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**Animal Rights and Moral Vegetarianism - The Moral Status of
Nonhuman Animals through a Social Contract Approach**

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“All animals are equal, but some animals are more equal than others.”
(George Orwell)

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1 Introduction

There has been a long debate on nonhuman animals regarding the acceptance of their moral status and its implications in the realm of public ethics. After all, recognising that nonhuman animals have moral standing¹ raises the question of whether they should have rights, which implies that humans may have duties towards them.

The notion of animal rights is defended by many scholars, from different areas of study and distinct theoretical approaches. There are many researchers who work with issues related to animal welfare, in several distinctive subject matters. Likewise, many substantial contributions have been developed for the advancement of the animal ethics field.

This thesis focuses on the specific issue of the moral status of nonhuman animals and its relation to animal rights and moral vegetarianism arguments. Its main aim is to investigate the possibility of legitimising a normative theory concerning the moral standing of nonhuman animals in order to promote public recognition of and deliberation on animals' rights in the context of liberal democracies. The intention is to argue whether there can be convincing theoretical arguments to use in the defence and justification of the moral standing of nonhuman animals that could grant them legal recognition.

Nonetheless, despite the multiple debates concerning animal rights, the thesis centres its investigation on a social contract perspective, more specifically, on two different approaches within contemporary social contract theory: contractarianism and contractualism. Therefore, as a moral-political issue, the thesis analyses the moral status of nonhuman animals in light of these two particular types of social contract theories to address the main research question: "Is it possible to justify animal rights within a social contract theory?"

In conformity with a social contract approach, individuals who accept the conditions of the contract have their rights created and acknowledged, in accordance with its norms, thus being protected by the rules of justice as specified in the contract by rational agents. With respect to the rights of animals, the main question is whether a social contract approach can be extended to apply to nonhuman animals. If it is possible, that is, if the moral standing of nonhuman animals can be validated by a social contract theory in order to justify animal rights, it means that humans should recognise this moral claim. As a consequence, they

¹ "Moral standing" (or "moral status") is something that possesses characteristics that count for our moral reasoning. "Standing" refers to a status, class, or degree of moral importance. In order for a being to have some moral standing, he or she must possess at least some morally significant property. In a strong sense, "standing" can be the equivalent of having rights (Bekoff and Meaney 1998).

should be entitled to moral rights, which raise the possibility of allocating them under the animal rights theory, granting them also legal recognition.

Apart from the discussion on the moral status of nonhuman animals and its political implications, regarding moral vegetarianism, the main focus of analysis within the thesis is the issue of meat consumption, considering the effects of this practice, which involves the suffering and killing of nonhuman animals. Therefore, according to the previous reasoning, if the thesis is proved sound, it could be assumed that: *(i)* to harm or to kill nonhuman animals is wrong; and *(ii)* accordingly, entering the moral vegetarianism debate, to consume meat is wrong.

The thesis is structured in the following way. Firstly, it presents a general view of both accounts in order to explain the main differences between contractarianism and contractualism. Secondly, the specific debate regarding animal rights is introduced, aiming to illustrate some of the main arguments, for and against the moral standing of nonhuman animals, within these two theoretical perspectives. Finally, a critical review of both theories is used to identify if it is possible to accommodate the ideas of animal rights and the moral defence of vegetarianism by adopting either of these theories.

In summary, the objective is to engage in a critical analysis on the whole argumentation presented, aiming to enhance the significance of the debate proposed, which transcends the realm of theoretical moral considerations in terms of instigating actual responses to the animals' issue. In other words, in considering animals as a moral-political concern, although the thesis aims to promote a theoretical debate over an ideal animal ethics, it also aims to instigate practical insights, building the debate towards a praxis-based approach.

2 Contemporary Approaches to the Social Contract Theory

Social Contract Theory has many different approaches. Since the Enlightenment period, many social contract philosophers, such as Jean-Jacques Rousseau, Thomas Hobbes, and John Locke – amongst the most well known –, have tried to develop their theories in order to justify political authority. Their central idea, the legitimation of political obligation, relied on the notion of consent and rational agreement. However, the problem of political obligation continues to be a puzzle within contemporary political philosophy.

Although both contemporary types of social contract theory chosen for this thesis research – namely, contractualism and contractarianism – are grounded on hypothetical² views, having many characteristics in common, they also have some pivotal distinctions. For example, regarding the representation of the agents/contractors, their motivations, and the circumstances in which they are placed within the contract procedure. As specified by Freeman (1990), it is difficult to make any generalisations over the social contract tradition due to the large diversity of assumptions that rely on the idea of agreement. However, it is essential to present the main features distinguishing these two approaches in order to demonstrate some of the leading disputes amongst contemporary social contract theories.

2.1 Contractualism

Contractualism, which is a Kantian approach, has its roots in Rousseau's political philosophy because Kant's ideas were significantly influenced by Rousseau. Within a contractual framework, the agents are perceived as “free and equal moral persons” who should be treated respectfully and impartially. The motivations behind the agents' decisions can be associated with Immanuel Kant's concept of Categorical Imperative, which determines that individuals' actions should be based on principles that follow the idea of “universal law”. In other words, individuals' acts should conform to the “general will” – which is a central concept within Rousseau's political thought (Verschoor 2012).

The most prominent contemporary theorists within contractualism are Thomas M. Scanlon, particularly known for his work “What We Owe to Each Other” (Scanlon 1998), and John Rawls, mostly known for his book “A Theory of Justice” (Rawls 1999). There are some

² The use of the term “hypothetical” reflects the interpretation of Cynthia A. Stark (2000), in which “hypothetical consent” aims to justify political principles in an idealised choice situation, where idealised agents would agree upon rules in an actual, non-idealised society.

significant differences between their theoretical approaches but, before introducing them, it is important to distinguish these two contractualist theories from another type of moral theory, which is one of the most influential in the history of philosophy: utilitarianism.

Utilitarianism is a form of consequentialism; it is an outcome-oriented perspective. This means that the agent ought to justify his actions by their outcomes. Denoting concern with individuals' well-being, the theory appeals to the idea of *maximum utility*³, i.e. to maximise the overall good or happiness of individuals. However, for present purposes, what matters in utilitarianism is that, as a maximising type of theory, the agent seeks to maximise the utility of his actions independently of the means for achieving it, and this procedure risks reducing individuals to mere means for the greater collective good. In other words, “the ends justify the means”, which is indeed a very different approach from Kantian moral theories, which are of a deontological nature. In such theories, “the concept of right is prior to that of the good” (Rawls 1999).

