

To say that a moral agent is driven to justify herself by that very freedom and rationality which makes her a moral agent (there is a measure of Kantian truth here) is not yet to recognize a contractualist essence. (I would, in fact, suggest that a measure of something other than freedom and rationality is necessary to drive - or to fuel - our need to justify. Again there is a Humean ring to my suggestion. Does rationality alone have the force or nature to egg us on to justification? This matter I leave for another time.) Free and rational justification is not yet contractualist. It is not, just, free and rational agreement in the sense of agreeing to. Justification of behavior etc. involves attaining agreement that (some explanation) is more or less satisfactory. Contractualism involves agreement to certain rules (in order that stability and so forth be maintained). Of course one most likely will employ justification in the process of agreement to certain rules. But, to justify in the service of contract does not make the two processes equivalent. Whether or not free and unforced acceptance of rules is actually and essentially contractualist, it is clearly not the case that free and rational justification amounts to free and rational rule acceptance.

For Carruthers' claim about the connection between moral motivation and contractualism to hold, not only must it be the case that free and rational acceptance of rules is singularly equivalent to contractualism, but - and more pivotal here - it must be the case that free and rational acceptance of rules is uniquely the same thing as free

and rational justification of one's actions and omissions. They are not equivalent (although they do make use of similar sets or subsets of capacities). Carruthers is not entitled to his claim.

Perhaps Carruthers is wrong in his insistence that a satisfactory moral theory must itself provide an account of moral motivation. This is my inclination. One might, as I am, be inclined to agree with the theory of moral motivation - a psychological, biological and evolutionary account - that Carruthers sketches, without at all having to subscribe to a particular moral theory. The very nature of the account he provides leads me to suggest that theory of moral motivation is separable from moral theory itself. At any rate, I think I have made it clear in this short rejoinder to Carruthers that his account of moral motivation is not essentially tied to contractualism. That he takes it to be so is the result of his conflation of justification with rule-acceptance (on top of the questionable assumption that free and rational rule-acceptance simply and solely is contractualist). To be able to understand, assess, and accept rules is an ability consistent with and necessary to the adoption or accuracy of any normative ethic. There is nothing inescapably or uniquely contractualist here. Carruthers' claim that any theory which involves rule-acceptance necessarily involves contractualist justification mistakenly identifies justification as contractual for the role of rationality (in the form of understanding, assessment and acceptance) in justification. Again, justification does involve rational processes much as does contract. And, contract may well involve justification. But in the end, they are not the same business.

3. Closing Remarks

The result of my small point in this chapter, as I remarked at the outset, is to deprive Carruthers of what he takes to be a supporting claim in his defense of contractualism as offered against the moral standing of nonhumans. It is not the case that we are all, at heart, predisposed to contractualism given our (likely) predisposition to morality (whether to be, or struggle with, "right" and "good"). To agree that we need to justify is not to agree that we need to contract. It is at most to agree that we are - to a measure - inexorably drawn to be moral.

One might press that the account of moral motivation I have just defended as promising, while not essentially contractualist, itself entails the view that the moral status of nonhumans is derived. If so, then I lose my larger point which is to argue that nonhumans are not automatically denied moral standing by the "the" right moral theory. There is confusion. In order to propose such a claim, one would need to rely on the truth of a premise to the effect that: (a) only those capable of moral motivation have (full-blown or direct) moral standing, or (b) only those to whom moral agents can actually, meaningfully, justify themselves have (full-blown or direct) moral standing. (Such a premise is obviously Kantian in that it embraces the idea that moral agency alone gives moral standing.)

Certainly moral agents are paradigm examples of beings with moral standing. However it will take argument to secure as fact the conclusion that the set of those with (full-blown or direct) moral standing is identical with and limited to the set of moral agents. In order to so argue one would need to prove that it is the very capacities which enable moral agency which bestow moral significance.

I offer that moral agency and moral relevance are differently described. By itself this suggestion bears no necessary implications as to degrees(s) of moral weight or import. It merely denies immediate acceptance of the notion that moral agency alone begets moral standing. In my sketch of the alternative rights theory I will draw on the account of motivation offered in this chapter. That picture will afford an account of ethics wherein moral standing is not equivalent to moral agency in the sense just discussed.

The accuracy of the account of moral motivation I adopt and adapt from Carruthers does not of necessity imply that nonhumans are morally of (at most) derived status. This is so first because it turns out not to be the case that the account itself entails the truth of contractualism; and second because it is incorrect to charge that this view of motivation necessarily involves the relevant equation of moral agency with moral standing.

My concluding point might also be made as follows: Scanlon's (and Carruthers') view is contractualist in the sense that the desire to justify oneself is a desire to show that one's actions conform to a set of rules that no one could reasonably reject as a basis of informed, unforced general agreement. But, moral motivation can be

detached from this and presented simply as a desire to show that one's action is justified by good reasons (that others might acknowledge as reasonable in the circumstances). Justificatory reasons could come from anywhere, and need have nothing to do with agreement. What falls out from this is that arational animals cannot have moral motivation. But this does nothing to imply that we lack reasons derived from their interests⁷².

⁷² I credit and thank Christopher McMahon for pointing out this different cast of my position.

VIII. An Alternative Rights Theory

I. Carruthers' Circumscribed Search

The final of the major difficulties I see with Carruthers' argument revolves around his unrealistically narrow consideration of alternatives to that contractualism whose theoretic superiority his argument is intended to prove. Not only does Carruthers consider just two alternative types of theory but he fails to examine the importantly different variances amongst possible versions of each. That is, Carruthers only assesses Peter Singer's utilitarianism and Tom Regan's rights theories. (Carruthers notes that Singer's utilitarianism may be taken to stand in for all utilitarianisms. Singer, we are told - p.51, "wants [his] argument to be acceptable to all", and so we may read, "to all utilitarianisms". No parallel claim is made about Regan and rights theory.) We must take it, then, that Carruthers believes (or intends his audience to believe) that each theory provides a model for all others which might go under the same general headings, such that if, for example, Regan's account of rights fails, so (in like fashion) must all other rights theories. This assumption is precisely that I intend to challenge.

That Carruthers makes such a mistake is all the more startling for his insistence on consideration of two varieties of contractualism (those of Scanlon and Rawls) in order that (p.38) we not risk being, "easily misled in thinking that we are drawing out implications of a contractualist approach to ethics, when in reality we may only be tracing out the consequences of Rawls' particular version of it." In quite unsatisfactory support of the complete neglect he evinces for alternative accounts of rights and utilitarian theories I might again cite Carruthers' stage-setting identification (p.9) of Singer and Regan as among those who have been, "most vociferous in promoting the rights of animals". Certainly vociferousness does nothing to affect quality or content of argument. And, as I pointed out in opening, there are some undeniable reasons that have very little (if anything at all) to do with quality of argument which may go far to help to explain the presence and general availability of a given philosopher's ideas. This help seems likely to have been extended to Singer

and Regan (whether or not they are appreciative or pleased is a further question). Witness the birth of journals such as "Environmental Ethics"⁷³ and "Between the Species"⁷⁴ which have published ideas rather unlike those in more mainstream philosophy journals, while the latter have continued to offer more typically Singer-Reganesque fare.

2. A Preliminary

My intent in this final chapter is to provide a preliminary sketch of an alternative rights theory - one which does not fall as Carruthers contends Regan's rights theory does. I will offer assessment of the "theory" along those lines Carruthers sets out in order to demonstrate that an alternative theory, overlooked by Carruthers, fares better than his contractualist picture. In fact, in the process of assessing the alternative theory (as part of pressing Carruthers' criteria for assessment - as part of identifying what is really involved in application of his criteria), it will become clear that Carruthers' contractualism fares worse than that utilitarianism he rejects - on grounds of inadequacy in reflective equilibrium. Furthermore, I will conclusively bring out what I have suggested - that contractualism does even less well than Regan's rights theory. This outcome is quite the opposite of what Carruthers would have us believe. Recall his notion (p.195) that, "it might be more reasonable to do without any theory of morality at all, than to accept one that would accord animals equal standing with ourselves." There is a philosophically unsavory error at work here. At bottom is a claim to the effect that some (prereflective) intuitions are so deeply held that we cannot give them up. If I am correct in my argument of this chapter, then by its conclusion, there will stand the claim that an alternative rights theory fares better

⁷³ Environmental Ethics. Ed. Eugene Hargrove. Denton, Texas: The Center For Environmental Philosophy and The University of North Texas.

⁷⁴ Between the Species, a journal of ethics. Eds. George Abbe, Steve Sapontzis and John Stockwell. Berkeley: San Francisco Bay Institute.

under assessment than all three of those theories which Carruthers considers. And, this theory is one which does not preclude the moral standing (equal or otherwise) of nonhumans. Carruthers' primary intent - to demonstrate the absolute lack of moral standing of all things other than human - fails.

Prior to setting out that alternative rights picture to which I have alluded, a few comments about my intentions with respect to this theory are in order. I have no intention of suggesting that the theory whose possibility I offer is the (or a, on some pluralist account) correct moral theory. Nor do I claim it as the only or best alternative. It is, simply, one whose likelihood and nature spring to mind given Carruthers' work and my own particular preferences and familiarities in moral theory. As wrong as Carruthers may be for failing to consider the possibility of some as of yet unexpressed rights theory, one might forgive him his oversight on this count. However, it would be easier to forgive him, and to label his error oversight, were it not for his passing comment (p. 14) acknowledging the existence of "the ecology movement" and its claims about the value of things such as rain forests and rare species. (If he is aware of such notions one might expect Carruthers to bestow more careful consideration on the theories offered and available to such a position - given that he is an analytic philosopher who feels strongly that such positions must be wrong.) At any rate, it is not at all easy to overlook or pardon Carruthers' total neglect of virtue theory or feminist thought about morality. I do not think it possible for any modern day moral philosopher to deny the presence of both these avenues. And, what they offer are such different pictures from traditional rights theories and utilitarianisms that it is certainly essential to assess them as well if one intends to give full endorsement to any particular moral theory.

It bears repeating then, before I turn to the core of this chapter, that it is in no way part of my goal here to offer the right moral theory - that which conclusively wins the moral theory game. I do intend to describe a contender whose nature and possibility make it such that it at once helps me to demonstrate how very poorly Carruthers' own position actually fares, and to point out that we do not yet have conclusive reason to believe that our treatment of nonhumans is an amoral matter.

