

# Speciesism as a precondition to justice

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Y. Michael Barilan, M.D., M.A.  
Department of Internal Medicine B  
Meir Hospital  
Kfar Saba  
*bentovia@shani.net*

Department of Behavioral Sciences  
Sackler Faculty of Medicine  
Tel Aviv University  
Tel Aviv, Israel

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**ABSTRACT.** Over and above fairness, the concept of justice presupposes that in any community no one member's wellbeing or life plan is inexorably dependent on the consumption or exploitation of other members. Renunciation of such use of others constitutes moral sociability, without which moral considerability is useless and possibly meaningless. To know if a creature is morally sociable, we must know it in its community; we must know its ecological profile, its species. Justice can be blind to species no more than to circumstance. Speciesism, the recognition of rights on the basis of group membership rather than solely on the basis of moral considerations at the level of the individual creature, embodies this assertion but is often described as a variant of Nazi racism. I consider this description and find it unwarranted, most obviously because Nazi racism extolled the stronger and the abuser and condemned the weaker and the abused, be they species or individuals, humans or animals. To the contrary, I present an argument for speciesism as a precondition to justice.

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Many philosophers nowadays believe that moral considerability must be based solely on a morally relevant trait or traits and that mere membership in a group cannot become such a trait. Paying more respect to human interests and rights than to animal interests and rights merely because membership in the human species is believed to grant superior moral standing is condemned as speciesism.<sup>1, 2</sup> If we wish to treat humans differently, claim these philosophers, we must show a morally relevant difference between the human and the animal. Predictably, opinions vary as to what may count as a morally relevant difference.

In this paper I follow Warren,<sup>3</sup> employing "moral rights" and "moral considerability" interchangeably, while methodologically relying on a distinction between recipient-dependent ethics and agent-centered ethics. I rely to a certain extent on Miller's rendering of rights and justice in Aristotle,<sup>4</sup> on Ritchie's discussion of rights,<sup>5</sup> on some points in McCloskey's discussion on moral rights,<sup>6</sup> and Goodpaster's exposition of moral

considerability.<sup>7</sup> Dombrowski,<sup>8</sup> Warren,<sup>9</sup> Clarck,<sup>10</sup> Wise,<sup>11</sup> Sterba,<sup>12</sup> and Varner<sup>13</sup> offer updated, extensively referenced, and thorough discussions of the literature on the moral rights of nonpersons. My debt to these scholars duly acknowledged, I have tried to keep notes and references from intruding excessively on the exposition that follows.

## Three creatures

Let M be the morally relevant attribute or set of attributes which constitutes moral considerability. According to non-speciesism, creatures that are M-positive are morally considerable; creatures that are M-negative are not. M stands for all possible degrees of moral considerability: M1, M2, and so forth.<sup>14</sup>

All living beings may be divided into three groups represented by three paradigmatic creatures, Brutti, Frutti, and Anonymi. Let Brutti be a creature about whom we know (1) that it is human and (2) that it is M-

negative. Following non-speciesism, (1) is irrelevant to Brutti's moral standing. Brutti has no moral rights.

Let Frutti be a creature about which we know (1) that it is not human and (2) that it is M-negative. Frutti has no moral rights, either.

Brutti and Frutti may bear value as, for example, aesthetic objects, but they have no *moral* rights. They are not morally considerable as *individual* recipients of justice.

Let Anonymi be a creature that we know to be M-positive. Anonymi has moral rights according to its M.

Now, let E1 be defined as that part of ethics that is recipient-dependent. This is the domain of justice. Someone is given equal consideration; someone has moral rights, which arguably guarantee even more than equal consideration; someone is treated justly. Injustice always has a victim and an unjust event a cause. Injustice often involves the moral failure of an agent; keeping promises, for example, postulates both an agent and a recipient. Still, to understand why certain acts are just or unjust, we must always focus on the *recipient*. Indeed, we often refer to "agent-free" events, such as the occurrence of good luck or bad disease, as being "just" or "unjust," "deserved" or "undeserved."<sup>15</sup>

Recipients of justice need not be able to claim it or protest its refusal. Anybody, assuming M-positivity, may be a recipient of justice, assuming also that circumstances allow justice to be conceptualized. We owe moral duties *to* such recipients,<sup>16</sup> and we feel guilty *to* them when we fail these duties.<sup>17, 18</sup>

Let E2 be all other moral considerations, such as agent-centered restrictions. Minimum requirements for E2 are free moral agency and ethical options. For example, by arguing that we must treat animals mercifully for the sake of cultivating our own virtues, Kant<sup>19</sup> cast our moral duties with regard to animals purely within E2.

Speciesism reflects an attitude towards the recipient of action; thus, arguments regarding speciesism fall within E1.