Within Scanlon's (1982) contractualism, the moral value is centred on reasons, and the scope of its morality – contrarily to the utilitarian view – is not applied to every area (it does not cover the whole of morality) but only to what we owe to other persons, or to “what we owe to each other”. Although the well-being of an individual is considered morally significant, it is not because of its inherent value but because an individual would reasonably reject any argument that gives his well-being no value. As Scanlon (1982) explains, contractualist morality is built on the assumption of what it is reasonable to accept, or reasonable to reject.

Scanlon illustrates his contractualist account as follows: “An act is wrong if its performance under the circumstances would be disallowed by any system of rules for the general regulation of behaviour which no one could reasonably reject as a basis for informed, unforced general agreement” (Scanlon 1982, 110). The motivational force driving the agreement is based on a criterion of *reasonableness*, and Scanlon's notion of morality follows this basic condition to explain the justification problem within moral theory.

According to Scanlon, the motivation behind the contract procedure is the aspiration of being able to *justify* one's actions to others based on arguments that they could not reasonably reject. Within this context, Scanlon mentions the connection with the principle of the “Golden Rule” through the idea of “changing places”, and explains that justification must

³ Jeremy Bentham, founder of the classical utilitarianism, defines utility as: “that property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness [...] or [...] to prevent the happening of mischief, pain, evil, or unhappiness to the party whose interest is considered” (Bentham [1789] 1999).

be acknowledged only if you could accept it in the same way if you were in another person's position. In short, it denotes a relationship of "mutual respect", within the justification process. However, differently from Rawls, Scanlon advocates an *informed* general agreement, which means that agents must be aware of their identities and the circumstances in which they are placed within the contract procedure. This particular feature will be elucidated in the next paragraph, where Rawls's contract theory is discussed.

Rawls's contractualist account is more political than Scanlon's, as it aims to design a general institutional framework for the constitution of liberal democracies. The Rawlsian social contract is represented by individuals in an "original position", which Rawls defines as a hypothetical initial situation in which rational equal beings would settle on an agreement about principles defining an ideal conception of justice as fairness for the basic structure of society. Within this initial status quo, no one would possess any kind of information over who he or she is. That is, apart from general facts about human society (such as psychology, economy, or sociology), no agent should know his particular qualities or his place in society, such as class position, sex, race, level of intelligence, personal and social capabilities, health condition, etc. Within a Rawlsian social contract theory, the principles are supposed to be chosen behind a "veil of ignorance", thus through an *uninformed* general agreement, which, according to Rawls, would ensure that no person be advantaged or disadvantaged by its outcome (Rawls 1999). In short, whereas Rawls's theory of justice argues for an impartial *non-historical* perspective, that is, a hypothetical initial situation wherein rational beings would make their decisions behind a "veil of ignorance", Scanlon defends the opposite by advocating for a *historical* one, where there is no "veil of ignorance" and the agents are allowed to have all the information about their status before making any agreement.

Apart from this particular difference – i.e. between an *informed* and an *uninformed* requirement over the agents' identities and circumstances within the agreement procedure –, there is also another significant distinction between these two forms of contractualism. Whereas Scanlon argues for principles that could not reasonably be *rejected*, Rawls appeals to the idea of principles that everyone would *agree* to: principles that "everyone would recognise as fair from a perspective that all would accept as reasonable" (Rawls 1999, 419).

These principles, which Rawls states that rational human beings would agree to, given the fairness of the initial situation provided by the "veil of ignorance", are the following: (i) "each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all"; and (ii) "social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least

advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity” (Rawls 1999, 266).

Having said this, it is important to emphasise that Rawls’s first principle is lexically prior to the second one, which indicates a *priority* on the fulfilment of *liberty*. Thus, equal basic rights and liberties are considered a primary feature for the constitution of the basic structure of society. The same applies with respect to the second principle, in which “a” is given priority over “b”. Thus, justice is given priority over efficiency and welfare (Rawls 1999).

2.2 Contractarianism

Contractarianism has its roots in Hobbes and is based on the idea of rational individual choice and mutual advantage. The agreement, differently from contractualism, is “morally unconstrained” (Morris 1998). This means that there are no moral beliefs or judgments, no pre-moral conceptions determined by the law of nature. Morality is a human construct based on a rational mutually beneficial agreement amongst individuals. The most famous contemporary contractarians are James M. Buchanan, famous for his theory of public choice, which is in the book “The Calculus of Consent”⁴, and David Gauthier, best known for his book “Morals by Agreement” (Gauthier 1986).

Within a contractarian theory, interpersonal relations are motivated by self-interest or individuals’ desires, thus the agents’ engagement in the hypothetical contract is dependent on a criterion of mutual advantage⁵. As stated by Verschoor (2012, 112), based on the analysis of Hobbes’s, Buchanan’s, and Gauthier’s works, these authors share a basic contractarian intuition: the view that “political society is understood as a cooperative venture for mutual advantage”.

Therefore, a first requirement for individuals to consider and rationally agree with the norms specified in the contract is that the circumstances within the procedure are perceived as beneficial to all the parties involved (Buchanan 1975; Gauthier 1986). Social norms, practices, and conditions of interaction embodied in the contract must be relevant and suitable to the agents’ interests in order for them to be able and willing to cooperate. According to

⁴ Co-authored by Buchanan with Gordon Tullock (Buchanan and Tullock 1962).

⁵ The contractarian approach is established on economic grounds, being correlated with the free market economic view manifested in Adam Smith’s concept of “invisible hand” (Smith 1759), which can also be illustrated by his famous quote: “It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest” (Smith [1776] 2007, 9-10).

Morris (1991; 1998), there must be practical, logical reasons in order for them to recognise the sense of committing and complying with them.

Buchanan (1975) declares himself as “an individualist, a constitutionalist, a contractarian, and a democrat” – which, to him, are essentially the same thing. He argues that economic theory is the best explanation for human *moral* behaviour⁶ – although not all human behaviour, as he himself acknowledges. Interpersonal relations, he states, can be compared to economic transactions, in which collective action is translated as the embodiment of individual interests: “In a genuine sense, economic theory is also a theory of collective choice, and, as such, provides us with an explanation of how separate individual interests are reconciled through the mechanism of trade or exchange” (Buchanan and Tullock 1962, 6-7).

