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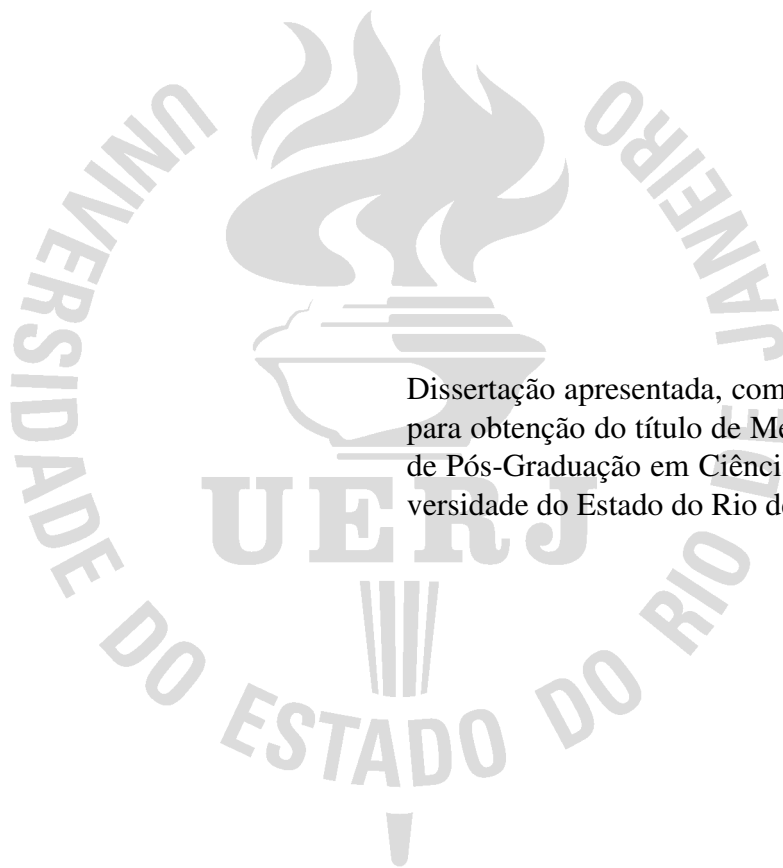
Nonhuman animals and the limits of contractualism

Rio de Janeiro

2023

Tiago Zeitone Gomes de Amorim

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Dissertação apresentada, como requisito parcial para obtenção do título de Mestre, ao Programa de Pós-Graduação em Ciência Política, da Universidade do Estado do Rio de Janeiro.

Orientadora: Prof.^a Dra. San Romanelli Assumpção

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DEDICATION

Para meus pais, Tatiana e Tiago.

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All the same, we ought to look into it more closely. After all, our discussion is not about something incidental, but about how we ought to live our lives.

Plato, The Republic, 352D.

ABSTRACT

ZEITONE, T. *Nonhuman animals and the limits of contractualism*. Orientadora: San Romanelli Assumpção. 2023. 107 f. Dissertação (Mestrado em Ciência Política) – Instituto de Estudos Sociais e Políticos, Universidade do Estado do Rio de Janeiro, Rio de Janeiro, 2023.

Contractual theories of justice often argue that nonhuman animals fall outside their scope. Furthermore, they usually look for morally relevant characteristics to define the proper recipients of justice. In this dissertation, I argue that the criteria typically used to specify the beneficiaries of social justice in contractualism are either overly restrictive or unduly arbitrary. The structure of the study is divided into three parts. Since contemporary political philosophy— particularly contractualist theories of justice — engages with fundamental concepts articulated by Kant’s practical philosophy, the first segment details the value and role of autonomy in demarcating the sphere of moral and political duties. Second, the extent of contractualism regarding the constituents of political concern is examined in the particular works of John Rawls (justice as fairness) and Brian Barry (justice as impartiality). The idea of citizens as free and equal, the central value of reciprocity, the elemental view of society as a cooperative venture for mutual advantage, and the very idea of a hypothetical contract are all identified as sources that hinder the incorporation of animals in justice as fairness. Further, contractualism as a political conception of justice starts with reasonable adult citizens and expands from them. In justice as impartiality, the emphasis on impartial rules rather than on the principle of reciprocity and the absence of mutual advantage may appear more promising to the fundamental interests of nonhuman animals. Yet, I contend that justice as impartiality still begins from a ratiocentric conception of persons, relies on a contractual description of justice, and is ultimately concerned with neutrality between persistently conflicting doctrines among reasonable human citizens. Lastly, the final segment applies eminently political concepts such as coercion, domination, and legitimacy in human-nonhuman exchanges. It is argued that species membership or rational nature are unsuitable characteristics to satisfactorily delimit those concepts. I advance the notion of legitimacy as responsiveness to fundamental interests and the idea of domination as disregard for interests in the context of abuses of power.

Keywords: nonhuman animals; multispecies justice; fundamental interests and needs; contractualism.

RESUMO

ZEITONE, T. *Animais não humanos e os limites do contratualismo*. Orientadora: San Romanelli Assumpção. 2023. 107 f. Dissertação (Mestrado em Ciência Política) – Instituto de Estudos Sociais e Políticos, Universidade do Estado do Rio de Janeiro, Rio de Janeiro, 2023.

Teorias contratualistas da justiça geralmente argumentam que os animais não humanos estão fora de seu escopo. Ademais, usualmente procuram características moralmente relevantes para definir os recipientes adequados da justiça. Nesta dissertação, defendo que os critérios tipicamente empregados no contratualismo para especificar os beneficiários da justiça social são excessivamente restritivos ou excessivamente arbitrários. A estrutura do estudo está dividida em três partes. Uma vez que a filosofia política contemporânea – particularmente as teorias contratualistas da justiça – cerca-se de conceitos fundamentais articulados pela filosofia prática de Kant, o primeiro segmento detalha o valor e o papel da autonomia na demarcação da esfera dos deveres morais e políticos daquela teoria. Segundo, a extensão do contratualismo em relação aos constituintes da esfera política é examinada nas obras particulares de John Rawls (justiça como equidade) e Brian Barry (justiça como imparcialidade). A ideia de cidadãos livres e iguais, o valor central da reciprocidade, a visão elementar da sociedade como um em-preendimento cooperativo para benefício mútuo e a própria noção de um contrato hipotético são todos identificados como fontes que obstaculizam a incorporação dos animais na justiça como equidade. Além disso, o contratualismo como uma concepção política de justiça começa com cidadãos adultos razoáveis e se expande a partir deles. Na justiça como imparcialidade, a ênfase em regras imparciais em vez do princípio de reciprocidade e a ausência de vantagem mútua pode indicar uma base mais promissora para os interesses fundamentais dos animais não humanos. No entanto, argumento que a justiça como imparcialidade ainda parte de uma concepção raciocêntrica das pessoas, depende de uma descrição contratual da justiça e, em última instância, preocupa-se com a neutralidade entre doutrinas persistentemente conflitantes entre cidadãos humanos razoáveis. Por fim, o segmento final aplica conceitos eminentemente políticos como coerção, dominação e legitimidade nas relações entre humanos e não humanos. Afirma-se que o pertencimento à espécie ou a natureza racional são traços inadequados para delimitar satisfatoriamente esses conceitos. Apresento a noção de legitimidade como resposta a interesses fundamentais e a ideia de dominação como desrespeito a interesses no contexto de abusos de poder.

Palavras-chave: animais não humanos; justiça como equidade; interesses e necessidades fundamentais; contratualismo.

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INTRODUCTION

In Brazil, the number of cattle exceeds the total number of human inhabitants. Almost 220 million cattle make up the livestock of a relevant country in the global value chain. According to the Brazilian Institute of Geography and Statistics (2020), 1.5 billion chickens and more than 40 million swine comprise a notable piece of Brazilian production. The intensive farming necessary to meet the massive demand for meat and other products inflicts practices that are harmful to the fundamental interests of these individuals. In the swine context, for example, the standard practice of intensive livestock farming requires a life confined in minuscule crates where the animal cannot move, excreting on the spot and often subjected to powerful drugs to treat generalized infections. For millions of hens, the enclosure is shared with hundreds of hens stacked on one another in confined spaces where many end up crushed to death. The sheer number of animals affected displays the potential for normatively thinking about fitting them in the scope of justice. The relationship between humans and nonhumans also extends to experimentation, circuses, sports, and the age-old dealings with domesticated animals. The brief examples mentioned above do not exhaust the whole extent of human impact on the biosphere, from deforestation related to livestock to the effects of animal use on climate change on a global scale (Hedenus; Wirsenius; Johansson, 2014). Following the recent trajectory of terrestrial biome elimination, it is imaginable that the Earth's sixth mass extinction will be anthropogenic (CEBALLOS, Gerardo et al., 2015; BARNOSKY, Anthony D. et al., 2011).

Human and nonhuman needs are not entirely separate issues. Essential concepts of normative political theory can be used appropriately for human-nonhuman relations. The recent growing interest in the literature on 'Animal Politics' and multispecies conceptions of justice (e.g., KYMLICKA; DONALDSON, 2011; O'SULLIVAN, 2011; COCHRANE, 2012; SMITH, 2012; GARNER, 2013; SCHMIDT, 2015; NUSSBAUM, 2023) reveals the progressive challenge to the pertinence of demarcating the range of social justice in respect to species, and instead emphasizing the moral and political space of the interests and needs of sentient beings. The present work aims to explore influential theories of contractual justice, their assumptions, and consequences regarding the sphere of recipients of rights and opportunities allocated by the principles of justice. The works of John Rawls keenly inspire contemporary political theory in an Anglo-Saxon analytical approach. Consequently, the discussion of liberalism, legitimacy, pluralism, citizenship, and the conception of persons often references the social contract tradition, whether critically or favorably. Contemporary theories of justice are also heavily influenced by the political, moral, and legal works of Immanuel Kant. In particular, the sphere of moral and political obligations stems from a distinctive conception of personhood founded on autonomy and freedom that generally antagonize attempts to formulate conceptions of justice toward nonhuman animals.

Animal ethics is a well-established discipline, with courses, research centers, and aca-

demic journals exploring various aspects of this area of research. Despite recent developments, the political study of animals is still undertheorized. The study of the limitations of contractualism concerning the beneficiaries of justice is well-known. Still, I explore the interconnection between the concepts conveyed by the contractualism of John Rawls and Brian Barry with the substantive values embedded in Kant's moral and political philosophy. In particular, the first chapter surveys Kant's commitment to a robust notion of freedom and its role in morality. The dissertation innovates by presenting the differences between justice as fairness and justice as impartiality regarding the assumptions about cooperation that influence who are the recipients of justice. The contrast between reciprocity and impartiality in the sequential exposition of the two theories of justice assists in clarifying the grounds of equality for both. Moreover, the contributions of this work probe the gaps and raise new ideas on domination and legitimacy. More precisely, the domain of the political is specified by reusing the commonly used concepts of coercion and involuntariness. This dissertation introduces the conception of *domination as a disregard for fundamental interests and needs* in the context of power abuses, contrasting with versions that rely exclusively on free will control. Accordingly, I also insert the idea of political legitimacy in terms of *responsiveness to the fundamental interests* of humans and nonhumans as to the principle of equal consideration of the good as drafted by Henry Sidgwick (1907). Hence, the current theoretical exercise focuses on the repositioning and conceptual elucidation of known objects of political philosophy to expand their application to the animal world.

