

Contractualism and Our Duties to Nonhuman Animals

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In this paper, I examine the influential account of contractualist moral theory offered recently by T. M. Scanlon in *What We Owe to Each Other*. Scanlon's contractualism is not intended to account for all the various moral commitments that people have, it covers only a narrow—though important—range of properly moral concerns and claims. Scanlon focuses on what he calls the morality of right and wrong or, as he puts it in his title, what we owe to each other.

My question is whether nonhuman animals can be wronged in the narrow sense of a moral wrong with which contractualism is concerned. Can we owe things *to* nonhuman animals? Scanlon is sensitive to the importance of this question, but he ultimately favors an account in which the perspectives of nonhuman animals are not explicitly included in contractualist theorizing. I argue that contractualism, largely as Scanlon conceives it, can accommodate duties to nonhuman animals. Moreover, I argue that if contractualism cannot make this accommodation, then its status as a theory that answers to important commonsense moral intuitions is called in question in ways that extend beyond its failure to live up to intuitions many share about the status of nonhuman animals.

I

Early on in *What We Owe to Each Other*, Scanlon notes that the “range of moral criticism, as most people understand it, is very broad,” and that it is often taken to apply to many forms of behavior that do not violate any duties that we have to others (6).¹ Some take certain sexual practices, for instance, to be *morally* objectionable even when they are not obviously harmful to the participants in these practices, or to anyone else. Scanlon’s contractualism issues in a narrower range of restrictions than this for it is concerned only with our duties to other people—with, for instance, the extent and the force of requirements to aid others and to refrain from harming and deceiving them.

According to Scanlon, when we consider actions that affect others, our judgments about right and wrong are, fundamentally, “judgments about what would be permitted by principles that could not reasonably be rejected, by people who were moved to find principles for the general regulation of behavior that others, similarly motivated, could not reasonably reject (4). On this account, a morally wrong action is one disallowed by a principle that no one (who is motivated to find unobjectionable principles for action) could reject. This is the “normatively significant property” that wrong actions share, and it accounts for our reason to avoid such actions (12). That is, the reasons we have to avoid wrong actions are grounded in the reasons we have for not engaging in actions to which a reasonable objection can be offered—and these latter reasons stem from the value of living in “a relation of mutual recognition” and justification with others (162). The fundamental starting point of one who engages in the project of finding unobjectionable principles for action is, then, the recognition of the value of coming to reasonable—i.e., informed and unforced—agreement with others about acceptable principles of conduct. Scanlon does not deduce the value of this relation but simply (and plausibly) asserts

that standing in this relation to others “is appealing in itself—worth seeking for its own sake” (162).

Engaging in the project of mutual recognition begins with the recognition of the value of other human beings. For Scanlon, this means seeing reasons for relating to others in ways governed by the contractualist formula: that is, seeing others as centers of reasons-giving and, finally, as centers of possible objection to our actions on account of these reasons. As Scanlon notes, this account of human value has the virtue that it “recognizes our distinctive capacities as reason-assessing, self-governing creatures” (106).

Given its focus, it may seem that contractualism cannot interpret the value of nonhuman animals as giving us reasons to govern our actions in the same way that the value of human beings gives us such reasons. Below I examine the issue of what Scanlon calls the scope of morality, or—in the terms of contractualism—the question of the range of creatures to whom we can be said to owe something.

II

What types of creatures can we be said to owe something to such that they can be wronged in the narrow sense of a moral wrong that contractualism is concerned with? Scanlon’s preliminary answer is that this is the “class of creatures to whom we can stand in the relation that underlies the form of moral motivation [Scanlon has] . . . been describing” (177). That is, the creatures that it is possible to wrong are the creatures whose objections to our actions amount to reasons for us not to commit these actions. “Morality,” in Scanlon’s narrow sense, “will thus include all those with respect to whom one has strong reason to want to stand in [the] relation” of mutual recognition (178). Scanlon takes it that human beings (and, presumably, any other

similarly rational beings) clearly provide us with such reasons. The question that I shall address is whether we also have reason to stand in this relation to nonhuman animals. One reason to think that we do not is that, for Scanlon, the relation that underlies moral motivation is supposed to be mutual—it is the “mutual recognition” mentioned above—and this may limit its province to human beings (and similarly rational beings).

Scanlon offers the following five possible characterizations of the set of beings that can be morally wronged (179).

