The Unavoidability of Social Contractarianism

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1. Introduction, Part I: Rawls, Animals and Disabled Humans

Most philosophers believe that the state is morally obligated to use its criminal justice system to deter and punish all acts of violence against humans, including severely disabled humans. Most philosophers also believe that the state is not morally obligated to use its criminal justice system to deter and punish all acts of violence against animals that have roughly the same psychological capacities as certain severely disabled humans. (They believe, for instance, that the state is not obligated to use its criminal justice system to deter and punish those who humanely raise and then kill animals for meat.) Similarly, most philosophers believe that the state is morally obligated to do its best to secure a decent level of welfare for severely disabled humans (e.g., protecting them against communicable diseases, natural disasters and starvation), but not obligated to do its best to secure a decent level of welfare for animals that have roughly the same psychological capacities as certain severely disabled humans (e.g., protecting them against communicable diseases, natural disasters, starvation, and predators). Finally, most philosophers are convinced that speciesism is a mistake, which means we believe that moral distinctions cannot be successfully argued for on the basis of species membership alone.

These five beliefs are in severe tension with each other. It would be very difficult to construct a non-ad hoc theory that accommodates them all. So any theory

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1 Acknowledgments.
of the state’s obligations will clash strongly against our considered moral judgments somewhere or other.

I mention this in order to set up a discussion of social contractarianism. Social contractarianism, especially Rawls’s version of it, takes a lot of heat for having counterintuitive implications about severely disabled humans (both cognitively disabled and physically disabled) and animals—namely that the state has no obligations to them. Many philosophers have proposed amendments to or reinterpretations of Rawls’s theory so as to render it less vulnerable to this criticism. I suspect, however, that for the reason just given, insofar as Rawls’s theory can be made to avoid being counterintuitive in this way it’ll simply end up being counterintuitive in another way. In any event, instead of playing defense on behalf of social contractarianism, I want to play offense by arguing against the alternatives to it.

2. Introduction, Part II: Answerability

2.1 The Relationship Between the State’s Obligations and Individuals’ Morally Considerable Interests

Suppose we wanted to know whether the state is obligated to animals to (insofar as it can) vaccinate them against communicable diseases. How could we go about answering this question?

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Some philosophers seem to believe that questions about the state’s obligations to animals will be answered as soon as we have an answer to what is usually called the *moral status* question. 4 (The ‘moral status’ question, let’s say, is the question of which individuals have morally considerable interests.) The reason why proceeding this way won’t work, however, is that is not generally the case that the state has positive obligations to protect individuals’ interests. For instance, cheating on one’s significant other is certainly an interest-thwarting action, but we do not think that in general the state is obligated to use its coercive power to prevent and punish such cheating. So even if we conclude that disabled humans and animals have interests, it remains open whether the state has positive obligations with regard to those interests.

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4 There are many such philosophers. Two examples:  
Martha Nussbaum, in “The Capabilities Approach and Animal Entitlements” (in Tom L. Beauchamp and R.G. Frey, eds. *The Oxford Handbook of Animal Ethics* (Oxford: Oxford University Press, 2011), pp. 228-51), provides arguments against utilitarianism and Christine Korsgaard’s neo-Kantianism as “general theoretical approaches” to the ethics of animal treatment, and then suggests that her own capabilities approach is better than them. Nussbaum clearly believes that the capabilities approach sets moral constraints on the state, since she says that it should guide the development of “political principles”. So, apparently, Nussbaum believes that a “general theoretical approach” to the ethics of animal treatment sets moral constraints on the state. Nussbaum would probably reply by saying, as she does in “The Capabilities Approach and Animal Entitlements”, that much of the reason why she prefers the capabilities approach over the other two is that it is specially suited to provide a basis for political principles because it remains neutral on controversial metaphysical or epistemological claims. She could then say that this demonstrates that she recognizes that the task of enunciating a “general theoretical approach” to the ethics of animal treatment is not identical to the task of providing a basis for political principles vis-à-vis animals. I have two things to say by way of rejoinder. First, the very fact that Nussbaum treats utilitarianism and Korsgaard’s neo-Kantianism as candidates for providing the grounds for political principles vis-à-vis animals shows that she really does believe that an answer to general questions about animal rights and morally considerable interests is the kind of thing that should provide a basis for political principles vis-à-vis animals. Second, metaphysical and epistemological neutrality is a red herring. Nussbaum brings it up because a central tenet of political liberalism is that the state should not make law based on comprehensive conceptions of the good (which would include metaphysical and epistemological commitments). But suppose political liberalism was a false doctrine. There would still be a difference between the task of providing answers to general questions about animal rights and morally considerable interests and the task of providing a basis for political principles vis-à-vis animals. But Nussbaum is committed to the claim that the two tasks would then be the same.

Similarly, Julian Franklin canvasses the various contemporary theories of animal ethics, including Peter Singer’s, Tom Regan’s, and Korsgaard’s, in the context of an article titled “Animal Rights and Political Theory” that appears in an anthology called *The Oxford Handbook of the History of Political Philosophy* (George Klosko, ed. (Oxford: Oxford University Press, 2011), pp. 756-67). This suggests that Franklin, like Nussbaum, thinks that a theory that provides the rights answers to general questions about animal rights and morally considerable interests *ipso facto* provides the right answer to animal-related questions in political theory/philosophy. And indeed Franklin examines the implications of the various ethical positions for questions about what kinds of animal cruelty measures should be enacted by the state.
One might argue, by way of response, that although the state does not have per se a positive obligation to protect individuals’ interests, the state does have per se a moral reason to do so. It’s just that the moral reason is often outweighed by contrary reasons. In the case of sexual infidelity, the contrary reason is protecting people against invasions of their privacy. More broadly, there is a strong moral reason against giving the state too much power, and this reason might often outweigh the moral reason that the state has to take certain action, including certain actions to protect and promote individuals’ interests.

There is some truth in this, I grant. But it’s not the whole truth as to why the state does not have per se a positive obligation to protect and promote individuals’ interests. A large part of the explanation is simply that there is a division of labor with respect to interests. Some interests are, at least in part, the state’s business to protect and promote, while others are not. This is a central tenet of liberalism and goes back at least as far as Kant’s distinction between duties of right (almost all of which should be legally enforced, according to Kant) and duties of virtue (which should not, according to Kant, be legally enforced). There are, of course, various ways of interpreting this liberal tenet. Libertarians interpret it as implying that there are no interests, except the interest in not having one’s property rights violated, that the state is obligated to protect. Other liberal political philosophies draw the line somewhere else. But the point is that for all liberal political philosophies there is a

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5 One suggestion, from Sidgwick, is that the state should enforce only the most “important and indispensible rules” (Henry Sidgwick, The Methods of Ethics, 7th ed. (Indianapolis: Hackett, 1981), p. 459). This strikes me as plausible, so long as we understand importance in this context the way I think Sidgwick did, namely as concerning the maintenance of social peace and order. It helps to explain why there’s an imperfect correlation between the importance of the various moral concerns and the appropriateness of state enforcement of them. The explanation is that there’s an imperfect correlation between the importance of a moral concern and the extent to which it bears on social peace and order. To give just one example of where the latter correlation breaks down, consider the case of a deceptive, manipulative and emotionally abusive spouse—someone who, in order to boost his own sense of self-worth preys on the vulnerability that goes along with loving and committing to someone in order to maintain the flow of attention and affection he receives from his wife, all the while feeling no love for
delimiting line to be drawn around the state’s obligation to protect and promote interests.

