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The Idea of the Domesticated Animal Contract

CLARE PALMER

*Department of Philosophy
University of Western Australia
Nedlands, Perth, WA 6009 Australia*

ABSTRACT: Some recent works have suggested that the relationship between human beings and domesticated animals might be described as contractual. This paper explores how the idea of such an animal contract might relate to key characteristics of social contract theory, in particular to issues of the change in state from 'nature' to 'culture'; to free consent and irrevocability; and to the benefits and losses to animals which might follow from such a contract. The paper concludes that there are important dissimilarities between a domesticated animal contract and other theories of social contract; and that contract language may be used to legitimate relationships of domination over domesticated animals.

KEYWORDS: Animals, social contract theory, Budiansky, animal contract.

INTRODUCTION

In the last few decades there has been increasing popular and academic interest in the nature of human/animal relationships and how such relationships should be conceptualised.¹ Particular attention has focused on ethical relationships between human beings and animals, in particular whether humans have direct moral duties towards animals (see, for instance, Carruthers 1992, Frey 1983, Leahy 1993, Regan 1984, Singer 1983). Most recently it has been suggested that contract theory might be an appropriate way of conceptualising some forms of human/animal relationships. In one sense, this turn to contract theory is not surprising. There has for some time been a growth of interest in, and popularity of, social contract theories as models for understanding human social relationships in modern civil societies (Pateman 1988:4). As such, contract models are readily available for those exploring ways of conceptualising human/animal relationships, in particular the highly interactive and social relationships involved in animal domestication.

Yet in other respects, the application of such contract models to human/animal relationships is also a surprising one. Hardly any of the great social contract theorists of the past 350 years even thought of the possibility of a human/animal contract of any kind, and those who did were immediately dismissive of

it. Pufendorf, for instance, argued that humans and animals were in a perpetual state of war and that humans could have no obligations to animals; (Maehle 1994, 90) whilst Hobbes maintained that without speech there could be no contract relationship, and consequently there could be no contracts involving animals (Hobbes 1962, 73) – an argument repeated more recently in various forms (for instance in Carruthers 1992). But that the idea of any kind of human/animal contract was not in the minds of the great social contract theorists is not in itself, of course, a reason for rejecting such a model. Early rights theorists equally did not envisage that rights theory would one day be extended (albeit controversially) to include animals. (See, for instance, Regan 1984.) Given the popularity of contract language and widespread concern about the moral status of animals, further exploration of ideas about animals and contracts seems, *prima facie*, to be justified.

HOW THE ANIMAL CONTRACT HAS BEEN USED

I want to begin by noting one extensive discussion about animals and contract theory which will not be developed further here: that relating to adapted versions of Rawlsian social contract theory.² In most such versions, Rawlsian contract theory is adapted to take into account the interests of animals in the making of a *general* (hypothetical) social contract between *human beings* as rational agents. Such an idea has been widely discussed elsewhere and I will not dwell on it further here.³ My interest here is in the idea of a *special* contract relationship between human beings and animals (specifically, domesticated animals); that is, a contract made *between* human beings and animals, rather than a contract made between human beings which takes animals into account.

In this 'special' sense, the expression 'the animal contract' has recently been used in both popular and academic contexts. Most prominently, Desmond Morris discusses it in *The Animal Contract* (1990); the biologist Stephen Budiansky develops it in some detail in *The Covenant of the Wild* (1994); whilst the environmental ethicist J. Baird Callicott suggests the idea in his 1988 article 'Animal Liberation and Environmental Ethics – Back Together Again' (*Between the Species* 5 1988; reprinted 1992). For the sake of clarity, I will begin by asking what these authors have understood by 'the animal contract', since this is by no means self-evident.