Buchanan states that cooperation amongst distinct individuals can be explained by economic theory, just like any theory of collective choice ought to try to clarify how conflicting interests amongst them can be settled. For illustrative purposes, he introduces the case of Robinson Crusoe: as the only economic agent on the island, there is no possibility of trade, just as there is no need for developing any theory of political decisions. Although, after Friday’s arrival, considering the emergence of their personal differences in interests and capabilities, eventually, both individuals realise that entering into *exchange* is *mutually beneficial*. Additionally, they begin to recognise that they share common values, which motivate them to make also “political exchanges” (as the idea of constructing a fortress), for their own well-being, for the common good (Buchanan and Tullock 1962). Notwithstanding, afterwards, Buchanan also acknowledges the fact that Crusoe, even before Friday’s arrival, needed some rules to govern his own behaviour; at least a *rational* Crusoe, who would certainly understand the necessity of planning and working in order to live a “fuller and better life” (Buchanan 1975).

With the so-called “constitutional contract”, Buchanan develops a distinction, separating two different stages in the process of collective choice: (i) a constitutional stage, and (ii) a postconstitutional stage. Basically, the first phase represents the emergence of political society, where the “rules of the game” are defined, and individual rights are established in order to overcome the “anarchic state of nature”. On the other hand, the second phase is where the “game” is actually “played”, in light of the (constitutional) rules previously chosen. The policy framework (established in the second phase) must follow the previous

⁶ Buchanan dedicated most of his work to the field of constitutional political economy. He acknowledges Adam Smith’s contribution and states that the mutual gain feature illustrated in economic theory should be more appreciated by political theorists for its great relevance to democratic political theory.

constitutional contract (political framework), which is supposed to be agreed by all members of society, and, based on an individualistic economic logic, operate to everyone's advantage. The basic idea is that the materialisation of this constitutional contract from the agents' mutual agreement implies reciprocal respect for everyone's rights, and requires that the state behave neutrally in this task, treating unequal persons equally (Buchanan 1975).

Following the same perspective, although more focused on moral rather than political aspects, Gauthier advocates a morality based on rational choice; an agreed mutual constraint to which agents' commitment is not grounded on moral reasoning but on the pursuit of their own interests and desires: "Morality, we should argue, can be generated as a rational constraint from the non-moral premises of rational choice" (Gauthier 1986, 4).

It is interesting to make a comparison with the Rawlsian approach. On the one hand, Rawls (1999) establishes the "original position", where individuals are under a "veil of ignorance" to agree on principles for the basic structure of a just society. On the other hand, Gauthier (1986) bases his theory on the idea of an "initial bargaining position", in which the parties (on an informed basis) agree upon particular social structures in order to rationally obtain the most advantageous negotiation outcome⁷. Gauthier criticises Rawls's collectivist approach, especially regarding the impartial conception of people's talents and abilities. According to Gauthier, these are part of their identities and to exclude these personal characteristics violates their integrity as human beings.

As specified by Vallentyne (1991), Gauthier's conception of morality can be summarised as a "rational and impartial constraint on the pursuit of self-interest". For Gauthier, rationality compels a person to act morally: "The main task of our moral theory", he maintains, is "the generation of moral constraints as rational" (Gauthier 1986, 7). As he believes that there are no objective moral values, moral judgments need deliberative justification in terms of rationality in order to accept any constraint.

In accordance with Gauthier's definition of rationality: "[...] each deliberator seeks to act in ways that realise his values" (Gauthier 1997, 135). Values are "the norm for choice" and, in this case, are conceived as the "measure of individual preference" (Gauthier 1986). Thus, moral norms are justified by rational individual agents in a way that confers a sort of "normative individualism" (Gauthier 1997) on the theory.

Nonetheless, it is important to emphasise that the fact agents are rational is not sufficient for morality. As explained by Gauthier (1997), social moral norms, despite their

⁷ This is supposed to be an obvious conclusion for any contractarian perspective as, in order to achieve a beneficial outcome, we must be aware of all the conditions established during the bargaining procedure.

dependency on individuals' choices, are also determined by social practices; which means that contractarianism can, in an important sense, be "constructivist".

Thus, apart from the intrinsic individualistic characteristic of contractarianism, there is room for concern with the common good within the theory. Gauthier argues that the hypothetical arrangement proposed by contractarianism is the best approach: it is a fair starting point to achieve a cooperative outcome since, by allowing a mutually advantageous process to all agents involved and yet, at the same time, being free of coercion, the bargaining process amongst independent and self-interested members would ultimately lead to just and stable social conditions.

2.3 Contractualism vs. Contractarianism

Although both social contract theories are relational, in the sense that their agents express the intention of justifying themselves to each other, contractarianism gives priority to the self-interests of the parties, which means that their justifications are motivated by their own interests and desires with respect to the outcome of the agreement. On the contrary, within contractualism the agents are essentially motivated by the "general will". For example, their actions must reveal that they are able to publicly justify them before they consider any personal desire.

The most visible distinction between contractualism and contractarianism is that, whereas contractualism has a public reason, focusing primarily on the idea of general morality, with a public-oriented view, contractarianism considers individuals' self-interest to be a priority when regarding justification for their acceptance of moral and political constraints.

Contractualism holds the idea of *deliberation*, which is the process of discussing issues that affect the public sphere, emphasising the common good in the decision-making process. Contractarianism, on the other hand, comprehends the social contract as a contractual *negotiation* celebrated between the parties with the purpose of maximising their self-interests. The idea of agreement is based on a bargaining procedure, which is considered a means to balance disagreements regarding individual interests.

Finally, whereas contractualism embodies the idea of "mutual recognition" as an essential feature, contractarianism appeals to the idea of "mutual advantage". Based on this inference, one could say that, in a contractarian approach, cooperation is the result of a rational individual choice rather than a general mechanism of coercion.

3 Social Contract Theory and the Moral Status of Nonhuman Animals

This section aims to discuss the application of both contemporary approaches of the social contract theory to the discussion on nonhuman animals' moral status. The literature presented tries to illustrate what each theory can offer in response to the issue of animal rights and some of its political implications.