3. Why "Alternative" Rights

Perhaps the most important claim I have to make to distinguish what Carruthers identifies as Regan's intuitionist rights theory from the alternative rights theory I will describe is that rights theory need not be incompatible with absence of value in the world external to moral agents. In other words, I offer, rights theory does not have to turn on the purported existence of ontologically odd and inexplicably attainable values whose identification forms the basis of those very rights which demand respect. Carruthers effectively charges Regan with intuitionism and so rejects his theory (p.22). More aptly, more directly, Carruthers might (p.23) label the charge one of positing, "values that are supposed to exist independently of us". (We might rather reserve "intuitionist" as a term to refer more widely to any reliance on pre-reflective, common-sense, intuition.) In response to Carruthers' description, and resultant rejection, of Regan's theory, I propose that it is simply not the case that a rights theory must posit moral agent-independent values from which rights derive. In fact, there need be no claimed existence of value whatsoever (agent-dependent or otherwise) for rights theory to remain a possibility. (Again, my refrain: the alternative, that all rights theories are vacuous for their mere enumeration of common-sense moral beliefs seems obviously incorrect.)

The alternative theory I will describe offers, instead, an account of rights as recognizable claims against moral agents whose very nature as moral agents brings to their attention the possibility of morality and what is involved in being moral (or struggling with matters moral) such that they - the moral agents - cannot deny that certain ways of dealing with the world and (perhaps all) those things in it are appropriate while others are not.

In the interest of brevity, and because I do not herald the theory I introduce here as the right one, or wholly accurate, I will sketch my account of this alternative (to Regan's) rights theory. Of course I will indicate where difficulties are likely to arise for this theory, in addition to citing its strengths. It would be unfair to demand too much of this sketch (as it is a sketch), though certainly any immediately recognizable inconsistencies or severely outrageous claims would necessitate its rejection. None such arise.

4. Alternative Rights: a first approximation

At the core of the theory which I depict lies the morally capable agent in a world whose inhabitants are affectable by that agent. (To say that x is affectable by a moral agent is not already to say that x can be morally affected. Consider, in a Kantian world moral agents affect chairs, dogs, and babies without affecting them morally. "Affecting" is not yet morally charged.) A paradigm human (healthy and normal), of course, serves as a paradigm of moral agent. This individual is capable of observing and learning about the world and its (changing) contents - herself included. In this regard her abilities to think, consider, compare, associate, empathize, and so on are relevant. (Whether these abilities flow solely from "rationality" is a question I leave unanswered. Whether such a question is necessary or sensical is irrelevant here.) The world - as observable and affectable - contains a wide variety of things: from the self and other humans to nonhuman animals, plants, ecosystems, species, and so forth. The agent, capable of reflection, can not only come to recognize and understand things in her world, but she can - much as a result of the former ability - come to acknowledge her own ability to affect those very observed things. The more carefully she studies things, the better able she will be to recognize how actions and inactions will affect particular kinds (not necessarily indicated along species lines⁷⁵ - the better equipped will she be to observe the positive or negative, the helpful or harmful, effects of her actions where each individual or kind is involved. In each case, the greater her familiarity with an individual or kind, the better will be our moral agent's ability to know the effect of actions under review.

5. The (Affectable) Good of a Thing

⁷⁵ Species, as human-created (and certainly otherwise useful) categories are not precisely relevant. In fact, to think along species lines may well deter a moral agent from proper identification of the kind I have in mind. A kind, as I intend it, is a set comprised of members who share relevant capacities and characteristics. "Kind" in this sense may well cross species boundaries. For instance, a healthy human infant, a mentally deficient human, and a youthful cat might all be more nearly of one "moral kind" than would a human infant and the rest of its species.

In the literature there are a variety of accounts intended to explain the notion of the good of a thing. From Aristotle's talk of the function of a good knife which leads to his suggestion of the good of a human as that which a man does which distinguishes him as human, comes the general idea that we can identify the essence of a thing whose flourishing or well-being can be described in terms of that essence. Aristotle harbored no intention of suggesting that a knife would flourish. To flourish is, more complexly, to have a good which unfolds, which ebbs and flows. Life is involved. Building on Aristotle comes the idea of good in terms of well-being or interest. In this sense to have a welfare is to be an affectable bearer of interests.

To determine, if only approximately, what is involved in any affectable being's well-being, is to identify the source as well as the nature of its good. It is to identify a being's nature, inclusive of its interests. Our ideas of the good of things are increasingly accurate as we study and come to better know them. (An embellished Humean analysis in terms of our empirically, attentively and studiously, attained impressions of a being or type which leads to our idea of its good is both accurate and useful.)

It is important to differentiate between a Cartesian or mechanistic understanding, which sees an organism only in terms of its parts, and the sort of understanding which additionally recognizes what the relationship of such parts permits. For example, on the former line, one might understand that a human being is simply a bundle of interconnected organs and tissues, which together run after a certain fashion. The alternative account of understanding further involves the recognition that said bundle works to particular ends - ends not equivalent to or identical with the enumerated organs and their interconnections. James Lovelock⁷⁶ offers that all living things are self-regulating systems. It is grasping the how, why, and wherefores of self-regulation that distinguishes the second form of understanding from the first. It is understanding in the second, the larger, sense which is at work in the alternative rights theory. And,

⁷⁶ James Lovelock, Gaia - A new look at life on Earth (Oxford: Oxford University Press, 1987).

I offer, it takes effort - even for a scientist ! - to limit one's self to understanding in the first sense. The natural human urge to ask "why" is at work here.

The notion of the good of a thing, then, is described in Aristotiean terms, with the idea that good in the relevant sense is not a function of purpose or design but rather the proper and fitting state of an organism (where "organism" may be loosely understood). To understand a thing's good is to know how it works, in a mechanistic as well as an existential sense. (To know both may be to know most completely. Though one might ignore the fineries of, for example, anatomy, and yet importantly know how a being best lives.) This is not yet morality. Only with the recognized addition of certain facets of human nature is the platform of this alternative account complete.

6. The Moral, and Motivated, Agent

A morally capable agent (a paradigm human) is one with a conscience. I take this to be indisputable. It is certainly a fact Carruthers would not want to challenge. Witness his reliance on Scanlon's sketch of the human urge to justify actions and intents to self and others. To want (to need?) to justify⁷⁷ is to exhibit what might well be called the "moral tug". Return to the above described agent. She knows that she is capable of affecting things for better or worse and she knows she will have (somehow) to live with her choices (as well as those very considerations she makes along the way). She may, too, be quite aware of a desire to do something despite these positive or negative effects her actions might have. A morally capable agent is one who (for her very nature and abilities) cannot but be faced with the tug of morality. If we add to this account a further point about human nature (which Carruthers, not atypically, accepts) to the effect that humans are equipped with (if only limited) natural benevolence, the tug of morality is even better supported.

7. Natural Benevolence: limits and potential

⁷⁷ Not all justification, or drive to justify, need be moral in flavor.

That Carruthers claims this benevolence to extend only to humans is a point he needs to defend. Here I will offer that limited natural benevolence (and feelings of sympathy, which likely accompany it) are not obviously, biologically or otherwise, limited by species lines or kinds boundaries. The burden of proof is on Carruthers. He must defend his strong - strong, for the limits it imposes - claim. Some humans extend their inclinations toward (certain, if not all) humans, others to canaries, still others to forests and beyond. A capacity for benevolence, for caring about things other than self, of the sort Hume describes⁷⁸ (which is what Carruthers, and others have in mind, I think) seems more accurately under- than over-described. Again, the burden of proof lies with those who would claim that the human capacity for limited benevolence is and can be only directed in every instance toward humans. (The burden is exceedingly heavy in Carruthers' case, recall, as he contends that this capacity just does extend to "all" humans.) The empirical facts seem to speak otherwise. "Limited" is best understood to apply to extent - to brevity of reach; rather than scope - to encompassing of kind. (To identify those who give preference to non-humans as aberrant is simply to restate an unsubstantiated claim. Such a tactic will not suffice in response to my offer here.)

8. First ... Duties

How do rights arise on this picture? The short answer is, from duties. That rights may come out of duties demands explanation⁷⁹. Just where duties flow from the account I have presented is a further matter deserving of attention. Since the (less than philosophically vogue) claim here is that rights flow from duties (rather than the

⁷⁸ Hume's Principles, as above-cited.

⁷⁹ In his, "The Nature and Value of Rights," Feinberg carefully describes the imaginary "Nowheresville" and so brings out the point (p.84) that, "in the sense of claim-rights, it is true by definition that rights logically entail other people's duties."

opposite), I will begin with a look at the origin of duty on the alternative rights picture. Only then, really, will I be in position to explain how it is correct to draw rights from duties (and to identify an interesting variety of them). On the alternative rights account, duties arise from the moral agent. A cryptic claim? I shall explain.

Currently it is fashionable to focus on rights. Such emphasis has the effect of describing duties as correlative to rights, and rights (at least in talk) are generally taken as prior. David Lyons⁸⁰ inclination to similarly assess the philosophic mood is evidenced in his preliminary and concluding remarks of his discussion of rights on a utilitarian line:

Ross gave brief notice to moral rights. Like other theories of his time, he focussed on moral requirements. Nevertheless, the attention that he gave to rights was exceptional for a moral theorist during the first half of this century.

The second half of this century, by contrast, has been a time of rights consciousness. The development within the scholarly community reflects social and political movements outside it ...

In recent years emphasis has been placed on rights, but in the first half of this century obligations received similar attention.

⁸⁰ David Lyons, Rights, Welfare, and Mill's Moral Theory (Oxford: Oxford University Press, 1994) 5 and 173, respectively.

Rights are traditionally described as God-given, or (which may account to the same thing) as arising out of particular characteristics. Thus they are basic, or foundational. Duties are then basically seen as arising from rights in that given the existence of the latter, it is encumbant on moral agents to respect those rights. This is duty. Duties are correlative with rights. Talk of rightless duties (such as that to give to charity) only arises after talk of rights from which talk of duties originally springs - when it is seen that there appears to be more moral ground than rights paired with duties covers.

Wherever there is a right, a duty exists - a duty to respect that right (generally held in virtue of some capacity or quality of the one in whom the right inheres). There may, as well, be duties with no corresponding rights - such as the duty to give to charity which cannot be claimed against any particular moral agent. (Although it seems any one charity might, without being charged with making inappropriate moral demands, direct a claim to society at large concerning their right to assistance. Basically, this is just what they do.) This is all commonplace. I have no intention to quarrel with this line. What I will do is suggest a slightly different account of duties and rights. It may be the case that only one picture can be, or is, correct. The alternative rights picture offers an explanation of the origin, existence, and nature of duties. This account relies on those very facts (purported, but unlikely to be disputed) about paradigm moral agents and about the world as described above.