- [1] The beings (or entities) for which things can go better or worse.
- [2] The beings in the first group who are conscious.
- [3] The beings in the second group who are capable of judging things as better or worse and are capable of forming attitudes on the basis of these judgment (i.e., are capable of forming “judgment-sensitive attitudes”).
- [4] The beings in the third group capable of making specifically moral judgments.²
- [5] The beings in the fourth group with whom it is to our advantage to enter into a relation of mutual restraint and cooperation.

According to Scanlon, it is clear that not all beings in group [1] can be covered by the morality of right and wrong. Group [1] includes everything from fully rational, adult human beings to any entity, such as a fragile ecosystem, for which one state of affairs conduces more to its health or integrity than other states of affairs. Of course, it may be wrong in a broader sense (i.e., in a sense that extends beyond prohibitions motivated by contractualist considerations) to wantonly destroy an ecosystem. However, according to Scanlon, “this is just to say that there is a serious objection to this course of action,” it is not to say that the ecosystem in question could somehow *be wronged*, for “[n]ot every entity that has a good . . . is a being that can be wronged”

(179). “Wronging” is constituted, on Scanlon’s account, at least partly by an inability to justify an action to one who is affected by that action, but “[i]n order for the idea of justification *to* a being to make sense it must at least be the kind of thing that can be conscious” (179).

It is clear, on the other hand, that we can make sense of justifying ourselves to the members of groups [4] and [5]. After all, these groups include only beings capable of full-blown moral reasoning. Further, Scanlon notes that we have no contractualist reason to limit our concern to the members of group [5]—the beings with whom a relationship of cooperation and restraint would be advantageous to us. If the aim of governing ourselves in terms of the morality of right and wrong were merely to secure the benefits of such restraint and cooperation, then we might have such a reason. This is, however, not the aim moral self-government; rather what motivates us here is, according to Scanlon, the value of interacting with others in ways that we can justify to them. If we are receptive to this value, we will see reason to want our actions to be justifiable to the beings that would be excluded by moving from group [4] to group [5]. We will see reasons to act in ways that are in principle justifiable even to those who will not extend the same courtesy to us, and to those who would extend this courtesy to us regardless of whether we would act reciprocally.

So the division between those beings we can wrong and those we cannot seems to lie somewhere in the range between groups [2] and [4]. But, as Scanlon notes, in practice there is little difference between groups [3] and [4] (since beings capable of judgment-sensitive attitudes are typically capable of moral reasoning as well), so contractualism does not seem to give us reason to draw the boundary of morality so narrowly as to exclude the members of the third group (180).

It appears, then, that the boundary of the morality of right and wrong is marked by the

division between groups [2] and [3]. This also seems to mark the division between the human and the nonhuman: at least if we assume that humans alone possess the linguistic and cognitive capacities necessary for the formation of judgment-sensitive attitudes. In view of this, the question becomes: Should the bounds of contractualist morality be wide enough to include members of group [2], such as most nonhuman animals?

III

Scanlon considers two routes a contractualist can take toward accommodating the widespread belief that certain ways of treating nonhuman animals are morally impermissible. The first option—call it the *broad morality* model—allows that an action affecting a nonhuman animal can constitute a moral wrong by appealing to the broad sense in which actions may be morally inappropriate. This sense of a moral wrong is external to explicitly contractualist considerations.

Many people believe that we can owe things to nonhuman animals; many also believe that these creatures have a value that is recognized by prohibiting certain behaviors with respect to them. These two beliefs are not equivalent. The first implies that nonhuman animals are properly taken directly into account as terms in contractualist reasoning. The second belief characterizes the motivation behind the broad morality model. It is consistent with the conviction that certain ways of treating nonhuman animals are impermissible, even if we cannot say that we owe anything *to* nonhuman animals because they are not appropriate partners in the form of reasoning that determines what we owe to each other.

According to Scanlon's contractualism, the motivation that supports moral behavior involves seeing the value of living in accordance with action-guiding principles to which others

cannot reasonably object. However, while contractualism thus defines a subset of properly moral proscriptions and prescriptions, there may be other moral claims that cannot be mounted on a contractualist basis because these claims arise from a focus on values that contractualism does not take into account. Failing to see the reasons to conduct oneself in certain ways in the face of these other values can be a moral failure—though not a failure to give others what they are owed. These non-contractualist values define the space of morality in a broader way than contractualism does.³

Scanlon considers the possibility that a person is morally criticizable for failing to strive for high standards in her profession. Such criticism may be generated from a contractualist perspective if the failure to strive for high standards brings about a failure to meet one's duties to others—to one's children, for instance. However, the moral criticism may also be generated from an extra-contractualist perspective. This would be the case insofar as we consider someone who fails to strive for high standards in her profession to have failed “to understand why achieving high standards, or developing her talents, is valuable” (174).