Morris, a popular writer on human/animal relationships, uses the expression rather loosely in a variety of different contexts and senses. He suggests that the relationship between humans and pets, and that between humans and farm animals, for instance, may be described in contractual terms, but that these contracts are rather different ones. Thus, Morris envisages a *multiplicity* of different animal contracts with different domesticated animals. However, he never makes explicit exactly what the nature of such animal contracts might be, how they might come about or what obligations they may entail, although he

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does indicate that such contracts can, dishonourably, be broken by human beings (Morris 1988: 111,169).

Budiansky and Callicott, on the other hand, have much more precise ideas of the animal contract which relate to the process of domestication and our current relationship with domesticated animals. Since most interpretations of the animal contract specifically focus on domestication it is on this idea of a domesticated animal/human contract that I will be working. I will use the definition of a domesticated animal adopted by Clutton-Brock (1989): 'an animal bred in captivity, for purposes of subsistence or profit, in a human community that maintains complete mastery over its breeding, organisation of territory and food supply'.⁴

Budiansky and Callicott provide interesting, if divergent, frameworks of interpretation of such a domesticated animal/human contract. Budiansky argues that the 'animal contract' was created by the historical process of domestication. This process, he argues, came about by the voluntary association of wild animals with human beings: that is, it was a 'product of nature' not a 'crime against nature'. Animals chose to associate with humans and thereby to drop some of their defence mechanisms because there were benefits of protection or food to be gained from such an association. Animals were, therefore, at the very least collaborators in the process of domestication; and, indeed, given the extinction rates of wild species, Budiansky argues that domestication has also proved an *evolutionarily successful strategy*. This 'animal contract' of domestication, Budiansky argues, can be broken by humans if domesticated animals are worse off, in terms of shelter or protection, than they would have been in the wild.⁵ Provided the contract is kept, it is, according to Budiansky, one from which animals gain.

Callicott (1992, 256) tentatively suggests that human relationships with domesticated animals might be characterised as 'a kind of evolved and unspoken social contract', based on the social relationships between humans and other animals in mixed animal-human communities.⁶ Such a contract, he argues, should not be viewed as morally reprehensible: to do so 'is to condemn the very being of these creatures' (domesticated animals). As a contract premised on relationship, Callicott argues that it can be broken if its relational basis is undermined by the depersonalisation and mechanisation of domesticated animals. He also emphasises the 'specialness' of the relationship between human beings and domesticated animals: it creates completely different obligations from those owed to wild animals. Wild animals are part of the biotic community, not the mixed animal-human community; they should, rather, be 'respected and left alone'.

Clearly, there are some differences in Budiansky's and Callicott's portrayals of a human/domesticated animal contract, particularly in understanding what constitutes *breaking* the contract. However, both writers agree that it is *appropriate* to talk of humans having a contractual relationship with domesticated animals, and further that it is a contract which humans can break. Callicott

explicitly likens this idea of an animal contract to a social contract; and, superficially at least there are a number of resemblances, in both Budiansky's and Callicott's formulations, to some portrayals of the social contract in political philosophy. It would, therefore, be helpful to look a little more closely at the social contract tradition, to see whether it might provide an appropriate framework within which to explore the idea of an animal contract.

THE SOCIAL CONTRACT TRADITION

The idea of social contract has been traced back thousands of years (Gough 1937; Lessnoff 1990) and advocates of social contract theories have included such renowned philosophers as Hobbes, Rousseau, Locke, Kant and more recently Rawls and Gauthier. The multiplicity of social contract theories has been categorised and differentiated by commentators in a variety of ways.⁷ However, it is possible to identify some characteristics which are (arguably) virtually universal to all understandings of the social contract. (For further discussion of such characteristics see also Narveson 1983: 56; Forsyth 1994: 37.)

These key characteristics can be summarised as follows:

- The social contract signifies a transition from one state to another (usually from a state of 'nature' to a state of 'culture/society').
- The social contract implies limitations on some freedoms (usually the loss of some freedoms in order to gain some forms of protection).
- All parties to the contract are free and equal individuals who understand and consent to it.
- The contract brings gains to all contractors (win-win).