### **Why parsimonious speciesism is compatible with justice**

The discussion begins with the following question. Is it moral to eat Brutti, Frutti, or Anonymi? Put directly in terms of E1, do Frutti, Brutti, and Anonymi have a right not to be eaten?

I suppose that although Brutti has no rights at all, many people would recoil from eating it, whereas neither the speciesist nor the non-speciesist would oppose to the eating of Frutti. For the time being, I assume that the aversion to eating Brutti is appropriate, that there is something inherently wrong about eating human flesh, that Dombrowski is right in asserting that "we shudder at the prospect of canning 'moron meat.'"<sup>20, 21</sup>

I wish to make the case that sparing Brutti from the butcher entails no moral wrongdoing towards Frutti. Frutti has no moral standing, so it cannot be discriminated against. Nor can Frutti be harmed morally in any other way. Hence, speciesism is not in every case morally objectionable. It follows that the sparing of Brutti does not violate the moral considerability of Anonymi either. We must eat something. Since we can eat Frutti, the sparing of Brutti does not compel us to eat Anonymi and thereby to violate its moral rights.

I will now ask whether it is moral to destroy Frutti gratuitously. I suppose most of us would shrink back from wanton destruction in general and from the taking of life in particular. We cannot express our disapproval of shredding Frutti wantonly in terms of justice, though. Frutti has no moral standing, so it is impossible to do it moral harm. The difference between processing Frutti through the meat grinder and throwing it into the office shredder is not related to the recipient of the action. Our disapproval belongs to E2. Sparing Brutti is a case of *parsimonious speciesism*. It is parsimonious because it overrides no moral claim. I also contend that parsimonious preferential speciesism seems to be a condition to justice. If M-positive creatures do not have M-negative creatures to eat and to exploit, M-positive creatures will have to eat and to exploit other M-positive creatures—or starve. However, some M-positive creatures eat other M-positive creatures. This fact justifies *ambitious speciesism*, where human-Anonymi enjoys higher moral standing than nonhuman Anonymi. In this paper I will touch only upon the question of *very ambitious speciesism*, namely preferring Brutti over nonhuman Anonymi.

### **How ambitious preferential speciesism may be moral**

Brutti and Frutti are not real creatures, but abstractions from a reality about which we have only rudi-

mentary knowledge. According to Rawls, Brutti belongs within the contractarian domain behind the “veil of ignorance,” whereas Frutti does not.<sup>22</sup> Considering the fact that Rawls’s “veil of ignorance” is his primary mental apparatus for the formulation of justice and that neither Brutti nor Frutti is M-positive, this discrimination seems rather arbitrary. Rawls also excludes non-human Anonymi from the contractarian domain, and this exclusion is not self-evidently just. Indeed, attempts have been made to reformulate Rawlsian ethics so as to accommodate morally considerable nonhumans.<sup>23</sup> I will now try to show why this task is doomed to failure. I will argue that contractarian justice dependent upon a device such as the “veil of ignorance” renders species-identity morally relevant. In other words, I will show that even though Anonymi stands for all creatures that have moral rights, a contractarian justice among all Anonymi-like creatures is inconceivable. My argument will also show that utilitarianism likewise cannot escape speciesism, nor can other schools of ethics.

M is usually taken as a sort of individual property,<sup>24, 25</sup> and philosophers of justice and rights focus on individual claimants to justice. Justice, however, is a social concept. Often do we tend to ignore “the circumstances of social justice,”<sup>26, 27, 28, 29</sup> a “social nexus in which individuals interact” and within which “the language of rights” is meaningful and practical.<sup>30</sup> I do not have in mind political or otherwise practical circumstances of justice. After all, if a particular society cannot administer justice, let that society be reformed. I address *substantial* issues of justice, namely the logical constraints on conceptualizing justice as a publicly intelligible agenda of interpersonal conduct.<sup>31</sup> I will show that the problem with nonhuman Anonymi is that laying claim to justice on the grounds of their M may be incompatible with the concept of justice. Their individual M is useless. In order to have a coherent and consistent concept of justice, we must know something about Anonymi in addition to knowing that it is M-positive. We need to know that it can participate in a society of justice. This additional piece of knowledge relates to Anonymi’s ecological profile, its species.

Moral speciesism has nothing to do with metaphysical essentialism. Species identity is our best and easiest *indicator* of ecological profile, but even this identity is in more-or-less obvious ways culturally assigned, rather than being biologically discovered. Cladistics offers identities that are *genomically* assigned

but ecologically uninformative and, maybe as a consequence, morally unintuitive.

Humans rarely prey on each other for nutritional fulfillment. Even when dead, “a person is not something to eat,”<sup>32</sup> but all animals, including humans, are food to other animals, most immediately when dead. The expansion of one group *inevitably* affects the wellbeing of others, in some cases constraining them, even eventually crowding them out of the biosphere. Such competition often dominates individual relationships as well: for example, in societies in which only one male enjoys mating privileges other than surreptitiously.