I am going to assume that liberalism is correct on this point, and for that reason will conclude that the state might lack an obligation to animals to vaccinate them against communicable diseases even if animals have morally considerable interests in receiving such vaccinations.

And the contrapositive of this is true as well, because some things that the state is obligated to individuals to do to/for them have nothing to do with promoting their interests. For instance, if a bill requiring the issuing of a set of commemorative stamps is approved through a state’s legitimate legislative process, then the state is obligated to issue them, even on the assumption that no one has a right to or morally considerable interest in such issuing (say, for instance, it was pure whim that led certain individuals to lobby their representatives to write and pass such legislation). Furthermore, this obligation is an obligation to certain individuals. Uncontroversially, it’s an obligation at least to the normal adult human citizens of the state.

2.2 Positive Obligations and Answerability

So far we have made no progress in answering the question whether the state is obligated to animals to vaccinate them against communicable diseases. If investigating whether animals have a morally considerable interest in such a thing doesn’t get us anywhere, then we face a real problem. For if the question were whether I (or any ordinary moral agent) have an obligation to animals to vaccinate them against communicable diseases, certainly part of the process of answering that question would be inquiring whether they have a morally considerable interest in such her and engaging in affair after affair. There are few things one person can do to another that are as morally abhorrent as this. But wrongdoing like this isn’t much of a threat to social peace and order; it’s too private.
a thing. So, at the risk of overgeneralizing from a single case, this suggests that ordinary moral methodology can’t lead us to the facts as to what obligations the state has to individuals to do things for them—or, to put it succinctly, what positive obligations the state has.⁶

One might object that we could reach some conclusions about what positive obligations I have without inquiring as to the morally considerable interests of others. We could make some headway, it might be proposed, in the following two ways. First, we can inquire as to what promises I’ve made. Plausibly, if I’ve made a promise to do X, and the conditions under which I made that promise were suitable, then that’s all we need to know to determine that I have an obligation to X. Second, if I occupy a certain role and doing X is an obligation that’s conventionally assigned to that role, then that might be all we need to know to conclude that I’m obligated to X. (For instance, if I’m an investment consultant I’m obligated to disclose to my client that the stock I’ve just recommended to her is one that I’m invested in with my own money, even if my client has no interest in having that information.)

I concede these points. Making a promise and occupying a role are two ways of becoming answerable to another individual in a special way—a way that can directly obligate one to do things for that person, where ‘directly’ means not by way of the action being in the interest of that person.

Once we draw attention to the moral importance of answerability, a more nuanced theory of the state’s positive obligations becomes quite appealing. It guides us, for instance, to an answer to the question of why there are so many morally considerable interests that the state is not obligated to promote, even when promoting

⁶ Negative obligations are another story. If X has a right not to be killed, then every moral agent (barring special circumstances) has a negative obligation not to kill X. The state is an agent, and so the state has an obligation not to kill X.

I think we can get a lot of mileage out of this argument structure. So I’m rather optimistic, actually, that we can work out the state’s negative obligations using ordinary moral methodology.
them wouldn’t breach the constraints imposed by liberalism. Consider the fact, for instance, that the state is not obligated to vaccinate human citizens of other countries against communicable diseases. This is true despite the fact that human citizens of other countries have an interest in receiving those vaccinations. It’s plausible to say that the reason why the state isn’t obligated to vaccinate them is that the state isn’t answerable to them (though of course that’s not the end of the story, since surely there is a reason why the state isn’t answerable to them). Taking this into account, it becomes plausible, furthermore, to suggest that when the state is obligated to individuals to do X so as to promote their interests, the fact that the state’s doing X would promote their interest isn’t the whole explanation as to why the state is obligated to do it. The other part of the explanation is that the state is answerable to that individual.

It turns out, then, that the facts about answerability are indispensible for working out the state’s positive obligations, despite the fact that when it comes to working out an ordinary human moral agent’s positive obligations we could get some answers without ever taking up the question.

So the question arises: What makes the state answerable to some individuals and not others?

2.3 How to Answer the Question of Answerability

If we were inquiring as to what makes me answerable to some individuals we would respond by citing certain non-moral facts about me, such as the promises I have made and the roles I occupy. By contrast it isn’t clear that there are any moral facts about
me that can make me answerable to others; rather, it seems that my being answerable to some individual is a morally foundational fact about me.

I submit that this is true about the state as well. To determine to whom the state is answerable we need to identify a non-moral truth about it, though of course a non-moral truth that is morally relevant.

All teleological political philosophies contain such a claim, because a teleological political philosophy (I’ll stipulate) is a political philosophy that attributes a purpose to the state. A thing’s having a purpose is a normative fact about it, for sure, but not a moral fact. And yet a thing’s purpose does seem morally relevant. Furthermore, a thing’s purpose seems, intuitively, to be a quite foundational fact about that thing. So there is reasonable hope that a claim about the state’s purpose can ground what itself is a quite foundational fact about the state, namely the fact as to whom it is answerable.

This is all a bit thin as an argument for adopting a teleological political philosophy, since I’ve presented no argument to the effect that non-teleological political philosophies cannot answer the question of answerability. All I’ve done so far, I hope, is to place an argumentative burden on non-teleological political philosophies: a burden of showing how they can answer the question of answerability.

7 “Teleology” in the sense of purposefulness is to be distinguished from “teleology” in the sense of being oriented toward the promotion of the good. When Shelly Kagan calls utilitarianism “teleological” (Normative Ethics (Boulder, Colo.: Westview Press, 1998)), he has the second sense in mind. Theories that are teleological in the second sense need not be teleological in the first. Even utilitarianism when advanced as a political philosophy, as it was by Jeremy Bentham and more recently Robert Goodin (Utilitarianism as a Public Philosophy (Cambridge: Cambridge University Press, 1995)), might fail to be teleological in the first sense. One can say that the state is obligated to maximize the good and yet deny that the state’s purpose is maximizing the good. Since teleology in the first sense is my concern here, I will not discuss utilitarianism or other versions of consequentialism any further, aside from making this one last point: Just as it’s open to a political philosopher to argue that the state is obligated to vaccinate animals while insisting that the state is not answerable to animals (the idea might be, instead, that the state is answerable only to humans, but humans demand the vaccination of animals), it’s open to a political philosopher to argue that the state is obligated to maximize utility while insisting that the state is not answerable to some of the utility-bearing beings. This is just another way of pointing out that utilitarianism as a political philosophy is per se neutral on the issue of answerability.
2.4 *Dimensions of Answerability*

When we ask to whom the state is answerable, we (clearly) do not want, in response, a list of individuals. That would be an unreasonable expectation. Rather, we want a set of criteria. This being the case, the question of answerability can be broken up into smaller, more manageable pieces by having an independent discussion of the validity of each purported criterion.

If we want to be able to answer the questions with which we began—questions about the state’s positive obligations to animals and severely disabled humans—what we need to know is whether an individual’s membership in the human species is a necessary criterion, a sufficient criterion, both, or neither, for the state’s being answerable to that individual. (Hereafter I’ll shorten the question to whether being a human is a “criterion for answerability”.) In the rest of this essay I focus my attention exclusively on that purported criterion. The topic here is what it would take to establish whether it is valid.

2.5 *Statism/Cosmopolitanism*

One might suspect that to answer any dimension of the question of answerability one needs to uncover the fundamental truth, whatever it is, about what it takes for an individual to be the kind of being to whom the state is answerable. If this were the case, then a separate inquiry into the dimension of humanity—the inquiry I want to undertake here—might be unnecessary, since there is already a large and sophisticated literature on another dimension: the dimension of denizenship. This is one way of understanding what the statism/cosmopolitanism debate is all about. It is
an inquiry as to whether an individual’s being a denizen of country X is a necessary condition for X’s being answerable to that individual.