Duties are both felt and recognized. That is, they can be felt and recognized. That a morally capable agent may ignore duties - purposefully or no - is a platitude. That duties are duties, in part because of the way they make themselves felt, because of the "moral tug" they exert, may be a bit more novel an idea. Duties spring from moral agents (given the very nature of moral agency) and the world. And in doing so they cannot but motivate (though that motivation may be greater or lesser - as a function of level of moral agency). Recall those capacities and abilities recently enumerated which together, I claimed, describe the moral agent: First, a moral agent is capable of learning about and understanding things in the world. Understanding, in this sense, makes possible (or might itself be) a sort of appreciation. The idea here is that the more one learns about, and so understands x, the more one appreciates (which is not of necessity, though it may often be to begin, to imply having positive feelings for) x. Second, a moral agent is quite capable of recognizing that, and how, its actions will or may affect things in the world. The better such an agent understands, or appreciates, x, the more obvious will be the implications of her agency with respect to the specific nature of x. Third, a moral agent is capable of recognition (in fact, is likely to be incapable of denying such recognition unless seriously flawed from birth or serious accident) of the fact that it cannot but be saddled with the need to justify itself and its actions to itself and its fellows. Fourth, the moral agent is capable of feeling (and, again, cannot without difficulty or by much practice or

abnormality escape or ignore) the moral tug as well as desires to go with or against it⁸¹. Here, then, is the feeling and recognition of duty. How such feeling and recognition blossoms into moral action will be explained.

9. Appreciation Breeds Action

I, as moral agent, cannot but understand and appreciate at least a few things. That is, no matter how weak I am in my moral agency, I will (if morally capable) exhibit traces of morality. I see how I can affect at least some things. And as I appreciate their natures and have identified their teloi (in fashion reminiscent of Aristotle) - given, too, that I may even be drawn to positively appreciate (over and above appreciation as "simple" understanding) what I know - the moral tug is completed with the recognition of feelings of compassion and benevolence for those things. I will act with respect to things I understand and have come to appreciate (in the full sense of the term⁸²) such that I am able to justify my actions to myself and others. Given that I appreciate x, I will likely opt to treat x in a way which will affect it (more) neutrally or (more) positively, rather than (more) negatively. And, given my appreciation, I will be in a position to know what such treatment involves.

⁸¹ "Even" my daughter, before the age of 2 1/2, pointed out to me that she tried to be good, but that it was so hard. Further, she then often blamed a teeny little (invisible) man in her head for pushing her to do naughty things - a man whom she claimed it to be very difficult to deny. She struggled with recognition of duty as well as a need - and a means by which to- justify (non)compliance with what she saw as duty.

If she is typical, and (at least in this regard I allow that she is!), we do have here empirical support for the claim that human moral agency springs consistent with that sketched account I offer. Childrens' literature, films, or a few hours' visit at a preschool will provide anyone hesitant to accept my claims with further support in a similar vein.

If we introspect or observe other adults, I think we find even more of the same.

⁸² Just what I intend by talk of "full" appreciation is nicely captured by "full blown". One might, too, speak of "thin and thick" appreciation. I will say more in a later chapter.

It is essential to distinguish my use of "appreciation" from another, quite different, use of the same term. The concept I intend by "appreciation" requires that the argument in which it occurs rests on a piece of cognitive, rather than emotive, moral psychology.⁸³ To appreciate morally is to respectfully understand a thing and its nature. It is not (of necessity) to feel compassion for the object of appreciation. Compassionate appreciation may accompany, foster or be fostered by, moral appreciation. However the two are not essentially or inseparably connected.

My duty to x is born of x's identifiable nature in combination with my ability to identify that nature and my recognition of my own moral agency (as explained above). There is nothing in x on its own which imbues it with special value or that otherwise awaits discovery which gives x value deserving of respect. Rather, given a moral agent's nature⁸⁴ (the "moral agent's predicament", one might say) and capacities, the agent cannot but recognize the fact of x's being and how his own agency puts him in position to affect x. That understanding is simple appreciation and that simple appreciation breeds full appreciation and so adds force to the tug of morality is a point I must defend.

10. The Role of Understanding

There seems to be a human tendency to fear or dislike the unknown. Consider: spiders, wolves, the enemy, and mathematics! One method of curing people's fears (and so, often, hatred and mistreatment - from ignorance to abuse) of things feared is

⁸³ Christopher McMahon is due credit for offering the terms I use in this further expression of the idea at issue.

⁸⁴ There could be other kinds of moral agents for whom facts of nature relevant to morality would add up differently. There might, then, be different moral norms, as a function of their different morally relevant capacities (or capabilities). For instance, a completely and solely rational agent might not be affected in quite the same fashion as we are by the cries of a creature in pain. Both human and "other" moral agents would likely respond - but perhaps differently in terms of method, speed, etc.

to familiarize them with the object(s) of their fears. People's hatred and fear of wolves⁸⁵ is, for example, often entwined in misunderstanding of the animals as a result of the highly inaccurate portrayals of them in fairy tales, cartoons, etc. Racial tension is often alleviated when one who hates and fears is actually befriended by, or otherwise introduced to, a person or persons of the previously unknown group. What I intend by these examples is to point to the very human characteristic to dislike what one does not know, or - even more - to attribute distinctly unpleasant qualities to things unknown and so to facilitate disliking. When one dislikes x, it becomes far easier to neglect or even to treat x quite badly without remorse. Any problem of justifying (that is, any discomforts one might otherwise experience in) one's less than kind or beneficial treatment of x virtually vanishes.

On the other hand understanding of x (even or especially of x once feared or despised) fosters appreciation of x. Those who once crushed spiders or threw rocks at Israelis from fear (based in lack of understanding, in the first case, for example, of spiders who keep bug populations manageable, whose most common fate is to die of starvation, who often die on giving birth, and who do not seek out human victims to poison as horror movies might have us believe), may - and in my experience do (I cite children and friends here) - take to putting spiders out of the house rather than squashing them, or befriending Israelis (witness recent events in the Middle East). Those who hate "blacks" may, as many of us have witnessed first hand, drop their slurs and racist actions if they really come to understand, and to appreciate (the moral irrelevance of) pigmentation. Often, with education, with understanding, comes appreciation or a certain wonder. The more we know about x, the better able we are to see how our actions will affect x. And, the more likely we are to want to let x be or to help x (than to harm x).

Moral agency involves a capacity to understand. A moral agent is - in part - one who can learn about things. Learning about things, I suggest, breeds understanding of

⁸⁵ Consider, by way of example, the apparently ill-grounded (and bordering on evil) intentions of cattle farmers surrounding Yellow Stone National Park. Or, recall that picture of wolves painted by the Brothers Grimm and their ilk.

and often (some sort of) appreciation of them, which is to say for them. The capacity to learn is an innate capacity. It is a capacity which appears to breed or bring some level of endearment toward that upon which it is focussed. With understanding comes motivation to appreciate, and so to treat things in a way consistent with one's appreciation. An intriguing upshot of this additional (additional for the already recognized existence of a capacity to limited benevolence which this further capacity may help to extend⁸⁶) aspect of duty as arising from agent motivation is the place thus given to learning, and to knowledge, in moral theory. Here, as in Aristotle (and as could be offered as a point in favor of utilitarianism, I think), we begin to see a moral compunction to know. The morally motivated individual comes to want to know more - in order to better understand and so be able to appreciate her world in order to be wiser, and so to be a finer moral agent (as well as for the joy of knowledge, which perhaps becomes entwined with a joy of moral knowing and being).

Furthermore, we have a rather nice account of moral inadequacy. Morally disreputables and morally bankrupt societies, for examples, are explicable as instances of failures to know and to learn. There is a human capacity and desire to learn. (There is also a tendency to sloth and paralysis!) But, one needs a certain amount of help and direction (or at least a modicum of self-motivation) to become learned and to enjoy learning. There is, similarly, a human capacity to learn and desire to learn morally. We may read this capacity as arising out of the desire to learn, simpliciter, and out of the need or desire to justify. This capacity too requires instruction, direction, and motivation. (No small wonder humans, moral agents, take so very long to "grow up".) Moral failures may reflect a variety of lacks - among them flat out absence of relevant capacities (perhaps analogous to colour-blindness), unwillingness to learn (from stagnancy and habit, for example), peer pressure to rebellion, and poor quality or absence of teachers.

⁸⁶ In Aristotle's *Nichomachaen Ethics*, see 1144a37-38, "Evidently, then, we cannot be intelligent without being good." And, 1145a31-33, "What we have said, then, makes it clear that we cannot be fully good without intelligence, or intelligent without virtue of character."

11. The Place of Rationality

What is interesting, I offer, is that on this account of the origin of duty via the moral tug (which springs from facts of human nature and the world), the import or role of rationality in morality is not lost. Yet, the rationality premise is avoided. Morality is not the business of appreciating rationality on this account. Instead, rationality is a key factor in explanation of the fact that, and the manner in which, morality is the business of appreciation.

Many traditional theories (as do those Carruthers considers) involve a sort of awe with respect to what is seen as the most "divine", or special, and distinctly human characteristic - rationality. (James Rachels' remarks as quoted in chapter 4 above are relevant.) Such stances seem generally to be couched in terms of implicit reliance on some form of the rationality premise (with related metaphysical and epistemic difficulties in tow). On the alternative rights account I have begun to set out, the importance of rationality - of the capacity to think, assess, have second-order reflections, and so forth - is not denied. In fact rationality is recognized as a critical human capacity which at once enables us to be moral and gives rise to that tug of morality which is so difficult to deny. (That rationality may not be alone in instantiating or engendering this tug - that it is likely joined by capacities best described as emotions - may well be the case. Whether rationality encompasses, or itself engenders, emotion is not a point I will address. What matters here is that rationality is recognized for its central role in the "birth" of duties.) Humans are, as all moral agents will be, rational. Rationality is not simply awe-inspiring, and so a basis of morality for the awe it calls up. Rather it is itself a critical beam in the structure of morality - one which we may at times applaud, and at times rue. The "moral tug", after all, is a reflection of a moral agent's indeterminist nature. We see what we are capable of. And we see that we might or might not (want to) comply. What is more, the rational capacity will figure prominently in human flourishing and so help to describe proper moral treatment of humans.

12. From Understanding to Appreciation

A final point remains to be made about the connection between a moral agent's rational (inclusive of learning) capacity and the claimed motivational aspect of that rationality. In effect this step will be to explicate the connection (the possible elision) between understanding and appreciation on which I have above relied. A pivotal notion here is that understanding breeds (some sort or level of) fascination. From fascination it is a shorter hop to appreciation as both these concepts, unlike the more neutral "understanding", carry positive or motivationally charged overtones.