People abuse and exploit each other, as none would deny, yet justice is valued. I contend that the valuing of justice is based on an implicit postulation that there could indeed be a just society, one in which every morally considerable individual might find happiness and fulfillment in a way not dependent on subversion or on the consumption of other morally considerable individuals. I contend further that justice itself presupposes the possibility of social life without one society member’s life plan or wellbeing being *inexorably* dependent on frustrating another’s. In such circumstances, existential collisions among members are *rare accidents*, which we *try to avoid* and to *stop* by all means.<sup>33</sup> Such moral-managerial interventions by humans into human communities or by humans into the affairs of husbanded or protected animals may seem prudential enough; analogous interventions to correct individual fates within *wildlife* communities, though, may be contrasted as morally quixotic and may be feared as ecologically ruinous. Put in other words, consumption or subjugation of any member of any community of justice can never be classed as an “environmental good,”<sup>34</sup> a “basic good,”<sup>35</sup> a “vital interest,”<sup>36</sup> or a “primary good”<sup>37</sup> for any *other* member. Human societies meet or pretend to meet this criterion, however manifested culturally, and they are characterized by their success in doing so or their sincerity in trying to do so.<sup>38</sup>

Hirsch makes a more ambitious claim, to the effect that wellbeing based on obtaining *positional goods* — those goods whose possession by more than a few societal members would be illogical — is immoral.<sup>39</sup> This formulation is open to exceptions, though, such as in the case of a person afflicted with an extremely rare disease whose cure costs millions. The desire for that cure is not immoral, even if only a few can possess millions and only

a few need millions in order to survive. Therefore, we can imagine a world in which an unfortunate person gets cured and no one is harmed: Pareto's optimality. Now, suppose that the cure of that patient involves the removal of another *living* person's heart.<sup>40</sup> In contrast to money, the human body, self, and life are indeed positional goods no one else can have or even share.<sup>41</sup>

Full maximization of one's wellbeing might always collide with full maximization of others'.<sup>42</sup> But collision would be less likely with less ambitiously realized life plans. Partly for this reason, one guesses, not being fully satisfied in each and every desire has proverbially been thought more conducive to a good life than has unending satiety.<sup>43</sup> Sterba shows that delineating human goods is not dependent on essentialist accounts of human nature.<sup>44</sup> In the same vein we may say that although human goods are heterogeneous and sometimes even exclusive of each other, they are never established on antagonism against other members of society — not even against pets! As McCloskey points out, moral rights are "rights to," not "rights against."<sup>45</sup> Humans sometimes find themselves in "lifeboat" dilemmas, in which many people occupy an environment that can sustain only a few. Demonstrably, a human society may fail to resolve survival conflicts or may blandly tolerate them without thinking itself unjust. But I argue that *real* justice, justice in the full sense of the word, not simply commutative justice, is inconceivable in societies where survival conflicts are either too frequent or morally tolerated. If justice is *only* a system of fairness, fair methods may be construed to determine who will be thrown out of a lifeboat, as, for example, described in the book of Jonah. But beyond fairness, Rawls and many other philosophers of justice also require that *everybody* gets *something*. Obviously, death and exploitation are far below the minimum share envisioned by Rawls, who so much emphasizes the centrality of "primary goods." I think it is safe to say that all the philosophers cited would agree that a system that *principally mandates* the death of some of its members is incompatible with the circumstances of justice, wherein is presupposed, among other things, that life in general is not an expanded version of a lifeboat situation.

If welfare is the currency of ethics, as many utilitarian philosophers, such as Sumner, believe,<sup>46</sup> it seems implausible to construe justice as bringing so much zero-welfare to so many relevant creatures. Nobody is requested to sacrifice life or basic rights for the sake of

justice or in the name of benevolence or other principle.<sup>47</sup> Justice that denies the possibility of a good life is a seriously deficient concept, probably even an incoherent one.

I contend, therefore, that an ethics of rights and justice depends on *unconditional disavowal* of exploitation of *other members* as a component of one's life plan or one's wellbeing. Such renunciation constitutes *moral sociability*. Rawls insists that fruitful deliberation behind the "veil of ignorance" requires knowledge of "whatever general facts affect the principle of justice."<sup>48</sup> I contend that among these "general facts" is this: rapacious life-plans drive out justice itself.