I have no view as to whether answering the question about one dimension of answerability requires unconvering some fundamental truth about answerability. All I know is that when we look at the statism/cosmopolitanism literature we find that none of the proposed answers to the question of denizenship are at all plausible when redeployed as answers to the question of humanity.

First, to clear away distractions, we have to separate the political question of statism/cosmopolitanism from another question of statism/cosmopolitanism. Much of what we find in the philosophical literature on statism/cosmopolitanism isn’t directed at the question of whether the state is answerable only to its own denizens but rather to whether individual humans are answerable only to their co-denizens. This latter question isn’t a question about the state, and therefore isn’t relevant here. So we should discard right away any purported criteria that are obviously answers to this question and couldn’t possibly be answers to the question about the state. One such criterion is common nationality (David Miller). Another is partaking in a common cooperative scheme (John Rawls). And another is freely and knowingly supporting institutions that force another to behave in certain ways that benefit oneself (A.J. Julius).

Having cleared away the non-starters, let’s look more closely at the genuine candidates.

Profound Impact: Some people believe that the state’s positive obligations extend only as far as its profound impact (Rawls). But this criterion clearly isn’t valid for determining whether humanity is a criterion of answerability. States can exert a
profound impact on all sorts of things, including inanimate objects. In order to avoid having to conclude that the state has obligations to inanimate objects, we need to be more specific about what kind of impact we’re talking about. Presumably we mean welfare-related impact; this would get inanimate objects out of the picture, anyway. But why should profound impact have this obligation-generating effect only when the impact is on welfare? The only answer I can think of is that this is because only individuals with a welfare matter morally. But now it appears that our verdict regarding the criterion of humanity isn’t really being drawn out of an answer to the question of statism/cosmopolitanism but is instead being drawn out of an answer to the question of moral status. And I already argued that this is an illegitimate move.

*Acting-for:* Thomas Nagel believes that the state has positive obligation only to those individuals in whose name it claims to act. The idea is that members of a political society are “joint authors” of a system of coercive rules. This gives such members personal responsibility for any unjust inequalities the rules permit and, therefore, positive obligations to rectify them. Whatever the merits of this as an answer to the question of statism/cosmopolitanism, it cannot be used to determine whether humanity is a criterion for answerability. In order for it to be used for that latter purpose we would have to know which beings are members of the political society; which beings in whose name the authorities claim to act. We would have to know whether this includes, for instance, severely disabled humans or certain animals. But this is the very question that we’re trying to answer.\(^8\)

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\(^8\) Note to self: Look closer at Nagel’s article to answer James’s objection.
Coercion: Some hold that the state has positive obligations only to those it coerces (Michael Blake). Now broadly speaking, there are two kinds of coercion: the use of force and the use of conditional threats. Both are ways of getting what one wants. So if I want you out of my way, I might grab you by the arm and drag you out of the way. This is coercion-by-force. Alternatively, I might say, “Get out of my way or I’ll kick you.” This is coercion-by-conditional-threat.

This raises a question: Under which of these two understandings of coercion could it be that state coercion gives rise to positive obligations on its part?

Certainly not the coercion-by-force understanding of coercion. Whatever the disagreements philosophers have about which kinds of individual the state is obligated to, everyone agrees that the state is obligated to normal adult humans. Yet a normal adult human might live a full life in a political society without the state ever coercing her by force. She might simply never attempt to do any of the things that the state is determined to prevent being done.

But neither do we get the desired implication if by coercion we mean coercion-by-conditional-threat. The natural proposal as to why the state might be obligated to the individuals it coerces is that coercion is prima facie or pro tanto wrong, and thus requires justification (this is what Blake says), and that this justification is provided only if the state guarantees certain goods to the coerced individual. And thus the state is obligated to that individual to do so. Yet coercion-by-conditional-threat is not prima facie or pro tanto wrong, as I’ve argued elsewhere.9


Some would say that it’s a conceptual truth that coercion is prima facie morally objectionable, and so any conditional threat that’s not prima facie morally objectionable doesn’t constitute coercion-by-conditional-threat. Fine, but if this is the operative notion of coercion-by-conditional-threat, then given (what I am about to argue) that some conditional threats—including typical threats that states issue—are not prima facie wrong, a state might never coerce-by-conditional-threat. And in that case the state wouldn’t be obligated to anyone.

I argued in the just-cited article that what makes a conditional threat wrong is the wrongfulness of the threatened action. So if a wife whose husband is a serial cheater says to him, “Stop cheating on me
2.6 My Thesis and the Plan for the Essay

Having said this much, I want to bring this extended introduction to a close by bringing us back to the topic we started with—social contractarianism.

Some versions of social contractarianism are teleological political philosophies. I contend that all non-teleological political philosophies are inferior to these versions of social contractarianism in that they do even worse than these versions of social contractarianism at telling us what the state’s positive obligations are. Whereas all versions of social contractarianism are doomed to give counterintuitive answers to questions about the state’s positive obligations to animals, disabled humans, etc. (as demonstrated at the outset of this essay), the non-teleological alternatives to it are doomed to give no answer at all to those same questions. Or, more carefully, they’re doomed to give no principled answer, and this is because non-teleological political philosophies cannot answer the question of answerability. Therefore, any answer a non-teleological political philosophy gives regarding the state’s positive obligations to animals, disabled humans, etc. is nothing more than an ad hoc addition to the theory. Providing an answer in this way is just as bad as literally providing no answer at all. And it’s much worse than providing a counterintuitive answer, especially considering the fact that it’s very difficult for a political philosophy to avoid giving counterintuitive answers to such questions.

or I’ll divorce you,” my theory has the consequence that the wife has not done anything even prima facie wrong, which is surely a plausible result. Similarly, if a duly constituted legislature passes a law providing a prison sentence of 20 years (or whatever punishment you think is appropriate) for murder, this certainly does constitute a conditional threat, but not a prima facie wrongful one. This is because it would be entirely morally permissible for the state to do what it thereby threatens to do.

So the proposal that the state has positive obligations to all and only the individuals it coerces, where coercion means coercion-by-conditional-threat, is fundamentally flawed. It remains a mystery why the state’s propensity to coerce by conditional threat should give rise to positive obligations on its part, since coercion-by-conditional-threat isn’t even prima facie wrong per se.
I already gave, in §2.3, my argument for the claim that a teleological political philosophy has some hope of answering the question of answerability. What remains is mostly to supplement the formal argument by way of informal argument—namely examples. In §3 I show how various teleological political philosophies can answer one aspect of the answerability question—the question whether humanity is a criterion of answerability—by identifying the state’s purpose and then making a sound inference from its having that purpose to a conclusion about the criterion of humanity. Furthermore, I distinguish three kinds of teleological political philosophy and argue that only one kind, teleological social contractarianism, is viable on metaphysical grounds. Finally, in §4 I give examples of non-teleological political philosophies and show that, because they have no way of answering the question of answerability, they are doomed to give ad hoc answers to questions about the state’s obligations to animals and disabled humans. I focus my attention on the theories of Ronald Dworkin, G.A. Cohen and Martha Nussbaum, as they constitute the vanguard of the recent anti-contractarian movement in political philosophy.

Putting all this together, my thesis is that the teleological versions of social contractarianism have an important advantage over all their competitors, though not the same kind of advantage in all cases.