I do not simply restate the claim made above that when we understand a thing we can see how our actions will affect it, and so already (given other factors involved in the complexity of the recognition of duty) be motivated to treat it well. The point I am after at this stage might be said to be both stronger and more difficult. It is the claim that when an individual really learns about something, she begins to like it or enjoy it, or to want to see it do what it does best, as best it can. Even if understanding breeds disgust, it may elicit a moral tug. I may learn about intestinal parasites and so find them even more disgusting. But my learning, my understanding, may also breed appreciation. I will certainly, for example, decide to get rid of my parasite but will feel a tinge of remorse or sorrow on its behalf - as its life must end as it is so unpleasantly connected to mine - which I would not at all have felt had I not come to some understanding of it. I may still find it thoroughly disgusting. (Understanding itself, in spite of dislike, may provide a sufficient moral tug for at least the morally predisposed - the normal! - agent.) To take this step is to move nearer complete virtue. A Buddha, for example, might let the parasite live. I, at least, come to recognize what it is like - even if I cannot bring myself to help it along. This is a step in the right, the moral, direction.

Perhaps simply, to understand a thing is to be able to explain it. But, I think, in understanding (from understanding) is born a sort of intellectual-emotional attachment to the thing understood. And in this "amazement", this interested comprehension, is appreciation. I offer that we academics have all experienced first-hand that which I attempt to communicate. And we have seen struggles to understand which frequently begin in tears of frustration and near hatred, turn to happy, even proud, feelings of positive attachment to the notion or thing understood. Consider (recall), "Now I

enjoy the Meditations. The ideas are pretty great!" "Rats ... yucky? Oh, no, they are really smart and sort of cute!" "My son married a Spic (oops), But she's just like me." Learning may be difficult and painful, and lengthy. It may be fun and challenging. Whatever stage we are at as learners, I suggest, the learning process itself endears to us that which we study - whether for the struggle, fascination, interest, or maturation involved in and inspired by the object (and the fact, ie. the activity) of our study. As we morally capable agents learn about things, as we come to really understand them, we come - more and more - to appreciate them. And so, the strength of the moral tug is amplified. (Such amplification will, certainly, reflect the facts we learn about x. It will only be moral error to anthropomorphize something and so want to extend inappropriate respect to it. It is wrong to see something, and so treat it, as what it is not. Whether one mistakenly imparts human, cetacean, or childlike characteristics is irrelevant. What matters is moral accuracy - accuracy in seeing or knowing, and so accuracy in understanding.)

To want to learn about all those things we can affect is thus a sign of moral maturity on this line (as, I think, it must be for utilitarians). Aristotle tendered the same sort of claim in identifying the flourishing of humans with knowledge (and practice, or work, toward eudaimonia). Carruthers in effect recognizes the point (pp.90-92) when he argues that rational agents themselves would not choose a life hooked to pleasure machines. That a learned, and learning, state is one which best fits humans is a point philosophers have long endeavored to make without sounding elitist or self-agrandizing. The point, I think, is merely a truism of human nature - and perhaps of moral agency. It happens to be a fact that, equipped with rationality one flourishes in the wide and full application of that rationality.

If I am on track in the claims I offer in my attempt to establish the likely possibility of an alternative rights theory (one grounded in part in moral agents' rational natures), rationality (whether alone or in connection with other capacities) breeds both a duty to be moral and a desire to understand. And that desire is, once got underway, so strong that it tends to breed appreciation - over and above "simple" understanding - out of the learning process itself as well as the nearness (figuratively, even more than literally) to one's object of study which successful learning brings.

13. Recapitulation

From her rational capacity an agent gains the capacity for morality. She is capable of learning about those things she can affect. Learning will often breed appreciation, and so multiply that moral tug already established in virtue of the agent's recognition of her position of active power with respect to things she does understand, in combination with her natural feelings (even if limited) of compassion. Of course appreciation, over and above understanding, may well be what drives the extension of compassion. Moral duty arises from an agent's recognition of all the above - her nature and capacities alongside the natures of those things and beings in the world they share. That moral tug the agent recognizes (however hazily) is duty precisely for the way in which it makes itself felt. It occasions justification. It makes a moral agent think, feel, and consider. It pulls the agent to recognize, to acknowledge, her moral agency - and, if not act accordingly, at least to struggle with her denial. (That this approach accommodates our intuitions about the varying degrees to which, and manners by which, different kinds of beings can be affected is important. I will say more about conflict-resolution and the likelihood of beings' moral imports.)

14. From Duties, Rights

There is duty. Where are rights? Rights are duty-dependent. Just as there would be no duties were there no moral agents, there would be no rights in absence of moral agents. On this account rights are not moral agent-independent out there in the fabric of the universe to be discovered (even by some hypothetical theoretically intelligent but morally incapable being.) On this line rights are not properly speaking claims which rights-holders can (if only in theory or by means of spokespersons) stand up and claim against moral agents. Instead, rights (at least as varied in nature as the gamut of things affectable) are claims which moral agents can recognize on behalf of all those things they can affect. Even in the case of a fellow human it is the acting agent who recognizes (or is in position to recognize) the right which another has not to be harmed, for example. A moral agent sees (or can see if sufficiently morally mature) that another's rights spring from her own capacity as moral agent and the fact

of duty which that entails. It is because a morally capable agent is (in being a moral agent) inescapably bound to the tug of morality and to the fact of moral duty that it makes sense to speak of rights which must be respected. I will elucidate.

When a moral agent thinks of herself as moral agent and considers the tug of morality and so forth in her own regard, morality is couched in terms of duty. When that same agent thinks, as it were, from the perspective of (or "deeply" about) those things or beings which she affects, morality is expressed and experienced in terms of rights. For example, I recognize that I have a moral duty (to some degree) to respect your autonomy. I also, and relatedly, recognize that from my capacity as moral agent and your nature as autonomous being, flows a right I must respect. The right is not yours insofar as it does not inhere in you in my absence. (More accurately, read "I" here as "all moral agents".) Your right vanishes with the disappearance of all moral agents. (It may feel odd here that you are a moral agent, but the gist is clear.) It is, poetically but accurately, as if from our combined existences spring rights - from our natures, a part of which is my being a moral agent (and all that involves), another part of which is your being what you are. Without either of us your right does not exist.

In effect one might describe rights on this line as duties couched in terms of desert. I who recognize my status as moral agent see as my duty in your regard (given your nature in addition to my capacities and my moral "predicament"), that which you deserve given the relevant facts of your nature, and mine. What you deserve in light of our existences, is expressible as a right you have in my regard. On the alternative rights theory, rights exist in virtue of the existence of duties which moral agents are capable of recognizing, and whose sway they will feel, given their nature as moral agents.

15. These Are Not Rights?

It might here be pressed that rights as traditionally recognized do not have a flavor sufficiently similar to that which I have described for the alternative rights account to be a rights theory. (This will matter as I intend to say that Carruthers has, specifically, ignored a possible rights theory, given the mainstream popularity of such theories - both in and out of academia.) A final look at the alternative account in response to

this likely charge will elucidate its error, I think. On a more traditional account, legal rights are got by means of instituted law. Purported moral rights are generally said to inhere in, to spring from, features of beings which command respect. We see variations on this theme in the likes of Feinberg, Regan, Kant, Rawls, Lyons, and Gauthier. We see it whether the account of rights is contractual and so must tend toward the notion that to be a rights-holder is to be able to actually claim (to understand and to request) one's rights, or whether rights are argued to inhere in interests (which does not entail that a rights holder must himself be able to claim rights). The contractualist picture sets out rights as ultimately grounded in the ability to claim. Strict rights views identify interests (variously described) as the ultimate base in which various rights are established.

On the alternative rights line, there is not a single item or quality identified as the ultimate source of all rights. Rather, rights are seen to arise out of a plurality of sources - all of which need exist in order for the rights in question to be. A recognized quality, then, is what generates rights on the traditional line. This is what the alternative theory claims, though the quality in question turns out to be a set of qualities - qualities which do not all inhere in a single being.

It is because morally capable agents have particular capacities (ie. qualities) and because things or beings in the world have particular natures (again, qualities) that it makes fine sense to speak of rights. A right comes into existence given the combined existence of moral agents' qualities and the qualities of affectable beings. That duty is prior to right on this account results from the fact that moral agents, in experiencing or realizing their status as moral agents (and all the range of recognitions that involves), feel or see duty which may then be cashed out in rights language. Rights talk is obviously quite helpful. And it is perfectly fitted for the alternative account I sketch. Rights talk need not be primary in order to form a cornerstone of conceptual explanation for the description and use of a theory.

IX. Assessment of the Alternative Rights Theory

i. The Criteria - revisited

I first turn to examination of this alternative rights theory against Carruthers' points of assessment for moral theory. I take the points out of the order in which Carruthers presents them (if only because that which I treat last will here prove most time-consuming). Order of consideration really has no bearing on the upshot of theory-assessment in this case. Recall that Carruthers requires that a theory be able to provide basic normative principles as well as a theory-particular account of moral motivation and moral knowledge. The latter two points he identifies as jointly constituting a theory's governing conception. A theory must (better than its closest competitors) square with common-sense, or pre-reflective, intuitions about morality. And, finally, a successful moral theory must avoid the excesses of both strong objectivism and strong subjectivism. Strong subjectivism fails for its amoral flavor. Strong objectivism fails for positing intuitionist facts.

Explanation in terms of criteria for a successful moral theory complete, I will begin reflective equilibrium assessment of the alternative rights theory. It will turn out that Carruthers' theory fails much as he argues Regan's does - if we accept his argument against Regan on anti-intuitionist grounds⁸⁷. Perhaps in fact, the call to reject contractualism will be even stronger.

2. Normative Principles

⁸⁷ Regan is not actually charged with strong objectivism. Carruthers recognizes that Regan may be read as an intuitionist and as describing a weak objectivism. See Carruthers' introductory discussion of Regan, pp.21-23. It remains true, however, (see pp.194-195), that Carruthers believes the most natural reading of Regan to be an intuitionist one. Of course, for Carruthers this leaves Regan's position in an irremediable fix. The alternative is no less pleasant as it involves mere enumeration of common-sense moral beliefs and so goes no farther toward a satisfactory governing conception.