These key characteristics are, obviously, manifested in different ways in different versions of social contract theory. A closer look at one classic version, the (civil) social contract theory of Hobbes, illustrates how this might work out in practice, and provides a kind of framework within which to examine the idea of the domesticated animal contract.

In his book *Leviathan*, Hobbes presents the making of a social contract as the transition between two states: the state of nature, and the state of civil society. In the state of nature, he argues, human beings act as selfish individuals. They have a 'perpetual and restless desire of power after power' (*Leviathan* 1, section 11). The main aim of such selfish individuals is the acquisition of scarce resources, their own safety and their own reputation (*Leviathan* 1, 13). Their greatest fear is of death. This desire for power over resources, self-security and reputation means that they are in a state of constant war with one another, where they can trust no-one and are threatened from all sides. Hence Hobbes' famous saying that the lives of humans in the state of nature is 'solitary, poor, nasty, brutish and short' (*Leviathan* 1, 13).

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This state of nature thus cannot give humans the security which they crave. For this reason, Hobbes argues that rational humans came together, as free and equal individuals, to make a *social contract*. This was a voluntary act, by individuals acting in their own self interest, to secure their own personal protection from death by the hands of others. It involved the establishment of an absolute authority, a sovereign, to enforce peace and to protect the lives of all contracting individuals from attack by others. The sovereign is a coercive power, forcing obedience if necessary by the sword – as Hobbes remarks: ‘Covenants without the sword are but words’ (*Leviathan* 1, 15). By establishing such an authority, contracting individuals give up certain liberties – in particular the natural right to self-protection, and the freedom to kill all others perceived to be a threat to resources, life or reputation. They subject themselves to the absolute power of the sovereign who will act decisively to protect lives in the civil society. The benefits of this, Hobbes maintains, outweigh the costs: ‘And although of so unlimited a power men may fancy many evil consequences, yet the consequences of the want of it, which is perpetual war of every man against his neighbour, is much worse’ (*Leviathan* 2, 10). The only circumstances in which an individual can justify rebellion against the sovereign is when obedience threatens life – that is, when the sovereign cannot provide the protection for which the contract was made. ‘If a sovereign command a man ...to kill, wound or maim himself, or not to resist those who assault him...yet hath that man the liberty to disobey....The subjection of subjects to the sovereign is understood to last as long as, and no longer, than the power lasteth by which he is able to protect them’ (*Leviathan* 2, 21).

This admittedly brief summary of Hobbes’ social contract illustrates how the four key characteristics outlined above fit into one particular theory:

- Hobbes’ social contract signifies a transition from one state to another (from a state of nature to a state of civil society).
- Hobbes’ social contract entails limitations on some liberties (in particular that of independent self-defence, but in general the agreement to obey in order to gain protection).
- All parties to the Hobbes’ contract are free and equal individuals who understand and consent to it.
- Hobbes’ contract brings gains to all contractors (win-win); it is a decision made in rational self-interest to secure protection for individuals’ lives and to act as the basis for further contracts (e.g. over property).

There are, of course, many problems with Hobbes’ theory (such as its relationship to empirical social history, to which I will return shortly, and its understanding of human nature). It is described here merely as an example of what social contract theories look like, and to provide a backdrop from which to go on to consider the animal contract in the context of social contract theory.

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The next step in exploring the nature of the domesticated animal contract in relation to social contract theory is to consider whether the domesticated animal contract has been – or can be – laid out in ways which exhibit the four key characteristics identified above. If so, an argument that the relationship between human beings and domesticated animals could be described in the language of social contract theory would be considerably strengthened.