Although our ethical intuitions largely accommodate them, these assertions can be established *a priori* by arguments of coherence and consistency. This would be true for "special" rights and "general" or "natural" rights alike.<sup>49</sup>

The lion and the lamb cannot move in behind the "veil of ignorance" because the former cannot realize its own good without eating the latter. An animal-rights advocate would never know how to negotiate behind such a veil. A would-be lion must participate in the deliberations in ways that would undermine the welfare of a would-be lamb, and vice versa. Deliberation would become even more hopelessly intricate when factoring in all life-forms sharing the ecosystem within which justice is due to be realized. A veiled animal advocate would have to stay mute to avoid self-contradiction. If the only problem with animals were their inability to abide by the Golden Rule, one would imagine an impartial bystander policing and restraining transgression. That said, in a world of lions and lambs an impartial bystander is hard to imagine under any circumstances.<sup>50</sup> With whom would he or she sympathize? The hungry lion or the fat lamb? This is a problem of trusteeship for animals<sup>51</sup> not found with guardianship of incompetent people. *Contra* Scanlon, I think we owe to animals a relationship of "justifiability," but this debt, I contend, we can hardly even conceptualize, let alone pay.

We may have a clear concept of how the life of a particular animal can go well. We cannot, however, have a clear concept of justice within nonhuman ecosystems. Dworkin in 1984 described moral rights as "trump cards," as nearly absolute safeguards against other considerations, even of great weight. According to Warren's milder phrasing, moral status "prohibits harming them [status bearers] in certain ways without

exceptionally good reasons.”<sup>52</sup> Thus, rights prevail upon us to act against good reasons, such as promotion of wellbeing and happiness. Rights often prevail in — and even against — human societies, and analogues of rights may affect nonhuman societies in ways teaching us much about the evolution of our own moral sense.

Environmental ethicists such as Ellul and Jonas speak of ethics of “no power” and restraint. Similarly, Leopold defined ethics as “limitation on freedom of action in the struggle for existence.”<sup>53</sup> Apparently, animals have no freedom to set limits on their struggle for existence. When environmentalists talk about justice within an animal context they usually mean “enlargement of one’s sphere of identification” and adoption of an attitude of care.<sup>54</sup> These ideas are inspiring. But they do not bear upon justice and rights.

I wish to stress that by no means do I claim that animals are incapable of moral reasoning, moral or self-sacrificial behavior, or moral tutelage of offspring; nonhuman primates especially show us we are not alone on our moral plateau.

I will now illustrate how utilitarianism, “care ethics,” and “virtue ethics” cannot construe meaningful systems of justice. Consider the following worlds:

W1: 500 lions starve, 500 lambs range happily.

W2: 500 lions are satiated, 500 lambs are mangled.

W3: 250 lions starve, 250 lions are satiated, 250 lambs range freely, 250 lambs are mangled *by the 250 satiated lions*, and so forth.

From a utilitarian perspective, worlds W1, W2, and W3 are equivalent. Even if lions and lambs were reasoned to value pain and pleasure differently, equivalence could still be maintained simply by adjusting the numbers starving, ranging, satiated, and mangled. Therefore, utilitarians find themselves committed equally to a world in which all lions suffer and to a world in which all lions are happy. Such an outcome — if meaningful at all — cannot guide action. W2 appears balanced or even fair, but only in the eyes of an outsider and only after species is factored in and individual rights are ignored. Even if ecological harmony were somehow optimized, individual points of view would not be reconciled.<sup>55</sup> Besides, ecological harmony is itself an elusive concept.<sup>56</sup>

Care ethics faces an even more serious problem. If I keep a lion in my front yard and a lamb in my back yard and if I have bonded with both equally, then handing

the lamb to the lion would constitute an act of care and a betrayal of care-relationship simultaneously.

Virtue ethics will not help us either. Justice cannot tell the lion to become a vegetarian or the lamb to submit itself to the lion. Such instructions would not make the lion or the lamb act justly or virtuously but demand that they *change their nature*. Ethics that undercuts one’s self, one’s *telos*, and one’s survivability is a hopeless contradiction, biting more deeply than Williams’ argument from integrity.<sup>57, 58</sup> On the other hand, humans who alter their ways of life on moral grounds *fulfill* their human nature. They do not distort or deviate from human virtues but *exercise* them. A vegan lion would not excel in leonine virtue but in polygenetic expression-intensity variation so extreme as to require a distinctive gut flora for the digestion of its first post-weaning meal. It would be no more real than a griffin.

Rights sometimes collide with each other. On pain of self-contradiction, an ethics of rights cannot acknowledge rights that *always and by necessity violate* other rights.<sup>59</sup> Granting lambs a right to life would necessitate the violation of the rights of lions, which in compensation would then just eat more gazelles. Rights are recipient-dependent; if lambs do not have a right not to be preyed upon by lions, then lambs do not have a right to life at all.<sup>60</sup>

A right to life calls upon us to save every endangered child, here or in the jungle. If justice does not require the saving of a lamb in the jungle, why should we save a lamb from the butcher? The jungle is remote and dangerous; the abattoir is nearby and already under inspection. Alas, these are practical and not morally relevant differences.

