

Assessing Rawls' Difference Principle as Practical Guidance for our Duties to Animals

Matthew Keliris-Thomas

Abstract

It is a commonly held view that Contractarian ethics cannot produce a substantial moral system that includes animals. However, since Mark Rowlands introduced his interpretation of Rawlsian Contractarianism we have been provided with, as it were, a ready-made system to which we can now insert animals. However, such a result is far from the final hurdle in providing a substantial account of human duties to animals. The extension of justice to animals may well be possible, but it produces a great many intricate problems as to how the dynamics of human-animal relationships should be borne out. It would seem now that the animal-friendly Contractarian¹ owes an account of how our relationships to animals be governed. In this essay I will argue that the Rawlsian *Difference Principle* lends itself to just such a task. The Difference Principle's focus on equal consideration without a need for identical treatment lends itself to producing comprehensive and flexible guidelines for our duties to animals - providing pragmatic answers to how we should engage with them. The conclusion of this paper will not be by way of an entire theory governing human-animal relations (as I'm without time or space to do justice to such a project), but an argument for establishing the viability of the Difference Principle as the guiding notion behind such a theory.

The body of this paper is divided into three sections: §1 will briefly present Rowlands' theory for an animal friendly Contractarianism; §2 will present the main argument for the applicability of the Difference Principle to animals and the potential results for human-animal relationships;² §3 will critically examine potential objections to the extension of the Difference Principle to animals.

1 Rowlands & Animals

1.1 Rawls in brief

Rawls' *Theory of Justice* uses metaphorical, prejudice-blind, contractors to argue for the production of a fair system of justice. His hypothetical contractors are set in a state of nature called the 'original position' in which they are unaware of certain conditions that typically bias the construction of moral rules. This limitation is termed 'The Veil of Ignorance' and blinds the contractors to morally arbitrary facts about themselves (race, gender, physical and mental attributes) (Rawls 1973, *Passim*). Rawls requires this ignorance to ensure that the social constructs designed by the contractors are the fairest to all in society – the underlying idea being that if you are unsure of your potential position in society, you will hedge your bets by making all positions hold equal moral

¹ Here and throughout this essay I will use the term animal-friendly contractarian as synonymous with Rowlands' approach

² I use 'human-animal' directionally in that my focus is on a practical application of the duties we have to animals and not to focus on whether animals can hold duties themselves.

consideration. This is the bare essentials of Rawls' theory and illustrates the aspects with which this essay will be most concerned.

1.2 The Intuitive Equality Argument

A common view of Rawls' theory is that animals, being without rationality and therefore unable to participate in the construction of the contract, would not be entitled to the justice it ensures (Carruthers 1992). Mark Rowlands argues however, that the Rawlsian framework for justice supports direct rights for animals – they have 'valid claims to a specific commodity, freedom or treatment...made against assignable individuals who are capable of granting or withholding [them]' (Rowlands 2009, p.118). At its centre, Rowlands' argument relies on pursuing a finer grained distinction of the authority of the contract than previously seen. Rowlands distinguishes two styles of authority: Hobbesian (in which the contract's authority comes from justifying the agreed terms as mutually approved conditions by rational, self-interested parties) and Kantian (where contracts act as a heuristic to test an existing, and contractually independent, moral theory) (Rowlands 2009, p.125-126). He argues that Rawls' theory is, then, vitally Kantian and as such reflects an external morality (Rowlands 2009, p.126-127).³ This external moral principle is the 'Intuitive Equality Argument' (hereafter: IEA). IEA is an interpretation of the crux of Rawls' theory because it presents the guiding instruction for decisions made by contractors in the Original Position (Rowlands 2009, p.134):

'If a property is undeserved in the sense that its possessor is not responsible for, or has done nothing to merit, its possession, then its possessor is not morally entitled to whatever benefits accrue from that possession.'

Given IEA then, no one deserves the benefits that are provided to them by morally arbitrary characteristics. This is the principle that underwrites Rawls' entire theory of justice – it is unfair that someone should suffer detrimentally because of characteristics outside their control (Rowlands 2009, p.134). Given the judicious application of this principle however, it seems clear to say that rationality is just such an undeserved benefit. Therefore it should also be hidden to those in the original position. If knowledge of one's own rationality is hidden behind the Veil of Ignorance, then animals should be included in the Original Position: 'the fact that the framers of the contract must be conceived of as rational agents does not entail that the recipients of the protection afforded by the contract must be rational agents' (Rowlands 2009, p.122). For Rowlands, it is clear that by its own principles, the Rawlsian contract should extend the entitlement to justice to animals.

³ There are extended arguments in (Rowlands 2009) by way of a justification for this claim that I will not explore here, as they do not seem to have raised much contest in the literature. Furthermore, I am working from a position of acceptance of Rowlands argument without a particular eye to justification of his theory – Julia Tanner has done an excellent job of this, see (Tanner, 2011).