Broadly moral considerations can also generate a sexual morality. Some sexual practices are morally offensive in ways that can be accounted for on a contractualist basis. People can object in reasonable ways to, for example, sexual activities that involve coercion or deception. However, other forms of sexual behavior, or ways of approaching sexuality, may be immoral because they reveal an inappropriate attitude toward the value of human sexuality. As Scanlon notes, this point can be affirmed without sanctioning proscriptions that seem to be motivated merely by prejudice. If we construe sexual morality as an investigation into the appropriate response to the value of human sexuality, we may admit that “the importance given to sex and sexual attractiveness in much contemporary advertising and popular culture involves a serious

misevaluation of sex, while the relations between many same-sex couples do not” (175).

Scanlon’s point is not that all moral claims motivated from this broader moral perspective have equal validity, rather it is that the contractualist need not be committed to the view that all properly moral claims must issue from characteristically contractualist concerns. Thus, on the broad morality model, the contractualist can claim that certain ways of treating nonhuman animals are morally prohibited without having to take the perspective of such creatures into account in contractualist reasoning. If we accept that the nonhuman world has a certain value, then we will likely regard ourselves as having reasons to refrain from causing nonhuman animals needless pain. A failure to feel the force of these reasons betrays an insensitivity to the value in question; we may consider this insensitivity to be a morally criticizable flaw.

In fact, Scanlon suggests that our objections to causing nonhuman animals needless pain arise out of an appreciation of the value of sentient life in general: “Pain—whether that of rational creatures or nonrational ones—is something we have *prima facie* reason to prevent, and stronger reason not to cause” (181). Since seeing these reasons is a central aspect of being sensitive to the value in question, anyone who ignores or fails to see these reasons is open to moral criticism, though not because he has fallen short of a specifically contractualist ideal.

This leads, however, to one of the central reasons for rejecting the broad morality model of accounting for the belief that it is impermissible to treat nonhuman animals in certain ways. As noted in the last paragraph, this approach gives us the same reason to refrain from causing rational creatures pain as we have for refraining from causing nonrational creatures pain. However, we also have *other* reasons to refrain from causing rational creatures unjustified pain. These reasons stem, of course, from the fact that we stand to rational creatures in a relation that requires that we not act in ways to which they can reject—and they can reject a principle that

permits actions that cause them needless pain (181).

Our reasons to refrain from needlessly injuring nonhuman animals, on the other hand, stem only from an impersonal value—the badness of pain. By contrast, we owe it *to* human beings not to treat them in certain ways. This implies that human pain and nonhuman pain are not wrong in precisely the same ways and that animal suffering does not motivate us in the same way that human suffering does. As Scanlon notes, we may wish to reject these claims, holding that “torturing any animal . . . is wrong in the very same sense in which it is wrong to torture a human being” and that such torture is “something for which we should feel guilty *to* the animal itself, just as we can feel guilt *to* a human being” (182).

The unsatisfactoriness of the broad morality model in this regard may drive us to extend the scope of the morality of right and wrong to include the beings in group [2] above. According to Scanlon, contractualism can accomplish this by taking into account objections that could be raised by “trustees” representing creatures in this group who themselves lack the capacity to assess reasons and express objections (183). This is the second way of accounting for the status of nonhuman animals mentioned above: call it the *trustee* model.

Unlike the broad morality model, the trustee model involves nonhuman animals as terms in contractualist theorizing about whether our actions are objectionable. No actual trustee need be involved here since the trustee’s role can be fulfilled by counterfactual analysis. Under the trustee model, a principle for action is judged wrong if a nonhuman animal *would* offer a reasonable objection (based on its interests and *if* it could do so) to the principle in question (185).