Critics of speciesism envision a system of justice that encompasses all Anonymi. I have shown that such a system is not possible. Each Anonymi must disclose the inner workings of its life plan or its conception of wellbeing in order to be admitted behind the “veil of ignorance” or to have its rights, pains, or preferences considered. It must show first that its happiness, life plan, and well-being do not require the abuse of any other morally significant individuals. It must tell us certain things about its ecological disposition. And it will have to reveal its species.

Some Anonymi we cannot invite into the community of justice simply because their way of living is incompatible with the circumstances of justice. The lion, the lamb, and the gorilla may count as such

Anonymi. Each *seems* morally considerable, but none is morally sociable, and those not morally sociable cannot truly be morally considerable, since moral rights cannot be exercised in isolation from a society of justice.

However, the exclusion of animals from a system of justice does not render our behavior toward them morally negligible. Human maltreatment of animals sometimes reaches spectacular hideousness. We must all shun cruelty, yet the moral issue here is not a question of justice or rights.<sup>61</sup> Problems arise when suffering or deprivation is inflicted in the name of “utility” or some particular value. When the recipient of suffering is a non-member, such as an animal, we cannot judge the justice of suffering.

### Mixed communities and hybrids

Let R-Anonymi be *rejected* from moral consideration on the grounds of moral sociability despite being M-positive, and let S-Anonymi be *sociable*.

Can humans bond with other Anonymi and create a society in which members do not consume or displace each other? This would be a non-speciesist community of justice encompassing all S-Anonymi.

Hume<sup>62</sup> wrote that the imbalance of power would render such an enterprise only partially possible. “We should be bound by laws of humanity to give gentle usage to these creatures, but should not, properly speaking, lie under any restraint of justice with regard to them.” Hume says, E2 but not E1.

Leahy<sup>63</sup> goes further, arguing that animals do not fit within the thick web which is the language game of ethics. Nevertheless, Diamond<sup>64, 65, 66</sup> shows at length how pets have become socialized animals. Many people feel that pets have rights, and many countries have laws protecting the putative rights of pets and other domestic animals. Possibly, some breeds of dogs and cattle have been altered by humanity so as to become morally sociable and completely dependent on human ambience, just like Brutti. Do they have moral rights? Are we bound to prefer them over Brutti? Perhaps. My point in this paper is that speciesism is a precondition to justice. I do not claim that everything which is human always takes moral precedence over everything which is nonhuman.

Besides, following Hume, people might say that domestic animals have been socialized for the purpose of using them. Pets are kept for company and

entertainment. Chicken are allowed to range in the garden for the sake of their eggs and flesh. If we cannot use and enjoy domestic animals and pets, we would never care for them in the first place. The sociability of pets is constructed on a relationship of property with humans. Pets and domestic animals are socialized for a purpose. Their sociability has not yet transcended that purpose. Humans are morally sociable as such.

Membership in a society of justice is the primary good all humans distribute to one another.<sup>67</sup> Justice is about the distribution of goods among humans, not the distribution of some humans *as* goods for the realization of the good life of other human beings. The consumer and the consumed cannot share the same system of justice. Hunting and predation belong to the animal, not the human, sphere.

The circumstances of justice require that its ecosystem contains both M-positive and M-negative objects. The M-positive creatures will have relationships of exploitation, ownership, and consumption *only* with M-negative objects, and this pattern will suffice for the sustenance of all M-positive creatures. It follows that clear separation between the consumers and the things consumed is a prerequisite to the conceptualization of justice. Elsewhere I discuss the significance of this separation for the use of human remains.<sup>68</sup>

Only agents that do not harbor life plans that unequivocally impose suffering or exploitation on others can conceive of ethics based on the avoidance of suffering and on respect. If my life plan and moral identity were dependent on the infliction of suffering — suppose I was a vampire who could not survive without biting humans for their blood — an ethics of non-suffering would undermine my moral and physical existence.

No human’s good life is inescapably conditional on the exploitation of another human. Vampires, no matter how intelligent, sentient, compassionate, and even innocent, cannot participate in a just society. They may even contribute to ethical theory, but they cannot have moral rights. Luckily, they do not exist.<sup>69</sup>

Is it possible for Dracula to give up on his “life” plan to be included in the system of justice? Is it possible that some people are born with a disposition so evil as to compel them to choose between self-denial and membership in society? If Dracula can mend his ways and hold to his identity and self, vampirism ceases to be his essence. In that case, no objection bars his in-

corporation into a society of justice, since his wellbeing and autonomy are no longer tied to drinking human blood. A society of justice is not open to the possibility that there can be a member who is sane and healthy and his or her genuine calling in life is rape and mayhem. Maybe there is a man somewhere who is hopelessly miserable unless he commits rape, but we are not willing to accept this *as a fact*. We would call him either mad or criminal and would try to treat, to reform, or to restrain him.