The current study is a work of analytical philosophy. By 'analytical philosophy', I am thinking here of two main features that distinguish it from other ways of theorizing and thinking about problems. First, the emphasis on clarity and vocabulary accuracy in uncovering ideas and concepts. The active effort towards effective communication of arguments is a central element, considered a virtue, of analytic philosophy. The clarity and precision of language ensure that philosophical ideas can be effectively shared. Conceptual analysis aims to refine the meaning and nature of concepts. For successful conceptual analysis, a central component of analytical philosophy, the precise use of language is vital. Since concepts are groupings of objects of knowledge, the accurate definition of these objects enables one to organize the relationship of ideas in moral or political theory. The second particularity of analytical philosophy is the *decomposition* of conceptual problems. Unlike holistic perspectives on solving sets of problems, analytical philosophy opts for the strategy of decomposing complex concepts into their constituent parts. By breaking down complex ideas into simpler pieces, theorists can explore the relationships between these components and how they contribute to the overall solution of the problem. Finally, it should be noted that normative theory habitually utilizes counterexamples to test the validity of arguments and propositions in general. This adjustment work is particularly meaningful in demonstrating that background theories about personhood are internally inconsistent.

Before offering the outline of the topics scrutinized in this dissertation, the valuable exercise of conceptual cleaning is expedient. The object of the present study concerns social

justice. There is a critical distinction between what I shall classify as *broad justice* and *social justice*. On the one hand, broad justice can be represented as the moral obligation to treat individuals fairly and impartially. As stringent forms of obligations, duties of justice impose a strong and compelling moral force on individuals. These duties are marked by their binding nature, demanding strict adherence to principles of fairness, equality, equity, or other commonly used terms to describe the sense of a just course of action. In this sense, broad justice can be understood in family relations. In the ordinary use of language, we can consider that a mother acted *unfairly* by arbitrarily distributing more sweets to one of her children to the detriment of the others. In the broadest sense, unfair attitudes also apply in the associative spectrum of organized religions, friendships, and other forms of interaction usually considered binding. The duties of justice differ from charity precisely because of their rigorous and mandatory nature, which are present in social life. There is a sense of *priority* of justice. Duties of justice take precedence over other moral considerations.

Here, social justice is the primary subject. In basic political institutions, social justice is concerned with the distribution of burdens and benefits in society. It regulates how the advantages and disadvantages are distributed among individuals and groups, particularly involving political, economic, and social matters. Benefits are expressed through rights and opportunities, while burdens are expressed through corresponding responsibilities. Here, the concern for animal inclusion is focused on social justice, that is, how the principles that regulate basic laws should apply to institutional relations with other species. By institutions and basic laws, I mean the constitutional framework and political rules that govern legal and economic systems. Although the notion of the ‘basic structure of society’ is not used, I refer to ‘basic institutions and laws’ throughout the text to reproduce similar ideas of fundamental institutions, laws, and social arrangements that determine the distribution of rights and opportunities within a political society. Social justice is considered a subset of morality because it is a specific dimension of moral principles. While morality encompasses a broad range of principles that regulate human behavior, social justice specifically concentrates on issues related to the distribution of goods and opportunities within society. That is why social justice is also commonly called *distributive justice*. Here, the approach to the arguments is limited to articulating the ideas of social justice and the materiality of expanding the concepts of political theory to relationships with other animals. Accordingly, unlike approaches that reject the rights discourse in favor of understanding duties towards nonhumans only in the scope of morality (ABBAY, 2007; MIDGLEY, 1984), the dissertation fits into the attempts to incorporate them inside the range of social justice specified by the just allocation of rights, privileges, and opportunities. It should also be said that the terms ‘justice’ and ‘social justice’ are used interchangeably throughout the following text.

The word ‘liberal’ can sometimes be elusive. Accompanying Rawls (2005, p. 6), I consider that a conception of justice is *liberal* in three ways. First, it identifies a list of basic rights that all citizens possess. These rights are considered fundamental to individual well-being. Second, these basic rights, freedoms, and opportunities are given special priority when

compared to other values. Third, it is liberal because it ensures that these rights, freedoms, and opportunities are *effectively* available. Likewise, the argument developed here strives to integrate animals into the sphere of rights protection inside a liberal conception of justice in line with existing contemporary constitutional democracies. This conception grants individual liberties and protects basic rights against violations. In particular, it understands the list of rights as a sphere of protection to the vulnerabilities of individuals against external forces — individual and (especially) collective.

Onwards, the term ‘individual’ refers to a single entity considered as a separate unit of being. Thus, ‘individuals’ are any distinct creatures, humans or nonhumans. Sentience is envisioned here as the capacity of an entity to have subjective experiences. It is the ability to experience the world subjectively rather than simply reacting to stimuli based on instinct or reflex. It is considered here that sentient individuals cover lives other than humans. By definition, sentient creatures possess an inner subjective life, where they can experience various mental states such as pleasure, pain, perceptions, and thoughts. Sentience does not require future projection or awareness about the course of one’s life. It minimally means the capacity to subjectively experience both positive and negative states. *Well-being*, as a *prudential* value, refers to the overall state of an individual’s physical, mental, and emotional health and happiness. It is prudential because it relates to the good of one’s own sake. The key concepts of *interests*, *harm*, and their relation to well-being are stated along the text in the same connotation as expounded by Joel Feinberg (1980, p. 45, author’s emphasis) that “a person is harmed when someone invades (blocks or thwarts) one of his interests. A person has an interest in Y when he has a stake in Y, that is, when he stands to gain or lose depending on the condition or outcome of Y”.

Interests are components of well-being. Ronald Dworkin (1993, p. 201) and Joel Feinberg (1980, p. 46) distinguish *experiential* (or welfare) interests from *critical* (or ulterior) interests. Critical interests are characteristic of autonomous beings with rational life plans and those who value long-term goals. Experiential interests are present in all sentient beings. I shall argue that the capacity for free agency and rationality is inadequate to ground human equality or a sufficient sphere of protection from harm. Another noteworthy distinction is the division between *secondary interests* and *fundamental interests*. Fundamental interests are the essential objects on which an individual’s well-being relies. They represent the core aspects necessary for a creature to have a subjective experience of a life worth living. Fundamental interests often take priority over secondary interests when they conflict. The former is considered more deserving of protection and promotion in matters of justice. Conversely, secondary interests can differ significantly from one individual to another. They encompass the range of contingent preferences, such as predispositions towards particular leisure pursuits. Multispecies conceptions of justice usually aim to assimilate the essential elements of well-being, the core interests of non-human animals, into the rights framework — e.g., Martha Nussbaum’s (2006) list of “central capabilities”. The use of ‘animals’ and ‘non-human animals’ will be interchangeable

to ease the application of the words, as the distinction between humans and animals is so current in common language.

On methodology, despite the dissertation being agnostic about the controversy between coherentism and foundationalism, a great deal of normative theorizing in moral and political issues regards finding principles and frameworks *consistent* with solid moral judgments. Normative political theories can be evaluated by their efficiency in developing principles that explain and justify certain moral judgments. A procedure popularized by John Rawls (1999a, p. 42) and Norman Daniels (1979; 1996) is the method of reflective equilibrium. On the process of mutual adjustment between principles and considered judgments, Rawls (1999a, p. 18) writes:

But presumably there will be discrepancies. In this case we have a choice. We can either modify the account of the initial situation or we can revise our existing judgments, for even the judgments we take provisionally as fixed points are liable to revision. By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming them to principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted. This state of affairs I refer to as reflective equilibrium.

The method of wide reflective equilibrium here is understood as a formal framework that organizes the system of justification of moral principles. In Daniels' (1996)¹ version, the method is composed of three constitutive elements: i) *considered judgments*, ii) *principles*, and iii) *background theories*. Considered judgments refer to our specific, concrete moral beliefs or intuitions about particular cases. These judgments result from our moral reasoning and reflection on ethical problems. They are the product of thoughtful consideration and formed after weighing various moral considerations and principles. Considered judgments are characterized by a higher degree of reflection and personal commitment than other judgments. In the context of the method of wide reflective equilibrium, principles are marked by the degree of generality and abstraction, serving as general moral rules applicable to different circumstances. Moral principles aim to explain and justify attitudes in a coherent framework. Lastly, background theories provide general descriptive and normative explanations about a topic relevant to the definition of moral theory as a whole. The metaphysical and ethical discussion implicating conceptions of persons is an instance of dispute around background theories that independently inform which assumptions are pertinent to the explanatory model.

The method of wide reflective equilibrium relates to considered judgments, identifying general principles that explain and justify these judgments, and assessing suitable background theories. Conflicts may arise between the original principles and considered judgments, promp-

¹ Nelson Goodman (1965) was the first to introduce the notion of adjustments between principles and considered judgments (lacking the element of background theories).

ting critical reflection and adjustment. Adjustments are the principal process of achieving theory coherence to build mutual support among the three components. In the present analysis, the *argument from species overlap* functions as a coherence test for the judgments considered regarding the treatment of nonhuman animals. The argument from species overlap states that no morally relevant trait can discern *all* humans from *all* other animals. Once principles and theoretical claims are adjusted, I argue that the support for moral consideration for humans can be extended to include certain nonhuman animals on the grounds of shared sentience — without incoherently excluding (or arbitrarily including) humans lacking the potentiality or capacity for rationality or moral agency. It is argued that conceptions of persons generally ignore the variety of characteristics in humans and other animals. Ultimately, the process of revising theories and principles seeks to find a more stable balance between the three elements that form the formal structure of the method of wide reflective equilibrium.

The following work consists of four chapters. The primary contribution of Chapter 1 is the examination of how the fundamental value of freedom in Kant's moral philosophy carries theoretical repercussions about the existence and character of our duties toward animals. Since contemporary political philosophy — particularly contractualist theories of justice — is deeply engaged with the concepts and ideas articulated by Kant's practical philosophy, detailing the theoretical bases of the Kantian framework is opportune. The central objective of the first chapter is to briefly present Kant's moral, legal, and political philosophy with regard to the particular inquiry of *who* are the proper members of direct moral and political concern. The influential Germanic author places the nature of morality as the relationship between actions and laws (maxims) determining their admissibility. The foundational concepts of right and wrong are only intelligible through the idea of *responsibility*. In turn, the responsible agent that respects or disrespects maxims requires the notion of rightness or wrongness only under the context of freedom. Accordingly, the presence of an autonomous will is the supreme piece defining the participants of the moral realm. The founding principle of Kant's legal philosophy lies in the primitive right to freedom of autonomous agents in accordance with the freedom of others ruled by a universal maxim. The conception of persons and the value of autonomy spontaneously excludes non-rational beings from the sphere of justice and political entitlements. The sources of the distinction between autonomous creatures and the 'rest of nature' persist in the normative models found in many contemporary theories of justice.