Scanlon himself prefers the broad morality model to the trustee model and he points out that the difference between these two options often comes to very little (184). Both models can,

for instance, protect nonhuman animals from gratuitous harm. The difference, then, does not have to do so much with the sorts of actions prohibited but with the rationale behind these prohibitions. The trustee model prohibits certain actions because it takes account of animals as occupants of particular points of view rather than simply because of the general badness of, say, needlessly causing pain. If we rely only on the broad morality model then we can speak of harming animals as wrong, but we cannot speak of wronging animals or doing a wrong *to* them. But the idea that it is possible to do a wrong to a nonhuman animal seems to me part of what enlivens the perspective of many who are interested the welfare of nonhuman animals. Many of these people presumably do not see a stark difference between the reasons we have to refrain from unjustifiably harming nonhuman animals and those we have to refrain from acting similarly toward human beings. Such a perspective also seems to be a preliminary requirement for taking the idea of “animal rights” seriously. Such rights presumably create duties *to* nonhuman animals, as well as a basis upon which trustees may mount complaints on their behalf. For these reasons, a contractualism that assimilates the wrongs done to nonhuman animals into the narrow domain of morality seems preferable to a contractualism that does not.

Another reason to pursue the trustee model is that the mechanics necessary to accommodate it are already included in Scanlon’s presentation of contractualism. As we shall see, contractualism requires the method of counterfactual analysis to validate widespread intuitions about our duties to genetically human, but cognitively impaired, beings. It seems to me that our duties to these human beings stand or fall with our duties to nonhuman animals—one group is inside the fold of narrow morality only if the other group is. This raises the stakes for contractualism’s potential failure to accommodate duties to nonhuman animals.

IV

As Scanlon points out, drawing the sphere of the morality of right and wrong so tightly as to exclude beings incapable of holding judgment-sensitive attitudes seems at first glance to also exclude certain human beings who probably should not be so excluded. It seems, for instance, to exclude infants and very young children, and adults with severely limited cognitive capacities. To avoid this consequence, Scanlon suggests that the trustee model can be straightforwardly applied to such beings—bringing them within the sphere of the morality of right and wrong—“whether it is appropriate for the case of nonhuman animals or not” (186).

Scanlon is partly right here. The trustee model is what the moral intuitions of many seem to require—that is, we owe things *to* these beings whether or not it makes sense to speak of justifying ourselves to them in a fashion that is comprehensible to them and whether or not we can enter into a relation of genuinely mutual recognition with them. I disagree, however, with Scanlon’s contention that there is a relevant difference between the viability of the application of the trustee model to infants and impaired adults, and the viability of its application to nonhuman animals.

Scanlon offers the following reasons to suppose that the application of the trustee model is especially appropriate with respect to human infants and very young children. He observes that, “infancy and childhood are, in normal cases, stages in the life of a being who will have the capacity for judgment-sensitive attitudes” (185). The suggestion here seems to be that infants and young children can be provisionally placed in group [3] or higher (via the trustee model) because they will develop—and perhaps already possess in an incipient way—the capacities that would, if fully developed, place them in these groups.

This line of thought is unpersuasive. Both nonhuman animals and infant humans fail to

have the characteristics that define membership in groups [3], [4], and [5]. Merely noting that infant humans typically mature into beings who possess these characteristics does not strike me as an adequate argument that their provisional admission to groups [3] (or higher) is more plausible than the admission of other beings that permanently fail to possess the requirements for group [3] (or higher) membership. At any rate, even if the cognitive potential of normal infants makes the trustee model appropriate in their case, this would not account for extending the trustee model to infants with congenital cognitive defects who will never develop the cognitive capacities required for membership in groups [3], [4], or [5].

We may think that a genetically human being who permanently fails to satisfy the cognitive requirements for membership in groups [3], [4], or [5] is somehow closer to satisfying these requirements than a nonhuman animal who fails to satisfy them. One wants to say, perhaps, that, given its genetic heritage, a human being with severely impaired cognitive abilities *could have* been born with a normal, or fully developed, human brain, or whatever would ameliorate the impairment in question. On the other hand, it is *possible* that a nonhuman animal could have been the beneficiary of an exceedingly beneficial mutation and thus *could have* (in this sense) been born with a brain that would have allowed it to engage in human-like cognitive activities. Similarly, perhaps one day we will develop technology that can turn nonrational animals into fully rational beings. In this case, it would be true of any nonrational animal that it *could have* been, or could become, rational.⁴ This would make the difference between congenitally impaired human beings and nonrational animals even more slight. However, it is strange to suppose that the mere development (and not necessarily the use) of this technology should bring animals within the fold of the contractualist framework. The solution, I think, is that the sort of potential rationality possessed by impaired human beings is not sufficient to

distinguish them from nonhuman animals, but since the intuitions of many people require that impaired humans be within the realm of morality that contractualism defines, nonhuman animals should be as well.