Clearly the alternative rights theory I have sketched is able to provide normative principles. Some of these will be very much like those other rights theories offer, such as that a moral agent must respect other moral agents' autonomy. There is, too, on this account the possibility of further (as a wider range in sort and number of) principles. For it may turn out that things such as ecosystems and individual plants, for instance, have rights. To point out this possibility is not to claim its truth. Instead, for example, it serves to suggest that a tree might have certain, limited, rights with respect to moral agents in virtue of its treeness and the moral agent's moral agency. There is no claim of "equal" rights with humans - or any other kind, for that matter - whether in number or degree. What rights, and so more specifically, what normative principles will look like on the alternative rights theory is a project for another occasion. (One will need a good deal of knowledge here - the more the better!) It is safe to say, however, that in general normative principles on this line will take the form: "I ought (ie. I recognize a duty) to, whenever possible, act so as to respect (the rights of) x which I can identify given the natures of both x and myself."

3. Moral Motivation & Knowledge

As far as moral motivation is concerned, I have already raised my suspicions as to the reason(s) for Carruthers' insistence that an account of moral motivation be uniquely theory-specific. One might, I claim, discover or describe springs of moral motivation which turn out to be consistent with any number of theories which are, between themselves, inconsistent. In a sense my claim is irrelevant here as it turns out that the alternative rights theory does provide a unique, or at least a theory-specific, account of moral motivation. This account employs Scanlon's talk of the human need to justify as well as a Humean recognition of limited benevolence and the human (rational) ability to learn which Aristotle recognizes to have a sort of snowball effect. As one learns, one not only appreciates knowledge and learning and so is drawn to more of the same, but one is one's self drawn along a sort of path of "perfection" - whereby one's nature as learner flourishes. Where morally relevant knowledge is considered, moral wisdom, moral learning, and moral agent flourishing arise. That

humans are drawn onto, and helped along, this path by the need to justify their acts as well as a certain benevolence (both tendencies which may well multiply along the way) only serves to further explain moral motivation. This picture suggests and is itself suggested by the alternative rights theory. Both evolve from consideration of human nature, things in the world, difficulties (such as those involved in positing purely objective values) in moral theory, and general reflection on the varieties of moral theories we have before us.

Notice that with this account comes an equally plausible picture of moral knowledge. The latter involves moral agents who are capable of introspection and outward-looking observation. In so observing agents recognize facts of nature - both material (about the world and things in it), and psychological (about their own inclinations, intuitions, and needs, as well as what they will take to be facts about others' existential and mental states). From these facts arises morality. There seem to be no ontologically odd posited entities here. Yet talk of supervenience of independently existing moral facts looms unavoidably. On this count the alternative rights theory provides at least a somewhat favorable account of supervening facts. The duties and rights which supervene spring either immediately from (biological and psychological) facts. There is no great remove between underlying natural facts and those moral facts which supervene on them⁸⁸. Thus far the alternative rights account fares nicely, though mention of odd entities brings a further hurdle over which to stumble or leap.

4. Alternative Rights and Contingent Objectivity

⁸⁸ I have Christopher McMahon to thank for insisting that I "be true" (to borrow a phrase from my daughter) about the nature of supervenience and the alternative theory I describe. It would be misleading to suggest, as I once did, that no problem of supervenience arises for the theory. The talk is most certainly occasioned. However, supervening entities turn out to be less than mysterious given the particular nature of the alternative rights theory.

Carruthers claims that strong objectivism and strong subjectivism are unsatisfactory. It is because Regan's rights theory must posit mind-independent values which the minds of moral agents must somehow grasp that Carruthers believes himself correct in categorically rejecting Regan's analysis. He may be correct. There is good, strong, reason against once and for all taking up an intuitionist (or, even more strongly objectivist) stance in ethics (although there is as of yet no sound argument which indicates we must not do so). So one might agree with Carruthers that any theory which turns out to inescapably involve intuitionist claims (or - and this need not be the same thing - brands itself strongly objectivist) simply flags itself as overly problematic. I seem to find myself in this position - certainly where intuition proves rationally indefensible - and am inclined to read the tide of current moral theory as doing the same (particularly in view of the already recognizable theories). At any rate, if rejection in the face of intuition or strongly objectivist claims is appropriate, it is relevant to ask whether the alternative rights account clears the hurdle. It does.

If the alternative rights account is an objectivist one, it is so in interesting fashion. I suggest it might best be labelled contingently objectivist. Certainly it is not a subjectivist theory as moral truths or values are not on its account up to the whims of individuals (and so strongly subjectivist) or societies (and so weakly subjectivist - whether this might boil down to strong subjectivism or no). If objectivism in some form or other is the only alternative (and I am open to suggestions that it is not, though I am unclear as to what any alternative might be), the alternative rights account must be objectivist. It is. Consider: this theory involves identification of facts - natural facts of biology and psychology. The theory escapes the strong objectivist label however as it does not claim the existence of mind- or moral agent-independent values. Rather the theory in review claims that morality (moral duties and rights) is born of rational minds in concert with (recognition of) other capacities, along with the fact of and facts about existent affectable entities. Moral knowledge, moral norms and so on, only come to be when all these things come together. Morality is contingent on their combined existence. Remove morally capable agents, and morality is gone. Remove things capable of being affected and morality vanishes. Any smattering of mental and psychological facts may remain, but these will not be moral facts in the absence of morally capable agents. If there is nothing to affect, and

so no actual fact of the matter concerning how "it" will be affected, one large part of morality vanishes. (A purely rational being - supposing that rationality does not itself provide all those aspects of rational agency discussed - might easily see this fact. Were he to exist on our planet, for example, in absence of any moral agents, there would be no morality for him to observe ... unless, of course, Kant is correct, and he might observe duties to himself.)

The alternative rights theory does not fall to the charge of being overly objectivist or subjectivist. No more is it fatally intuitionist as it is not by intuition that any ontologically odd moral fact is recognized. Rather it is by rational (not to exclude emotional) observation⁸⁹ of biological and psychological facts about the world that the contingently objective facts of morality are found.

5. Reflective Intuitions and Considered Judgements

At this juncture I turn from the alternative rights theory to a discussion of intuition. That intuition has a place in moral philosophy will out, as will my contention that Carruthers and contractualism make improper philosophic use of intuition. The alternative rights theory, on the other hand, suffers no similar setback. Carruthers ignores the fact that contractualism is intuitionist if not strongly objectivist. It is so for reliance on intuition - in fact, intuition which goes unanalyzed. This omission hides severe difficulties for contractualist theory. To bring these problems to light will further my current project in two ways. First, my "digression" will demonstrate a far more philosophically correct use of common-sense or intuition than that (unreflective) use upon which Carruthers appears to rely. Second, to show Carruthers' mistaken use of intuition - and then to correct him accordingly - will permit far more accurate assessment of the failure of his theory. Just how the alternative rights picture squares off against utilitarianism in reflective equilibrium will, then, be the final hurdle.

⁸⁹ "Observation" here is taken to include reaction to, or mulling over and so reflection on, that which is observed. Thus it is taken to encompass empathy, sympathy, jealousy, aversion, etc.

A remark about terminology is in order. Until this point, my uses of "objectivist" and "intuitionist" have allowed Carruthers' own confusion. I clarify only now as it is at ~~this~~ juncture, I think, that clarity in the matter is actually essential. Carruthers charges Regan with "intuitionism". He also speaks of the importance of intuition in theory assessment. He, as would we, would do better to straightforwardly label Regan's difficulties objectivist and to retain the term "intuition" for application to the concept of pre-reflective or pre-philosophic common-sense beliefs. There is no need to risk conflation of charges of reliance on common-sense with charges of reliance on the purported existence of independently existent values. I recognize this distinction rather than risk the confusion with which I believe Carruthers flirts.

The point I am after is quickly made. Recall my exposition, in chapter 5, of contractualists' implicit reliance on the rationality premise. Recall too just what this premise must in some form involve. It is a claim to the effect that rationality brings with it categorically superior moral worth (such that, of course, those in whom it inheres are themselves of categorically superior moral worth). That rationality has such oddly superior value is itself an intuition. It is also a common-sense belief which has so impressed (or snuck past) many philosophers that they have assumed its reliability and have implicitly or explicitly used it as a premise upon which to mount their various moral theories. Here is Carruthers' fault.

Carruthers relies on a premise gotten from intuition. This is not in itself a fatal flaw. Philosophy does (as do other intellectual enterprises) recognize the worth of intuition or common-sense. However Carruthers completely misstates, or mistakes, the way in which intuition ought to be used in philosophy. Carruthers offers a process, a Rawlsian sort of reflective equilibrium, by which theory is to be assessed against intuition. If a theory fares well (as has the alternative rights account) against those other points of assessment Carruthers details, then it must be considered against common-sense or intuition. All this is fine. But, Carruthers does not correctly identify the proper use of intuition in philosophy.

Time and again in The Animals Issue, Carruthers refers to the intuition that animal lives are simply not equal as against human lives. This is, as it were, his paradigm example, of intuition. And, it provides a straight-forward claim to the effect that x is incommensurable with y. It is either right or wrong. Carruthers is so completely

certain of the truth of this (of his) intuition that he does nothing to consider it, nothing to test its accuracy, and nothing much to see what might be offered in its support. Here lies the root of his hidden failure.

In philosophy, I suggest, intuition is to serve as a guide. And intuition must itself be analyzed or assessed as far as possible. One must check qualifications and references, after all - whether selecting a sherpa for a Himalayan trek, or an intuition in which to ground a moral theory. This is what we teach, and are taught, in so many words in introductory philosophy courses! It is basic to our discipline. Carruthers takes the intuition at issue not as guide, but as given. In so doing he uses a prereflective intuition, a bit of unanalyzed common-sense, as key premise in what is to be a philosophically rigorous argument. This error makes for a sorry state of affairs.

At this point one might suggest that Carruthers' intuition - the contractualist intuition - is a prime example of a Rawlsian "considered judgement" in order to defend contractualism against the rather obvious intent of my charge to the effect that the theory is inescapably intuitionist. (Note that to claim, as contractualism must, that rationality has special value is not necessary in order to obtain the result that humans will often command the most and most frequent moral respect. Such a position is wholly consistent with the alternative rights theory, for example. But here the account flows from the fact that rational agents will recognize particular duties and rights of particular intensities and frequency, rather than by citing some insubstantial intuition to the effect that rationality is of superior worth.) The operant idea of such a tactic would be to suggest that there is somehow something more philosophically substantial to a considered judgement than to an intuition, and that this something is a distinguishing feature of the rationality premise. The move fails.