I focus on two prominent conceptions of justice influenced to some degree by Kant's writings: justice as fairness and justice as impartiality. Chapter 2 presents the Rawlsian framework in two parts. First, it discusses the main elements of Rawls' theory that hinder the potential duties of social justice to animals. It also presents recent attempts to account for animals' fundamental interests and needs in Rawls' contractualist framework. The idea of citizens as free and equal, the central value of reciprocity, the fundamental view of society as a cooperative venture, and the idea of a hypothetical contract are pointed out as sources that obstruct the incorporation of animals in the scope of Rawlsian justice. On top of these factors, the se-

cond part introduces the 'political turn' that further hinders any endeavors to extend the realm of justice beyond free and equal citizens. Rawls' contractualism as a political conception of justice starts with adult citizens and expands *from them*. Chapter 3 is divided into two parts. The first objective is to present T. M. Scanlon's moral contractualism, distinguishing it from the more restricted formulation of justice as fairness. The Scanlonian theory also helps to situate Brian Barry's justice as impartiality. Without the basic idea of a society in Rawls' version of contractualism, the emphasis on impartial rules rather than on the principle of reciprocity may seem more favorable to the fundamental interests of nonhuman animals. Yet, I argue that justice as impartiality still retains a ratiocentric conception of persons, relies on a canonical contractual explanation of justice, and is concerned with neutrality between persistently conflicting comprehensive doctrines of the good among reasonable (human) citizens in democratic societies.

Chapter 4 challenges the criterion of species, rationality, or moral agency as a morally and politically relevant threshold for delimiting the scope of justice. The fourth and final chapter is divided into four parts. The first section analyzes three justifications for species partiality — a perspectivist case about humanity as a basic component of moral thinking, a relational argument, and a nature-of-a-kind argument. I claim they all fail to accomplish their goals of validating species membership as a cut-off property towards conferring moral standing. The second section maintains that nonhuman animals should be rights holders under the same criteria as humans. The function of rights can, among other possible functions, be understood to promote its holder's well-being, human or not. Consequently, the only normatively relevant trait for the concept of rights to be comprehensible is the capacity for well-being (e.g., sentience). Social justice is, in modern democratic societies, inseparable from the language of rights, and political structures are organized via the distribution of rights and opportunities. I claim that it is theoretically desirable to include human-nonhuman relations of power in the lexicon of justice. The third section revisits the principle of equal consideration of the good as devised by Henry Sidgwick (1907). This principle allows (and requires) the reference to a benchmark of moral equality that can be transferred to the political domain. Based on the principle of equal consideration of similar fundamental interests, the distribution of rights and opportunities must obey a burden of justification for each deviation from equality. Lastly, the fourth section employs eminently political concepts such as coercion, domination, and legitimacy in interspecies relations. I shall defend an idea of *legitimacy as responsiveness to fundamental interests* and an idea of *domination as disregard for interests* in the context of abuses of power.

1 BEFORE RAWLS: THE MORAL STANDING OF ANIMALS IN KANT'S PRACTICAL PHILOSOPHY

Kant is one of the most influential theorists – if not the primary – within the contemporary discourse on justice and human rights². The ubiquitous vocabulary of ongoing discussions regarding the foundations of justice and human rights applies the notions of dignity, equal respect, humanity, and the moral personality of human beings arising, to some extent, from the original structure erected by Kant's practical philosophy³. In particular, discourse about moral and political equality within analytic philosophy and political theory often utilizes the vernacular of *equal dignity*⁴. As discussed below, the basis of equality in JaF bears evident traces of inspiration from Kant's thought, which, in turn, uncovers the origins of the theoretical boundaries of Rawls' work. A brief review of Kant's moral philosophy enables a better understanding of contractualism's limits in justice as fairness. In particular, this section focuses on the primacy of the role of freedom as a basic condition for the possibility of moral philosophy itself for Kant. For him, morality should be understood as the relationship between *actions* and the *autonomy of the will* (KANT, 1996b, 88). The autonomy of the will emerging from rational nature is a theoretical (and, in his view, logical) requirement for arriving at the moral law through pure practical reason. This section mainly examines how the fundamental value of freedom⁵ in Kant's ethics carries theoretical repercussions about the existence and character of our duties toward animals.

Kant's writings are well known for rejecting the moral standing of animals. This stance is directly related to his theory of value concerning the rational nature of human beings. In *Conjectural beginning of human history* [1786], Kant satirizes the format employed by Johann

² Onora O'Neill (2000, p. 65) is likely correct in writing that "much contemporary work on justice is seen, both by protagonists and critics, as Kantian. Evidently not all its conclusions accord with Kant's views on obligations, rights or justice; but this in itself is not surprising since its aim is to develop Kant's basic insights, even to improve on his conclusions".

³ In the moral and political philosophy of the past fifty years, Kant's influence can be found in John Rawls (1999), Thomas Nagel (1987), Ronald Dworkin (2011), T. M. Scanlon (1998), Jürgen Habermas (1993), Robert Nozick (1974) and even Robert Paul Wolff's anarchism (1970) – to name only a few. A contemporary work of Kantian persuasion on the grounds of human rights can be found in Griffin (2008).

⁴ The lexicon of human dignity also integrates and initiates the terms of various international human rights covenants, from the United Nations Charter and the 1948 Declaration to more recent texts such as the 2006 Convention on the Rights of Persons with Disabilities. , human dignity is recognized as the founding pillar "of freedom, justice and peace", an inalienable value of all members of the human family (UN, 2006). But this section limits itself to reviewing Kant's doctrine and its subsequent influence not on international covenants but on analytic political theory over the past half-century.

⁵ Many excerpts reveal the intrinsic value given to freedom. On this basis, Kant's early notes from 1769-70 are already quite enlightening: "[...] nothing has an absolute worth but persons, and this consists in the goodness of their free power of choice. Just as freedom contains the first ground of everything that begins, so is it also that which alone contains self-sufficient goodness" (KANT, 2005, p. 420).

Herder in *Ideas for a Philosophy of the History of Humanity* [1784] to state an Enlightenment counterpoint with the historical defense of reason along the lines of the biblical structure found in Genesis. The short essay portrays the development, by reason, of human freedom in four steps while also showing key features of Kantian philosophy⁶. Initially, humans lived under the rule of instincts and obeyed nature's call for food and the objects of their natural desires. Yet, with the help of the imagination, reason began to direct human desires towards artificial objects, even those contrary to the natural desires for nourishment. In this first phase, men already discovered a faculty of choosing a way of life for themselves and not being stuck to a single one like other animals. Soon after came the sexual instinct for preserving the kind and the deliberate expectation of the future as the second and third steps, respectively. But only in

The fourth and last step that reason took in elevating the human being entirely above the society with animals was that he comprehended (however obscurely) that he was the genuine *end of nature*, and that in this nothing that lives on earth can supply a competitor to him. The first time he said to the sheep: *Nature has given you the skin you wear not for you but for me*, then took it off the sheep and put it on himself (Genesis 3: 21), he became aware of a prerogative that he had by his nature over all animals, which he now no longer regarded as his fellow creatures, but rather as means and instruments given over to his will for the attainment of his discretionary aims. This representation includes (however obscurely) the thought of the opposite: that he must not say something like this to any *human being*, but has to regard him as an equal participant in the gifts of nature (MAM, 8:114, author's emphasis).

This passage tersely characterizes the notable denial of direct duties towards animals within Kant's practical philosophy. A brief exposition of the Kantian stance on normative authority and "rational nature" is essential to account for where this rejection comes from. Allen Wood (1999, p. 121) even states that "perhaps the most fundamental proposition in Kant's entire ethical theory is that rational nature is the supreme value and the ground of whatever value anything else might possess".

The first step in assimilating Kant's late moral and legal philosophy demands acquaintance with his moral epistemology, which directly promotes his deontological framework. In short, a teleological conception derives principles of right from antecedent principles about what constitutes the good. On the other hand, a deontological conception derives the principles of right from an antecedent determination of what is right as universal and necessary.

⁶ Kant's works are cited henceforth in the ABNT format. The relations are the following: 1996a = "*Critique of Practical Reason*"; 1996b = "*Groundwork of the Metaphysics of Morals*"; 1996c = "*The Metaphysics of Morals*"; 1997 = "*Lectures on Ethics Collins*"; 1998a = "*Critique of Pure Reason*"; 1998b = "*Religion within the Boundaries of Mere Reason*"; 2000 = "*Critique of the Power of Judgment*"; 2005 = "*Notes and Fragments*"; 2007a = "*Anthropology from a pragmatic point of view*"; 2007b = "*Conjectural Beginning of Human History*" and 2016 = "*Natural Right Course Lecture Notes by Feyerabend*". The references are all presented in the bibliographic section.

The first step in assimilating Kant's late moral and legal philosophy is the acquaintance with his moral epistemology, which directly promotes his *deontological* framework. In short, a teleological conception derives principles of right from antecedent principles about what constitutes the good. On the other hand, a deontological conception derives the principles of right from an antecedent determination of what is right as universal and necessary. Borrowing from William Frankena's definition (1973, p. 15), another way of defining deontological theories is the possibility for an action or rule of action to be morally right, even if it does not promote the greatest possible balance of good over evil. Deontological theories either deny that the latter teleological element makes acts (or rules) right, or they contend that other primary forms of "right making".

Kant thought the problem with teleological conceptions was that any concept of good and evil also presupposes a principle of practical reason, namely the principle of causality. The *good* does not refer directly to pure concepts of understanding but depends on the category of causality that defines its terms. The description of the good as an object of the will depends on reason so that it becomes a genuine motive for acting from the moral law⁷. The universe can only be good or bad insofar as the rule of practical reason driving the will determines the general form of right. In this sense, Kant is skeptical about moral knowledge outside reason. Hence, he distances himself from any utilitarian definition that places the good in the objects of will. Even if happiness is an object of desire in all empirically known places, it is a law subjectively necessary by the law of nature and, therefore, contingent and empirical.

Reviewing Kant's concept of freedom of choice within his moral philosophy is the cardinal task to understanding the limits set on the realm of justice encompassing only rational beings. For Kant, the existence of morality is incompatible with natural determinism since ethical questions concern wills not governed by antecedent causes. It would be deception and contradictory⁸ to unite the notion of freedom with the idea of causal necessity. Since natural necessity dictates that the "past is no longer within my control, every action that I perform must be necessary by determining grounds that are not within my control, that is, I am never free at the point of time in which I act" (KANT, 1996a, p. 216). All human interests and desires correspond to an empirical reality causally determined by nature and, for Kant, ethical doctrines that define the objects of the good before the right are heteronomous because they obey the laws

⁷ In his own words, "Well-being or ill-being always signifies only a reference to our state of agreeableness or disagreeableness, of gratification or pain, and if we desire or avoid an object on this account we do so only insofar as it is referred to our sensibility and to the feeling of pleasure or displeasure it causes. But good or evil always signifies a reference to the will insofar as it is determined by the law of reason to make something its object; for, it is never determined directly by the object and the representation of it, but is instead a faculty of making a rule of reason the motive of an action (by which an object can become real). Thus good or evil is, strictly speaking, **referred to actions, not to the person's state of feeling**, and if anything is to be good or evil absolutely" (KANT, 1996a, p. 188, my emphasis).

⁸ The more exact wording employed was "wretched subterfuge" (KANT, 1996a, p. 216-217).

that make us passive agents. Hence, the metaphysics of morality is to investigate the idea and the principles of a possible pure will, and not the actions and conditions of human willing in general, which are largely subject to all sorts of corruption (KANT, 1996b, p. 45).