1. Transitional state

If we take the animal contract to refer to a contract between domesticated animals and humans, the idea of the contract as marking a change of state, the transition from *nature* to *culture* or *society*, can easily be accommodated. Prior to domestication, it might be said, animals were in a state of nature. Indeed, this might be characterised in a way not dissimilar to Hobbes. The ‘natural’ or ‘wild’ state could be seen as a dangerous one, where animals must obtain vital scarce resources and protect their lives against a range of threats. In this respect, life in the wild is sometimes characterised as ‘nasty, brutish and short’. Thus the animal contract could be presented as a transition for animals out of wild nature and into human society, where protection from predators is provided and – going beyond the terms of the Hobbesian contract – resources are made available for sustenance. It is worth noting here, however, that acceptance of this idea rests on a number of presuppositions about what life is like in ‘the wild’ – presuppositions with which Ingold, for example, might take issue (Ingold 1994). In particular, it seems to imply that animals in the ‘wild’ have no culture (an idea contested by, for instance, Clutton-Brock 1994:29). However, in that there is clearly a transition of some kind involved in domestication – whether one sees this as a transition from ‘wild nature’ to ‘culture’ or from a culture independent of human beings to a culture dominated by human beings – this key characteristic of the social contract is present in the putative animal contract in some form. (Indeed, in that there can be no factual dispute that such a transition did happen historically, the animal contract seems to be on firmer ground than some inaccurate historical versions of the social contract.) So far, then, the animal contract can be presented as echoing the basic form of the social contract.

2. Limitations of liberties

Again, it is not difficult to see how the animal contract might echo the social contract. All instances of domestication involve a limitation of some kind. The limitation is not dissimilar to that characterised by Hobbes. Budiansky (1992, 16) comments ‘The defence mechanisms that allow a species to survive on its own, but likewise make it fearful of associating with others, are dropped’ –

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resembling Hobbes' description of the social contract as a transference of the right to self defence to other powers. But domestication also involves the loss of other liberties, normally including physical liberty. Indeed, it might also be argued that the breeding of domesticated animals to reflect certain human preferences may mean that they lose not only their physical liberty, but also their ability to survive in the wild, due to both cultural and physiological changes. This kind of change – in culture and nature as well as in circumstances – adds a new kind of element to social contract theory. No existing examples of social contract theory – as far as I am aware – posit that the contract entails a change as extreme as this (although social constructionists might argue that a social contract would, by changing societies and cultures, change human 'natures'). But this does not, I think, at this point anyway, undermine the idea that the animal contract might be like a social contract.

3. Made by free and equal individuals, who understand and consent to the contract

This characteristic of the animal contract is, however, multiply problematic. Questions such as: can animals be thought to understand such a contract? Can they consent to it (unless they understand it?) Can they be considered to be equal (in this sense) with human beings, the co-contractors? Bearing these difficulties in mind, could they be described as free?

It is obvious why these issues are problematic. Whatever one may think of the intellectual capacities of animals, no-one would argue that they could understand the kind of contract which domestication might constitute, and consent to it. Furthermore, unlike other social contract theories, the balance of power amongst the contractors is uneven. Although (in a manner not dissimilar to the Hobbesian contract) domestication results in the passing of power to one who becomes absolutely powerful, unlike the Hobbesian contract this is not built on the foundation of *initial* equality. So the animal contract seems to fail here on grounds of *equality*, and on grounds of *understanding* and *consent*.

Some kind of response can, however, be made to at least one element of these problems, by drawing on some particular forms of social contract theory: those which rest on *tacit consent*, and those which develop *hypothetical contracts*. Explaining how this might be relevant to the idea of consent in the animal contract requires a brief digression.

Hampton (1986: 266), drawing on the work of Gauthier, identifies four different ways of interpreting social contract theories as a justification for the existence of the state, all of which turn on the way in which consent is to be understood. The first maintains that social contract theories offer historical accounts of how governments were formed – by the contractual agreement of a particular group of individuals at a specific time in history. But, as Hampton points out, such historical interpretations are undermined by a lack of any historical evidence to support them; and even if such evidence were forthcoming,

it would not explain why such historical agreements should bind *us*. A second interpretation of contract theories maintain that they are dependent on an explicit contractual promise to be made by each person in each generation. But as Hampton also argues – in practice, who can ever remember having made such a promise?