3. The Teleological Approach

In this section I describe three historically popular teleological political philosophies and show how they each have a principled claim as to whether humanity is a criterion for answerability.
3.1 Social Contractarianism

3.1.1 Some Examples and a Generalization

One historically popular political philosophy that can be teleological is social contractarianism. Such a political philosophy begins with a state of nature thought experiment. Often, as with Hobbes and Locke, this includes a description of what the state of nature is like. But sometimes, as with Rousseau and Rawls, nothing of the sort is included. Essentially a state of nature thought experiment is an invitation to consider how a group of stateless humans could come together to form a state. The other classic element of a social contractarian political philosophy is, of course, the social contract. The social contract is the means by which the stateless humans create their state; it is the proposed answer to the question that the state of nature thought experiment poses.

Social contracts cannot be created by accident; they are the result of human actions. And of course every action has a purpose. Now here’s the key teleological inference that the social contractarian can make: given that the creation of the social contract is purposeful, the thing created by the social contract—the state—has as its purpose doing the things that the social contract obligates it to do.

Let’s focus our attention, from here forward, on versions of social contractarianism that make this inference. What does social contractarianism, so understood, tell us about whether humanity is a criterion of answerability? In determining the purposes of the social contractors, any social contract theory will say something about their basic motivational outlook. If the contractors are depicted as caring for humans plus certain kinds of individuals other than humans, then the contract they create will give the state positive obligations to certain non-humans, and the social contractarian will conclude that being human is not a necessary criterion for
answerability. Alternatively, if the contractors are depicted as having a generalized moral motivation, as in Christine Korsgaard’s recent Kantian social contractarianism, then the social contractarian will conclude that a sufficient criterion for answerability is being the kind of entity that matters morally.

If, on the other hand, the contractors are depicted as purely self-interested, things are more complicated. It depends on how the contractors think about the self in which they are interested. At one extreme we might conceive of the contractors as being situated behind an extremely thick veil of ignorance, in which case they will have a correspondingly thin conception of the self whose good they are motivated to promote. And the thinner the conception of the self, the larger the group of individuals who will fit that conception. Mark Rowlands proposes, for instance, that the veil of ignorance should exclude knowledge of species membership. That being the case the contractors will design the contract so as to have the state promote the good of a multi-species set of individuals, and from this the social contractarian will conclude that the state is answerable to not only humans but some non-humans as well. Cynthia Stark and Henry Richardson, meanwhile, propose that the veil of ignorance should, at least for part of the contracting process, deprive the contractors of the knowledge of whether they’re fully cooperating members of society. With this provision in place, the contract is likely to be designed for the benefit of all


It’s also been proposed that the veil of ignorance should exclude the knowledge that one will always possess a sense of justice. This is another way of forcing the parties to the contract to take the interests of non-humans into account. See Donald Vandeveer, “Of Beasts, Persons, and the Original Position,” Monist 62 (1979): 368-77.
humans regardless of disability status, and so the social contractarian will conclude that humanity is sufficient for answerability. At the other extreme we might conceive of the contractors as being situated behind no veil of ignorance at all. This allows them to have a full conception of their selves, and since no two individuals are identical the result we get is that the contractors share no ends at all.\textsuperscript{13} From this the social contractarian will conclude that the social contract itself is not directed toward anyone’s good. This, of course, raises the question of what its content will be. One answer—and this is the answer given by Hobbes, who of course imposed no veil of ignorance on his contractors—is that the social contract is nothing more than an agreement to transfer rights to an artificial person. This being the case, the state (or “the sovereign”, as Hobbes put it), which is that artificial person, has rights but no positive obligations.\textsuperscript{14} So the answer to the question, “To which kinds of beings is the state answerable,” will be “none”.

With these examples on the table, I want to turn our attention briefly once again to the general form of the teleological inference that social contractarians can make: because the creation of the social contract is purposeful, the state has as its purpose doing the things that the social contract obligates it to do. This inference is not \textit{sui generis}. We unhesitatingly make similar inferences about other abstract entities created by humans. For instance, we are happy to say that the purpose of a corporation is to do the things that its charter (which was purposefully created) obligates it to do. And inferences of these two sorts are actually species of a broader genus that conforms to the following template: because X was purposefully created it has a purpose, and its purpose is to do the thing that it was purposefully created for.

\textsuperscript{13} Different individuals may have \textit{qualitatively} the same end, but no two individuals will have \textit{numerically} the same end, which is what we’re talking about when we speak of shared ends.

\textsuperscript{14} Hobbes, \textit{De Cive}, Chap. 7, § 9,12. This is not to say that Hobbes believes that the state can never wrong anyone; rather, what Hobbes denies is that there are individuals to whom the state is \textit{answerable} in a way that could give rise to positive obligations on the state’s part to those individuals.
I’ll stipulate that any argument containing an inference of this sort is an instance of *artefactual teleology*. Social contractarianism, therefore, is an instance of artefactual teleology when it is teleological. It says that the state is a purposefully created thing, that its creators are the contractors, and (simplifying a bit) its purpose is whatever the contractors had in mind for it in creating it.

Simply for the sake of further illuminating artefactual teleology and its role in political philosophy, I want to point out that social contractarianism is not the only possible political philosophy that can embrace artefactual teleology with respect to the state. I said at the outset of this sub-section that social contractarianism has two classic elements: the state of nature thought experiment and the social contract. All artefactual teleologists will accept the first tenet of social contractarianism: the need to engage in state-of-nature theorizing. They accept this because they accept that the state is to be understood as being endowed by its creators with a purpose; this means that its creation story has to be told, which in turn means that we have to start by imagining a world without it. But while all artefactual teleologists agree *that* the state is endowed with a purpose through its creation, they might disagree over *how* the state is endowed with a purpose through its creation.\(^{15}\) And thus some artefactual teleologists might reject the second element of social contractarianism—the social contract—and insert in its place some other theory about *how* the state of nature is purposefully escaped.\(^{16}\)

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\(^{15}\) In addition to disagreeing, of course, about what the state’s purpose is.

\(^{16}\) David Hume’s political philosophy as laid out in “On the Origin of Government” leaves this possibility open. It is certainly an instance of artefactual teleology, since it engages in something like a state-of-nature thought experiment and suggests that humans would intentionally exit the state of nature by forming a government. But neither the idea of a social contract nor any substitute for it appears in “On the Origin of Government”, so it doesn’t commit Hume one way or the other regarding social contractarianism. *(Note to self: James says it’s arguable that Hume understood the duty of allegiance to the very first governments as resting on something like a contract (see Treatise of Human Nature 3.2.8. But, he says, this does not mean that political obligation in ALL contexts rests on a contract.)*
As to why social contractarianism is the only version of artefactual teleology in political philosophy that’s actually been put forward, I can only speculate that philosophers are convinced, correctly, in my judgment, that a social contract is the only morally permissible way to escape the state of nature.

3.1.2 Is Social Contractarianism Really an Instance of Artefactual Teleology?

Sorting the teleological version of social contractarianism under the category of artefactual teleology is a way of vindicating its metaphysics. Consider, for instance, a stapler. Unless we simply deny the existence of purposes, we’ll be happy to say that the purpose of a stapler is to bind together sheets of paper, and that the stapler obtained that purpose on account of the fact that that was the purpose that the person who made it had in mind for it. This sort of teleological inference shouldn’t bother us any more in political philosophy than it does in everyday talk.