Early on in A Theory of Justice Rawls (pp.47-8) explains considered judgement as follows:

[T]hey enter as those judgements in which our moral capacities are most likely to be displayed without distortion. Thus in deciding which of our judgments to take into account we may reasonably select some and exclude others. For example, we can discard those judgements made with hesitation,

or in which we have little confidence. Similarly, those given when we are upset or frightened, or when we stand to gain one way or the other can be left aside. All these judgments are likely to be erroneous or to be influenced by an excessive attention to our own interests. Considered judgments are simply those rendered under conditions favorable to the exercise ... and therefore in circumstances where the more common excuses and explanations for making a mistake do not obtain. The person making the judgment is presumed, then, to have the ability, the opportunity, and the desire to reach a correct decision (or at least, not the desire not to). Moreover, the criteria that identify these judgements are not arbitrary.

(pp.47-48)

Furthermore, Rawls makes it clear (p.20) that considered judgments are "provisional fixed points" which are subject to pruning and adjustment on inspection as a result of reflective equilibrium assessment: "An allowance must be made for the likelihood that considered judgments are no doubt subject to certain irregularities and distortions...". Thus we have it (later in the same paragraph) that:

From the standpoint of moral philosophy, the best account of a person's sense [of justice] is ... the one which matches his judgments in reflective equilibrium. As we have seen, this state is one reached after a person has weighed various proposed conceptions and he has either revised his judgments to accord with one of them or held fast to his initial convictions (and the corresponding conception).

In this notion Rawls is influenced by Sidgwick who (he points out, p.51, footnote 26), "takes for granted that philosophical reflection will lead to revisions in our considered

judgments, and although there are elements of epistemological intuitionism in the doctrine, these are not given much weight when unsupported by systematic considerations." It is part of moral study to scrutinize considered judgments - particularly when one sees one might in order to further intellectual progress (as well as to guard against unwitting bias which might stand in the way of such progress). If considered judgments bear up under assessment, they may serve as fundamental premises in our moral work. If not they need be reshaped (if salvageable), or discarded.

Given the item at hand - the rationality premise, in which what one judges about is the value of rationality - no amount of rational prowess or control will help. Rational calmness, coolness and collectedness are of no avail. The considered judgment is a lovely tool for rational study, except when rationality is itself the object of judging as it must be in the matter at hand. Recall that judging (as Rawls recognizes) is a rational business. One cannot judge the value of rationality as against irrationality in (or as) considered judgment, for to do so would necessitate being unable to be capable of so judging.

We have compelling reason to abandon the rationality premise, even if we, at the outset, take it to be defensible as considered judgment. On inspection we see it cannot truly be a rational judgment. As far as the rationality premise goes, it cannot properly speaking succeed as a Rawlsian considered judgment. It fails on this count just as it fails the test of considered, or reflective, intuition.

Intuition, pre-reflective intuition, is clearly philosophically helpful. It can indicate ideas and claims which may be right-headed or worth further reflection. This is, however, all it can do. It would be a serious mistake to equate intuition with a priority. Certainly Carruthers cannot wish to so err? If intuitions themselves are to serve in arguments as premises, they must undergo careful consideration. The case of the rationality premise - derived from common-sense feelings about the specialness of rationality - is one in which the underlying intuition is of such a nature that it can never be proven true. Thus the same holds true of the premise. Said premise does not admit demonstration of proof by a rational being and so cannot successfully (or unproblematically) ground a sound argument.

Carruthers fails to recognize that intuition demands careful analysis. (At the very least, he slips badly in this instance.) Intuition can serve philosophy. It can also be dangerous. Carruthers is caught by its appeal. He grounds a theory in a prereflective intuition which cannot be proven true.

Carruthers makes a second grave error connected with intuition. This one has more specifically to do with the amount of weight to assign an intuition in the reflective equilibrium process. The specific problem I have in mind again brings into play the indemonstrability of the rationality premise. Here the charge against Carruthers is that it seems rationally quite wrong to give so very much weight to an intuition which - on reflection - cannot commend itself to our rational faculty. Bluntly speaking, whether or not Carruthers is on the mark in his claim that the rationality premise is an extremely widely accepted bit of common sense, it will not be correct in the rational process of reflective equilibrium to assign very much weight at all to an intuition which cannot be proven by rational argument to be true. Intuition may well suggest (may guide us to consider) the superior value of rationality. On rational reflection, however, we come to see the indefensibility of this intuition and so must reject it as a strong check in the reflective equilibrium process. That is, it will be a mistake to herald the rationality premise as an intuition with which a moral theory would do well to accord in reflective equilibrium.

6. The Theories and Their Intuitions

Reflective equilibrium cannot speak in favor of Carruthers' contractualism or Regan's rights theory (or even many a utilitarian theory) in the case of their reliance on the rationality premise, over a theory such as the alternative rights theory which denies - or ignores - such a claim. On philosophic reflection we see that rejection of the intuition in question is strongly suggested. It cannot, then, stand in the way of success of the alternative rights theory in reflective equilibrium as final step in the assessment process. If a theory which incorporates the rationality premise makes it to reflective equilibrium in assessment against or contention with a theory with which it is otherwise equal but which does not rely on the rationality premise, the former must lose out.

Before I move to complete my assessment of the alternative rights theory by way of a check on those intuitions upon which it relies, it is worthwhile and interesting to see how reliance on a rationally indefensible intuition actually appears to put Carruthers' contractualism below Regan's rights theory (as well as Singer's brand of utilitarianism⁹⁰) in terms of acceptability or success. I will begin with utilitarianism, which runs up against intuitions or common-sense in a significantly different manner than do contractualism and rights theories as heralded by Carruthers and Regan. (The alternative rights theory tussles with intuition, when and where it does, in a fashion similar to utilitarianism as opposed to the other two theories here discussed. That all theories will involve give and take of various descriptions with intuition is, because of the place of intuition in philosophy, obvious.)

Carruthers points out, as do many who comment on utilitarianism (and not all such comments are intended to disprove the theory, some rather suggest revision of intuition), that utilitarianism dictates moral courses of action which may seem quite out of line with our prereflective beliefs about what is and is not right. Utilitarianism has been called too demanding, too constantly demanding⁹¹, and even insufficient⁹². It has been taken to require that we give 'til giving would make us just as poor as the poorest (as well as the converse⁹³). It requires that we not falter in doing so. (And, it

⁹⁰ A Benthamite utilitarianism (which denies the value-distinction between push-pin and poetry) does not embrace the rationality premise. It will, however, fare worse than the alternative rights view in reflective equilibrium for reasons similar to utilitarianisms which do distinguish between higher and lower pleasures, and so which likely involve the rationality premise. Simply put, utilitarianisms are rather strongly counterintuitive on a number of counts -whatever their position on the distinction between pleasures. As such it is safe to say that utilitarianisms do fare worse than the alternative rights theory in comparative assessment.

⁹¹ This is in response to arguments the like of Singer's, "Famine, Affluence, and Morality."

⁹² See especially Bernard Williams' "against" picture in J.J.C. Smart and Bernard Williams, *Utilitarianism For and Against*. (London: Cambridge University Press, 1973). His final comments as to utilitarianism's inability to cope with the scope of social and political matters are relevant.

⁹³ Tony Jackson, "Against the Grain: The Dilemma of Project Food Aid", (Oxford:

is said to leave no space for nonmoral action⁹⁴.) These are indeed heavy charges when we consider - in our philosophic tradition and perhaps even our cultural milieu - what has passed as a general description of fine persons and fine lives lived.

If that common-sense moral intuition which rails so strongly against utilitarianism critically involves dependence on the truth of a claim to the effect that autonomy must be respected (for the "glory" of rationality which makes it possible and so places limits on what moral, autonomous, agents can be required to do and give), then I think this intuition has no solid weight in rational consideration as against utilitarian theory. On the other hand, it strikes me as possible that "our" common-sense hackles which raise so quickly against the demands of utilitarianism may well be supported by less troublesome claims. For instance, one might without risk of mistakenly invoking principles of the very theory one intends to speak against, point to the all too human need for variety. That is, one might offer as support for the claim that there is reason behind certain of the intuitions against utilitarianism, that humans need to do and see different things (to have a rich life experientially). To single-mindedly focus on "giving 'til all are equal" is not something humans will be able to do. Whether or not giving takes many forms, one will no more be capable of constant focus on giving for and by utilitarian means than one is capable of living a truly human life and focussing successfully on a mantra. (Consider the uniqueness of the Buddha or the singularity of bodhisatvas or Mother Theresa.) Though there may be difficulties here, I suggest that for present purposes, this defense of intuitions versus utilitarianism serves my purposes.

I have suggested that if we can discover plausible (the stronger, the better) reason to agree with what pre-reflective intuition claims, we elevate common-sense to the status of reflective intuition - to considered intuition (intuition which has proven

Oxfam, 1982).

⁹⁴ Carruthers (p.32) levels this familiar charge. Later (p.35) he does note that the matter of whether nonmoral space (and so supererogatories) exists is, "not a matter that admits of decisive proof." This is unclear. It is clear what Carruthers thinks.

defensible). Such intuition can serve in the reflective equilibrium process as weight in favor of or against a moral theory, for there is (some measure of) reason to believe it on the mark. Just how much weight the intuition bears will be a function of the apparent force it commands with respect to reason. In the case at hand (where we have seen the failure of Regan's rights and Carruthers' contractualism for reliance on intuition impervious of proof), the fact that utilitarianism conflicts with a credible intuition is insufficient to force the theory's abandonment, as long as it is the only remaining theory. However, utilitarianism is not the sole alternative. And so, if it is possible to identify those intuitions on which the alternative rights theory rests as well as those intuitions with which it comes into conflict, we will be in position to determine which of these two remaining theories best squares with reflective, considered, intuition and so fares best in reflective equilibrium.

The intuitions which ground the alternative rights theory seem rather unproblematic. They include notions of limited benevolence, the inkling that there really is no (moral agent-independent) value in the world - tied with the feeling that yet there is moral right, and the desire to explain one's self along with the notion that (desire) to do so is correct or inescapable. These are intuitions, I think. And, the role of each in the alternative rights theory should by this time be clear. All appear to bear reflection and have, in fact, received it amply. I might cite Hume⁹⁵ in support of the first. Of course, Scanlon and Carruthers furnish reason to believe the third. As to the second, I offer in its support the struggle many of us seem to experience (witness those of us who do moral philosophy as prime examples) in attempts to explain the moral tug. We are at once drawn to and yet pushed from the claim that moral facts exist in the fabric of our universe. The alternative rights theory involves no reliance on intuition(s) about requirements for moral standing, and so does not tread near the rationality premise.