On free will and the possibility of morality, Kant thinks of causality in only two ways: according to nature or according to freedom. As already examined, the principle of right could not be defined from the laws of nature, as they are contingent and empirical. On the other hand, the law of liberty stipulates the principle of right based on a priori universal, necessary, and pure maxims. These maxims must serve as the basis for informing the pure will of a rational self-legislating being. Therefore, good and evil are defined not by the category of nature, which causally determines the state of one's feelings, but by the category of freedom directed by the determination of free choice (KANT, 1996a, p. 193). The rational nature allows the human being to know the universal and necessary laws of morality from his or her cognition. In section III of *Groundwork*, Kant attempts to prove transcendental⁹ human freedom by, in short, arguing that to deny that we are free would necessarily be a contradiction. In other words, the rational being can conceive her actions from the perception and self-assessment of the foreign stimuli that may alter her will. Being rational involves understanding her actions as determined by reason¹⁰. In short, if she were not free, the rational agent could not concoct her reason as the motivation for her actions.

Kant's mature moral philosophy reveals his position on the value of freedom. In *Groundwork* and *Critique of Practical Reason*, the role of autonomy is central to the foundation of moral principles by which laws are not bound by causal determination. Kant understands morality as the relationship of actions with laws determining their admissibility. Accordingly, the object of morality is restricted to categorical imperatives where the law defines the universal and necessary permissibility of actions of autonomous beings. He claims that "autonomy of the will is the sole principle of all moral laws and of duties in keeping with them" (KANT, 1996a, p. 166). Or even "that the envisaged principle of autonomy is the sole principle of moral science can very well be established by mere analysis of the concepts of morality" (KANT, 1996b, p. 89). Antecedent causes do not confine the autonomy of the will but a determination of itself. In

⁹ This freedom is transcendental because he argued for causal determinism in the phenomenal realm. Still, he conceived the category of freedom in the noumenal realm prior to experience and to the senses.

¹⁰ Of course, this also brings new objections. Chief among them is the objection that our perceptions of freedom as rational agents are nothing more than mere illusions. But that is beyond the scope of this work.

an elucidative excerpt in Collins' notes to Kant's lectures on moral philosophy¹¹, we read that

Freedom, on the other hand, is the capacity which confers unlimited usefulness on all the others. It is the highest degree of life. It is the property that is a necessary condition underlying all perfections. All animals have the capacity to use their powers according to choice. Yet this choice is not free, but necessitated by incentives and stimuli. Their actions contain *bruta necessitas*. If all creatures had such a choice, tied to sensory drives, the world would have no value. But the inner worth of the world, the *summum bonum*, is freedom according to a choice that is not necessitated to act. Freedom is thus the inner worth of the world (KANT, 1997, p. 125).

Autonomy is the foundation of human dignity and every *rational nature* (KANT, 1996b, p. 85). This rational nature allows the type of choice in which the agent owns motivations grounded on moral understanding independent of the phenomenal constraint of causal determinism. Thus, the rational being has absolute and unconditional value founded on her autonomy to regulate her will according to self-erected laws. Rational beings are ends in themselves because their value is not derivative or relative to anything. Their value is likewise independent of being the object of desire of another rational being. Human dignity is said to be absolute (KANT, 1996b, p. 84) because it is not subject to trade-offs or sacrifices to achieve a conception of the good. There is an underlying normative claim on the significance of freedom to morality and the fundamental value of freedom. Freedom of will, therefore, is an unconditional value that is self-evident upon reflection and carrying out reason's principle of non-contradiction.

For him, human dignity is irreplaceable and does not contain a price for which it can be exchanged – humanity, in other words, is an end in itself. On the other hand, non-rational beings can only be mere means insofar as their value is relative to the desires of some rational being who chooses her ends and her objects of desire by reason. In the words of Christine Korsgaard (1996a, p. 123), when you view yourself as having a “value-conferring status” in virtue of your power of rational choice, you must view anyone with the power of rational choice as having, in virtue of that power, a value-conferring status. Thus, you must realize the unconditional value of humanity in your person or others. According to her interpretation, Kant held that only something with absolute value could confer value from the power of choice that would end the infinite regress of conditional values being derivative of one another.

¹¹ Similar passages are also found in the lecture notes by Gottfried Feyerabend regarding the Natural Law course given in the winter of 1784: “The existence of non-rational beings has no value if there is nothing there that can serve rational beings, i.e. if no rational being uses it as a means. Animals also have no value in themselves because they are not conscious of their existence – the human being is thus the end of creation [...] The inner value of a human being is based on his freedom, that he has a will of his own. Because he should be the final end his will must be dependent on nothing else. – An animal has a will but it does not have a will of its own but the will of nature. The freedom of a human being is the condition under which a human being can himself be an end. Other things have no will but they must be determined by another will and be usable as a means” (KANT, 2016, p. 86).

Freedom is also central to Kant's legal philosophy, which is the only original and innate right on which all other rights rely (KANT, 1996c, p. 393). Freedom independent of coercion by choice of others is the inherent value of rational nature that underlies the *universal principle of right* (hereinafter, universal principle of justice).

- **Universal Principle of Justice:** "Any action is right if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law" (KANT, 1996c, p. 387).

For Kant, the moral claims that authenticate legal rights do not depart from the protection of interests but from the protection of the range of rational choices not determined by the preferences of others – freedom. This kind of freedom only extends to human beings who can reason. The Kantian conception of reason discussed here is normative. It does not concern a cognitive capacity for problem-solving but the capacity to determine one's ends under categorical imperatives and carry a moral personality capable of fulfilling them.

In *Religion within the Boundaries of Mere Reason* [1793], Kant describes three fundamental predispositions of human beings: i) animality, ii) humanity, and iii) personality (KANT, 1998, p. 50). Human beings have a proclivity for animality, given their "mechanical drive" steered by the instincts of self-love, by the search for well-being that is not exclusive to the human species, such as self-preservation, the preservation of the kind through sexual propagation, and cultural preservation. The predisposition for humanity and personality distinguishes humans from other living beings. In *Anthropology from a pragmatic point of view* [1798], he lists the inclination for humanity into two distinct ones (technical and pragmatic). He calls the propensity for personality the moral predisposition, retaining the content depicted in *Religion* (KANT, 2007, p. 417-421).

The predisposition for humanity is the capacity of a being to define its own ends and the objects of its desires independently of antecedent causes. The rational ability to formulate one's notion of the good life and act pragmatically to achieve its goals captures this concept of humanity. For example, imperatives that aim for goods that all beings empirically desire, also named *assertoric hypothetical imperatives*, for promoting happiness and the maxims of prudence (KANT, 1996b, p. 68). In *Religion and Anthropology*, the predisposition to humanity comprises the rational disposition in the non-moral arena. Assertorical hypothetical imperatives are universal only as they are empirically necessary for all known subjectivities. However, empirically considered imperatives are non-moral.

The predisposition for personality (or moral predisposition) is the rational ability to formulate the universal and necessary moral imperative and obey it as a categorical dictate. Moral personality arises from rational reflection on the moral law itself as a sufficient incentive for the

power of choice (KANT, 1998b, p. 50)¹². The moral personality founded on the autonomy of the rational agent differentiates her from all other earthlings insofar as only the rational nature allows her to enjoy transcendental freedom. When Kant writes about duty to humanity in other writings, such as *Groundwork* and *The Metaphysics of Morals*, he suggests the convergence of these two predispositions in contrast to animality.

Kant confers the status of *things* to all non-rational beings with relative value only as a means, not as the object of unlimited respect (KANT, 1996b, p. 79). In contrast, rational beings are *persons* with absolute value (i.e., with dignity). Although non-rational beings have a relative value under the status of things, most people consider that a bonobo has a much greater value than an empty bottle of wine lost at sea. Yet both are things with relative prices furnished by a rational creature without the proper notion of infinite value that is particular to persons. Rational beings endowed with practical freedom can bring value to the universe. Consistent with this view, Kant unambiguously wrote

that without human beings the whole of creation would be a mere desert, existing in vain and without a final end. But it is not their cognitive faculty (theoretical reason) in relation to which the existence of everything else in the world first acquires its value, so that someone should exist who can **consider** the world. For if this consideration of the world were to allow him to represent nothing but things without a final end, then no value would emerge from the fact that they are cognized [...] but in the **freedom** of his faculty of desire; i.e., a good will is that alone by means of which his existence can have an absolute value and in relation to which the existence of the world can have a **final end** (KANT, 2000, p. 308-309, author's emphasis).

The implication of his notion of freedom in developing his legal philosophy is critical. Kant's legal philosophy belongs to the tradition of the *will theory* on the function of rights. The role of rights is, within the Will Theory, to give their holder control over the duty of another. For Kant, for instance, when a moral agent transfers a property to another, the new owner has his property right in the sense of having the power to exercise authority over that domain and keep others under duties stipulated by the right holder. In other words, a will theorist claims that the function of a right is to give its holder control over the duty of another. Therefore, this view is compatible with his idea that only persons are subjects of direct rights and justice, while things can only be subjects of rights relative to some rational being.

Only persons can constrain the will of others since moral obligations to a rational being

¹² Rawls' distinction between the rational and the reasonable contains similarities but within the social contract framework. Persons are reasonable in that they are ready to propose fair terms of cooperation and abide by the principles in accordance with the reciprocal disposition of the other party. On the other hand, persons are rational in their terms, given their ends and interests that can be fulfilled by adopting the most effective means to guarantee their ends (RAWLS, 2005, p. 48-54). In short, "common sense views the reasonable but not, in general, the rational as a moral idea involving moral sensitivity" (RAWLS, 2001c, p. 7). As discussed further, moral persons possess two powers that contain these complementary capacities for Rawls' justice as fairness.

are understood primarily as constraints on the freedom of the will of others. When someone makes a promise, they are understood as transferring their freedom of choice to someone else. Rather than protecting or promoting interests, Kant's justice is concerned with preserving the *original right* to the freedom of choice not necessitated by antecedent causes, a unique ability of rational beings.

Kant sets moral standing on the capacity for moral agency. Only free rational beings – with the ability to determine their ends beyond natural instincts – can have moral claims. Since rational nature is the only property that grants its holders an absolute value – dignity – other beings are not ends in themselves. All value is conditioned by good (free) will, which, in turn, is the only source of unconditioned value. Thus, it is not unanticipated that Kant's system of duties requires treating nonhuman animals and nature only as a general duty *towards humanity*. And this raises extensive discussions about the adequacy of Kantian ethics when treating nonhuman animals and severely disabled persons who do not hold rational capacity. On duties to animals, he explicitly examines them in the *Doctrine of Virtue*. Kant never directly acknowledged the implications of his doctrine concerning human beings without the capacity to determine their ends and to exercise a moral personality.

It warrants noting that Kant's moral and political philosophy is not necessarily anthropocentric or speciesist in the strictest sense because it does not delimit the scope of justice to the *homo sapiens* as a species category on its own. Moral standing is not defined in terms of a biological description of humans but in terms of the rational nature that belongs to existing human beings. Moral status does not depend on an incursion into the distinctively human nature as a sublime species in the universe or as a unique product of divine creation. In theory, creatures other than humans could share a rational nature rendering the necessary freedom to obey universal laws of right¹³. Consequently, the autonomy of the will founding the dignity of the rational life can be distributed in other worlds not yet discovered.