One might also attempt to drive a wedge between the human and the nonhuman by noting that one of contractualism's characteristic features is an interest in deriving a neutral basis for decision making. Part of what motivates this interest in neutrality, and our concern to live with others on principles that they cannot reject, is an acknowledgement that the position from which we choose is largely a product of circumstantial and constitutive luck. John Rawls' presentation of contractualism, for instance, argues that the fairness of the organizing principles of a society is likely ensured if the choosers of these principles are unsure of the position that they will occupy in that society.⁵ This procedure has the virtue, and the aim, of neutralizing luck as far as this possible. If we focus on this aspect of contractualism, we may imagine that an emphasis on acting on principles that others cannot object to is connected with an interest in acting on principles that I would find acceptable had I been in the position of one who must share the world with me. We might suppose, then, that the differential treatment of humans and nonhuman animals is justified just because it is easier to put ourselves imaginatively into the positions of other human beings than of nonhuman animals.⁶

To link this theme with the previous one, we might suppose that we can more readily occupy the position of a mentally impaired human agent than that of a nonhuman animal. However, I believe that this last claim becomes more and more suspect as the level of impairment increases. If it is implausible that we can imaginatively occupy the perspective of the *most* impaired human agent more readily than that of a nonhuman animal, then we have no reason to assume that such a seriously impaired human agent is within the fold of narrow

morality, while nonhuman animals are not. Moreover, even if we can enter into the perspectives of human agents more readily than those of nonhuman agents, it still seems that we can enter into the perspective of a nonhuman animal sufficiently to object to a wide variety of behaviors on its behalf. For a trustee to object to principles that allow the causing of pointless pain to nonhuman animals, all that seems necessary is that the nonhuman animal experiences pain in something like the way the trustee does. Insofar as a trustee and a nonhuman animal share the quality of being sentient and being subject to pain, whatever imaginative projection is necessary to ground such an objection seems possible.

Returning now to the topic of normal human infants, Scanlon argues that the “mere fact that a being is ‘of human born’ provides a strong reason for according it the same status as other humans” (185). Again, this seems insufficient when we are speaking about beings that differ from most of us in lacking just the qualities that—according to Scanlon—ground the claims that others can make on us to act in ways that are justifiable to them. Scanlon acknowledges that merely emphasizing the genetic humanity of the beings in question might be criticized as “speciesism,” but he denies that it is a prejudice to recognize that our “relation to these [genetically human, but cognitively deficient] beings gives us reason to accept the requirements that our actions should be justifiable to them” (185). This, however, does not deflect the charge of speciesism. After all, the “relation” Scanlon mentions here has to be our genetic relation to these beings (it cannot be the fact that they share our rational capacities—because these beings do not resemble normal adult human beings in this regard), so this is just a direct appeal to the fact that these beings are members of our species.

We want to treat infants on the trustee model because other options fail to generate results in conformity with our intuitions. Without the trustee maneuver, we might be able to say

that the interests of an infant should be taken into account as a function of a generalized concern for human life or insofar as these interests are subsumed under those of a normal adult. Mary Anne Warren pursues this latter course, suggesting that an instance of infanticide is unacceptable only because some full-fledged members of our moral community may object to it. On Warren's account, we do not owe it *to* infants to refrain from infanticide because infants are not the type of being we can owe things to. It is, rather, recognition of the (contingent) fact that "there are other people who would . . . be deprived of a great deal of pleasure by its destruction" that obliges us not to destroy an infant.⁷ However, the failure to acknowledge that we can stand in direct moral relations to infants will be morally unacceptable to many.

As distinct from Warren, Scanlon prefers to construe the wrongness of wantonly injuring an infant as a failure to recognize what we owe *to* that infant. However, since the infant is not eligible for membership in groups [3], [4], or [5], this can only be accomplished by employing the trustee model. But, again, it seems to me that if we think that contractualism can satisfy the intuition that wantonly harming an infant is a wrong *to* the infant (as opposed to being a wrong to some fully rational adult), then contractualism can also, and for the same reasons, satisfy our intuitions about nonhuman animals.