The idea of tacit consent – that social contracts may be based not on explicit agreement but rather on tacit, unspoken agreement – should, then, be viewed in the light of these difficulties. Hampton summarises a contract based on tacit consent as one where ‘if one takes benefits from one’s political society, the assumption is that one has tacitly consented to it’ (Hampton 1986: 267). Locke, for instance maintains that the social contract evolved as a ‘a series of events each of which can be read in terms of tacit consent or agreement on the part of those involved’ (Waldron 1994: 66). Tacit consent is a highly controversial idea, even amongst social contract theorists (see for instance Nozick 1974: 287; Narveson 1983: 50, Hampton 1986: 267) but it does, at least, partly resolve the problems created by there being no evidence of explicit contracts ever having been agreed.

Finally, Hampton identifies the *hypothetical* interpretation of social contract theory. This justifies the existence of the state ‘in terms of what rational people, in a state of nature, *would* agree to’ – that is, not necessarily something which they *have* agreed to or *do* agree to, whether explicitly or tacitly. This, importantly, severs the link between historical description and social contract theory, making social contract into a hypothetical construct rather than a historic or present actuality.

Returning to the domesticated animal contract, then, these interpretations yield some interesting possibilities for understanding consent. Clearly, the first two interpretations, relying as they do on past or present *explicit* consent cannot apply to the animal contract. But what about the idea of tacit consent: that, in Locke’s terms, the animal contract involved a series of events which can be read in terms of tacit consent or agreement? This would certainly seem an appropriate way of interpreting Budiansky’s account, which is tightly locked into a historical framework where ‘animals chose us as much as we chose them’ (Budiansky 1992: 24). Animals chose to associate with human beings, primarily as scavengers, discarding some of their defensive mechanisms, from which association domestication began.

Yet, as with many social contract theories, this account, dependent as it is on a specific reading of history, is contested and tendentious. Accounts of how domestication came about are many and varied, some focusing on human responses to environmental change; some on protecting crops; some on the production of special foodstuffs for feasts; some on the human penchant for taming animals as pets.⁸ Budiansky’s account – although currently popular – is one among many; and indeed it is unlikely that the nature of the evidence could ever be conclusive. The idea of tacit consent based on historical collaboration by animals in domestication in Budiansky’s sense would be a vulnerable hook on which to hang an animal contract.

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Is the idea of the animal contract as a hypothetical contract, divorced from any historical context more secure? Budiansky occasionally hints at this; and the philosopher Narveson explicitly proposes that animals might give hypothetical consent to living domesticated lives. On this basis, one might argue for hypothetical consent on the grounds that were animals able to understand what contract was on offer, they would agree to it. Thus a hypothetical contract requires viewing the relationship between human beings and domesticated animals as an agreement of mutual benefit, since animals could not be supposed, however hypothetically, to agree to a contract in which they would lose out.

The idea of mutual benefit brings us to the fourth key characteristic of the social contract identified above: it should provide gains to all contractors; it is a win/win deal. This characteristic is closely bound up with that of consent, since in social contract theory consent is dependent on there being gains which outweigh the losses of freedoms resulting from the contract. Two questions are raised here. First: is this idea of hypothetical consent in the animal contract comparable with ideas of hypothetical consent manifested in some forms of the social contract? And secondly: is the 'animal contract' of domestication the kind of win/win agreement to which animals would consent were they been able to make such a decision?

I will deal with the second question first.

4. Can domestication be presented as a win/win contract?

I will begin here by making an assumption: that the domestication of animals has been a gain to human beings – although this is actually something which Budiansky (1992, 41) doubts. Thus the question which remains is: Has domestication been of benefit to animals? Are animals better off domesticated than in the wild? Such questions have been widely debated. Zeuner (1963: 37) and Harris (1989) describe domestication as symbiotic – Zeuner argues that both partners 'gain without suffering'. Clutton-Brock (1994: 27) disagrees, arguing that only humans benefit from the association. In this context, some refinement of the idea of 'animal contract' is required.