It follows that what we really care about is the *moral sociability* of creatures, not their metaphysical or biological traits. Species serves only as an indicator of moral sociability, as borne out repeatedly by science-fiction literature and cinema. Benign aliens like E.T. mix easily with humans, while rapacious creatures are ruthlessly fought no matter how human-like they are: evil androids, for example. The moral self may rely on a species identity too weak to justify speciesism, as many philosophers believe and as stories such as E.T. suggest, yet species identity, I will show, most reliably predicts the treatment of Brutti.

### Speciesism is not Nazism

Critics often compare speciesism to Nazism and human treatment of animals to Nazi persecution of the Jews.<sup>70</sup> These analogies deserve special attention.

Let me say right away that I strongly believe in the moral equality of all humans. Nonetheless, I do not think the thrust of Nazi evil was national or religious aggrandizement. As a matter of fact, many nations and religions promote beliefs in their own superiority over the rest of humanity. Jews consider themselves “the chosen people,” a title self-applied as well by Christians and others. Yet, comparison of Judaism or Christianity to Nazism is preposterous: conceits of superiority do not necessarily imply abuse of the supposedly inferior.

Nazi ideology made three postulates:

- (1) Not all humans could find happiness and fulfillment in the world. One race *had to* enslave, expel, and exterminate other ethnic groups in order to survive and flourish.
- (2) Since only one race could find happiness on earth, it should be the best of all races.
- (3) The best of all races was the Aryan race.

Postulates (2) and (3) were racist, obviously, but

I believe that postulate (1) was the most nefarious of the three. Had Hitler thought that the earth could accommodate all peoples, he would not have felt the urge to exterminate and subjugate non-Aryans in search of *Lebensraum*. Nazism considered the subjugation and annihilation of some people indispensable for the survival and happiness of other people. The doctrine of racism was wrong, but postulate (1) undermined the very foundations of justice.

Wasserstrom<sup>71</sup> argues that racism denies or ignores the fact that all humans have the same capability for suffering. Yet, if we accept postulate (1), acknowledgment of equal capacity for suffering cannot stop us from deciding *who* should suffer. Similarly, if “care” ethicists face a choice between their sons and any stranger, they would save their sons at the expense of the stranger, if not at the expense of all strangers at once.<sup>72</sup> But Nazis believed that the human condition was a constant struggle between the wellbeing of one’s kin and the wellbeing of all others. According to Nazism, “[a] healthy community thus became, by definition, one in which the death of some was decisively tied to the life of the remainder.”<sup>73</sup> Holding to the belief that life itself is a life-boat dilemma is, in my view, the *root* of evil; indeed, human society is built on a bedrock assurance that the world at large is *not* a lifeboat.

Recent research by Boria Sax<sup>74</sup> suggests that Nazi concerns were rather remote from those of environmentalists and animal-rights activists. The Nazis worshiped the predator, be it human or nonhuman, and ignored the sufferings of weak or “undeserving” creatures. Sax shows that humans and animals in Nazi Germany were treated *similarly*. Both groups were divided between the strong and the weak, the predator and its prey. Nazi ideology did not care for animals or people as such but for certain patterns of behavior and survival. Nazism encouraged predation and cultivated ferocity, courage, and virility, even among pets and farm animals. The Nazis even tried to purge “Jewish” oxen and dogs—not those *owned* by Jews but those manifesting “inferior” traits rhetorically associated with Jews. Once denounced, these racially incorrect animals, some of them anyway, were sterilized or even shot.<sup>75</sup>

Nazism stood out against most — maybe all — ideologies, faiths, and systems of ethics for it explicitly rejected the idea of justice, reducing relationships of justice to relationships of power. Nazis found the distinction between strong and weak more relevant

morally than the distinction between morally sociable and morally nonsociable.

The life of animals is open to becoming predator or prey, superior or inferior. I contend that the fundamental ethos of human morals is the rejection of predatory relationships, of openness to extinction and of similar cosmic or Darwinian processes within *our* society.<sup>76</sup> Justice is the rejection of the Darwinian pecking order in human society. Note that the rejection here is not of evolutionary theory. Evolution and justice simply operate on different scales and in different dimensions.

### Care for humans

Our profound repulsion from the very idea of “canned moron meat” conveys moral sensibilities beyond the technicalities of justice. We *care* about Brutti. One of the meanings of the word “care” is “charge, oversight, a view of protection and preservation” (*Oxford English Dictionary*, second edition). In this sense, “care” implies the possibility of loss or destruction and the impossibility of caring for something that cannot be lost or destroyed. Saying that A does not care about B means either (1) B is indestructible<sup>77</sup> or (2) A is indifferent to the fate of B.