V

Part of my aim has been to show that it is important that contractualism should accommodate the trustee model if it is to satisfy widely shared moral intuitions. If contractualism is inconsistent with the application of the trustee model to nonhuman animals, then it is also inconsistent with the application of the trustee model to humans with cognitive impairments, and to infants and very young children.

The main reason for doubting the consistency of contractualism and the trustee model is the idea that the beings that stand in need of trusteeship are just those beings to whom it may not make sense to speak of justifying ourselves and to whom we cannot stand in the relation of mutual recognition that contractualism requires. Put another way, perhaps those beings whose “reasons” must be determined by counterfactual analysis are just the beings to which we cannot, strictly speaking, owe things.

In addressing this issue, it is worthwhile to look at a suggestion that Scanlon makes in his important essay “Contractualism and Utilitarianism,” which appeared almost twenty years before *What We Owe to Each Other*. There, Scanlon says that it makes sense to speak of justifying ourselves to nonhuman animals (even though they are not reasons-assessors) because things can go better or worse for them in virtue of the fact that they have a point of view: there is “such a thing as what it is like to be that being, such a thing as what the world seems like to it.”⁸ On this account, it is the fact that an animal occupies a point of view—that there is a way that the world appears to it—which makes it a source of reasons, even if it is not an articulator of reasons in the way that human beings are. That a being is the source of reasons in this way is perhaps sufficient for us to speak of justifying ourselves with respect to it. On this account, it would presumably count as a justification to an animal if we have reasons that could override any reservations that might arise from the animal’s point of view.

The fact that humans occupy points of view is clearly important for our duties to them. One could even argue that it is not a human being’s status as a reasons-assessor and reasons-articulator that ultimately grounds our recognition of her value as a source of reasons. Perhaps we do not owe things to human beings *because* they are capable of giving and assessing reasons—it may be that we owe things to others because they occupy a point of view with

characteristic interests and needs that can generate reasons for us.

While the hypothetical attribution of reason to nonhuman animals (and, indeed, to human infants and cognitively impaired adults) under the trustee model may seem suspicious, it is important to note that a very similar sort of counterfactual analysis plays a significant role in Scanlon's project even without the introduction of trusteeship. We often engage in counterfactual reasoning concerning normal, adult human beings in order to determine whether our actions are right or wrong. We may, for instance, attribute ideal rationality to others and reason as if we existed in a relation of mutual recognition with them to determine whether they have a reasonable objection to some proposed principle of action.

The reason, after all, that the wrongness of an action gives us not to perform it is that others *could* reasonably object to it—not that they actually do object to it, but that they could do so given the particulars of their situation. Even if someone does not object to our actions—due, for example, to a failure to realize that she has a reasonable objection to it—contractualism requires us to view matters from her perspective, and to judge whether her needs and interests provide a reasonable objection to our actions. It is not, then, actual agreement we seek insofar as we are contractualists: it is, rather, the “ideal of hypothetical agreement which contractualism takes to be the basis of our thinking about right and wrong” (155).

Similarly, even a narrow construal of morality “requires us to be moved by . . . the thought of our relation to a large number of people, most of whom we will never have any contact with at all” (168). Now we clearly do not stand in a relation of mutual recognition with these beings—though perhaps we *could*—rather we give hypothetical content to, and represent to ourselves, the perspectives of these individuals. That is, we treat them under a sort of trustee model. Nor, of course, do we exist in a state of mutual recognition with the amoralist, yet we

also take her interests into consideration. It seems clear, then, that my recognition of others does not depend on them recognizing me since this latter condition does not obtain in many circumstances in which I take myself to be obliged by the moral standing of others. I act in many ways that take account of others when I have no way of knowing whether they can, or would, do the same by me. Given how widespread this sort of counterfactual reasoning is, it may be that the obligation to recognize others as centers of reasons-giving has more to do with their having viewpoint dependent interests than with them being in a state of actual mutual recognition and justification with me.

If my considering someone's interests is not contingent on whether they are rational or on whether they consider my interests, why impose these conditions on nonhuman animals? One might say that we extend this consideration to humans because they *could* extend it to me (even when they do not because they happen to be amoral or irrational), but, again, this seems false. We do not recognize the reasons others give us because they recognize us or because they could do so—ultimately, we recognize others, it seems to me, because they have needs and interests.