3.1 Contractualism and Nonhuman Animals' Moral Status

According to Scanlon's (1982) contractualist view of morality – i.e. a relational morality of “what we owe to each other”, which applies only to rational beings who are able to make moral judgments and act reasonably –, animals would be left without protection as no rights can be conferred to them under these circumstances. The scenario described by Scanlon (1982) allows only a relationship of trusteeship towards animals as, according to him, beings must constitute a point of view in order to be part of the justification mechanism. That is, they must be capable of logical reasoning, to agree or disagree on something, since contractualist morality is based on the notion of what can reasonably be accepted or rejected.

Likewise, Rawls's account does not see any prospect for animal rights in his theory, except for a vague allusion to “duties of compassion and humanity” towards them, considering their capacity to feel pleasure and pain. According to Rawls (1999), animals are outside the scope of the theory of justice. However, he acknowledges the fact that the principles of justice are but a part of a much more complex social ideal, recognising the limitations of his theory. Besides, even if his theory fails to embrace all moral relationships – leaving aside human treatment towards animals and the rest of nature –, he admits the importance of these matters, and declares that, once the main body of his theory is understood, there should be no limits on further revisions and improvements regarding its conclusions.

Rawls's work is considered one of the most important contributions of moral and political philosophy and continues to inspire many contemporary academics. This leads us to the next philosopher, Mark Rowlands, who tries to advance Rawls's “Theory of Justice” with the aim of accommodating animals' rights.

However, it is important to indicate that Rowlands adopts “contractarianism” rather than “contractualism” when referring to Rawls, as he adopts Will Kymlicka's terminology regarding social contract: “Hobbesian and Kantian contractarianism” (Kymlicka 1991, 188).

As already mentioned, this conflation of terms is expected to be seen amongst many theorists due to their antagonistic interpretations about social contract theories. Kymlicka, for instance, distinguishes the two forms of contemporary social contract theory as “Hobbesian contractarians”, to refer to the proponents of the “mutual advantage” theory (contractarianism), and “Kantian contractarians”, to those who advocate an impartial theory that emphasises the idea of “mutual recognition” (contractualism).

Rowlands disagrees that “contractarianism” can grant direct moral status only to rational agents. According to him, at least some forms of “contractarianism” can concede direct moral status to animals independently of their utility for rational agents. Rowlands’s version of “contractarianism” is essentially based on Rawls, who, according to him, “is (deservedly) the most influential of modern contractarians” (Rowlands 1997; 2009).

Rowlands states that Rawls’s account is – like many other recent forms within social contract theories – a mixture of Kantian and Hobbesian contractarianism and that he intends “to exorcise Rawls of his Hobbesian demons” (Rowlands 2009, 128). He argues that “contractarianism”, by itself, does not require that the contract must be restricted to rational agents; according to him, this is a fallacy. In fact, he states, when properly understood, its conclusion is quite the opposite, including also non-rational agents. The fact that the contractors must be rational agents does not entail that the *beneficiaries* of the contract are also rational. According to him, a justification for this gap could only be explained if the contract had been of Hobbesian nature, which consists of a mutually advantageous bargaining procedure – which he calls the “equality of power condition” (Rowlands 2009).

Based on Rawls’s “A Theory of Justice”, Rowlands (1997) argues that his arguments can provide a general theory of morality, that is, a broader framework that would embrace not only political rights (since Rawls focuses on the political and institutional constitution of society) but also moral rights in general, which are capable of granting nonhuman animals moral status. His explanation lies in the “intuitive equality argument”, which is explained in the following paragraphs.

Rawls’s idea of the “original position”, where the principles of justice are supposed to be chosen behind a “veil of ignorance”, assumes that economic and social inequalities are undeserved, as are inequalities in natural talents and capabilities. In Rawls’s sense, the possession of an undeserved property is morally arbitrary, thus, to benefit either from the former or from the latter aspects is unjust. Although, it is important to remember that the argument has a corresponding negative form. That is, no being should be punished for possessing a property that he has done nothing to earn (Rowlands 1997; 2009).

In following this reasoning, the “intuitive equality argument” developed by Rowlands maintains that *rationality* is also a “*morally arbitrary property*” since no being can choose whether he will be rational or non-rational in life. Therefore, knowledge of one’s own *rationality* – one’s status as a rational or moral agent – and, at the same time, of one’s own *species*, should be additional features within the “veil of ignorance” – “thickening the veil of ignorance”, as mentioned by Wenz (1988) –, given the fact that these characteristics are not a matter of choice; they are determined by nature (Rowlands 1997; 2009).

Vickery (2013) believes that Rowlands’s version of Rawls’s theory establishes a strong foundation for the recognition of nonhuman animals’ moral status. In Rowlands’s (1997; 2009) hypothetical scenario – where individuals do not know whether they would be rational or irrational, or what kind of species they would be –, would rational agents allow the killing of animals for food? According to Vickery, an answer could be obtained by comparing the advantages and disadvantages of both groups regarding the practice of eating meat.

A meat-free diet has already been proved to be safe. That is, consuming meat is not essential to humans’ survival, being just a matter of “taste” related to the pleasure of eating meat (Rowlands 2009). On the other hand, in the case of the animals, their lives are lost – not to mention all the suffering they incur. Therefore, when this comparison is made, it appears that “the rational choice is clear” (Vickery 2013).

Likewise, Hilden (2007) agrees with Rowlands’s revision of Rawls’s original position and underlines the importance of extending legal⁸ recognition to nonhuman animals. She maintains that, in light of the progress obtained in research, and with the dissemination of knowledge over animals’ physical and mental lives, the classification of animals by the legal system as mere “property” has become increasingly “archaic and obsolete”, and it is time to overcome this status quo. According to Hilden, Rawls’s theory provides a great method for ending the species bias that pervades current law and introduces true fairness into this area by instigating practical legal changes towards animal protection and welfare.

On the other hand, Carruthers (2012), who defines himself as a contractualist, rejects altogether the moral standing of nonhuman animals. He argues that the lives and sufferings of animals do not imply any direct moral claim on human beings. However, concerning the *argument of marginal cases* (AMC)⁹, he defends that non-rational humans do have such claims. To arrive at this conclusion, Carruthers (2012) appeals to three different assumptions.