Nonhuman animals lack the rational nature necessary for moral (and legal) standing. As argued earlier, rational nature is a core value premise for defining those who are the ends in themselves and the bearers of dignity – i.e., absolute value. In sum, morality belongs to the field of concepts that cannot be causally determined since it needs the idea of responsibility derived from the autonomy of the will. If factors beyond the agent's control define conceptions of the good, they are merely empirically determined and would not retain the authority required for

¹³ In fact, Kant begins *Groundwork* with the following sentence: "It is impossible to think of anything at all in the world, or indeed even beyond it, that could be considered good without limitation except a good will" (KANT, 1996b, p. 49, my emphasis). Furthermore, in the part of the *Critique of Pure Reason* where he distinguishes the three stages of conviction between opinions, beliefs, and knowledge, indeed indicates his strong belief in the existence of other beings outside this world: "I say that it is not merely an opinion but a strong belief (on the correctness of which I would wager many advantages in life) that there are also inhabitants of other worlds" (KANT, 1998a, p. 687). The moral foundation of human dignity is tied to its rational nature and practical freedom, not to the idea of human beings as belonging to a superior or sacred species *per se*.

moral responsibility.

Consequently, freedom can only mean a split with the idea of causal necessity suggested by the laws of nature. It must be a determination of itself, that is, *causa sui*. Animals, as non-rational beings, carry a will, but it is always bounded by factors external to them and, therefore, never *free* in the Kantian sense. Practical freedom is understood as the independence of the power of choice from the necessity caused by the impulses of sensibility (KANT, 1998a, p. 533; KANT, 1996b, p. 101). Only humans, as rational beings, are capable of self-determination and reflect on things in themselves, independent of impulses and other determinations of nature; that is, the human being, as a rational entity, is free in the transcendental sense, whose causality is not determined by time according to the law of nature¹⁴.

Kant conceives one's duties as constraints imposed by another's will. Rights are, thus, claims to the innate freedom of choice not necessitated by antecedent causes. Moral obligations can only operate under the constraint of pure and free will, which nonhuman animals do not have. *The Metaphysics of Morals* divides duties between *duties to self* and *duties towards others*. The *formula of humanity* (FH), of always treating a person as an end and never just as a mere means, establishes the moral foundations for the system of duties (to oneself and others) described in this work. This is the preferred formula used by Kant in *The Metaphysics of Morals* (MoM) to ground the ethical duties listed throughout the work. The reiterated categorical imperative in MoM is often described in terms of the FH (see KANT, 1996, p. xxxii)¹⁵. In Kant's doctrine of duties, human rationality is outlined in terms of their capacity for freedom and humanity (KANT, 1996c, p. 564).

A succinct section from *The Metaphysics of Morals* summarizes the Kantian doctrine and its relationship with animals. Kant claims that the destruction of beauty, plants, and animal cruelty express moral failures (KANT, 1996c, p. 564). The killing of an animal must also be quick and without pain, while animal labor cannot be employed under excessive strains (KANT, 1996c, p. 564). Speculative experiments with animals in agony must also be abhorred (KANT, 1996c, p. 564). However, per the proper respect for humanity as the only end in itself, "as far as reason alone can judge, a human being has duties only to human beings (himself and others)"

¹⁴ In the *Critique of the Power of Judgment*, Kant writes: "we have in the world only a single sort of beings whose causality is teleological, i.e., aimed at ends and yet at the same time so constituted that the law in accordance with which they have to determine ends is represented by themselves as unconditioned and independent of natural conditions but yet as necessary in itself. The being of this sort is the human being, though considered as noumenon: the only natural being in which we can nevertheless cognize, on the basis of its own constitution, a supersensible faculty (**freedom**) [. . .]" (KANT, 2000, p. 302, author's emphasis).

¹⁵ The expeditious *Groundwork* reader can hold the misperception that the *Formula of Universal Law* (FUL) – "I ought never to act except in such a way that I could also will that my maxim should become a universal law" (KANT, 1996b, p. 57) – expresses the whole of Kantian ethics.

(KANT, 1996c, p. 563)¹⁶. Indirect duties towards X do not involve any moral consideration, strictly speaking, towards X. What underlies the (indirect) duties towards animals is, in fact, the duty that the rational being has towards the humanity in him or her. A human being has no duty to any beings other than rational creatures. If she thinks she has such duties, it is because of an “amphiboly” in her concepts of reflection, and her supposed duty to other beings is only a duty to herself (KANT, 1996c, p. 563).

Animal cruelty and the disregard for natural beauty are viewed as attitudes contrary to the disposition for humanity, as it weakens the feeling that, although not moral in itself, is still a disposition of sensitivity that promotes morality towards other persons (KANT, 1996c, p. 564). Moreover, another reason is that indirect duties are appropriate because interactions between humans and other animals are analogous to human relationships. If a dog, for example, has faithfully served its owner for a long time, this is an analog of merit and, therefore, must be rewarded (KANT, 1997, p. 212). Not satisfying this analogous merit injures the predisposition for humanity by encouraging this same action toward other human beings.

These actions hurt one’s character and the due respect for humanity itself, comprehended here as the ability to define one’s ends and the capacity for moral agency – Kant does not distinguish between humanity and personality in all of his works. Thus, duties to animals arise from duties to oneself acting from the categorical imperative to promote the ends of humanity. The rational respects her humanity by aspiring to her own perfection, distancing herself from the disposition of animality, and cultivating her will to the purest form (KANT, 1996c, p. 518-519). By mistreating non-rational creatures, one is feeding her predisposition to animality and shaping her will in a way that harms his moral disposition toward other rational beings, generating vices contrary to the promotion of humanity. This framework is, briefly, Kant’s scheme regarding the treatment of nonhuman animals.

Someone committed to the Kantian scheme may follow the original stance and confer only indirect duties to animals (see DENIS, 2000). But there is still no room for animal rights for their own sake. Coercive state action to prevent transgressions against them is solely an indirect protection of human freedom. The universal principle of justice legitimizes coercion exclusively to prevent hindrances to freedom since the hindrance to the hindrance to freedom is consistent with the promotion of freedom (KANT, 1996c, p. 388). But, as stated earlier, this freedom of choice, the only original and innate right, is not shared by non-rational beings. Hence, animals cannot be considered subjects of justice, and duties towards them are indirectly tied to furthering the ends of humanity. Despite everything, some contemporary Kantians are unwilling to hold the original account of the moral standing of nonhuman animals and prefer to

¹⁶ “Even gratitude for the long service of an old horse or dog (just as if they were members of the household) belongs *indirectly* to a human being’s duty *with regard to* these animals; considered as a *direct* duty, however, it is always only a duty of the human being *to himself*” (KANT, 1996c, p. 564, author’s emphasis).

build their own modified versions with direct duties to animals.

Jens Timmermann (2005) attempts to modify Kant's schema by arguing that the proper treatment of animals constitutes a portion of the direct duty to oneself and, for this reason, is directly morally relevant. In this understanding, acting correctly for the right reasons is part of the duty to oneself. In the case of non-maleficence, people have a duty to themselves to act for the right reasons, whether toward other people or animals. For him, other possible factors, such as the feeling of pleasure and pain, entitle a life to be an end in itself beyond the title of humanity. But there is no detailed attempt to reconcile this normative proposition with the fundamental idea that the faculty of choice is the *single* source of absolute and unconditional value for Kant. Pleasure and pain are, for Kant, determinations of the senses and should not guide the moral law.

Another Kant scholar, Allen Wood (1998), begins with the Kantian idea that rational nature is an end in itself with absolute and unconditional value. But Wood distances himself from Kant by pointing out that respect for rational nature should not be personified. As Wood calls it, *the principle of personification* adopted by Kant contends that rational nature is respected only by respecting the humanity in one's person. Therefore, every duty must be a duty to a person or persons. The formula of humanity as an end in itself (FH) has the following structure: "So act that you use humanity, **whether in your own person or in the person of any other**, always at the same time as an end, never merely as a means" (KANT, 1996b, p. 80). Therefore, the principle of personification demarcates that respect for humanity is realized only as respect towards a person or persons. As Wood points out, this principle rules out any possibility of a direct duty to creatures without the rational nature necessary for personified humanity. Wood's proposal, consequently, is that, in addition to respecting the rational nature in people, "we should also respect rational nature in the abstract, which entails respecting fragments of it or necessary conditions of it, even where these are not found in fully rational beings or persons" (WOOD, 1998, p. 198).

The main challenge for this proposal is to show how respect for animals connects with direct respect for rational nature. To Wood (1998, p. 200), although nonhuman animals may not have the rational nature present in humans, they would have recognizable fragments of it. They have capacities we must understand and value as the constitutive infrastructure of rational nature. The difficulty in extrapolating respect for humanity into the abstract is that unconditional and absolute value belongs solely to the kind of rational autonomy unique to "free" rational beings. Finding parallels of this autonomy in non-rational nature is contrary to the Kantian framework of singling out rational nature as an absolutely good element of freedom restricted to rational beings. In outline, a similar structure does not exist between heteronomy and the autonomy of the will, as Kant conceived it, that makes possible due respect to humanity in its abstract version, that is, outside the people themselves. Moreover, Kant's moral thought counts on a repeated enunciation of how the freedom of choice following the full exercise of practical reason differs from anything found in nature.

Christine Korsgaard (1996) argued in her *Tanner Lectures*, later published as *The Sources of Normativity*¹⁷, for direct duty towards nonhuman animals. In short, her starting point deviates from Kant's by submitting that the origin of value lies in the self-promotion of one's identity as a being. Sentient beings place value on themselves, where lives are their imperatives that hold absolute value. Rational beings reflect on reasons, and non-rational sentient beings have a 'perception of a reason', an unreflected rejection of threats to their identities. This predisposition to animality is also present in other animals in the form of preserving one's own life his part of morality, where "valuing itself just is its nature" (KORSGAARD, 1996, p. 152). Despite being an original position, her account of the sources of value surely seems to be heteronomous from Kant's point of view. Integrating this thesis into the Kantian framework would demand deforming it enough to make it unrecognizable.

This concise presentation of Kant's moral philosophy relevant to nonhuman animals benefits the following subsection examining the domain of justice in the most influential theory of justice of the 20th century, Rawls' justice as fairness, in light of the contractualist argument found in his work. Two points that are central to demarcating the boundaries of Rawlsian justice concerning nonhuman animals (and the severely debilitated). First, the conception of persons as free and equal plays a central role in the fundamental ideas underpinning Rawls' theory of justice. Second, his conception of society as a cooperative venture for mutual advantage over time. The former is particularly shaped by Kant's thought about what constitutes persons. These premises significantly affect the weight given to animal interest considerations, especially when they inevitably conflict with human interests.

¹⁷ See esp. section 4.3.

2 CONTRACTUALISM I: JUSTICE AS FAIRNESS AND ANIMALS

The contractualism¹⁸ of John Rawls (1999a, 2005) provided an enormous framework for normative political theory. However, contractualist theories of justice have often excluded nonhuman animals from their scope. Contractual devices generally focus on principles generated from agreements between rational beings, guilelessly excluding animals from the initial framework. This chapter has two aims. First, it introduces the main components of justice as fairness, as Rawls' conception of justice is known. Second, it explores the limitations regarding its assumptions and possible applications of the theory regarding the duties of justice owed to other species. The first section focuses on *A Theory of Justice*, while the second examines the implications of the “political turn” of Rawls' later works. In conformity with the author (RAWLS, 1999a, p. 448; RAWLS, 2005, p. 245), I argue that his contract doctrine can only include the fundamental interests of animals with a massive distortion of the contractualist doctrine.