Option (1) is inapplicable to Brutti. Option (2) means that indifference to Brutti exemplifies indifference to harming human life. All we know about Brutti is that Brutti is (1) human and (2) M-negative. Non-speciesism dictates that (1) is completely contingent with regard to (2). Therefore, (2) positions Brutti on neutral ground. Brutti has no moral standing, but neither is it objectionable. If being human does not carry with it M, a state of M-negativity cannot erode a creature’s human status. All we know of Brutti is its M-negativity and its humanity. If M-negativity cannot justify carelessness or malice, then a careless or malicious attitude towards Brutti is simply misanthropic.

Since we know that Brutti is human, it is of little wonder that we care and love Brutti; that we identify ourselves with it; that when Brutti is abused, we feel as if we were personally ill-treated as well.

We do not love every human being. Maybe we should, but we do not. When we do not love people we know well, we may have reasons to hate, fear, or despise them. We do *never* hate, fear, or despise people merely because they are human.

We identify with what we care about: our own

bodies,<sup>78, 79</sup> objects of our affection,<sup>80</sup> and so forth. Brutti qualifies as such an object in the sense of being immune to consumption merely for another’s personal fulfillment, assuming principles of justice hold.

The reader may be reminded that Brutti is a conceptual creature, but some philosophers think the profoundly retarded, irreversibly comatose, and other “marginal humans” are M-negative and, thus, Brutti. Terms such as “marginal humans” or “nested communities” in which proximity to “the center” grants higher moral standing<sup>81, 82</sup> are free from speciesism, but they smack of “normalism.” Moral sociability requires no positive attributes that can make up such a scale. Sociability requires only the *absence* of certain forms of wellbeing and of ecological dispositions. Sociability is based on *negative* reciprocity, on attitudes members *do not have* towards each other. Consequently, this apparently pejorative term “marginal” is completely misplaced. Brutti is morally sociable. His or her sociability is not peripheral or residual. Rather, so-called “marginal humans,” such as the profoundly retarded and the demented, exemplify innocence. They do not share human vice and malice.

Since Brutti is not morally considerable, we do not have an E1 duty to include it within our system of justice. However, membership in a community is not a sortal issue, but a practical one. Brutti belongs to the society of justice as a matter of fact. It is human. We can conceive of a human-free ecosystem of lambs and lions, but we cannot conceive of Brutti in a human-free ecosystem.

Brutti is morally sociable even though not morally considerable. If we believe that moral sociability always carries with it moral considerability, Brutti is an illogical concept.

### Care for the natural world and a weak version of justice

We care for the natural world, and we deeply care for many animals as well. Our sense of care posits us against destruction. All things being equal, we would opt for preservation, construction, and pleasure.

We may express our care for animals by formulating the morality of treating R-Anonymi in terms of agent-dependent (E2), rather than recipient-dependent (E1), ethics. We might say, for example, that a virtuous disposition does not permit the abuse of R-Anonymi. We would not exploit R-Anonymi without good reasons or

even without *exceptionally* good reasons. The destruction and loss incurred by scientific experiments, factory farming, bull fighting, and the like would have to be balanced against their benefits. We might feel obliged to subsist on the simplest possible forms of life and satisfy our needs always by the least destructive means at hand.<sup>83, 84</sup> We might also express our care for the natural world by desiring less ruinous life plans or even by developing life plans centered on unbounded benevolence, humility, and pity.

All this being said and done, R-Anonymi still leaves us in a quandary. On the one hand we feel a duty to respect the moral considerability entailed by M. On the other hand, we find any attempts to do so frustrated by the problem of sociability.

I think it is possible partially to resolve the dilemma by making a case for a *weak contractarian-like justice* that will encompass R-Anonymi. Possibly this is what Callicott refers to as an “evolved and unspoken social contract between man and beast.”<sup>85</sup>

The “unspoken” contract would decree that we shall never exceed nature’s ambit of pain and suffering; we shall not visit R-Anonymi with levels of destruction and suffering that reach beyond the fate of R-Anonymi in a human-free nature.

Thus excluded on grounds of injustice would be factory farming systematically and irremediably frustrating natural animal behavior, genetic manipulations much more radical than naturally occurring mutations; disfiguring and unusually painful experiments; and grandiose projects altering whole ecosystems, along with the lives of creatures therein contained. Consumption as food, experimentation no worse than falling prey to predators or succumbing to another natural calamity, and gradual alteration of habitat or genetic make-up—these may be taken as human-made imitations of natural processes and as criteria limiting our action. E2 attitudes—stewardship, cruelty avoidance, mercy, love— would set the actual limit higher still.