One might object, however, that I’m being too generous to social contractarianism by sorting it under the genus of artefactual teleology. For some artefacts, such as a stapler, we can tell a story about its creation that is both historically accurate and explains how it got its purpose. But the social contractarian doesn’t even try to tell this kind of story about the state; the social contractarian’s origin story for the state is, by design, a myth.\(^\text{17}\) So whereas the person who wants to be an artefactual teleologist about staplers is strictly bound by the facts in reasoning to her conclusion about what the purpose of a stapler is, the person who wants to be an artefactual teleologist about the state seems bound only by the limits of her imagination! For our purposes, one important result of this leeway is that social contractarians will disagree, as we saw above, as to the motivational profile of the

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\(^{17}\) Actually there’s one social contractarian, John Locke, who evidently believed that the story he told was factual. But I’ll set this aside for now and assume that for the social contractarian the state of nature/social contract story isn’t supposed to describe actual events.
contractors. Since no such contracting ever occurred, it’s hard to imagine how one stipulation about the motivational profile could be right and the others wrong. And since the motivational profile of the contractors plays such a central role in any social contractarian’s answer to the question of whether humanity is a criterion for answerability, it seems that the social contractarian can game the system so as to get whatever answer she wants.\textsuperscript{18}

There are actually two problems here for social contractarianism. One problem is the seeming arbitrariness of certain elements of its origin story for the state, like the stipulated motivational profile of the contractors. The other is that even if the origin story avoids being arbitrary it is still ahistorical. In other words, even if there’s a right way to tell the story, the described events still never happened.

These are both extremely serious and important worries and I can do no more here than gesture at strategies for answering them. As to the second, the task for the social contractarian is to explain how an ahistorical origin story for X can still constitute a valid argument for some claim regarding X. My suggestion here, drawing on what Bernard Williams says about the usefulness of ahistorical origin stories, or what he calls “genealogies”,\textsuperscript{19} is that we have something that needs explaining and no other apparent way of explaining it. We know that states are answerable to some individuals and not others and there doesn’t appear to be any way to explain this without putting forward a picture of the state on which it has a purpose. In such a situation, perhaps the best we can do is to tell a plausible story about how the state could have been devised so as to serve some purpose. As to the first challenge, the task for the social contractarian is to show that some particular counterfactual history

\textsuperscript{18}This sort of criticism of social contractarianism is familiar from the literature on Rawls. Many theorists accused Rawls of sneaking too much of substantive morality into his description of the original position, thus guaranteeing in an uninteresting way that his preferred principles of justice would result.
is more relevant than another. Again, drawing on Williams, I think that what we want
to do here is to depart from actual history where, and only where, doing so is
necessary so as not to presuppose that which is to be explained. We want to give an
origin story for the state, to show how the state could have a purpose, and to show
how the state’s having a purpose answers the question of answerability. So we
imagine a world in which there are no states and in which no one has the idea of there
being states with purposes nor has any ideas about to whom the state (were there to be
one) should be answerable, and we show how from these conditions they could have
created a state with a purpose which would then be answerable to certain individuals
but not others. Aside from these possible departures from fact, we remain as true as
possible to what we know of the historical facts and laws of nature.

3.1.3. Objections to Artefactual Teleology in Political Philosophy

If sorting the teleological versions of social contractarianism under the genus
of artefactual teleology is a way of vindicating their metaphysics, the next question to
ask is whether this categorization could also come with a cost—Are there any
drawbacks to artefactual teleology in political philosophy?

One obvious problem that has to be confronted when we deploy artefactual
 teleology in moral philosophy, broadly construed, is the problem of evil purposes. I
argued in §2 that there is a tight connection between the state’s purpose and the fact
as to whom it is answerable and a tight connection between the fact as to whom the
state is answerable and the fact as to what positive obligations it has. In effect, then, I
have argued that there is a strong connection between the state’s purpose (if it has
one) and its positive obligations. Well, what if the purpose of the state is evil? Is it
then obligated to do evil?
This precise worry has been raised with respect to another kind of artefact that, like the state, is not only an artefact but also an agent: the corporation.\textsuperscript{20,21} To my mind, Kenneth Goodpaster has offered a satisfactory response to this worry. He says, simply, that individuals who create a corporation cannot license it to do anything that they wouldn’t be morally permitted to do on their own.\textsuperscript{22} Goodpaster, I take it, is not denying that corporations can have evil purposes. Rather, he is denying that the moral obligations of the corporation are entirely determined by its purpose. He’s saying that ordinary moral constraints that apply to flesh-and-blood people apply to corporations too. This, I submit, is what we should say about states. There are certain things the state is not permitted (and cannot be obligated) to do qua moral agent, no matter what its purpose qua artefact.\textsuperscript{23}

A second problem for artefactual teleology in political philosophy is that it seems that artefacts can come to have purposes that their creators did not have in mind for them. For instance, if I decide to use a t-shirt as a rag from now on, it seems that I’ve changed the purpose of the t-shirt. More troublingly, a human being is an artefact and therefore, according to artefactual teleology, the purpose of a human being is whatever purpose its parents had in mind for it in creating it, regardless of any purpose that that human might set for herself. So, for instance, if a human was created for the sake of having organs to transplant, then that human’s purpose would be to provide spare parts.

\textsuperscript{20}The objection wouldn’t arise for artefacts that aren’t agents, since only agents do things, and hence only agents do evil.
\textsuperscript{23}This is another way of saying what I already said in an earlier footnote: that we don’t need to answer the question of answerability in order to know what the state’s negative obligations are.
Artefactual teleology clearly requires revision in light of these problems. What we should say, I think, is that anything that has a self-given purpose cannot also have a creator-given purpose. In other words, autonomy trumps artefactuality. If an individual can set an end for herself, then that’s her end, period.24 And we should also allow that creator-given purposes can be trumped by new-user-given purposes, as when I repurpose a t-shirt as a rag.

Does this alter in any important way the doctrine of artefactual teleology in political philosophy? It does. We’ve been thinking of states as agents, and given this it’s really not open to us to deny that states have the capacity for autonomy. If a state is an agent surely it’s more like a human than a worm or a goldfish, since states have processes built in to them for engaging in reasoned deliberation about what to do. So states can give themselves purposes. Any variety of artefactual teleology in political philosophy will have to account for this. For instance, this forces social contractarians to say something about what happens after the social contract is put in place. Supposing, for instance, that the terms of some particular social contract would eventually become so repugnant to the members of the state that they would come together to amend it, then it’s not open to the social contractarian to say that the contents of the original social contract continue to settle the matter of what the state’s purpose is.25 What the social contractarian has to say is that only those social

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24 One might worry that this doesn’t fully solve the problem, since very young children are probably not autonomous in the sense just defined. So it seems that the doctrine of artefactual teleology still yields the conclusion that the purpose of a human being can be to provide spare parts.

By way of response, I concede the point. Note, however, that there are no unsavory ethical implications to admitting that some human’s purpose is the provision of spare parts. An artefact’s purpose doesn’t settle the question of what the creators of that artefact are morally permitted to use it for, as I already explained in discussing the problem of evil purposes.

25 One might think that the problem for social contractarianism runs deeper here. Surely if hypothetical contractors can give a hypothetical state a purpose then real humans can give a real state a purpose. And it seems that in the case of some states, this has actually happened. I’m thinking, in particular, of states that have a constitution. And it may seem, intuitively, that if a single state is such that there is a purpose that hypothetical contractors would’ve given to it and also a purpose that real humans actually did give to it, the latter purpose must trump the former. This suggests that for some states the social contractarian thought experiment could be entirely irrelevant to what that state’s purpose is.
contracts that would attract perpetual assent can settle that question. This thought is, presumably, what drove Rawls to take such pains to demonstrate the stability of the two principles of justice that he thought would be agreed upon in the original position.