2.1 Justice as Fairness and the Rights of Animals

Contractualist theories try to answer fundamental questions of moral and political philosophy, such as i) what justice requires of us (i.e., a question of content) and ii) why we should obey the demands of justice. In his contractual conception of justice, Rawls seeks principles of justice that free persons would accept in a hypothetical position of equality – i.e., under a *fair* circumstance. Hence, it's termed *justice as fairness* (JaF). Regarding the second fundamental issue, persons should obey the demands of justice precisely because a hypothetical agreement under fair conditions specifies them. Rawls' impact on theories of justice is so vast that it is reasonable to assert that he restarted normative political theory. A notable share of theories of justice today either agree with or stand as reactions to justice as fairness. Thus, it merits discussing the basic notions of this conception and why, at first glance, this theory may seem hostile to the consideration of the interests of other sentient creatures. The arguments against the premises and consequences of Rawls' (and Brian Barry's) contractualism are reserved for Chapter III. This section limits itself to i) laying out those aspects of Rawls' theory of justice relevant to the discussion of justice for nonhuman animals and ii) presenting recent efforts to integrate animal interests within Rawls' contractualist framework.

In *Justice as Fairness: A Restatement*, Rawls (2001) enumerated six fundamental ideas

¹⁸ Hereafter I shall describe John Rawls' doctrine of the social contract as a contractualist conception of justice. I also use the terms 'contractualism' and 'social contract tradition' interchangeably in this chapter. Yet, according to Samuel Freeman (2018, p. 177) Rawls called his own position 'Kantian contractarianism' before *Political Liberalism* and resisted the term 'contractualism' to his own position.

that structured his conception of justice: a) society as a fair system of cooperation over time; b) the basic structure of society; c) the well-ordered society; d) the conception of persons as free and equal; e) the original position and, finally, e) the idea of public justification. Some ideas are more fundamental than others, but all six elements are essential to understand justice as fairness. In particular, the focal point of this section is directed to Rawls' ideas of society as a cooperative venture and his conception of persons, examining the limits these two fundamental concepts impose on the theoretical boundaries of justice as fairness.

It is contended in Chapter III that these basic ideas, as articulated by Rawls, are theoretically undesirable for an adequate conception of justice, that is, for proper attribution of rights and duties by the basic institutions of society and its way of distributing burdens and benefits. The central external criticism offered here claims that the essential features of justice as fairness fail to correspond to what is morally considered just, particularly the theory's basis for equality. The fundamental idea of society in JaF knowingly collides with multispecies justice by attributing moral and political relevance to reciprocity within a voluntary cooperative scheme between persons. The second fundamental idea that clashes with the description of animals as subjects of justice is the very conception of persons conceptualized in justice as fairness. Before examining objections to the scope of justice in JaF, this chapter and the next inquire in detail about the influential contractualist arguments made in contemporary debate. Here are the basic features of the Rawlsian theory of justice:

Rawls' idea of society anchors his contractualist argument. In his words, "the most fundamental idea in this conception of justice is the idea of society as a fair system of social cooperation over time from one generation to the next" (RAWLS, 2001, p. 5). This social cooperation has at least three essential elements (RAWLS, 2005, p. 16). First, the notion of cooperative venture cannot be summarized merely as the coordinated activity by a centralized agent. Still, it must be understood as cooperation driven by publicly recognized (just) principles. Additionally, the idea of reciprocity sets the basic terms of this cooperation. According to Rawls, reciprocity implies two primary aspects that form the rest of the crucial elements of cooperation. Reciprocity is simultaneously constituted by *equal respect* and *mutual advantage*. The terms of cooperation are those that each participant would reasonably accept, provided that everyone else also accepts them. These terms of cooperation are also specified, in addition to mutual respect, by the concept of rational advantage of each participant in advancing their own good. A mutual agreement in a two-way fashion characterizes the terms of reciprocity. Mutual concurrence is only fulfilled if both parties contribute equally in the *exchange* of rights and privileges established on a shared notion of equality. Inside this idea, there is mutual dependence among participants in reciprocal behavior. According to the Collins Dictionary, reciprocity is "the exchange of something between people or groups of people when each person or group gives or allows something to the other" (Reciprocity, 2023). Reciprocity requires a mutual return of expectations in the fair exchange. In the case of JaF, reciprocity is legitimate if it meets the benchmark of equality between the parties. In this sense, justice as reciprocity is situated

between a purely altruistic version and a mere model of mutual advantage (RAWLS, 2005, p. 16-17).

At one extreme, an altruistic conception can mean either the maximization of an altruistic utility function or an unbiased conception of universal benevolence, such as in classical utilitarianism. An altruistic function may assign less weight to oneself for the benefit of others, but it is hardly what Rawls had in mind. It is more likely to assume that Rawls mentioned “altruism” as representing the utilitarian ethos of impartiality among persons. On the other hand, Rawls also notes that JaF does not represent a version of unsubstantial mutual advantage. In other words, *A Theory of Justice* distances itself from Hobbesian contractarianism by establishing “restrictions” of moral equality to the model that precludes asymmetry of bargaining power. These asymmetries allowed by Hobbes’ (1996) moral contractarianism give rise to objections to the idea that morality is the set of norms derived from an agreement for mutual advantages. Distinguishing it from the utilitarian conception of justice, Rawls (1999b, p. 208) argues that a practice conforms to the notion of reciprocity if no person feels that she or any others are taken advantage of or forced to give in to claims that they do not accept as legitimate. The purely altruistic standing violates the principle of reciprocity by assigning greater moral weight to others than to oneself, infringing the central value of equality. Alternatively, the pure conception of mutual advantage allows for agreements under circumstances of inequality that would render unfair principles.

The conception of justice as a mutual advantage (GAUTHIER, 1986) does not demand sharing the gains from cooperation on a benchmark of equality. According to this view, for justice to acquire a firm foundation, it can only rest on rational gains through cooperation. It recognizes that individuals have different interests that may require necessary compromises so that collectively they can reap the fruits of cooperation (*Pareto improvements*, i.e., where all benefit from the collective bargaining). Drawing on the prisoner’s dilemma, a point is defined as *Pareto optimal*, in reference to the Italian economist Vilfredo Pareto, only when there is no longer any possibility of gain for one without the direct loss of another. In Gauthier’s morality, moral rules are exclusively derived from the concept of mutually beneficial exchanges. This strain of the social contract tradition that portrays morality as the resulting vector of rational plans is generally referred to as *contractarianism*. Associated with Hobbes, this conception of justice is posited since Glaucon’s challenge to Socrates. The substantive value of equality only appears in the form of equal rationality of the participating members who enter the bargain

(GAUTHIER, 1986, p. 270)¹⁹.

On the other hand, in justice as fairness, the members of the hypothetical agreement are also rational agents promoting their good, but with the additional requirement that social cooperation is to benefit all members of society. The reciprocity criterion comprises JaF's underlying social theory. The notion of mutual advantage assumes that citizens of a well-ordered society regard each other as free and equal. Freedom is also expressed by voluntarily joining the cooperative system for mutual advantages. Fair cooperation respects the criterion of reciprocity by affirming the position of equal consideration. The idea of fairness affirms this substantive value of equality between persons and goes far beyond conceiving members as exclusively equally rational; they are similarly positioned and recognize this fact by submitting terms of cooperation that embody the principle of reciprocity. Hence, reciprocity incorporates a notion of justice as a fair distribution of payoffs from cooperation (RAWLS, 2005, p. 16). In other terms, it would be unfair to distribute the gains from cooperation disregarding the equal consideration of those who are part of the social contribution (RAWLS, 1999a, p. xv).

Similarly to Rawls' reciprocity principle, Scanlon (1998) justifies the authority of moral rules no one could reasonably reject from the fundamental idea of mutual recognition between moral agents. Obeying moral standards no one could reasonably reject represents the "positive value of a way of living with others" (SCANLON, 1998, p. 162). A critical part of reciprocity is that agents are capable of a sense of justice that allows them to contemplate and act on fair terms of cooperation, even when they are not rationally advantageous. Implicit in justice as fairness is the idea of citizens' relationships where benefits are judged against a benchmark of equality (RAWLS, 2005, p. 17). Citizens are equal as they fulfill the minimum degree of having the two moral powers necessary to have a moral personality capable of formulating and acting based on the two principles of justice.

The importance given to the idea of society as a fair system of cooperation is also founded on a relevant concept in JaF: the *circumstances of justice*. The circumstances of justice are the normal conditions under which cooperation is possible and necessary (RAWLS, 1999a, p. 109). The social theory devised in *A Theory of Justice* is simple: individuals are usually geographically, historically, and culturally situated—furthermore, normal conditions foist circumstances in which there is mutual gain from entering the cooperative system. Therefore, the

¹⁹ I shall briefly argue that justice as mutual forbearance is an alternative to justice as usually conceived. Justice is often conceived as the virtue expressed by being morally fair to those most in need, even at the cost of the general welfare. Gauthier (1986, p. 18) straightforwardly explains his contractual version when introducing the distributive issue with the impaired; They should fall beyond the scope of justice because there is no rational gain "when the services required exceed any possible products". This conception of justice must not only reject nonhuman animals from the scope of morality but also be hostile to their fundamental interests. Given that the range of morality is restricted to those where there is something to be gained from cooperation, this produces the incentive to maintain the *status quo* in which there is the systematic exploitation of those who cannot be rational subjects able to contribute to this rational venture.

distribution of burdens and benefits must be regulated by public principles of justice connected to the idea of fair cooperation. Collective and individual gains from social cooperation build the challenge of formulating fair rules that would garner support from persons with different conceptions of the good. The premise of the need for cooperation under normal conditions establishes a pillar of the social theory underlying the theory of justice. Rawls divides the conditions that make cooperation possible and necessary between objective and subjective.

In short, the objective conditions are i) geographical coexistence, ii) relative equality of mental and physical power (in proportion as no one member can dominate the rest), iii) vulnerability at the individual level (their life plans may be attacked by the union of others) and iv) moderate scarcity of resources (RAWLS, 1999a, p. 109-110). The subjective circumstances are those found in the subjects of justice. On the one hand, the interests are similar. On the other hand, interests often conflict. Objective and subjective circumstances compel cooperation to be a social imperative. Therefore, this is the theoretical basis for the fundamental idea of society as a cooperative venture in JaF. The moral and political relevance given to cooperation, reciprocity, and contribution raises objections that will be discussed later. In particular, this section's second purpose is to examine the recent efforts to integrate nonhuman animals into Rawls' contractualist framework. I argue that these initiatives err in two ways: first, they distance themselves from the central elements of the contractual argument they intend to be a part of; second, they are vulnerable as moral theories.

Along with the fundamental idea of society, a second central aspect frequently at odds with the efforts to integrate animals as subjects of justice is the conceptual consequences of persons being conceived as *free and equal*. To work, justice as fairness models citizens as fully cooperating members of society over time, from one generation to the next (RAWLS, 2001, p. 5). Moral persons are specified by their two moral powers: First, the capacity for a sense of justice, a desire to apply and act on principles of justice that select the fair terms of social cooperation. Secondly, the other moral power is the capacity for a conception of the good, the capacity to maintain, review, and rationally pursue a conception of the good. By possessing a *minimum degree*²⁰ of these two moral powers, this individual has a moral personality, namely being able to pursue her ends while honoring fair terms of cooperation. It is a feature-based model (as I shall call it) of considerability that justifies the entitlement to justice by virtue of certain human characteristics. More broadly, the feature-based approach to entitlements of justice contains the following structure: In virtue of possessing S natural characteristics, individual i is entitled to justice. In Rawls' case, S is the possession, at least to a minimum degree, of the two moral powers – the capacity for a sense of justice and the capacity to form, revise, and pursue a conception of a good life.