VI

Aside from worries about whether we can stand in an appropriate relation to nonhuman animals there are other reasons for resisting the inclusion of nonhuman animals in the morality of what we owe to each other. For one thing, it may seem that the counterfactual analysis employed on the trustee model would lead us to treat nonhuman animals as if they were fully rational and we would then owe the same things to humans and nonhuman animals. It might also be thought that if we admit that we can owe things to animals we will be forced to admit that we owe things to ecosystems and whatever else might be included in group [1] above: entities for

which things can go better or worse.

As to the first worry, it is important to note that what we owe to others is based on their actual interests, which can motivate actual or hypothetical objections to principles of action. Not all beings have the same interests. We have reason, for instance, to treat seriously impaired individuals with love and caring, to refrain from harming or exploiting them, and to provide them with the opportunity for as rich a life as possible. These are all benefits to them from their point of view. However, depending on the level of impairment, not every individual has a legitimate interest in, for instance, obtaining a driver's license, in which case a reasonable objection to being excluded from this privilege cannot be mounted.

The same reasoning can be applied to nonhuman animals. We need not act toward nonhuman animals (or infants, and so on) in just the way we act toward human beings because there is a great divergence in the interests of these two groups. Indeed, this divergence may allow us to treat nonhuman animals, infants, and normal adults all in dramatically different ways, and it may be that none of these groups could mount reasonable objections to our way of treating them. I have wanted to insist, after all, not that these groups must all be treated the same, but that we should see our reasons for governing our behavior with respect to all these beings as arising in accord with duties *to* these beings.

Still, it may seem that taking this sort of interest in the welfare of nonhuman animals will create especially onerous burdens for human beings. For instance, nonhuman animals have an interest in being free from pain. This creates duties to refrain from causing them needless pain but it may also create duties to alleviate their pain when possible. Moreover, this may be true not just in the case of those animals with which we have the most, and the most affectionate, interaction—domestic animals—but also in the case of wild animals.⁹

It is worth pointing out that this is not a worry unique to trustee model contractualism. Even on the broad morality model, or on noncontractualist theories, we may judge that we have reason to prevent, as well as to reduce, the suffering of nonhuman animals in general. Moreover, the problem here for contractualism (and this is probably true on other theories as well) seems to be an instance of more general theoretical problems: the problems of balancing competing interests and of how to respond when a moral theory requires more of us than we are inclined to give.

Certainly, a trustee representing the perspective of nonhuman animals could reject principles that made no room for the relief of suffering of animals in the wild. So, for instance, if there is an epidemic of a fatal and painful disease in a wild population that we can easily combat by the minimally invasive introduction of an antidote into their habitat, we may be required to do so—and required to reject a principle that would disallow this action. However, if tremendous expenditure of resources on our part would be required to reduce the pain of this species, then a principle disallowing such expenditure might *not* be rejectable by trustees representing the species in question. The issues here are analogous to those that arise when we consider the duties of citizens of well-off countries to address the suffering of people who live in remote (and not so remote) parts of the world. In each case, we have to engage in practical reasoning along contractualist lines to determine how much is required of us. Almost certainly, in the cases of both nonhuman animals and less well-positioned human beings, we fail, individually and collectively, to do what is required of us. We should do more, but this does not mean that we are required by contractualist morality to impoverish ourselves in the service of nonhuman animals anymore than we are required to do so in the service of other human beings.

Another aspect of this problem involves balancing competing interests of different

nonhuman species. We have reason to interfere when one human group exploits or terrorizes another human (or nonhuman) group, or at least an exploited group can reasonably reject principles that disallow such interference. We may wonder then, whether we have reason to interfere in the relations between, for instance, nonhuman predators and their prey. From the standpoint of commonsense, it seems that we do not have such a duty. Predators, after all, are not analogous to unjust humans; indeed, predators could object to activities that would deprive them of food necessary for their survival. Rather than attempt to weigh the competing interests of nonhuman species we may, at this point, want to appeal to Scanlon's emphasis on morality construed broadly. We may believe, for instance, that minimally disturbed nonhuman nature has a certain value that needs to be respected (barring very strong reasons for intervention as in the above case of a painful disease easily cured via minimally invasive techniques). This value might motivate us to remain largely uninvolved in predator-prey relations.