⁸ If the moral standing is strong, its claim can become legal, turning it into an equivalent moral right (Bekoff and Meaney 1998).

⁹ Ibid., p. 237.

In his first argument, Carruthers claims that rational individuals would undoubtedly agree that all human beings should be entitled to the same moral standing, including non-rational human beings (such as infants or old senile people), for it is part of human nature to care about our immediate relatives. This is a psychological argument, which supports the idea that we should include all human beings within the contract procedure by virtue of the deep feelings of attachment that humans have towards other members of the species as part of human nature.

Carruthers's second argument – which is related to the former – claims that the attitude of excluding non-rational human beings from the contract would generate social instability. This is called “the social stability argument”. It is explained by the fact that, if our relatives (whose lives we care deeply about) were at risk, we would certainly resist and disrupt civil order and stability in order to protect them. This, according to Carruthers, denotes a practical reason for including non-rational human beings in the contract since the very aim of its procedure is to preserve peace and social stability: moral rules must be “psychologically supportable” (Carruthers 2012).

Finally, Carruthers argues that the affective feelings human beings have towards their pets are hardly as deep as those regarding our relatives. For Carruthers, nonhuman animals cannot be compared at the same level since, differently from infants and elderly people our attachment to them is not universal. Rather, it is a consequence of “cultural forces”. In short, according to Carruthers, human behaviour associated with animal suffering relies upon “local cultural factors”, prevailing in some societies but not everywhere. Therefore, as it cannot be considered a universal claim, nonhuman animals are not entitled to moral standing (Carruthers 2012).

It is important to remember that, in his early writings, Carruthers claimed that nonhuman animals lacked a “theory of mind”, or a “phenomenal consciousness”, which would disable them to contemplate “higher-order thoughts” (HOT) as humans normally do. For Carruthers, animals' pain was “unconscious” (Carruthers 1998). However, in his more recent works, he accepts that most animals are able to have conscious experiences, validating, therefore, the suffering condition (which is advocated by utilitarian authors). Nonetheless, even admitting that animals can feel pain and fear, Carruthers still argues that it does not mean that something is *morally* required from humans. People can feel sympathy towards animals, he claims, although these sympathetic concerns must not be considered mandatory or universal. Thus, nonhuman animals should be omitted from the contract agreement (Carruthers 2006; 2012).

3.2 Contractarianism and Nonhuman Animals' Moral Status

There are many accounts of contractarianism allowing for different interpretations and conclusions on the same issue. Regarding Gauthier's account, considering that rational agreement presupposes the condition of mutual advantage, within the scope of expected benefit, those considered too weak to offer any advantage to others are excluded from the agreement: "Animals, the unborn, the congenitally handicapped and defective, fall beyond the pale of a morality tied to mutuality" (Gauthier 1986, 268). Accordingly, the protection generated by a contract agreement based on Gauthier's account can only be extended to the latter if the contractors decide to care about them; otherwise they cannot be taken into account (Vallentyne 1991). The same conclusion can be achieved regarding Buchanan's theory and most other contractarian theorists. That is, if non-rational beings were to be entitled to moral standing, it would be only in an "indirect way". This will be explained in more detail hereafter.

Andrew Cohen, whose account of moral standing is essentially based on Christopher Morris's view on contractarianism (Morris 1991), maintains that the contractarian theory can be more inclusive¹⁰ than what critics usually believe, even more than what Gauthier assumes it to be. According to Cohen (2016), Gauthier's account fails to provide effective protection to some minority groups, such as women, infants, and disabled persons, including nonhuman animals, because these sorts of groups can be excluded on the grounds of a "morality of mutual-restraint" (Gauthier 1986), considering the mutual advantage condition for compliance. Cohen, then, tries to develop another version of contractarianism, a more advanced and extensive one, which would allow extending moral considerations towards both non-rational humans *and* animals.

Firstly, Cohen defines "moral standing"¹¹ as having three essential features: relational, scalar, and unilateral. Moral standing is '*relational*' when "it is the object of at least one duty that binds at least one other entity": at least one being *owes* some duty *to* another one. Secondly, '*Scalar*' refers to the level of moral consideration that a being may have towards another, which can have distinct degrees. Lastly, moral standing is '*unilateral*' since it can also be a "unilateral relational property", which means that, albeit moral standing is a

¹⁰ According to Cohen (2016), contractarians themselves underestimate the whole potential of inclusiveness that contractarianism is capable of offering in terms of moral protection.

¹¹ Cohen (2016) makes a distinction between "moral standing" and "moral status": "moral standing" is a special kind of "moral status" and, accordingly, an entity with "moral standing" should be owed *direct* moral considerations.

relational condition, it is not necessarily bilateral or symmetric. Therefore, based on these three features, moral standing can be considered a *relational status*, which can be seen as “(potentially) variable” (Cohen 2007; 2009; 2016).

Cohen, then, argues that there are two ways of achieving moral standing, which he classifies as: “*primary* and *secondary moral standing*” (Cohen 2007; 2009; 2016). With respect to the former, duties are *directly* owned by the agents as a consequence of the mutual agreement settled by them as mutually vulnerable beings. The latter, on the other hand, is conferred on beings that, albeit *not directly* involved in the agreement procedure (the case of non-rational beings), are still owed moral considerations. Cohen concludes that nonhuman animals can obtain moral standing if their interests are taken into consideration by humans, who Cohen calls “nonhumans’ advocates” (Cohen 2007). Thus, if individuals demand that the interests of animals should be considered, some rights could be extended to them in the contract in the same way that they are extended to non-rational humans.

However, Cohen claims that the secondary kind of moral standing should not be treated as less valuable than the primary one; both can be equally strong and have the same normative force. Therefore, “secondary” should not be taken to mean “second-class”. Actually, it would be the same moral consideration with regard to an *infant*, who also needs another agent (e.g. parents) to represent his or her claims but can still be owed *direct* moral consideration (Cohen 2007; 2009; 2016).

Critics, besides, may argue that, once this extension in the scope of morality is granted, why not extend moral consideration to anything, such as inanimate objects? In reply to this claim, Cohen (2007) argues that: (i) inanimate objects cannot be regarded as claimants since they do not possess any interest, and (ii) whilst lacking interests, they cannot be harmed or benefited in any way. Thus, nothing can be claimed.