First, are individual animals being thought of as the 'gainers' here, or whole species? Budiansky certainly argues that domesticated animal species gain from domestication; whilst membership of domesticated species is growing, membership of most wild species is declining. This is, for Budiansky, reason enough to argue that from a 'species perspective', domestication has been a gain. Yet this is obviously contentious. It is not at all clear that a species is the kind of thing which can be described as better or worse off at all (see, for instance the discussion in Norton 1987: 171). Even if we could make sense of this, is it obvious that domestication, albeit accompanied by high species membership, would be a better state than the wild? (Would we think that the human species would be in a 'better state' if the Earth was invaded by beings from outer space who bred huge numbers of humans to accentuate their fat, their docility and the

size of babies they produced?) Obviously, a number of difficult issues are raised here. But we should be able to side-step them. At the heart of the social contract tradition is the idea that *individuals* (not groups) make contracts for their own gain. So it seems reasonable here to focus only on whether individual animals, not species are better off through domestication.⁹

Secondly, is 'domesticated animals' too broad a class to be considered here? Clearly, some features of domestication are common to virtually all domesticated animals – neotony, and breeding by humans to achieve other particularly desired characteristics such as long flanks. But of course domesticated animals are kept and bred for different purposes, which may suggest differences in the nature of the contract. One group's putative 'contract' (that of farmed animals) could be characterised as forgoing physical liberty (to a varied extent), defence-mechanisms and wild characteristics for temporary protection and food before slaughter. Another group's contract (companion animals) could be seen as forgoing physical liberty (to a varied extent) and wild characteristics for lifelong protection and food. These look like rather different contracts (and in this respect at least, Morris's multi-contract portrayal seems reasonable). In the light of this, how might one weigh up whether individual animals might 'gain' from the contract?

Answers to this will depend on a series of value-judgements about the relative desirability of different life-qualities. For all domesticated animals, one would have to weigh the loss of independence and freedom against the gain in security and protection; and different philosophical approaches would value such losses and gains in different ways. More specifically, whilst it is not so difficult to maintain that the deal of a companion animal is a win/win one, what about that of a domestic food animal? Is the life of an animal bred for slaughter to be preferred to the unpredictable, and possibly miserable and brief life of a wild animal? After all, one might describe the life of an animal on a factory farm in Hobbes' terms as 'poor, nasty, brutish and short' (if not solitary!) just as one might thus describe a life in the wild.

At this level of discussion, conclusions about whether animals, or some kinds of animals 'win' or 'lose' from domestication will depend on the value – positions of those taking part in the discussion. Singer, for instance, argues that the life of freedom outweighs the protection and provision of domestication, for farm animal at least (Singer 1983: 232). Budiansky (1992, 144) argues the opposite: 'freedom from predators, from starvation and from parasites are not advantages to be dismissed casually'.

Whatever one might decide about such arguments (and I am not going to debate them further here) what is significant is the deeper level of abstraction required by such arguments than is required for discussion of a hypothetical social contract. What is meant by this? The domesticated animal contract, however hypothetical, relates to an existing state of affairs i.e., the existing relationships between human beings and domesticated animals. This is also true of some forms of the hypothetical social contract – those which act as a