3.2 Eudaimonistic Political Philosophy and Natural Law Theory

Leaving aside social contractarianism and reachinging back farther into the history of western political theory we arrive at Plato and Aristotle. Purpose, or telos in the ancient Greek, is one element in Aristotle’s famous four-fold distinction in kinds of cause. As for the polis, Aristotle says, repeatedly in his Politics, that the telos of the state is the good life, by which he clearly means the good life for humans. However, there’s no argument given for this conclusion. Similarly, Plato states without argument that the purpose of the polis is to produce the greatest happiness (Republic, 421b).

What kind of teleological approach is this? Plato’s Republic actually contains hints of an artefactual teleological approach. In it Socrates says “If we could watch a city coming to be in theory, wouldn’t we also see its justice coming to be, and its injustice as well?” (369a). But Plato doesn’t follow through on this thought. The conclusions he draws about the justice of the polis are not based on any theory about how the polis comes to be. This is entirely unsurprising if we keep in mind the role that purposes played in the metaphysical system of the ancient Greeks. For them, no reason could be given as to why the purpose of the thing is what it is. A purpose,

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This is a good objection. I think the social contractarian’s best strategy is to concede the point in principle but maintain that the concession amounts to little in practice. It amounts to little in practice, the social contractarian can reasonably say, because typically constitutions spell out the purpose of a state in an incomplete way. This leaves room for the social contractarian thought experiment to be used for filling in the blanks.

along with the other three kinds of cause (matter, form and origin), is an ultimate explanation of something and cannot itself be explained. It is an essential aspect of that thing; the thing would be something else if it had a different purpose. (Any intentions that humans might have had in creating a state would determine not the purpose of the state but rather a different one of the four causes of the state: its origin.) Since artefactual teleology in political philosophy purports to offer an explanation as to why the state has the purpose it does, it would have been anathema to the ancient Greeks.27

The defining characteristic of this style of teleology is its essentialism; its view that a thing’s purpose is essential to what it is and cannot be explained. Let’s call this essentialist teleology. Plato and Aristotle’s version of essentialist teleology gives a straightforward answer to the question whether humanity is a criterion of answerability. It turns out to be both a necessary and a sufficient criterion, because the purpose of the state is the promotion (perhaps maximization) of human happiness.

As a final example of a teleological political philosophy we should examine classic natural law theory. Although many of the classic natural law theories have a bit of social contractarianism or eudaimonism mixed in with them,28 classic natural law theory can be distinguished in principle as its own kind of political philosophy. It

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27 Although the ancient Greeks wouldn’t have allowed that the truth about the purpose of the state can be explained, they would’ve allowed that it can be argued for. (Remember, Aristotle does argue for his conclusions regarding what the purposes of human beings and other living things are—see Book I of the *Nicomachean Ethics.*) So it’s not out of place for us to speculate as to what argument Plato and Aristotle would have given for their conclusion that the purpose of the state is the promotion (perhaps maximization) of human happiness. The obvious starting point for any such argument would be Aristotle’s claim that the human purpose is happiness, or eudaimonia. One aspect of happiness is politicality; we are by nature political animals, in Aristotle’s famous phrase (*Politics*, 1253a). So if the purpose of the polis were anything other than human happiness then the world itself would be disordered, which the ancient Greeks adamantly denied. Therefore it would be unthinkable for the purpose of the polis to be anything other than human happiness.

28 Among natural law theorists who incorporated some appeal to social contractarianism is Hugo Grotius. On the blurry line between natural law theory and eudaimonistic political philosophy, see the next footnote. Martha Nussbaum’s political philosophy is, in a way, another example of the blurring of natural law theory and eudaimonistic political philosophy. It contains elements of both (though in the end is neither), as I will explain in §4.2.
begins with a depiction of humans as uniquely in need of authoritative guidance, in virtue of their possession of a free will. The state is then given a role in a great chain of that authority—a chain that begins with God. The purpose of the state—namely to keep humans in obedience to God’s command—is therefore conceived of as God-given.\textsuperscript{29}

Like social contractarianism, classic natural law theory can be teleological. Such versions of natural law theory would depend on what we might call \textit{divine teleology}—the view that the things God wills have the purpose that God has in mind for them in willing their existence. As to the question whether humanity is a criterion of answerability, there are two directions the classic natural law theorist can go having said this much. One is to say that humanity is a necessary and sufficient condition of answerability, which makes sense since the purpose of the state is tend the human flock, so to speak. The other is to say that the state is answerable to God and only to God, since it is God’s agenda—keeping humans in obedience to the moral law—that gives the state its raison d’être.

3.3 \textit{The Arguments For Artefactual Teleology}

The reasons we should prefer artefactual teleology in political philosophy to divine teleology or essentialist teleology are entirely to do with the defects of the latter two approaches, I submit. In particular, they both embody a metaphysics that most of us are already inclined to reject. We are no longer comfortable with

\textsuperscript{29} See, for instance, William of Ockham, \textit{A Letter to the Friars Minor and Other Writings}, ed. Arthur Stephen McGrade and John Kilcullen, trans. John Kilcullen (Cambridge: Cambridge University Press, 1995), pp. 291ff. Some natural law theorists, such as Aquinas and Suárez, held that humans have the ability to discover by reason, starting with an inquiry into human nature, what we are obligated to do. This appeal to human nature commits Aquinas and Suárez to something close to Aristotelian teleology and makes them hard to categorize as pure natural law theorists. But the categorization is legitimate, to my mind, since they held that nature itself is ordered by God. (In working out the relation between eudaimonistic political philosophy and natural law theory I’ve been helped tremendously by Stephen Neff. See Stephen Neff, “Introduction” in Hugo Grotius, \textit{On the Law of War and Peace}, student edition, ed. Stephen Neff (Cambridge: Cambridge University Press, 2012), pp. xiii-xxxv.)
essentialism; it seems unscientific. In the political case, essentialism would be the view that some entity which to all appearances is a state (e.g., it exercises a monopoly of violence over some territory, is thought by its denizens to constitute the legitimate authority over the territory in which they reside, carries out legislative and judicial functions, etc.), is not in fact a state if it lacks some particular purpose. As to divine teleology, it obviously carries the metaphysical burden of proposing the existence of a very specific sort of deity—one who gives humans free will and establishes a great chain of authority to ensure that it is used justly. Whatever the defects of artefactual teleology, it’s not based on a controversial metaphysics, as I’ve tried to emphasize.

4. The Inadequacy of Non-Teleological Political Philosophies

In the previous section I argued by way of example that teleological political philosophies can provide a reasoned answer to the question of whether humanity is a criterion of answerability, having shown already in §2 how answering this question can lead to the answer to the further question as to what positive obligations, if any, the state has to animals, disabled humans, etc. My goal in this section is to argue by way of example that non-teleological political philosophies cannot give a principled answer to that latter question.

The most helpful political philosophies to examine will of course be certain non-teleological ones, but more particularly they’ll be non-teleological ones that have been developed with an eye toward ensuring that they provide an answer to the question regarding the state’s obligations to animals, disabled humans, etc. If my claim, that non-teleological political philosophies cannot provide a principled answer to this question, is to be put to the strongest-possible test, these are the examples we
need. Fortunately, there has been some interesting work done lately in just this area by Martha Nussbaum. But my first case studies will be Ronald Dworkin and G.A. Cohen. Although Dworkin and Cohen never turned their attention to the question on which we are focusing here, I consider them to be fair targets. They, along with Nussbaum, are in the vanguard of the recent anti-contractarian turn in political philosophy. As I mentioned at the outset, much of that movement stems from the dissatisfaction with how social contractarianism deals with animals, disabled humans, etc. While I do not, as I said at the outset, intend to defend social contractarianism against the charge of doing badly on that score, I do want to undermine the alternatives to it. And Dworkin, Cohen and Nussbaum have set out to develop explicitly non-contractarian political philosophies.