Finally, in order for other people to agree with extending moral considerations to animals, sound, robust argumentation may be required. In this case, nonhumans’ advocates should raise strong arguments to justify their claims so that they can actually affect people’s actions, which may demand empirical evidence, such as “ecological, economic, and psychological” (Cohen 2007).

This reasoning leads one back to Morris’s analysis of contractarianism, which determines that, apart from the “mutual benefit” condition, there are also other requirements for a morality of justice: the capacity and willingness to establish constraints on our behaviour (Morris 1991). Morris’s version of contractarianism emphasises the role of reasons as necessary conditions for justice, in terms of a “morally unconstrained theory”, that is,

independent of moral beliefs or judgments¹². To illustrate his view, he presents a thought experiment in which he compares two different worlds of justice: one that provides reasons for action (according to his view of justice), and another one that does not provide such reasons. In the first world, those excluded from the contract agreement (the noncooperators) can still be entitled to moral standing if others take their interests into account (i.e. secondary moral standing). As for the second world, where justice does not provide reasons, all agents are obligated to be just towards all other agents; thus, even if noncooperators lack reasons to act justly, they are still obliged because they are under the jurisdiction (Morris 1998). What Morris intends to say is that, for a contractarian to accept *any* form of constraint, there must be *some sort* of personal interest involved; otherwise, it would not make sense for him to commit. Any other model of justice (like the one portrayed in the second world) would be considered coercive.

Conversely, Tanner (2013) argues that the contractarian account cannot allocate “the right kind” of direct moral standing, neither to marginal humans nor to animals. Tanner, who refers to primary moral standing as “symmetrical moral standing”, and to secondary moral standing as “asymmetrical moral standing”, maintains that these labels presuppose a hierarchical condition, implying that the latter is weaker than the former. For that reason, she claims, the account is unsatisfactory. According to Tanner, it is counterintuitive and fragile, insofar as secondary moral standing makes marginal humans and animals’ moral standing dependent upon others’ willingness. She argues that it is very unlikely that contractors place their own interests as a second plan, considering that self-interest usually takes priority over other sorts of interests (in this case, the welfare of a third party). Under a contractarian account, altruistic interests are overridden by self-interests, which make it impossible to protect nonhuman animals (especially wild and unappealing animals). Tanner highlights that in the “real world”, people usually care only for attractive animals, mainly their pets, or for charismatic megafauna, acting differently towards unappealing animals. This can be widely proved by the news in the media, and the fact that these animals are not protected in the real-world makes it even harder to believe that they would be protected by contractarian agents. Tanner finally emphasises the fact that there are humans who do not care for animals at all – some of them harm animals for pleasure –, and these are the people that nonhumans’ advocates would have to bargain with. Whether the benefits from consenting to extend moral standing to animals would exceed contractors’ self-interests remains to be seen.

¹² This perspective has also been called “existence internalism” or “agent internalism” (Morris 1998).

4 Animal Rights and Moral Vegetarianism: a Social Contract Review

Loughnan, Haslam, and Bastian (2010) state that the conflict between the love for animals and the pleasure of eating meat – what they call “the meat paradox” – would have three solutions: (i) to stop eating meat; (ii) to avoid the fact that animals are killed in order to produce meat (a sort of “tacit denial”); or – as they suggest – (iii) to remove any vestige of moral status from animals and deny their capacity to suffer. Considering that, nowadays, human knowledge of the mental and physical qualities of nonhuman animals is virtually universal, and that hardly any people can still be considered truly unaware of the fact that animals are killed in order to produce meat, these alternatives appear to be quite valid. A person can ignore the processes involved in the meat industry, or purely disregard animals’ welfare at all, whatever the reasons. However, the fact that animals are killed in order to produce meat cannot be ignored.

It is well known that animals can experience a wide variety of feelings, such as pleasure, happiness, pain, fear, anxiety, grief, etc. There are many studies¹³ that prove animals possess intellectual and emotional capabilities much like human beings and suffering is a common shared experience between humans and animals. Whereas in the past it was not an easy task, today, particularly with the advent of the internet – despite the dissemination of misinformation that it bears –, people can easily access reliable information, appreciating many pieces of evidence about this matter. However, a question that remains is whether these facts are able to enhance human recognition towards animals’ moral status.

The question addressed in the thesis is whether a social contract theory can accommodate the moral standing of nonhuman animals in order to promote the deliberation of animals’ rights under the perspective of liberal democracies. Since the allocation of rights in liberal theory presupposes *equality* of rights, and equality of rights presupposes fairness, a social contract approach is more suitable than a theory of the utilitarian type. In this section, both of the contemporary theories will be reviewed in an attempt to answer the main question proposed and to reach a final conclusion.

4.1 The Contractualist Perspective

Although sentience is considered the main argument of utilitarians, it does not mean that other theoretical frameworks cannot adopt the same premise as a starting point for

¹³ See, for instance, Darwin (1871), DeGrazia (1996), Singer (1975).

subsequent elaboration. In fact, Rowlands (2009) recognises sentience as “the cut-off point for morality” within his “contractarian” approach, holding the prospect of expanding further the scope of morality.

As specified by Rowlands (2009), even if morality was created by *humans* in order to facilitate their interactions with other *humans* – as Carruthers (1992) mentions in reference to Rawls’s account –, this cannot exhaust the real extent of morality. As a matter of fact, by mixing the *origin* of morality with the *content* of morality we commit the genetic fallacy, as Rowlands (2009) notices. From my perspective, indeed, I believe morality can be much broader than its origin, and it should not be conceived as limited in its scope as if it was a deterministic algorithm. Actually, it is specifically for this condition – morality being a *human construct* –, that it is supposed to be open and to change over time. Bearing this in mind, the discussion on speciesism¹⁴ is quite pertinent.

Besides avoiding speciesism, I believe that, if the “veil of ignorance” really aims to promote a consistent system of justice as fairness, then it should include rationality and species membership as its objects. As Rowlands (2009) highlights, every person was a non-rational being in his or her earlier years, and will perhaps return to that state during his or her later years. Moreover, we never know our future. At any moment of our lives, some accident can occur and cause us an irreparable trauma in our brains. Thus, for the same reason, we consider including in our contract vulnerable, *non-rational* human beings (e.g. children and mentally disabled people); the “veil of ignorance” ought to include *non-rational* animals, as we do not know who we will end up to be after the veil is lifted – we know nothing of ourselves and of our circumstances. To summarise, if the “veil of ignorance” applies to the case of marginal humans, the same argument should be valid to our moral considerations towards animals, as it is grounded on the same principles.

