RAWLSIAN CONTRACTARIANISM (RC): For all acts x, x is right iff x is permitted by the original-position hypothetical contracted moral code of the agent’s society.

COMMENTARY: The difference between Hobbesian Contractarianism (HC) and Rawlsian Contractarianism (RC) is this: In HC, the parties who choose a moral code are real people, with all the limitations and shortcomings that real people possess. In RC, the parties who choose a moral code are idealized people, with none of the limitations or shortcomings that real people possess. The Hobbesian contractarian asks, “What would real people agree to, if they were to enter into an agreement?” The Rawlsian contractarian asks, “What would idealized people agree to, if they were to enter into an agreement?” Both agreements—as indicated by the words “would” and “if”—are counterfactual (i.e., hypothetical) in nature (as opposed to actual). The original position is Rawls’s way of idealizing the contracting parties. His veil of ignorance is designed to deprive people of knowledge (information) that they might use to make biased, prejudiced, or selfish choices.

THE ANIMALS OBJECTION:

1 Also known as Rawlsianism and Rawlsian Ethics, after the American philosopher John Bordley Rawls (1921-2002). Rawls coined the term “justice as fairness” for his theory of justice. John Rawls, A Theory of Justice (Cambridge: Harvard University Press, 1971), 11. He coined the term “rightness as fairness” for the “entire ethical system” that might be modeled on his theory of justice. Ibid., 17. Justice is part, though not the whole, of morality. According to Rawls, justice concerns the basic structure of society rather than the rightness or wrongness of particular acts.

2 “A moral code is a set of moral rules. Of course, not just any set will do. Let us assume that a set of rules must satisfy at least two conditions if it is to count as a moral code. First, it must be complete. That is, it must provide a prescription for every morally important situation. Second, it must be consistent. That is, it must not provide incompatible prescriptions for any situation.” Fred Feldman, Introductory Ethics (Upper Saddle River, NJ: Prentice-Hall, 1978), 67-8.

3 Human limitations and shortcomings include, but are not limited to, stupidity (i.e., lack of intelligence), ignorance (lack of knowledge), bias, prejudice, selfishness, various forms of irrationality, and superstition (including religious superstition).

4 “It indeed is a defect in the contractual theory that it neglects the sufferings of animals: the veil of ignorance prevents us from knowing who we are, i.e. which human being, but it does not, I think, prevent us from knowing that we are at least human.” J. J. C. Smart, “Distributive Justice and Utilitarianism,” in Justice and Economic Distribution, 2d ed., ed. John Arthur and William H. Shaw (Upper Saddle River, NJ: Prentice Hall, 1991), 106-17, at 114.
1. RC implies that there are no direct duties to animals.
2. There are direct duties to animals.
   Therefore,
3. RC implies a falsehood (from 1 and 2).
4. Anything that implies a falsehood is false.
   Therefore,
5. RC is false (from 3 and 4).

REPLY: The objection takes the form of a chain argument, i.e., a series of two or more interlocking arguments. The Rawlsian contractarian accepts the validity of both arguments that make up the chain. The Rawlsian contractarian also accepts 4. At this point, there is a split among Rawlsian contractarians. (i) Some Rawlsian contractarians reject 1. (This is known as grasping the bull by the horn.) They say that if (1) some animals (such as dolphins) qualify as rational moral agents (making it coherent for them to occupy the original position) and (2) the veil of ignorance is thick enough to prevent contractors from knowing their species, then the moral code chosen in the original position will take these animals (though perhaps not other animals) into account. There will, therefore, be direct duties to at least some animals.  
(ii) Other Rawlsian contractarians reject 2. (This is known as biting the bullet.) They say that, while there are no direct duties to animals, there are indirect duties.

COMMENTARY: As this shows, Rawlsian contractarians are not of one mind concerning the moral status of animals.

THE MULTIPLE-SOCIETIES OBJECTION:

1. RC implies that an act can be both permitted and not permitted.\(^7\)

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\(^5\) See, e.g., Elliot, 100–6; Alan E. Fuchs, “Duties to Animals: Rawls’ Alleged Dilemma,” Ethics & Animals 2 (December 1981): 83–7, esp. 86. Rawls addresses the moral status of animals on page 512 of *A Theory of Justice*, but not in enough detail to indicate which of the two premises (1 or 2) he rejects.

\(^6\) “If soldiers frequently entertain themselves by bombing and machine-gunning herds of elephants then they will develop a degree of callousness and sadism which makes it very likely that they will act unjustly in the conduct of a war, for example by massacring prisoners or raping civilians.” Robert Elliot, “Rawlsian Justice and Non-Human Animals,” Journal of Applied Philosophy 1 (1984): 95–106, at 96 (parenthetical reference omitted). Note that this is the same response made by a Kantian.

\(^7\) Here is Fred Feldman’s example: “Suppose a drug pusher sells some drugs to an addict, and the addict promises to pay for the drugs later in the day. How does [Rawlsian contractarianism] assess the morality of the keeping of that promise? To answer this question, we must determine what moral code [would have been contracted for in] the society in which the promise was made. But in what society did that act occur? Was it in the ‘drug culture?’ Perhaps it was in ‘street society.’ Perhaps some will insist that it was performed in the American society of 1975. It might even be suggested that the pusher and the addict constitute a two-person ‘mini-society.’ The problem is that (a) there seems to be no way to determine the society of the act, and (b) different codes might be contracted
2. No act can be both permitted and not permitted.
   Therefore,
3. RC implies a falsehood (from 1 and 2).
4. Anything that implies a falsehood is false.
   Therefore,
5. RC is false (from 3 and 4).

REPLY: The objection takes the form of a chain argument, i.e., a series of two or more interlocking arguments. The Rawlsian contractarian accepts the validity of both arguments that make up the chain. The Rawlsian contractarian also accepts 2, but rejects 1. (This is known as grasping the bull by the horn.) The Rawlsian contractarian says that RC alone does not imply that an act can be both permitted and not permitted. What implies this is the conjunction of RC with another claim, namely, that someone can be a member of two societies at once (in one of which the act is permitted and in one of which the act is not permitted). The Rawlsian contractarian can save RC by rejecting this ancillary claim.

COMMENTARY: The Rawlsian contractarian must explain why it is not possible for someone to be a member of two societies at once, which will, in turn, require analysis of the concept of a society.

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**for in] these different possible societies. Hence, depending upon which is 'the society,' we may get different moral evaluations of the act in question.” Feldman, *Introductory Ethics*, 70-1 (italics in original).**