We now have a system for applying a Rawlsian Contractarian doctrine to animals, but we must still establish that the Difference Principle could be produced by such a theory.

2 Establishing the Difference Principle for Animals

2.1 Defining the Difference Principle

It is intuitively convincing, as Rawls argues, that no society can be free of inequality given the inevitable occurrence of undeserved benefits, both physically and socially. A well-ordered society must arrange these inequalities so they are to the greatest benefit of the least advantaged, the process of ensuring this is *The Difference Principle* (hereafter: DP) (Rawls, 2001, p.55-63). DP is then an application of the sentiments of IEA to the actual world. To ensure the fairest society we must ensure the best possible distribution of inequalities – the inequalities must be to the benefit of the least advantaged.

2.2 Motivating the Difference Principle for Animals

In what way would the Difference Principle be beneficial in explaining the rights of animals? I believe the application of DP to animals would produce a system in which they, as the least advantaged members of society, would most benefit from their disadvantages. The primary benefit of this approach is that it provides equality without the need for identical treatment. We can decide, for any given situation, what the best course of action should be – it must be that which is best for the least advantaged, the best for animals.⁴ As such, we retain animals in a position that supports their ‘primary goods’ (Rawls, 2001, p.55-59), but does not need to ascribe animals equivalent, or clashing,⁵ rights with humans.

How would we apply the test of the Difference Principle then? For any given issue we must decide (a) whether the subject animal(s) is the least advantaged and (b) whether acting as we intend to will result in the greatest benefit for it (Tanner, 2011, p.582). My purpose (due to time and length constraints and in the interest of keeping a single focus) is to provide an argument for the viability of DP’s application to animals, not to illustrate its practical consequences. However, there is merit to discussing briefly such consequences to strengthen my argument by proving its practical applicability.

It seems the strongest example of the benefit of DP would be to show the practical balance it can strike between human and animal interests – a common argument against animal-friendly Contractarianism being that it places humans and animals in an unresolvable conflict because we would be unable to decide with whom the right to an action (or its restriction) lies (Garner 2012, p.168). I believe that animal testing is

⁴ Here I am discussing only human-animal dynamics in the usual sense. Animals will not always be the least advantaged in a scenario but the theory is flexible to this issue (as shown in the latter part of §2.2)

⁵ By ‘clashing’ I mean an impassable conflict between animal and human rights, for instance if it was illegal to interfere with animal habitats but that meant allowing bears to roam free in the center of towns. To clarify, I do not simply mean adjudicating between possible options.

one such example. Animal testing holds an interesting position, as it is a widespread issue, much like animal consumption, but has evidently non-trivial results for both humans and animals. As such, maintaining animal testing seems to produce clear and valuable benefits for humanity. However, it also produces great harm by exposing animals to extended confinement, painful experimentation, and commonly, death. The advocate of Rowlands' theory would therefore conclude that the contractors in the original position would not risk becoming animals in such a state and so remove our option for animal experimentation, providing them with a direct right to not be used in such a way (Tanner, 2011, p.579). This option is certainly in keeping with Rowlands' sentiment but it is too coarse a response. It results in an all-or-nothing decision that is greatly detrimental to humans. We can now see a great benefit of using DP to govern human-animal duties. If we apply the two tests, (a) and (b) to animal testing we are offered a more productive solution. It remains the case that tortuous testing on animals would be far from the best option for the least advantaged party here (let us say she is a dog called Spot). However, were we to need to test, say, a medicine for a type of arthritis from which we know Spot suffers then her advantage is raised. It is true she runs all the potential risks we wish to avoid for humans, but her advantage increases greatly. Spot now has a chance to recover from something that would have otherwise most likely caused her lots of pain. So, far from animal testing being prohibitively restricted by my arguments, there is great potential to retain at least some of its benefits. I admit that the cases in which this method would apply would be slim – but they would be of far greater merit than a total ban on testing.

We have now seen that DP holds a distinct and practical benefit as a method of adjudicating action between humans and animals. I chose to discuss the potential results first to provide an impetus for my arguments. I have shown how the results would work and I will therefore now go on to substantiate the theory.

2.3 Rowlands & The Difference Principle

I have established how Rowlands secures animals as part of a moral contract, and how the initial conception of the Difference Principle also arises from that contract. I shall now go on to establish that DP can indeed be produced by Rowlands' framework for animal-friendly Contractarianism and that animals fulfill the requirements of the principle.