7. Is The Alternative Rights Theory Intuitively Abhorrent?

⁹⁵ Hume, Principles, as above.

It appears that (as in the case of utilitarianism) the alternative rights theory relies on no intuitions whose very natures dictate that we reject the theory. It may yet encounter difficulties with respect to common-sense, to intuition, (or better yet, reflective intuitions to which we have reason to listen) which speak against its claims. One such potentially damaging intuition is what I will cautiously identify as Carruthers' favorite. It is the claim that it is pretty universally a human intuition that humans cannot possibly, in any sense, be morally equated with nonhumans. This is not a proposition whose status as obviously universal intuition I would normally grant. There are entire continents populated (even densely!) by individuals who would rail at such a claim, let alone accept (or offer) it as common-sense⁹⁶. Nevertheless, since this is an endeavor aimed in part at discrediting Carruthers' argument, I shall pretend that his claim is valid. What would the truth of the claim that it is universal intuition that humans simply cannot be equated morally with nonhumans do to the alternative rights theory? Had we reason to maintain, and retain, such an intuition - to elevate its status to that of reflective intuition - we would garner no reason to reject the alternative rights theory.

On the alternative rights theory it will be quite possible to speak of and identify rights of different natures and degrees. Recall that rights and rights-talk in this context actually flow from duties. Moral agents may turn out to have duties to forests, to individual moose, and to humans. The nature of these duties, and the expression which fulfillment or respect thereof will take will be a function of the affectable thing in question (and, of course, the moral agent who is capable of identifying and affecting each nature). What is involved in a good, "average", moose or rain forest existence is not what is involved in a good, "average", human existence. There will, too, exist a variety of sorts of good human existences. (It may prove important that the range of "average" in certain cases may be far wider than in others.) The possibilities of actually harming or helping certain existences or existants will be

⁹⁶ One might consider Taoism and its adherents - as simply set out in Benjamin Hoff's The Tao of Pooh (New York: Penguin Books, 1982), which has of late become a sort of classic introduction to the philosophy.

equally different according to natures. To charge that all rights require equal respect becomes almost an artifact carried over from more traditional rights derivations wherein all rights are similarly grounded - ie. as said to exist in virtue of a common feature. On the alternative rights theory, talk of equality appears to be a theoretic relic. Things are not equal - neither equally deserving nor equally demanding. Rather, each thing deserves and "demands" as a function of what it (and moral agent, or moral agency) is. An agent's duty to one human (a severely retarded individual, for instance) may be more like his duties to a nonhuman than to a paradigm human. What is relevant is what a particular thing is like, how it flourishes given the kind (which is absolutely not dictated by species, but rather by ability, nature, etc.) it is. Equality is not an issue.

If Carruthers' rejoinder is that equality is most certainly an issue of major importance, he will need do more than restate the special moral value of humans in support of this claim. On the line Carruthers embraces, "equality" is a notion used to ensure like treatment of likes - where what makes things like is that in virtue of which they are accorded or recognized to have rights⁹⁷. Again, on the traditional line, rights are held in virtue of common characteristics, and so identify and guarantee equality. On the other hand, if one recognizes the moral relevance of (identification of) particular characteristics, the cry for equality is hushed. At the very least a call for equality is demoted in import and replaced by one for respect of individuality and that particular expression it finds. (That various individuals resemble each other may well make talk of equality by way of call for similar treatment of similars relevant. Equality need not, will not, be ferreted out since the fact of equality is not of moral primacy on the alternative rights account. Recognition of what a particular thing is, is!)

⁹⁷ In his, "Rights, Human Rights, and Racial Discrimination," (in David Lyons' **Rights**), Richard Wasserstrom describes this sense of equality (p.50): "...because [human rights] are not possessed in virtue of any contingent status or relationship, they are rights that can be claimed equally against any and every other human being." Further remarks (p.57) about the fact of immoral prejudicial inequality are also to the point.

If there is an intuition which calls for the rejection of a theory which dictates talk of human and nonhuman equality, it cannot beg the rejection of the alternative rights theory. At most it can steadfastly cling to its demand that all rights are at bottom equal (in virtue of that equality they reflect), and so are those in whom they inhere. To so claim is to have to defend one's theory. It is not to discredit the alternative rights account.

What, then, of an intuition which calls for the elevation of human above nonhuman⁹⁸? I have already defended the alternative rights theory against this count. Such a claim would ultimately need to be grounded in the rationality premise and as such fails to make it to the reflective equilibrium process. (Autonomy and verbal ability are familiar examples of capacities offered to demonstrate human superiority of value. Both cases assume the value of rationality.)

What of further possible counter-intuitions? The most likely objections come to mind by way of familiar criticisms of rights theory and a difficulty over moral heroics in general. I will take them in turn and then conclude this final chapter with a look at the outcome of the reflective equilibrium contest between Singer's utilitarianism and the alternative rights theory.

⁹⁸ The question of how to act in a situation where one is faced with only being able to benefit either a human or some other animal, is accommodated. My point in the paragraph at hand is that we cannot cite the rationality premise in favor of the human. No more can we cite it in attempt, for example, to save a chimpanzee over a pill bug. What is quite permissible, and of course recommended by the alternative rights theory, is that rationality be considered - when present - as part of any creature's nature and circumstance where moral decision and action are required.

To say that a creature does not deserve moral preference simply because its rationality is valuable is not to say that that creature should be treated in certain ways because those ways (facilitated by reason) describe its nature and being. And, surely, there may be levels of call to respect. Sometimes rational existence will command great moral weight. Other times the rationally (and otherwise) imbued existence will not need as much moral attention as the arational.

It is often suggested (particularly, of late, from feminist perspectives⁹⁹) that rights theories are too conflict-oriented, that they focus unnaturally on things moral agents must not do in order to not harm. Furthermore, they are said to inaccurately describe the plight of many with moral standing. Everything is not easily squeezed into "rights garb". All this, the charge continues, is to the neglect of the positive side (which there really is!) of morality. Is it not the case, the claim runs, that morality is as much a helping, caring, nurturing business as one of restraining from or limiting harm? Such an intuition might well be held out as against the alternative rights theory because, as a rights theory, it involves a good deal of talk about respect which is cashed out in terms of restraint. Moral rights-talk, as its legal counterpart, is generally taken to best suit avoidance of negatives. Can the alternative theory avoid this charge and so appear less incomplete a theory with respect to the reflective intuition that morality does involve more than restraint? (That said intuition is reflective and satisfactory is clear if one considers the spectrum and content of philosophic thought given to it.) I think it can.

The alternative rights account involves identification of affectable beings' "normal" states. A moral agent will feel compelled to not negatively affect a thing (whose being it actually takes the time to consider - recall, this is critical). And so, the agent will appropriately act so as not to disturb x. However, if a moral agent encounters a being who is far from what that agent sees (again, reflection is involved) to be its normal state, there is moral reason to help that thing stabilize or achieve normalcy. The alternative rights theory offers no reason to believe that either restraint from harm or motivation to help is more important. Both arise out of recognizable facts which are

⁹⁹ For example Elizabeth Wolgast's "Wrong Rights" in *Hypatia*, vol. 3, Winter '89, and Rosemarie Tong's discussion (pp.51-52) of and embroidery upon Caroline Whitbeck's work in Rosmarie Tong, *Feminine and Feminist Ethics* (Belmont, California: Wadsworth, inc., 1982) Also insightful is Roger Rigterink's, "Warning: The Surgeon Moralist Has Determined That Claims of Rights Can Be Detrimental to Everyone's Interests," in *Explorations in Feminist Ethics - Theory and Practice*, Eve Browning Cole and Susan Coultrap-McQuin, eds. (Indianapolis: Indiana University Press, 1992).

experienced as duties. (That judgements about normalcy, degree of need, and amount of variance within the norm and so forth will be relevant does not do much to argue against this theory. The existence of grey areas does nothing to dispute the existence of the red, black, or white, and it is always possible to play it morally safe in the haze.) The alternative theory does, then, accord with intuitions to the effect that morality involves more than a call to restrain one's self.

A further rejoinder is relevant. It springs from the importance or place of learning (and of appreciation) in the theory I at this juncture defend. Just as Aristotle's path to *eudaimonia* describes a man who becomes increasingly good at being and doing what a man does best, and so wants to do more of the same, the alternative rights theory offers an account which emphasizes the addictive aspect of knowledge, of understanding. The more a moral agent learns, the more she is drawn to appreciation - not only of those things she appreciates and comes to know about, but of knowledge, and so of being moral. There is a sort of spiral effect here. There is, too, the makings of a reply to the likely objection from feminist quarters I expressed above. (It is a reply in the making as full and careful exposition of the idea would be a project unto itself. However, brief description should suffice in this case.) Caring, positive, moral attitudes may come with greater moral prowess (this is an idea not unfamiliar to feminism¹⁰⁰). If such is the case, the alternative rights theory is nicely on track as it offers explanation of how a moral agent blossoms and so comes to be concerned with more "demanding" duties - duties over and above those to refrain from harm.

There is, too, I think, the intuition that morality (or more correctly, moral theory) ought to be able to tell us "straight up" what is right on any given occasion. No theory is without its difficulties on this count. But the intuition may lead us to prefer a theory which does provide an easy method by which to determine what is the (or a) morally appropriate response on a given occasion. In support of such an intuition,

¹⁰⁰ "Caring" is extensively discussed in "the" literature (feminist as well as mainstream - if that distinction remains to be made here) and is a currently fashionable topic. There is quite definitely not agreement as to the value, place, naturalness, or safety (etc.) of caring.

one might offer that we want a theory that works. If a contender will not work for us, it fails as a successful theory. There is at least a measure of truth behind this claim - though certainly what "working" involves is itself a matter for further thought. The objection is possible and plausible. But the alternative rights theory does not succumb. Nor, in fact, does that theory fare as does utilitarianism in its respect. It turns out that given that we want a theory that "works", on reflective equilibrium the alternative rights theory surpasses utilitarianism and thereby recommends itself as the best of the four theories discussed.

The particular objection to which the intuition at issue gives rise with respect to the alternative rights theory is that this theory does not tell us exactly what to do in the face of conflicting duties. Again, conflict-resolution is a difficulty faced by all theories. That answer alone is insufficient to adequately defend the alternative rights theory, however. What does help to significantly soften the blow here is a fact that lies hidden in a theory only briefly sketched. On a fuller account of such a theory, one would find accurate descriptions of the kinds and degrees of duties moral agents have with respect to the variety of affectable beings. From degree, and perhaps from kind (or nature) will come direction with respect to importance of duty and severity of moral wrong for neglect thereof. There is a way to resolve conflict - at least some of it (which is, likely, all we can realistically hope of any moral theory.) The path to discovery of this way is (much as in virtue theory) a path of study and practice.