In holding a more flexible and encompassing idea of the social contract, Rowlands (1997; 2009) presents a theoretical framework that covers many different issues related to animal rights. If we accept Rowlands’s view of Rawls’s theory as an “intuitive test of fairness” – remembering it is a *hypothetical* contract, whose agents are regarded as *ideal* and not real individuals –, then, our imagined society should be as fair as one can possibly conceive it.

¹⁴ Speciesism is practising discrimination or exploitation on the basis of species membership. In treating nonhuman animals as a mere means to our ends, based on the belief that mankind is superior to them, we are being speciesists. *Speciesism* has been often associated with *racism* and *sexism* as a form of discriminatory behaviour (Bekoff and Meaney 1998).

To better illustrate the relevance of the concept of species membership, Rowlands (2009) offers a very compelling thought-experiment, which he names “The Independence Day scenario”. In this experiment, the Earth is invaded by powerful aliens, whose primary purpose on Earth has to do with food. Human meat is considered one of the tastiest in this part of the galaxy and their plan is to engage in *human husbandry*. That is: to raise, to kill, and to eat humans. The intelligence of the aliens is considered to be vastly superior to that of humans, and they eat them only for pleasure, as they do not need to do so in order to survive. The thought-experiment goes on but the basic idea behind it is that the aliens perceive us (humans) in the same manner as humans perceive nonhuman animals, which are killed in order to become food. The aim is to draw attention to the fact that humans would certainly refuse changing places with animals in our current society, given the way we treat them. Once Rowlands’s criteria of rationality and species membership were admitted into the “veil of ignorance”, all the issues involving nonhuman animals – including their raising and killing for food – would be analysed in light of this “contractarian” arrangement. Undoubtedly, behind Rowlands’s “veil of ignorance”, rational agents in the original position would opt for a society where no animals were killed, turning vegetarianism into a common human practice as the result of a rational choice procedure. Suddenly, vegetarianism would be placed amongst humans’ moral considerations.

On the other hand, if Carruthers’s (2012) arguments were accepted (i.e. nonhuman animals make no direct moral claim on human beings), we could not justify animal rights and killing animals for food would be allowed under certain circumstances. Notwithstanding, some of Carruthers’s arguments are questionable and these will be discussed in this section. We all know that the diet issue is only a part of the problem, as the animal rights debate involves many different aspects, which would require a much more complex analysis, from different areas of study. However, in line with the scope of the thesis, my focus is on this particular issue.

One argument that should enhance people’s recognition towards nonhuman animals is a very sound one, as it can be considered to affect all human beings, turning it into a general claim: environmental issues. In “the social stability” argument, Carruthers (2012) states that people would rebel against any authority that attempted to exclude their relatives from the protection of the social contract. This, he explains, would happen due to a notion of “natural affection” that humans have towards members of their families. However, Carruthers disregards another important issue that can also affect social stability: the environmental impacts of the meat industry. Thus, I reply to Carruthers’s argument by arguing that social

instability has already been “knocking at our door” for a long time. Environmental issues are at the core of the debate regarding the quality of life and survival of humanity.

Beyond being the leading cause of deforestation in the world, animal agriculture is more responsible for greenhouse gas emission than the entire business of transportation – 18% to 13%, respectively (Andersen and Kuhn 2014; PETA 2019) – and this is only a small illustration of how the practice of livestock can affect the environment. The environmental consequences of eating meat can be now considered a global problem, as it may affect all human beings. The long-term prospects are even more worrying since the world population is steadily growing and the consumption patterns do not seem to be changing that much in order to effectively have any influence on this impacting scenario. Therefore, there would be strong *empirical* grounds for vegetarianism and, thus, for according rights to animals.

Another disagreement with regard to Carruthers’s theory concerns his “cultural forces” argument, which is related to his former argument. As already mentioned, by appealing to a psychological conception of human behaviour, Carruthers (2012) maintains that people care about their infants and aged relatives as part of the human nature constitution. On the other hand, he advocates that people’s attachment to pets “is rarely so deep as attachments to relatives”. According to him, it is irrational to compare humans with animals since even our attachment to pets cannot be regarded as a human universal premise as it depends on cultural factors. For this reason, he includes non-rational humans but excludes non-rational animals from the scope of morality.

However, it is important to remember that there are some people who value their pets more than their family members. There are even examples of pet inheritance, in which people decide to leave their fortunes to their pets, or people who treat them as if they were their own children. These cases seem to be increasing worldwide. Furthermore, just like morality itself, it is important to recognise that these concepts (e.g. childhood and old age) are to a certain extent a human construct. That is, apart from biological patterns, they are *also* based on socio-historical-cultural aspects. They are collective, social representations of a particular society within a given period, which means that they are not exclusively “natural” but “nurtured” conceptions.

In order to contextualise my argument, the way elderly people are currently perceived in society – having their rights recognised and protected – has actually arisen during the XIX and XX centuries, as a result of industrialisation. Older people were constantly neglected in the industrial society, specifically for their inability to work and contribute to the social structure. Most of the legal advancements seen nowadays are a product of the pressure of

people who actively engaged in claiming their rights in view of the aggravation of their social conditions. Ultimately, the diffusion of principles and values regarding older people's rights are part of a socio-historical process, which contributed to two fundamental advancements in society: (i) the progress within medical research, in the attempt to better understand the aging process and assist older people, and (ii) the institutionalisation of pension systems (Benetti, Fagundes, and Zanella 2011).

The same argument applies to the concept of childhood. In the classic famous work on the history of childhood, the historian Philippe Ariès reveals that these feelings of protection and affection towards children were not prevalent in the past. They have evolved over time, according to social and economic changes. The contemporary perception about childhood did not even exist in medieval society (Fonseca 1999).

What I want to indicate with these arguments is that socio-cultural-historical aspects matter. They are intrinsically related to human social and ethical-moral behaviour. Considering that our society's mindset is always subject to change, it is pivotal for society to discuss the moral standing of nonhuman animals to recognise the importance of these factors, understanding that reality is processual and dynamic. I mean, the fact that animals are currently widely conceived as a morally irrelevant matter may also reverse in the future.