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legitimation for existing forms of government (although presumably not those, such as Rawls', which relate to not [yet] extant ideal states). However, the hypothetical domesticated animal contract refers to an *irreversible* state of affairs in a way very different to the hypothetical social contract. In this sense, talking about hypothetical choices is a further step into abstraction. Most domesticated animals (with the exception of those who can survive as feral animals) cannot live in the wild – not just due to external constraints but due to changes in their own nature and culture. In this sense, domesticated life is not so much a 'win' or a 'gain', but the only sort of life which is possible (see Narveson 1983: 49-50). What is so striking about the condition of domestication is the irrevocable *loss of independence* which results from it. Once the process of domestication is under way, future generations of animals have no alternative ways of living. Even if Budiansky is right, and historically in some sense animals 'chose' or gave 'tacit consent' to domestication, this is no longer a possible 'choice' for current generations of animals. The nature of the 'animal contract' is such that once in, it is impossible to get out. This makes a mockery of the idea of either tacit or hypothetical consent, since if there are no alternatives consent is meaningless. It would be rather like maintaining that by being born I have given tacit or hypothetical consent to being a human being. This fundamental foreclosure of alternatives associated with domestication differentiates the animal contract (whether it is viewed as a single contract or multiple contracts, and whether or not it is tied to a historical account involving animal collaboration), as far as I am aware, from any other version of social contract theory. For instance, the Hobbesian contract allowed for rejection of the contract and a return to a 'state of nature' where the enforcing authority threatens one's life or can no longer offer protection. Such a rejection is not of course possible within the contract of domestication, however humans might threaten domesticated animals. And whilst not all social contract theorists agree with Hobbes that there are occasions when one *ought to* withdraw from the social contract (Kant for example, thinks that disenchantment with the social contract should only be expressed in writing!) all are premised on the *possible* freedom of individuals to do so. The final, definitive nature of the animal contract is distinctive in removing the possibility of all alternatives.

To summarise so far: I have suggested that the domesticated animal contract resembles the social contract in that it signifies a transition from 'nature' to 'culture' and the loss of certain freedoms to gain certain benefits. However, I raised questions about how far it could be regarded as a contract made between free and equal consenting individuals and attempted to resolve some of these questions by considering hypothetical contracts, tacit consent, and whether animals 'gain' from domestication. My conclusions indicate that key aspects of the social contract and the domesticated animal contract are fundamentally different: the animal contract could not be said to be created by equal individuals; it is not clearly advantageous to all animals and it is dependent either on the controversial idea of tacit consent or on an extremely abstract kind of hypotheti-

cal contract, both of which are peculiar in that they foreclose all possible alternative options. In the light of all these factors, it is difficult to accept that the domesticated animal contract, despite its apparent parallels, does in fundamental ways reflect the form of the social contract.

CONCLUSIONS: THE DOMESTICATED ANIMAL CONTRACT AND DOMINATION

I have already indicated the importance of free consent in contract theory. Consent must be fundamental to what we understand by the term *contract*: for instance, dictionary definitions define a contract as an *agreement*, and an agreement surely implies consent. But free consent is at the very heart of the problem with the idea of the animal contract; animals cannot give explicit consent and the idea of tacit or hypothetical consent to domestication is fraught with irresolvable difficulty.

In the light of this the idea of an 'animal contract' between human beings and domesticated animals can be seen as problematic in another sense. The language of animal contract – implying, as it does, some kind of consent or agreement – serves to legitimate the power which humans have acquired over domesticated animals: power not just over their conditions of existence, but over their very natures – and power which, with recent developments in biotechnology, is becoming increasingly absolute. As Ingold (1994: 13) argues, this kind of involuntary and non-terminable relationship is one premised on *domination*. In this sense, the putative animal contract is not only *not* comparable in key respects with its closest parallel, the social contract, but it might be argued that it also offers us the misleading, but comfortable chimera of free consent by domesticated animals.

I am not, of course, the first to comment on the way in which contract theory can use the language of free agreement to justify relationships of domination.¹⁰ This idea is central to Pateman's important book *The Sexual Contract*:

The genius of contract theorists has been to present both the original and actual contracts as exemplifying and securing original freedom. On the contrary, in contract theory universal freedom is always an hypothesis, a story, a political fiction. Contract always generates political right in the form of relations of domination and subordination. (1988:8)

If Pateman's case is accepted, the domesticated animal contract is typical of social contracts more generally in using the language of free consent to justify relations of domination.¹¹

There are, then, several reasons why we should think twice before adopting the idea of a domesticated animal contract. First, the domesticated animal contract does not exhibit key characteristics of contract theory: it is not made by