I turn now to the second worry mentioned above, the concern that if we owe things to nonhuman animals, we will owe things to trees, plants, and inanimate objects. It is difficult to conceive of ourselves as owing things to these entities because they do not occupy points of view at all. Quite probably, there is no *what it is like to be a tree*. The significance of this fact is revealed by the fact that if there were a *what it is like to be a tree*, and hence a *what it is like to be chopped down*, we would no longer view chopping down a tree as a (*ceteris paribus*) morally neutral act.¹⁰

Scanlon makes the following point in "Contractualism and Utilitarianism." "[I]n order for a being to stand in moral relations with us it is not enough that it have a good, it is also necessary that its good be sufficiently similar to our own to provide a basis for some system of comparability."¹¹ So, with regard to "a forest or an ant colony," Scanlon says, "while these

entities have a good, it is not comparable to our own in a way that provides a basis for moral argument.”¹² While we can extend the notion of justification to many mammals and other animals, our willingness to do so may fall away as what constitutes the good for these animals becomes less similar to our own, and becomes less robust in general. A tree simply does not have the capacities for suffering, or flourishing in the way that a chimpanzee, a dolphin, or a pig does and therefore does not present us with the same types of reasons to govern our behavior. Further, the good of a tree is not a good “for it”—assuming that a tree lacks experience and that there is nothing it is like to be a tree—in the same way that a dolphin’s good is a good for it. A dolphin’s good is a good for it precisely because it is a center of consciousness and our human goods are preeminently goods “for us” because we can represent them to ourselves *as* goods. This need not be taken as a denial of reasons to treat non-sentient nature in certain ways, but it does point to the conclusion that these reasons are most naturally accounted for in terms of values and concerns that have their place outside of contractualist reasoning.

NOTES

¹ All internal page references are to T. M. Scanlon, *What We Owe to Each Other* (Cambridge, Mass.: Harvard University Press, 1998).

² As I note below in the text, there is little difference, in practice, between the extension of group [3] and the extension of group [4]. The distinction does, however, allow for the possibility of agents who are rational to such a degree that they are capable of forming attitudes based on judgments about reasons, but who are incapable of moral reasoning in particular. Here

Scanlon may have in mind “psychopathic” agents—though he does not use that term—that are rational in a general sense but lack important moral concepts and hence are “morally blind.” Scanlon thinks that we have reason to care about justifying our actions to such agents and, in fact, that such generally rational, but constitutionally amoral, agents can reasonably be held morally responsible for some of their actions. For more on this last point, see pages 287-90 of *What We Owe to Each Other* in Scanlon’s chapter on moral responsibility.

³ Scanlon deals with the distinction between contractualism and broader accounts of morality at several points in *What We Owe to Each Other*. Perhaps his most detailed treatment of this subject is a section called “Fragmentation of the Moral” on pages 171-77.

⁴ The thought here is taken from Michael Tooley, though he develops it in a quite different direction. Michael Tooley, “Abortion and Infanticide,” in *The Rights and Wrongs of Abortion: A Philosophy and Public Affairs Reader* edited by John Finnis, Judith Jarvis Thomson et al. (Princeton: Princeton University Press, 1974) pp. 52-84. The argument I am referring to is on pages 75-7.

⁵ John Rawls, *A Theory of Justice* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1971).

⁶ An anonymous referee for *Environmental Ethics* indicated how to develop this potential worry.

⁷ Mary Anne Warren, “Postscript on Infanticide” in *Introduction to Ethics* edited by Gary Percesepe (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1995) p. 453.

⁸ T. M. Scanlon, “Contractualism and Utilitarianism” in *Utilitarianism and Beyond* edited by Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982), pp. 113-114.

⁹ An anonymous referee for *Environmental Ethics* suggested the worries raised in this paragraph.

¹⁰ If an animistic society does not view the destruction of a tree as a neutral act, this is often because it views a tree as in some way inhabited and conscious of, and responsive to, its environment. It should be noted that even if panpsychism—of the sort considered by David Chalmers, *The Conscious Mind* (Oxford: Oxford University Press, 1996) pp. 293-301—is true, what it is like to be a tree will be radically different from what it is like to be a more typically sentient being. In this case, it would still be difficult to consider mounting objections on a trees behalf, rather than appealing, say, to the general badness of wantonly destroying flora.

¹¹ Scanlon, “Contractualism and Utilitarianism,” p. 113.

¹² *Ibid.*, p. 114.