We realize that some actions that befall R-Anonymi are unjust *qua* its M. In the absence of a coherent and consistent way of formulating justice for R-Anonymi, we cannot tell which action is just and which is not. We may say, however, that any of our actions leads the animals involved to one of three possible outcomes:

(1) a better fate than those animals would have met, had humans not acted at all;

(2) a worse fate than those animals would have met, had humans not acted at all; or  
 (3) no change in wellbeing.

Our sense of justice finds only the second option objectionable. Indeed, as long as we treat an animal at least as well as nonhuman nature does, we are not likely to do it wrong. Moreover, trying to improve the natural lot of animals by means of ethics seems to bring about absurdity rather than justice.

The “Great Ape Project” (GAP), which is arguably the most ambitious animal-rights effort extant, demonstrates this point — as well as the moral unsociability of even the most “human-like” animals. GAP campaigns for sanctuaries “where the needs, interests and rights of the apes come first.”<sup>86</sup> This vision implicitly admits to our inability to mix morally with apes. The project actually protects individual apes only from humanity, not from each other, not even from disease, whereas a truly recipient-dependent justice (E1) would be blind to the sources of misfortune. Besides, GAP does not reckon with the welfare of other life forms, which the apes might abuse in the sanctuary or which might be disadvantaged by GAP on the apes’ behalf. GAP is a speciesist project whose benefactors are apes, who are believed to be human-like. Ironically, if, indeed, proximity to being human is measured on a scale of moral sociability rather than on that of intelligence or physical characteristics, apes are not the most “human-like” animals.

Advocates of GAP compare it to antislavery movements.<sup>87</sup> But the latter sought to bring about some measure of *assimilation* of freed slaves into an improved human society. And, similarly, the civil-rights movement in the United States and the anti-Apartheid movement in South Africa sought to end the segregation of humans into racially separate societies. GAP could not help separating ape society from human society.

The realization of individual moral rights is dependent on artificial constructs of civilization such as healthcare and police. But GAP does not campaign for establishing oncological services in the jungle in the benefit of apes sick with cancer, and it is explicitly opposed to “policing” wild animals. Is it better for a gorilla to go about with untreated cancer or to be moved to a modern hospital? Is it better for a chimpanzee to be sexually molested by a superior or to live on its own in a psychology lab? We have no answers. We,

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humans, no matter how well intentioned, do not know how to incorporate animals into a rational system of justice.<sup>88</sup> This is one more reason why the weak contract I propose is “unspoken”; it cannot be clearly articulated. The only justice-like gesture we can render animals is “simply to leave them alone,”<sup>89, 90</sup> to provide them with sanctuaries where they can prey on each other to the beat of the blind watchmaker of the evolution. Therefore, Steinbock advocates granting animals a “separate but not equal status.”<sup>91</sup>

Coming back to my notion of a “weak justice” based on a “silent contract,” we humans are its only agents and it accepts no explicit responsibility and promises no direct action. It calls upon us to stay aside or to act as if we were an absent presence in the animal kingdom, as human action would seamlessly merge with the natural lot of animals. We are far less positively committed to apes than to people, much less willing to leave people to the mercy of natural forces and not at all interested in making them feel as if human society does not exist.

The justice proposed regarding animals is weak in two additional ways as well. First, as Hume noted, the power endowments of humans and nonhumans are inherently asymmetrical. Second, since the nonhuman party to any “contract” can neither consider terms nor consent without such consideration, no contract really exists. Nor is every human able to consent, either. But nearly anyone who can seriously violate the contract can also consent to it.

Justice based on facilitation of practical and substantial circumstances within universal liberty, so as to pursue happiness, is a-priori meaningful. Justice presupposes the separation of consumers from consumed. This separation only *humans* pretend to build and respect.

Many animals are part of our intimate lives. Some are emotionally and intellectually sensitive to our deepest feelings and wishes, even more so than are most other people. But we cannot share a coherent and consistent system of justice with animals or with anybody representing their point of view. President Lincoln observed,

The shepherd drives the wolf from the sheep’s throat, for which the sheep thanks the shepherd as a liberator, while the wolf denounces him for the same act as the destroyer of liberty, especially when the sheep is black

one. Plainly, the sheep and the wolf are not agreed upon a definition of the word liberty.<sup>92</sup>

This paper has focused on the relationship between a community of moral persons (“us”) and nonperson candidate-claimants for moral rights and justice. I have not asked directly whether the community of justice can be *left* or whether it can expel a member from its midst, as ancient Greek communities could do by pronouncing *atymia*, complete and irreversible banishment. Nor have I explored the possibility of dividing all morally sociable creatures into separate and even alienated communities of justice, thus constructing a “tribal morality.”<sup>93</sup> A weaker version of the same question inquires into the possibility of a “limited right of closure” within the human race in general.

The reader might have guessed by now that I believe the answer to those question is no, but this topic must be left for further work.

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