8. The "Main Event"

So we have it, both the alternative rights theory and utilitarianism pass the tests of intuition as well as meeting Carruthers' criteria for a successful moral theory. How, then, do they fare against each other in reflective equilibrium? My contention is that it is over the very difficulty just described that the alternative rights theory proves itself superior to utilitarianism. The point is quickly made, given the notorious difficulties of calculation utilitarianism breeds.

If we ask what utilitarianism dictates in order to escape conflict or to resolve dilemma, we are offered the calculus. An apparently simple answer, or tool, this

calculus is actually so fraught with problems as to paralyze any moral agent who attempts to use it. For example, at what point in time is one to stop a particular instance of calculus? That things may eventually even out does little to help one to know what to do on a given occasion. How, in light of this fact, do we determine the appropriate end of deliberations - by calculus? Just how far ought one go with respect to consideration of beings affected by one's actions? Ought one decide whether to calculate further, or decide whether to decide, etc. - all by calculus? There are many tempting, and perhaps even unavoidable aspects of utilitarianism. But, paralysis does appear to be necessarily intertwined with it as well. This, surely, is far more severe a problem than that of the alternative rights theory with respect to the manner and difficulty of dilemma- and problem-resolution. In short, in the process of reflective equilibrium on the count of intuition about a working moral theory, the alternative rights account proves superior.

9. The Final Analysis

As Carruthers' contractualist theory seems, if anything, more demanding - and so less successful - than Regan's rights theory with respect to the nature of intuitionist claims, it will turn out that Carruthers' is the least philosophically attractive of the theories he considers, while Regan's is less successful than Singer's, and the alternative rights theory appears to be the best of the bunch. In closing I will flesh out my suggestion that Carruthers' theory which, while it recognizes objective value as does Regan's, does so in peculiar fashion which involves a greater degree of ontological oddness and so requires even more "speculative intuition".

Regan's version of rights theory involves talk of intrinsic value - value which Carruthers insists might only be inexplicably "known" by some odd or mysterious faculty of moral intuition. The value toward which Regan gestures is one purported to inhere in animals of sufficiently sophisticated mental life in virtue of this mental sophistication. Recall that Regan offers that we can be safe to assume that at least all mammals aged one year or older have this stuff of moral standing (for their similarity to paradigm morally relevant creatures - full grown, fully matured humans). Carruthers' claim is more restricted. It is that all and only sufficiently rationally

sophisticated animals have the ability to be moral (and so will describe morality contractually such that "all" and only their kind have moral standing, regardless of presence of developed rationality).

Regan will ultimately need to explain and defend his notion that basically any sprinkling of rationality brings moral worth. He needs to provide an argument to the effect that rationality is special and so deserves moral respect of a correspondingly special nature. On the other hand, Carruthers will need to provide further argument - further for his claim involves separating more "sophisticated" rationality from the larger set of rational capacities. Carruthers needs not only to offer a similar argument (which will as well, of course, have to defend, if it cannot wholly avoid, the troublesome rationality premise). He must additionally provide an acceptable explanation of the morally significant difference between certain degrees or categories of rationality - degrees which he is prepared to acknowledge. (Recall, Carruthers admits that other animals may be rational to a degree. For instance, consider my earlier citing of his reference to chimpanzees in this regard.)

It will matter to the case that it is a scientific truism at this point that if rationality is anything at all it is certainly not all or nothing, it does admit of degrees, and many sorts of animals are endowed with rationality, reasoning abilities (perhaps even including that very consciousness which Carruthers denies them, see his chapter 8) suited to their natures. Carruthers has his work cut out for him - more work than Regan. Thus it seems fitting to relegate his contractualist theory to a position below Regan's rights theory if our intent is to provide ranking from least to most promising moral theory.

So we have it: Carruthers' contractualism, Regan's rights, Singer's utilitarianism, and the sketched alternative rights theory. (A utilitarianism such as Bentham's which does not recognize a difference between higher and lower pleasures need not accept the rationality premise. But it is still fraught with utilitarian difficulties as is Singer's brand. Thus, Bentham's utilitarianism might surpass Singer's, but in the end will not surpass the alternative rights theory in reflective equilibrium.) At this stage of consideration, that is precisely their order in terms of mounting adequacy given Carruthers' own method of assessment (a method which seems a healthy enough one to adopt). I may conclude.

X. Conclusion

The (relative) failure of Carruthers' argument in favor of contractualism leaves his intended conclusion with respect to the moral irrelevance (even arelevance) of nonhuman animals similarly disabled. Furthermore, in demonstrating the severe and varied failures of the monistic contractualist picture, the likelihood of accuracy of a theory which does accommodate direct moral standing for nonhumans is elevated. In fact that theory which fares best on analysis (analysis carried out in Carruthers' own spirit - that is, in an attempt to exercise most rational, most philosophic, precision) is the one which leaves open the possibility that the world in which moral agents live may be replete with things of direct moral relevance (which is not to assume that they, any of them, have objective moral value). Far more than just nonhuman animals may matter morally. The calls of environmental ethics are not automatically written off. This, I suggest, is a strength of my argument against Carruthers. For if we are not in position to press the categorical moral superiority of our own kind, those of us keenly interested in moral philosophy may need to give serious consideration to the possibility that a moral agent's life is far more constantly an expression of her moral agency, given that she is almost constantly in position to affect morally affectable entities.

Carruthers (and those of his ilk) who purport - on contractualist grounds - to have reason to support their practice(s) of denying nonhumans or arationals (all) moral standing ought not do so. Against Carruthers I have offered four separate arguments (as well as a number of additional suggestions), the combined force of which is truly devastating to his support of contractualism and that support it is intended to give to his claims about the amorality of "all" but humans. My argument against Carruthers' contractualism hold against monistic contractualisms in general. Thus, in exposing the fate of Carruthers' contractualism in reflective equilibrium, I demonstrate the nature of the relative shortcoming of all monistic contractualisms (and vice-versa).

My arguments of this work are, I repeat, devastating for Carruthers' project. For Carruthers' intent is to secure the relative theoretic superiority of contractualism in order to demonstrate the moral arelevance of nonhuman animals. I demonstrate his failure on the first count, and so can conclusively state that his claims with regard to

the animals issue are disallowed. The force of my argument against contractualism as a moral theory is more correctly identified as (merely, though deeply) troublesome. As I have already remarked, there are aspects of contractualism which appear accurate. Certainly on a pluralistic account contractualism is a likely candidate for successful description of some of the moral world in which we function.

No moral theory is flawless. The primary weakness I have identified in contractualism is its foundational circularity. The theory must ride on a claim of the categorically superior value of rationality in order to get off the ground (a premise it then proceeds to justify). That such a premise is indemonstrable of proof - for reasons explicable in terms of the Millian rational judge- figures prominently in my argument. To demonstrate the value claimed by the rationality premise, a judge must be what she essentially cannot be; that is she must be arational (or she could not be familiar with arationality). A judge can no more be familiar with arationality than she can be arational. In addition a judge, being rational, will be inescapably drawn to favor rationality. Such bias rules the "judge" unfit for reasons of partiality. One must defend, downplay, or otherwise account for this pair of theoretic difficulties if one chooses to champion contractualism over other moral theories.

Carruthers' unwitting reliance on a rationally indefensible premise about the special status of rationality belies (monistic) contractualism's irremediable and troubling intuitionist nature. His argument from slippery slope crumbles for overlooked biological and logical possibility (as well as his downplay of human theoretic capacity). Carruthers' typically contractualist reliance on inadequately analyzed intuition is facilitated by his apparent misconception as regards the proper role of intuition, or considered judgment, in philosophy. Furthermore, what Carruthers offers as a uniquely contractualist account of moral motivation appears to have no necessary connection to contractualism, though it serves as a likely sketch of motivation in general. And, finally, Carruthers' absolute neglect of other possible moral theories leaves his defense of contractualism lame. This weakness is quickly seen to be, if not in and of itself deadly, then severely disabling, when consideration of an alternative rights account is shown to be far more promising than Carruthers' own theory.

That Carruthers overlooks possible challenge from a sort of theory he recognizes is none too laudable. (That he neglects alternative sorts of theories is perhaps reflective

of his own philosophic narrow-mindedness. For one to write in the area Carruthers chooses and ignore good, relevant, philosophic thought such as that which springs from the "feminist" or environmental arenas certainly reflects lack of rigor.) Until Carruthers answers these four major charges (and satisfactorily contends with difficulties I set out regarding his use of intuition), or demonstrates the even greater failings of those three theories whose superiority I have here suggested, he is clearly not entitled to claim success.

Furthermore he, and we, must admit that if we are to err on the side of morality - those of us who take a practical as well as an academic interest in matters moral - we might do well to practice a more broadly encompassing stance of moral concern than that to which we may be accustomed. This is not at all to say that we must act as if the alternative rights theory is correct. Rather it is to point out that we do not have that reason which Carruthers' claims we have - reason to turn away from "all" but humans in our moral endeavors. (It is, too, to discover a deep difficulty implicit in contractualism.) It is to recognize what the possibility of the alternative rights theory suggests - that our moral touch just may reach farther than even contending utilitarian and rights theories suggest. At the very least to attempt such an attitude could be in part regarded as at once an intellectual and an empirical check on the plausibility, possibility, and perhaps even enjoyability of a unique and promising contending moral theory.

The alternative rights theory is a superior alternative to contractualism, traditional rights, and utilitarian programs. The alternative rights theory does not rely on the rationality premise. And it does a comparatively superior job of meeting the requirements generally set for moral theories - criteria here set out in Carruthers' terms. Those intuitions upon which the alternative rights theory relies are less then controversial, and certainly as plausible as those of its competitors. This theory denies any singular value in rationality, but is committed to recognition of the place of rationality in moral maturation and agency, as well as the role rationality holds in description of the nature and being of those lives in which it figures. It is only by fully understanding - and appreciating - the rational life that we as moral agents can treat our fellows with the sort of moral respect they may be due. On the alternative rights theory there is ample room for moral standing. There also promises to be a means by

which to determine who and what matter, as well as how and how much, such that we can account for the (continued) moral functioning of moral agents in the whole of their morally affectable realm. The theoretic and practical fineries of the alternative rights theory remain to be carefully worked out. I believe I have here provided ample cause to rule that project a worthy one.

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