The capacity for moral personality defines the range of beings entitled to equal justice

²⁰ Later, the concept of range property will be examined in more detail.

(RAWLS, 1999a, p. 442). Differences in the moral capacities between members of society may qualify the most gifted for offices where judicial virtues are demanded, but after a certain minimum is reached, all are entitled to equal citizenship.

In an article published in 1963, *The Sense of Justice*, Rawls (1999b, p. 112, my emphasis) wondered to whom we owe justice:

Put another way, what qualifies a being as entitled to hold an initial position of equal liberty, so that in our dealings with him we are required to conduct ourselves in accordance with principles which could be acknowledged in such a position? The answer to this question is that it is **necessary and sufficient that the being is capable of a sense of justice.**

The sense of justice is the effective desire “to apply and to act upon the principles of justice, at least to a certain minimum degree” (RAWLS, 1999a, p. 442). The capacity for a sense of justice as a necessary condition is defended on two grounds. First, the duty of justice is owed only to those who can complain about not being treated fairly. Rawls contends that a person without a sense of justice cannot complain or feel resentment if others do not act toward him as the principles of justice require. Additionally, he understands rights as the power to claim something for oneself. Second, the sense of justice is acknowledged as a necessary part of one’s dignity, in the Kantian sense of being able to possess moral dispositions that give the absolute value already discussed heretofore. But since these are not propositions of his mature philosophy, it might be more appropriate to interpret his position in *A Theory of Justice*.

The emphatic position found in the 1963 paper just cited contrasts with the ambiguous stance in TJ. In *A Theory of Justice*, Rawls relinquishes the thesis that both moral powers are necessary to be owed justice while also pointing out that giving strict justice to beings without these capacities does not seem required. In one passage, he writes:

We see, then, that the capacity for moral personality is a sufficient condition for being entitled to equal justice. Nothing beyond the essential minimum is required. Whether moral personality is also a necessary condition I shall leave aside. I assume that the capacity for a sense of justice is possessed by the overwhelming majority of mankind, and therefore this question does not raise a serious practical problem (RAWLS, 1999a, p. 442-443).

Yet, later on he states that “while I have not maintained that the capacity for a sense of justice is necessary in order to be owed the duties of justice, it does seem that we are not required to give strict justice anyway to creatures lacking this capacity” (RAWLS, 1999a, p. 448). However, the ultimate precautionary position is that “even if the capacity were necessary, it would be unwise in practice to withhold justice on this ground. The risk to just institutions would be too great” (RAWLS, 1999a, p. 443). This retreat into ambiguity may be the expected result of conflicts between the assertion that possessing a sense of justice is necessary to give considerations of justice and ordinary moral intuitions regarding the treatment of other individuals that do not meet the criterion of moral personality. For simplicity, let’s subdivide these individuals into four

categories: i) children, ii) adults with temporarily impaired abilities, iii) permanently disabled human beings, and iv) nonhuman animals. The first two categories are assimilated by Rawls as follows:

Rawls (1999a, p. 444) introduces the concept of “range property” to justify the minimum degree criterion and to incorporate children and the temporary fluctuations in the moral capacities of individuals. For example, all points inside a circle belong equally to the property ‘being inside the circle’, regardless of their distance from the center or proximity to its limits. In more precise terms,

There is property R, which operates in a binary way (either you have R or you don’t), and property S, which is a scalar property admitting of differences of degree. We say that R is a range property with respect to S, if R applies to individual items in virtue of their being within a certain range on the scale indicated by S. In the simplest cases, R is like a threshold. If you are over a specified threshold on scale S, you qualify for property R (WALDRON, 2017, p. 118-119).

This range property allows differences in degree within a range/space. Jeremy Waldron (2002, p. 77) gives the example of property ‘being in New Jersey’. Hoboken and Princeton equally possess the ‘being in New Jersey’ status, despite Hoboken being on the New York border. From a minimum degree of moral capabilities, all members can be perceived as equal holders of these powers.

Children and adults temporarily disabled, whether by accident or other contingency, can be accommodated in justice as fairness through the use of the notion of range property to the two moral powers. Further, Rawls distinctly defines justice as fairness as a system over time, from generation to generation. Hence, there is no reason to exclude children from considerations of justice, as their potentiality (RAWLS, 1999a, p. 442) can easily be included in a dynamic conception of justice. Similarly, adults with temporarily impaired two moral powers may also be suited to a dynamic theory of justice.

The main theoretical challenge arises for permanently cognitively impaired individuals (hereinafter called *disabled persons*). This challenge is part of a notable argument made by animal rights advocates about the existence of people with disabilities who do not meet the minimum requirements for moral personality. This well-known objection is known as the *argument from marginal cases* - henceforth, called the *argument from species overlap*²¹. Peter Singer (2002, p. 237) summarizes the argument by writing that:

²¹ The term *argument from species overlap* avoids several misguided objections to one of the most employed arguments by animal rights advocates. From the idea of reflexive equilibrium, the argument from species overlap may be construed as evidence, for its advocates, of an imbalance (inconsistency) between considered judgments. Therefore, the from species overlap argument is a relevant tool for defining a more mutually supportive equilibrium between considered judgments and principles.

In most ways, human beings are not equal; and if we seek some characteristic that all of them possess, then this characteristic must be a kind of lowest common denominator, pitched so low that no human being lacks it. The catch is that any such characteristic that is possessed by all human beings will not be possessed only by human beings. For example, all human beings, but not only human beings, are capable of feeling pain; and while only human beings are capable of solving complex mathematical problems, not all humans can do this. So it turns out that in the only sense in which we can truly say, as an assertion of fact, that all humans are equal, at least some members of other species are also “equal” – equal, that is, to some humans.

On the subject of disabled persons, Rawls (1999a, p. 446) adopts a reticent position, where “those more or less permanently deprived of moral personality may present a difficulty. I cannot examine this problem here, but I assume that the account of equality would not be materially affected”. Yet he never explained how his assumption of equality would not be materially affected²². Indeed it is difficult to contemplate modeling a principle of equality incorporating disabled persons without some speciesist premise or a complete revision of the conception of persons and its centrality to Rawls’ contractualism²³.

Political Liberalism (PL) eliminates the ambivalence present in TJ. In the former, both moral powers are again sufficient and necessary conditions for being considered by the duties of justice. In this restored view, Rawls (2005, p. 20-21) lists four problems for justice as fairness, as he treats them as “problems of extension”: a) the problem of future generations; b) the problem related to the law of the peoples; c) the problem of persons who do not reach the status of fully cooperating members of society and d) the problem of duties towards animals and nature. These four challenges would be problems of extension as they require adjustments to some premises originally held in justice as fairness.

He claimed that justice as fairness provided adequate solutions for future generations through the definition of just savings. The issue of international law, in turn, is settled through the determination of principles regulating the relationship between political societies (RAWLS, 2005, p. 21). Regarding the third problem of extension, he considers it is *partially* solved by the extension of a fair system of health care along the lines proposed by Norman Daniels (1985), relaxing the idealization that all members would always need to be fully cooperative, allowing

²² Peter Carruthers (1992, p. 116-177) conceives the picture that the parties involved in the social contract will choose stable moral principles under which it is possible to avoid abuses and arbitrariness. In this sense, any conception of justice in which some humans are denied moral rights is unstable and capable of denying rights to those with rights. The problem of contractualism persists: these individuals would not have the dignity of others but would be holders of rights only insofar as they would be useful for maintaining the normative stability of those genuinely worthy of the consideration of justice. Consequently, there seems to be a fatal problem of justice in describing the duty of justice to severely disabled human beings and their expected intrinsic (nonderivative) value. And this also applies to nonhuman animals.

²³ The conception of persons is an essential feature of Rawls’ constructivism and his contractualist moral theory as a whole. To annul the conception of *persons as individuals holding the proper moral powers* would imply a total reformulation of Kantian constructivism by which Rawls structures his moral epistemology and metaethics.

justice to demand assistance protections for the return to “normal functioning”. Finally, concerning extending justice to other animals (and the permanently disabled), he could not adequately integrate them into justice as fairness.

With all these considerations, animals are expected to be excluded from the Rawlsian theoretical scheme for lacking the two moral powers located in the conception of persons as fully cooperating members of society. The Rawlsian construction designs a theory of justice that aims at cooperative relations between free and equal persons in modern democratic societies (RAWLS, 2001, p. 32). Limitations of the model reflect the author’s aims to develop a conception of justice appropriate to regulate fair terms of voluntary cooperation between persons seeking to propose and live by reasonable doctrines. The Rawlsian political theory allows us to structure a broad range of normative arguments for political regimes with free and equal citizens who benefit from social cooperation. Rawls (2007, p. 10) was concerned with the practical consequences of setting the normative basis for modern constitutional democracies. Therefore, his theory’s limitations do not imply the devaluation of justice as fairness as an employable framework for thinking normatively about contemporary constitutional regimes. On possible flaws in his political conception of justice, he wrote that “how deep a fault this is must wait until the case itself can be examined” (RAWLS, 2005, p. 21).

Rawls’ realm of justice is consistent with a Kant-oriented conception of persons as free insofar as they can equally participate in an agreement under fair conditions. Justice as fairness derives its authority from moral principles under a contractualist argument that relies on citizens being able to recognize and act on the principles of justice. The ideal of mutual respect between rational and reasonable agents retained in the notion of reciprocity is realized within the model of society as a fair system of cooperation in which the members are fully capable of participating. Despite the restriction of the scope of justice to moral persons, Rawls often stressed that justice is only a partial account of morality, extending the duties of compassion and humanity to other animals. Although justice is not due to nonhuman animals, “it is wrong to be cruel to animals and the destruction of a whole species can be a great evil” (RAWLS, 1999a, p. 448). Thus, being outside the scope of justice does not enact a state of license for the indiscriminate use of nature and other sentient beings, as their treatment would still fall within the scope of morality.

Since the publication of *A Theory of Justice*, several authors have sought to incorporate nonhuman animals within contractualism, especially of Rawls. Despite him explicitly rejecting the inclusion of nonhuman animals within the scope of justice in his later work, some have

sought to incorporate the interests of animals within JaF²⁴. In contrast, others claim the unfeasibility of adequately integrating nonhuman animals' interests into Rawls' theory of justice without a profound contortion of its fundamental ideas²⁵.

The final part of this section presents three ways of assimilating the interests of nonhuman animals within the contractualist scheme tried by different authors. The first course aims to ascertain that the subjects of justice are those members with whom we maintain cooperative relationships, moving away from the *feature-based approach* and focusing more on the moral relevance of the mutually advantageous *relationships* resulting from cooperation (interhuman or interspecific). The second effort sets out to employ the device of the original position to design principles of justice under the ignorance of species membership. The third case for integration seeks to extend the scope of social justice by incorporating nonhuman animals with the concept of public reason.