4.2 The Contractarian Perspective

Cohen's revisionist view of contractarianism indicates that the answer to the problem of nonhuman animals' moral standing is in the hands of "nonhumans' advocates", allocating them under a "secondary moral standing" (Cohen 2007). Thus, the decision-making process that determines whether animals should have rights or not is conditional on these people's power of persuasion and commitment towards animals' interests. In other words, in order to have some effect in changing people's perception and behaviour towards animals, nonhumans' advocates need to work hard to put the issue on the political agenda, and to reinforce the significance of their arguments in favour of animal rights.

Having said this, I consider Tanner's (2013) criticisms to be pertinent, as secondary moral standing suggests a hierarchical relationship between humans and animals, turning the latter submissive to the former, placing them in a lower moral position. Likewise, given the fact that contractarianism is based on a rational choice for mutual advantage, if a person does not see any benefit regarding these animals' moral claims, he can simply reject them. In other

words, under a contractarian account, the attitude of denying moral standing to animals is always a possibility, which hinders the deliberation of animal rights.

Nonetheless, although I consider Tanner's (2013) arguments to be compelling, particularly the argument that probably only domesticated or charismatic megafauna animals would be protected by this sort of contractarian account, I argue that we should be focusing, instead, on the essential features of moral standing that Cohen proposes: "relational, scalar, and unilateral" (Cohen 2007). Based on these features, moral standing presupposes a social time-varying construct configuration, which leads us back to the previous discussion on socio-cultural-historical aspects.

According to Verschoor (2012; 2015), the contractarian approach is legitimate under a democratic procedure for the characteristic of its bargaining method as an "open and serial process of consensual binding". Verschoor maintains that this contractarian procedure establishes "a perfectly inclusionary push" outcome, since, beyond being available to all individuals, it is always susceptible to be reopened by any "free and equal utility-maximising individual". With respect to this matter, it is interesting to notice that Buchanan also mentions this possibility of reviewing the contract agreement: "The constitutional status quo should not be interpreted to embody rigidity in social interaction. Shifts in individual claims may take place [...]" (Buchanan 1975, 77).

Accordingly, under contractarianism, people are free to approach each other and influence their behaviour in line with their interests. In this process, nonhumans' advocates play an essential role, by convincing other individuals to commit to their claims in favour of the animals' cause. Concerning the cooperation procedure, these advocates need only to demonstrate that there are strong reasons to do so and to require that animals' interests be considered. This means that the set of rules, rights, and institutions within society are subject to change over time, reflecting the status quo changes.

5 Conclusions

In response to the main question of the thesis, I believe both revisionists' views of contractualism and contractarianism – namely Rowlands's (1997; 2009) and Cohen's (2007; 2009; 2016) theories – offer a reasonable account for nonhuman animals' moral standing. However, only the former could support a general theory of animal rights, one that would include vegetarianism. The notion of “secondary moral standing” proposed by Cohen indeed presupposes a hierarchical condition, which is essentially conflicting, and I believe the dependency on the efforts of nonhumans' advocates cannot legitimate animal rights in a general sense; only in a limited range.

Notwithstanding, contractarianism supports my own perception over vegetarianism, which I believe should be based on personal choice and not be something imposed. I believe that a just way of transforming society is to change people's behaviour by example and not by force; that is, in a non-arbitrary, non-coercive manner. Having said this, despite my concern over animals, considering the perspective of liberal democracies, human individual freedom must prevail. Therefore, regarding the relationship between humans and animals within social contract theory, especially with regard to the discussion on vegetarianism, I would conclude my analysis with a *hybrid social contract theory*, which I explain below.

Firstly, I would use contractualism to imagine a society as fair as it would possibly be – to use Rowlands's words: an “*intuitive test of fairness*” –, by extending Rawls's (1999) first principle of justice (the principle of “equal liberty”) to nonhuman animals in order to conceive a society in which every human *and* nonhuman animal is considered *equally free*. However, in terms of an “*empirical test of fairness*”, I believe only contractarianism provides us with a fair procedure to deal with the question of vegetarianism, for it prioritises individuals' liberties in confronting any sort of enforcement or constraint. Therefore, secondly, I would use contractarianism to conceive a “*difference principle*”, correlating it with the hierarchical distinction made between primary and secondary moral standing. Humans' liberties should be valued prior to animals', thus considering *liberty* prior to *equality*. This, indeed, infers a hierarchical relationship but the decision to become vegetarian should not be forced on individuals – the power of choice should belong to each single person.

Regarding moral vegetarianism, two main arguments were presented in order to enhance its justification and feasibility: (i) the environmental impact of the meat industry, and (ii) the significance of socio-cultural-historical aspects for human moral behavioural change. Categorising animals as food has been dominant for so long in society that it is difficult to

believe it can be changed. Although, like many other social processes, vegetarianism may, also, become universally accepted as a rational moral practice in the future. If not for its intrinsic moral character, considering the moral integrity of animals, maybe other arguments need to be highlighted in order to raise awareness of animal rights, as, for instance, the progressive challenges inflicted on mankind due to the environmental issues related to meat consumption. After all, just as Buchanan's (1975) explanation of Robinson Crusoe before Friday's arrival, a man needs some rules to govern his own behaviour; at least a rational man who is supposed to understand the necessity of planning for his own quality of life and survival.

Although, as I said, this transformation should not be based on force; it should be a product of a rational individual choice. For this reason, considering the liberal-democratic thought, I believe *contractarianism*, in its *constructivist* form, provides a fairer means to deal with the question of vegetarianism.

On the one hand, contractualism yields us a pivotal "*intuitive* test of fairness" to contemplate our inner selves and the world around us, allowing us to imagine what an ideal world of fairness should be. On the other hand, we live in a non-ideal world and our "*empirical* test of fairness" on vegetarianism reveals that contractarianism is the best option.

Ultimately, with respect to the enforcement dilemma regarding animal rights, I may not have the perfect answer for now. All I can do is to make these arguments visible, in an attempt to reach other persons' perceptions, in order to create a new moral awareness. However, I truly hope someday our society will wisely address these ethical questions and reconcile the human-animal relationship.

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