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free and equal individuals who understand the nature of the agreement; it is dependent on controversial ideas of tacit or hypothetical consent and it is irrevocable. This means that the use of contract language to describe the relationships between human beings and domesticated animals is inappropriate. Second, the use of inappropriate contract language, in implying free consent, legitimates a relationship of increasing domination and control which now includes not only the labour and lives of domesticated animals but also their genetic fabric. Third, it can be argued that social contract theory *in general* uses the fiction of free consent to justify relationships of dominance and subordination, and it is therefore in general terms, as well as in this specific instance, problematic.

I am not suggesting here that there is something wrong with domestication and with the relationships of dominance and subordination which it implies (although no doubt good arguments could be made to support such a position). It may, indeed, be reasonable to maintain -although I will not be doing so - that the gains from domestication to humans (and perhaps even to animals) outweigh the costs to domesticated animals from the process. My only concern in this paper has been to argue that the idea of a contract between human beings and domesticated animals is misbegotten and should be abandoned.

NOTES

¹ For convenience and to avoid clumsiness I will be using the term 'animals' as shorthand for 'nonhuman animals'. I intend the term 'animals' to refer primarily to mammals.

² See Rawls, 1972.

³ This is discussed in detail in Singer 1988, 224. See also Elliott 1984, Fuchs 1981, Manning 1981, Prichard and Robinson 1981, and VanDe Veer 1979; partly summarised in a discussion in Thero 1995.

⁴ This is not, however, an uncontroversial definition, as what constitutes domestication is still widely debated. Budiansky (1994, 36) for instance maintains that some domesticated animals do not have their breeding controlled by humans. See also Ingold (1994) and Clutton-Brock (1989).

⁵ The environmental ethicist Holmes Rolston (1988, 61) puts forward a similar principle when he maintains that 'The strong ethical rule is this: Do not cause inordinate suffering beyond those orders of nature from which the animals were taken'.

⁶ Callicott's discussion of 'mixed communities' here is derived from Midgley (1983).

⁷ See for instance Hampton 1986, Forsyth 1994, Boucher and Kelly 1994.

⁸ See for instance Cohen 1977, Clutton-Brock 1994, Bökönyi 1989, Hayden 1992.

⁹ This individualistic basis of social contract theory is one of Pateman's (1988) central objections to it.

¹⁰ I am grateful to Michael Hammond for pointing out parallels between the animal contract and Pateman's work on the sexual contract.

¹¹ Much more could be said about the parallels between Pateman's discussion of the sexual contract and my discussion of the animal contract, which I do not have space to explore

fully here. Pateman argues that the classic social contract theorists premised their *social* contract on a *sexual* contract. The social contract, Pateman argues, is envisaged by contract theorists as an agreement between 'rational' men to form civil society (excluding women). This is premised, she maintains, on a sexual contract, understood as an agreement between men and women where women agree to offer men obedience, domestic labour and the use of their bodies in exchange for food, shelter and protection. This sexual contract clearly resembles the animal contract as I have described it – in particular in the offering of labour and the use of animal bodies in exchange for food, shelter and protection. (However, it is worth noting that there are also some substantial differences: domesticated animals are not [usually!] required to provide sexual services, whilst the sexual contract does not [usually?] entail the right to take life at the convenience of the other contracting party). Pateman also expresses doubts about what might be meant by free consent in the sexual contract which have some points of contact with my doubts above about tacit or hypothetical consent.

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Dr. Roderick Lawrence, C.U.E.H., UNI MAIL, 102 Boulevard Carl Vogt, 1211 Geneva 4, Switzerland. Fax: +41-22-705 81 73. Email: lawrence@uni2a.unige.ch

Dr. Clive L. Spash, Dept of Land Economy, University of Cambridge, 19 Silver Street, Cambridge CB3 9EP, UK. Fax: +44 1223 337130. Email: cls27@cam.ac.uk