4.1 Dworkin and Cohen

Dworkin’s central aim in his Sovereign Virtue is to establish that governments should aim to distribute resources equally.\(^{30}\) He is eager to distance himself from social contractarianism,\(^{31}\) going so far as to explicitly reject it\(^{32}\) and deny that equality of resources can gain support from an original position-style thought experiment.\(^{33}\) Dworkin’s avowed strategy, instead, is to derive a political morality from ordinary moral commitments.\(^{34}\)

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\(^{32}\) Sovereign Virtue, p. 278.


Curiously, though, Dworkin does deploy something that looks an awful lot like a state of nature thought experiment, namely his thought experiment involving a group of shipwreck survivors washing up on a desert island and then trying to decide how to divide up its natural resources. This thought experiment is the starting point of his argument for his principle of equality of resources (Sovereign Virtue, chap. 2). But for Dworkin the fact that the survivors would settle on a certain way of distributing goods isn’t supposed to lend moral force to the requirement of equality of resources—if it was then Dworkin would indeed be a social contractarian—rather it is supposed to tell us what equality of resources is.

\(^{34}\) Ibid., pp. 4-6, 294-5. Dworkin expands on this view in Justice for Hedgehogs.
As to whether the state has positive obligations to animals or disabled humans, as I said Dworkin never explicitly took up the question. But he did implicitly answer it: Dworkin clearly believes that the individuals among whom resources should be distributed equally are humans, and only humans. As to what argument might be found for this answer, I suggest we focus our attention on his claim that “it is important…that human lives be successful rather than wasted, and this is equally important…for each human life.”35 This, according to Dworkin, is one of the two substantive moral truths upon which a political philosophy should be based.

The problem, however, is that this ethical commitment doesn’t actually suggest any answer at all to the question whether the state has positive obligations to animals or disabled humans. Laying out moral truths doesn’t help us to figure out what we need to figure out in order to answer the scope question—namely, which aspects of morality are the state’s business, and which aren’t. Remember, we already agreed, in §2.1, that there are some morally important matters that are outside the state’s remit.

The only way I can imagine Dworkin responding to this criticism is by insisting that he is merely trying to work out what position on the state’s obligations to animals and disabled humans is implicit in our society’s public political culture, a culture that instantiates the ethical commitment to the equal moral importance of all human lives. Dworkin at times seems inclined toward this kind of modesty.36 But then of course he cannot claim to have argued for his answer to the question of answerability.37

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35 *Sovereign Virtue*, p. 5.
36 Ibid., p. 117.
37 Except as against the comparison class of other answers to the question of the state’s obligations to animals and disabled humans that might be thought to be implicit in our society’s public political culture.
As to G.A. Cohen—an even more prominent critic of social contractarianism\(^{38}\)—he never officially provides, much less argues for, an answer to the question of what positive obligations the state has to animals and disabled humans. He does, however, discuss physically disabled humans, and in a way that makes clear that he believes the state has positive obligations to them. His discussion of physically disabled humans is, in fact, the centrepiece of his argument for his preferred principle of distributive justice: equality of access to advantage.\(^ {39}\) Equality of access to advantage requires that we eliminate inequalities in advantage between individuals that are due to factors for which the less advantaged individual cannot be held responsible,\(^ {40}\) where “advantage” is left largely undefined but is stipulated to include both lack of resources and lack of welfare.\(^ {41}\) Since physically disabled humans are in the scope of the principle and physical disabilities yield disadvantages for which the sufferer is (usually) not responsible, Cohen holds that justice requires that we compensate for their disadvantages. And although the “we” referred to here might include individuals, since individuals have duties of justice (according to Cohen), it certainly also includes the state, as long as there is one. So Cohen believes that the state has positive obligations to physically disabled humans.

Cohen appears not to be aware of the can of worms this opens up. If it is the state’s business to compensate for undeserved inequalities in resources and welfare,

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\(^{38}\) See G.A. Cohen, *Rescuing Justice and Equality* (Cambridge, Mass.: Harvard University Press, 2008), chap. 7, where he critiques “constructivism” in political philosophy, of which (as he recognizes) social contractarianism is one version.


\(^{40}\) Ibid., p. 922. Cohen’s view on distributive justice remained largely the same over the years. See *Rescuing Justice and Equality*, p. 7.

then it would seem that the state is answerable to every kind of sentient being, since
sentience is (most would allow) sufficient for having a welfare. Cohen’s principle
seems to imply, for instance, that it’s an injustice not to bring rabbits up to a normal
human level of welfare—after all, it’s not the rabbits’ fault that they have relatively
unsophisticated brains and cannot, therefore, gain welfare from things like music,
love, and humour. Since Cohen would obviously not endorse the idea that the state
owes it to rabbits to bring them up to a normal human level of welfare, he faces a
dilemma: either give an unprincipled answer to the question of the state’s positive
obligation to animals—i.e., that it isn’t obligated to bring them up to a normal human
level of welfare, even though a moral principle he endorses implies that that’s exactly
what the state should do—or refuse to give any answer at all to that question.

4.2 Nussbaum

Let’s turn now to Nussbaum. Nussbaum advocates the view that individuals
should be brought up to a sufficient level of capability, for each of a list of
capabilities. Nussbaum’s *Frontiers of Justice* is intended to demonstrate that the
capabilities approach offers attractive solutions to two difficult questions of justice:
how we should treat people with physical and mental impairments and how we should
treat non-human animals. The challenge, for her, is to say whether the state is
obligated to bring all beings—disabled humans and animals included—up to
sufficiency with respect to capabilities and, if so, whether there should be a different
list of capabilities for different kinds of beings.

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42 *Frontiers of Justice*, pp. 71, 178.
Nussbaum’s position is that the state is obligated to ensure capabilities-sufficiency for every sentient animal, that there is to be a different list of capabilities for each species of sentient animal, and that the same list of capabilities applies to non-disabled humans and disabled humans alike.\(^{43}\) This forces her to say something about how a list of capabilities is to be generated for each of the distinct species. In the case of humans she says the list of capabilities is derived from the idea of a “life that is worthy of the dignity of the human being.”\(^{44}\) So the capabilities approach is evaluative from the start, working from a notion of a good human life.\(^{45}\)

This sounds eudaimonistic, thus suggesting that Nussbaum is appealing to essentialist teleology to answer her scope question. But Nussbaum says that she wants to settle on a list of human capabilities without committing herself to anything metaphysical, such as teleology.\(^{46}\) So although she does speak of human life having a characteristic form, this presumably is not in virtue of some fact about the essence of being human.

Nor does she propose to answer the scope question by appealing to God’s will. Thus despite Nussbaum’s claim that the capabilities approach “in many ways revives the Grotian natural law tradition”,\(^{47}\) Nussbaum is not a natural law theorist in the teleological sense of natural law theory (i.e., the sense of natural law theory in which God sets a purpose for the state and for other things).

\(^{43}\) Well, almost all disabled humans. Nussbaum says that there are some (including vegetative humans) with respect to whose capabilities the state has no obligations at all (ibid., p. 187; Nussbaum, *Creating Capabilities* (Cambridge, Mass.: The Belknap Press, 2011), p. 31).

\(^{44}\) *Frontiers of Justice*, p. 180.

\(^{45}\) Ibid., p. 181.

\(^{46}\) Ibid., pp. 182, 186.