Throughout §1.2 we can see that Rowlands' argument for animal-friendly Contractarianism is crucially reliant on IEA (Rowlands 2009, p.133-138). Moreover, it is this argument for equality that influences DP. It is a practical tool by which to apply the principles of fairness established in IEA within the actual world - by use of DP, those inequalities that inevitably, but undeservedly, occur in society can be mitigated.⁶ As such the intuitive equality argument leads to the Difference Principle:

- P1) The purpose of the contract is to produce procedures for a fair society.⁷
- P2) It is manifestly unfair to detriment others by benefiting from undeserved properties (IEA).

⁶ As per §1.2

⁷ Both Rawls and Rowlands maintain this view in virtue of the contract being in the Kantian vein – to attest to which actions suit external morality (§1.2)

P3) Given 1) and 2), we must mitigate this unfairness through the contractual process.

P4) The Difference Principle fulfils the requirements of 3).

C1) Therefore, in order to achieve the requirements of IEA, we should use the Difference Principle.

Fulfilling the fairness principle of the contract is simply to follow IEA, which is itself an integral part of Rowlands' argument.⁸ DP is then a tool that provides a clear way to achieve this end, by balancing undeserved attributes to the benefit of the least advantaged. DP, while not explicitly advocated by Rowlands, is clearly applicable within his theory.

3 Is the Difference Principle Really Viable for Animals?

Up to this point I have established DP as a guiding standard for the treatment of animals in a Contractarian system. DP can viably originate from Rowlands' adaptation of Rawlsian Contractarianism and be applied to the lives and values of animals. In this final section I will go on to present and critique a number of potential objections to the theory by way of securing the validity of my arguments and further clarifying certain aspects.

3.1 Can the Difference Principle Legitimately Apply to Anything Without a Political Society?

The Difference Principle is applicable to animals in a practical sense, and further, its application is possible under Rowlands' Contractarian framework. However, I can envisage a contention that the Difference Principle can only apply to specific political goals, Rawls himself suggests DP should act to equalise the powers of office, self-respect of social institutions and free choice of occupations - seemingly a list of the furthest things from any non-human animal's mind (Rawls, 2001, p.58). However the core position held by Rawls means DP is open to any area. The view that gives rise to Rawls' perception of political rights is that of 'living a complete life' (Rawls, 2001, p.58). I believe such a position is as eminently suited to the lives of animals as it is those of humans. It is Rawls' species-specific extension of this principle that excludes animals, not its more fundamental basis and as such there is scope for the entire principle's application to animal rights, not just those of humans.

⁸ As per §1.2

3.1 Would the extension of The Difference Principle Lead to Unmanageable Duties to Animals?

The Difference Principle, now applied to animals, obliges us to preserve their direct rights to ensure they retain the primary requirements for life. My opponent could therefore contend that there is no more primary requirement for life than not to be hunted and killed. Yet this is a daily threat for a vast proportion of wild animals – so DP would oblige us to steward animals in order to preserve their right to life, possibly even providing them with healthcare and protection as needed. This, it would then reasonably be argued, would make DP damagingly burdensome and impractical. However, I would contend that we are not obliged to act as a moderating force between animals. Such a response would misunderstand the way in which Rowlands’ contracts provides animals with rights. The contract, in accordance with IEA, obliges us to temper *our* engagement with animals in order to preserve their rights, it need not create duties between animals, as any contractors would well understand they could not maintain such duties. As such, we can retain the advantages and viability of applying DP to animals.

4 Conclusion

In this paper I have argued that the Difference Principle provides practical system for establishing duties between humans and animals. I have illustrated that the Difference Principle can arise in the appropriate manner from Rowlands’ animal friendly Contractarianism, and by way of example shown its usefulness in providing rights to animals in a contractualist framework. A number of opposing points have been made but I have responded by showing them to misunderstand the widely applicable core motivation for DP (§3.1) or to over-apply the theory in an inconsistent manner (§3.2). As such I have established the legitimacy of applying DP and provided arguments as to why DP provides practical guidelines for our duties to animals.

Bibliography

- Carruthers, P. (1992). *The Animals Issue*. Cambridge: Cambridge University Press.
- Garner, R. (2012). “Rawls, animals and justice: New literature, same response.” *Res Publica* 18 (2), 159–172.
- Rawls, J. (1973). *A Theory of Justice*. Oxford: Oxford University Press.
- Rawls, J. (2001). *Justice as Fairness | A Restatement*. Cambridge, MA: Harvard University Press.
- Rowlands, M. (2009). *Animal Rights*. Palgrave Macmillan Ltd.
- Tanner, J. (2011). “Rowlands, rawlsian justice and animal experimentation.” *Ethical Theory and Moral Practice* 14 (5), 569–587.

Tanner, J. (2013a). "Clarifying the concept of cruelty: What makes cruelty to animals cruel." *The Heythrop Journal* 56 (5), 818–835.

Tanner, J. (2013b). "Contractarianism and secondary direct moral standing for marginal humans and animals." *Res Publica* 19 (2), 141–156.