\(^{47}\) Ibid., p. 21.
Finally, and most obviously to anyone who reads her writings, Nussbaum is not a social contractarian. In fact perhaps the central purpose of the capabilities approach is to provide an alternative to social contractarianism.\(^{48}\)

Having steered clear of all three so-far identified forms of teleology in political philosophy—eudaimonistic, divine, and artefactual—Nussbaum defends her list of human capabilities by claiming that there is consensus among us that the capabilities she has identified are central to a life of human flourishing.\(^{49,50}\) But defending the list of human capabilities is only half the task. It gets Nussbaum only as far as Dworkin got: it gives her an ethical truth\(^ {51}\) but leaves her needing to argue that that ethical truth—the importance of human flourishing, along with the species-specific flourishing of all the other sentient animals—is in the state’s remit.\(^ {52}\)

Unlike Dworkin, Nussbaum tries to provide this argument. In fact she tries twice over. Her first strategy is to provide the link between capabilities and state obligations by way of the notions of entitlements and justice. She says that individuals (and from what we said above we can assume she means sentient

\(^{48}\) Ibid., p. 69.

\(^{49}\) She says,

The claim that is made by the use of this single list [of capabilities], then, is…that these capabilities can be agreed by reasonable citizens to be important prerequisites of reasonable conceptions of human flourishing… (ibid., p. 182).

And again:

The list is single…because it seems reasonable for people to agree on a single set of fundamental constitutional entitlements that provide the underpinning for many different ways of life, entitlements that seem to inhere in the idea of human dignity (ibid.).

And once more:

We can accept without profound metaphysics the idea that human life has a characteristic shape and form, and that certain abilities, meaning certain spaces for choice, are generally agreed to be very important to its success… (ibid., p. 186).

\(^{50}\) For Nussbaum’s view on how to defend the other species-specific accounts of flourishing that must be provided for a full account of capabilities-related justice, see Frontiers of Justice, pp. 352-6.

\(^{51}\) Perhaps even an ethical truth of central importance, as she believes: “…once we have judged that a central human power is one of the good ones, one of the ones whose flourishing defines the good of the creature, we have a strong moral reason for promoting its flourishing and removing obstacles to it” (Nussbaum, “Beyond Compassion and Humanity,” in Cass R. Sunstein and Martha C. Nussbaum, eds. Animal Rights: Current Debates and New Directions (New York: Oxford University Press, pp. 299-320 at 305).

individuals) have a basic entitlement to have a sufficient level of each of the capabilities and that “the sphere of justice is the sphere of basic entitlements.” These premises, plus the suppressed premise that the state has a positive obligation to secure justice, yield the conclusion that the state has a positive obligation to secure a sufficient level of each of the capabilities to each sentient individual.

The problem for this argument is its suppressed premise. Justice surely has more than one sense, and Nussbaum is in trouble no matter which sense of justice is at play Nussbaum. Justice might denote a thin moral concept—the concept of the first virtue of social institutions (to use Rawls’s term)—thus making the suppressed premise analytically true. But if this is the sense of justice at play in the suppressed premise then the argument commits the fallacy of equivocation, since it’s surely not justice in the sense of the first virtue of social institutions that we have in mind when we accept the premise that says that the sphere of justice is the sphere of basic entitlements.

On the other hand it is true—indeed, obviously true—that justice is concerned with basic entitlements if by justice we mean the set of moral requirements that are directed and urgent. (A moral requirement is direct if and only if a failure to abide by that requirement wrongs someone. Urgency of course needs no elaboration.) And this is the sense of justice that Nussbaum explicitly employs when defending the claim that justice is concerned with basic entitlements. But if that’s the sense of justice at play throughout the argument then the suppressed premise is no longer analytically true. Granted, it may seem obviously true nevertheless; I admit that we often have something like this sense of justice in mind when we say that the state has a positive obligation to enforce duties of justice. This claim about the state enjoys

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53 Frontiers of Justice, pp. 70-1.
54 “Beyond Compassion and Humanity”, p. 302. For similar comments see Frontiers of Justice, p. 75.
55 “Beyond Compassion and Humanity”, p. 302.
widespread acceptance and can claim a distinguished pedigree, since both Hume and Kant argued for something close to it. But the problem I’m raising for Nussbaum isn’t that her suppressed premise might be false; the problem is simply that it needs a defense. If it’s true that the state has a positive obligation to enforce justice in the sense of directed and urgent moral requirements, this is neither an analytic nor a foundational truth. So Nussbaum must defend it, and the question for our purposes is whether she can do that without endorsing a teleological political philosophy. She can’t make use of either Hume’s argument or Kant’s argument for this claim, since both of them were artefactual teleologists in political philosophy. Until Nussbaum can find a way of arguing, without appeal to the purpose of the state, that the state has a positive obligation to enforce justice, in the sense of directed and urgent moral requirements, her argument that the state has a positive obligation to secure capabilities for each sentient being is incomplete.

Nussbaum’s second attempt to argue that the state has a positive obligation to involve itself in the securing of capabilities comes when she says, “The purpose of social cooperation…ought to be to live decently together in a world in which many species try to flourish.”56 If we grant this, along with Nussbaum’s claim that the achievement of a sufficient level of capabilities is necessary and sufficient for an individual’s being able to flourish, then it follows that the purpose of social cooperation ought to be to secure a sufficient level of capabilities for everyone.

Notice that Nussbaum’s claim here is about what the purpose of social cooperation “ought to be”. If it were instead a claim about what the purpose of social cooperation is, then Nussbaum would be offering a teleological basis for her answer to the scope question. But as it stands, Nussbaum is simply making a claim about

what the purpose of social cooperation ought to be. I don’t see how this can ground an independent argument for Nussbaum’s position that the state has positive obligations to all sentient beings. Any such argument would be parasitic on whatever Nussbaum might have to say about why the ability to flourish is morally central. Presumably Nussbaum would have to fall back on the basic entitlements/justice argument.

4.3 Conclusion

Most versions of social contractarianism endeavor to remain neutral on controversial questions of value. For the social contractarian, what the state should be doing is to be settled not by appeal to evaluative facts, but by appeal to the social contract. A fundamental motivation for the recent anti-contractarian turn is the conviction that we shouldn’t try to build a political philosophy on such thin foundations. And the fact that most non-contractarians are willing to take certain evaluative claims as given might seem, initially, to give them more material to work with in determining whether the state has positive obligations to animals, disabled humans, etc. But, as I hope the examples given here have shown, it is of no help to them at all. This is because, again, it takes a teleological claim to establish an answer to the question of answerability, and an answer to the question of answerability to establish what positive obligations the state has. This is the strong advantage teleology in political philosophy has over its alternatives.

Now it may seem like I’m stirring up trouble where there need be none. If, as I’ve shown in the cases of Dworkin and Nussbaum, identifying an important moral value is insufficient to establish that the state has a positive obligation to promote that value, then any heretofore non-teleological political philosophy can simply say that
promoting that value is the purpose of the state, and thereby become teleological. So, conflict over.

In response, I’m happy to have more company in the teleological camp, but I suspect that those who might be tempted to cross over to my side won’t like the choice with which they’re confronted once they do. The problem is, it’s not enough just to admit that the state has a purpose; one has to take a position on why the state’s purpose is what it is. We already know that Dworkin, Cohen and Nussbaum don’t want to sign on for social contractarianism. That leaves essentialist teleology and divine teleology, with all of their attending metaphysical problems. (And if one refuses to answer the ‘why’ question, one is in effect signing on for essentialist teleology.) So the arguments advanced here do indeed put non-teleological political philosophers in a tenuous position.