The first theoretical route examined here is to challenge the premise that only human members participate in the cooperative system. In this line of reasoning, Mark Coeckelbergh (2009) argues that the relationships between humans and nonhumans can be understood within the scheme of mutual advantages. It explores how individuals, regardless of species, gain from each other by cooperating, voluntarily or not. Accordingly, Coeckelbergh (2009, p. 69) proposes “shifts attention away from what nonhumans are towards what ‘we’ (humans/nonhumans) do together”. Thus, moral criteria emphasize more on “(quasi) social” relations of mutual benefit and less on the properties of the members of the social contract.

Coeckelbergh's argument is particularly innovative in combining the social contract device with an emphasis on the moral relevance of nonhuman animals' contributions to modern societies. This thesis denies the premise that animals do not contribute materially and morally to the development of societies. Domesticated animals were (and still are) largely exploited for economic interests or bred for companionship. Animals are sources of food, clothing, and medical research that regularly benefit societies. Unlike the standard voluntary notion of cooperation, Coeckelbergh also highlights dependency relationships. Indeed, Coeckelbergh's relational approach is limited to the classes of contributory relationships. In his case, duties of justice arise from the *interdependence* (COECKELBERGH, 2009, p. 74).

Yet, including nonhumans in a moral contractualist theory also attracts objections. First,

²⁴ For modifications of the original position towards including species membership as a morally arbitrary property, see VanDeVeer (1979), Elliot (1984), and Rowlands (1997). For an argument of sympathetic members of the original position in regards to animals, see Richards (1971). For an argument to conceive of other animals as cooperative members of society, see Coeckelbergh (2009). For an argument including nonhuman animals in the scope of justice through public reason, see Roberts-Cady (2020). Another route is to accept the limitation of the range of justice to human beings but to explore the moral dimension of obligations towards other animals outside the 'rights discourse', as seen in Abbey (2007).

²⁵ See Pritchard & Robison (1981), Carruthers (1992, esp. chapter 5), Garner (2003, 2012), Nussbaum (2006), Svolba (2016), and Berkey (2017).

the focus on the moral relevance of contributory relationships is exclusionary of members unable to contribute. If social (or quasi-social) contribution is the primary source of duties of justice, the intrinsic value of disabled humans is not explained by theory. Again, the argument from species overlap can be applied to counter the idea that duties of justice come from contributory characteristics.

Second, Coeckelbergh (2009, p. 77) ascribes to a wider notion of cooperation, one that includes voluntary and involuntary relations, in order to welcome the contributions arising from multispecies relationships. However, by abandoning the ontological criteria of moral personality in favor of a social philosophy, nothing prevents inanimate objects from being subjects of justice as long as they contribute to the cooperative scheme (GARNER, 2012, p. 170-171). Therefore, This concept of cooperation comes closer to arguments for a theory of ecological justice that Coeckelbergh rejects (2009, p. 70) and raises its own theoretical problems about moral considerability. Therefore, even considering that the level of adherence to the Rawlsian scheme is an irrelevant criterion for validating the arguments, objections still persist.

Another theoretical path tries to answer the question: What if the original position (OP) includes all sentient creatures? An expanded notion of OP has been briefly considered by Donald VanDeVeer (1979), and more recently by Mark Rowlands (1997, 2009). First, it is imperative to introduce the fundamental idea of the original position and its particular importance as a device of representation for Rawls' theory of justice. This contractual way of thinking about the formulation of principles of justice is, as I will show below, marked by elements that Allen Wood (1998, p. 189) calls *logocentric* – in contrast with mere speciesism. A proper understanding of the original position allows examining a central argument of the contractual structure of thinking a theory of justice: the idea of principles developed from a fair agreement of free and equal citizens.

The original position is a hypothetical construct aimed at discerning the principles of justice that rational and reasonable individuals would choose under fair conditions. In the original position, Rawls (1999a, 118-119) sets a group of individuals positioned behind a *veil of ignorance*. This veil effectively conceals their attributes, such as social status, wealth, talents, and even their conceptions of the good. This experiment aims to eliminate any inclinations or advantages that may influence the decision-making process of the parties involved. From this position of ignorance, individuals engage in rational deliberation to determine the principles of justice that would govern their society. In the absence of knowledge regarding their own circumstances, Rawls argues that these individuals would choose two principles of justice. The original position should not be construed as a mere formal mechanism for deriving principles of justice from non-moral premises. Instead, it functions as a tool that aids in the clarification of our judgments, allowing us to examine and reaffirm our commitments to the fundamental principle of reciprocity.

The parties are not real people, but artificial persons in a thought experiment (RAWLS, 2001, p. 83). The original position serves as a *device of representation* – a thought experi-

ment that aids in both public and self-clarification (RAWLS, 2001, p. 17). It provides a model for two essential aspects (RAWLS, 2001, p. 85): Firstly, it models what the general audience currently deem as fair conditions under which representatives of citizens, considered solely as free and equal individuals, would agree upon the fair terms of cooperation that govern the basic structure of society. By visualizing this hypothetical scenario, the principles that should guide the regulation of the fundamental institutions and arrangements within a just society are discernible. Secondly, it models the acceptable limitations on the reasons that the parties, situated within these fair conditions, can legitimately present in support of specific principles of political justice while rejecting others. Essentially, the original position is a tool for conceptual exploration and examination of our (personal or shared) notions of fairness and acceptability. It assists in critically evaluating the conditions that we consider just and the appropriate reasoning in formulating principles that govern our political and social systems.

Regarding the *formal constraints* to parties in the original position, individuals possess limited information that Rawls deems essential for reaching fair agreements. They are assumed to have a general understanding of social and political concepts, including social cooperation and the importance of principles of justice in governing a well-ordered society. However, they lack specific knowledge about their particular circumstances or socioeconomic positions. They are unaware of their social class, occupation, natural talents, race, gender, or other factors that may influence their advantages or disadvantages in society. Parties are rational and reasonable, and Rawls (2001, p. 87) takes rationality like economists: the rational creature consistently seeks his ends.

Regarding their knowledge, the parties are rational and aware that they possess a rational life plan, obeying to the rational principle of preferring more over less (RAWLS, 1999a, p. 123). The parties have an understanding of political affairs, as well as some knowledge of the principles of economic theory. They are well-versed in the underlying principles of social organization and know of the laws governing human psychology (RAWLS, 1999a, p. 119). In their role as trustees or guardians, the parties, serving as representatives of free and equal citizens, bear the responsibility of safeguarding the fundamental interests of those they represent when they engage in the agreement of principles of justice (RAWLS, 2001, p. 85).

Another fundamental concept is the idea of primary goods. Primary goods ultimately allow free and equal citizens to exercise their two moral powers under normal conditions. In other words, “Primary goods, we said, are things persons need as citizens, rather than as human beings apart from any normative conception” (RAWLS, 2001, p. 88). Justice as fairness is concerned with the fair distribution of primary goods. The final list elaborated by Rawls (2001, p. 58-59) contains the following: (i) The fundamental rights and liberties encompass essential freedoms such as freedom of thought and liberty of conscience, among others, (ii) The freedom to move and the ability to choose one’s occupation are granted within a context of diverse opportunities, (iii) The powers and prerogatives associated with positions of authority and responsibility. (iv) Income and wealth; (v) The social bases of self-respect.

In essence, the parties within the original position are characterized as mutually disinterested members (Rawls, 1999a, p. 112) who exhibit rationality in their pursuit of safeguarding and advancing the fundamental interests of their trustees. Equipped with a broad understanding of societal organization, economics, and human psychology, and a comprehensive grasp of the conditions that underlie justice, these parties engage in a deliberative process to establish principles of justice through consensus. The parties in the original position must possess knowledge of the stability of the chosen principles to ensure the long-term effectiveness of the social contract in modern democratic societies. Rawls emphasizes the significance of stability. The parties recognize that stable principles are essential for sustaining social cooperation and avoiding the constant rewriting of the public tenets. In Rawls (1999a, p. 119) own words:

An important feature of a conception of justice is that it should generate its own support. Its principles should be such that when they are embodied in the basic structure of society men tend to acquire the corresponding sense of justice and develop a desire to act in accordance with its principles. In this case a conception of justice is stable. This kind of general information is admissible in the original position.

Rawls extensively argues that the members of the original position endorse two widely recognized principles of justice from his theory of justice as fairness. While the exact formulation of these principles may vary in time and place, the later version present in Rawls' (2005, p. 5-6) *Political Liberalism* has the following structure:

- **The First Principle:** “Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value”.
- **The Second Principle:** “Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society”.

Where the first principle of justice is called the *Equal Liberty principle*, and the second principle of justice is split between the *Equal Opportunity principle* and the *Difference principle*. Rawls argues that the difference principle would be the result of a reflexive balance between considered judgments, candidates for principles of justice and background theories. Notably, the principle of equal opportunity permits the perpetuation of inequalities stemming from natural talents and abilities. This, according to Rawls (1999a, p. 64), would allow the distribution of primary social goods in a “morally arbitrary” fashion. Consequently, the principles of justice as fairness “express the result of leaving aside those aspects of the social world that seem arbitrary from a moral point of view” (RAWLS, 1999a, p. 14). Let’s call this interpretation of justice as the *institutional elimination of distributive arbitrariness*.

From examining the original position and the two principles of justice, we can now analyze the arguments of Donald VanDeVeer (1979) and Mark Rowlands (1998, 2009) for incorporating nonhuman animals in the contractarian system. Both authors use Rawls' idea of the original position as a device of representation. Two questions will now be examined: i) whether the authors' view of Rawlsian contractualism is appropriate and ii) whether, regardless of the theoretical distance with JaF, the expansion of the scope of justice is successful through contractualism. The second point, however, will be analyzed in greater detail in Chapter III.

VanDeVeer (1979) raises important questions about the treatment of animals and the implications of excluding them from considerations of justice. First, VanDeVeer (1979, p. 374) argues that Rawls' exclusion of animals is grounded on arbitrary properties, namely, the possession of rationality and moral personhood. He contends that this exclusion fails to justify why animals should be excluded from considerations of justice. VanDeVeer claims that the interests of animals should be considered when determining principles of justice. By invoking the argument from species overlap, VanDeVeer (1979, p. 374) challenges Rawls to provide a consistent rationale for excluding animals from considerations of justice while encompassing humans with similar cognitive capacities. He maintains that if we acknowledge the moral status and interests of humans lacking rationality or moral agency, a parallel moral consideration should be extended to animals possessing similar interests or capacities.

VanDeVeer (1979, p. 371-372) argument is summarized as followed:

Should not the veil of ignorance exclude the knowledge that members of the society will have a concept of their good or of justice? Only if it is excluded can the participants avoid adopting principles truly impartial between the least advantaged moral persons and those disadvantaged, yet sentient, members of the society who fail to be moral persons. The rationale of the veil of ignorance is, on Rawls's own view, to guarantee impartial consideration of principles. A veil of ignorance which achieves this end must, then, exclude such knowledge.

According to VanDeVeer, the participants in the original position should select principles that contain all entities with interests, including beings for whom it is reasonable to discuss "their well-being or ill-being," even if they lack a subjective understanding of their own welfare (VanDeVeer, 1979, p. 372). In other words, the principles chosen in the OP should consider the interests and welfare of all relevant beings, regardless of their cognitive capacity for a conception of the good and a rational plan of life. In other words, a revised version of the original position would not require participants OP to have predetermined knowledge that they shall have some, yet undetermined, conception of the good. This would render "truly impartial participants" (VANDEVEER, 1979, p. 372).

A problem to the the main reasoning lies in the initial thesis that the rationale of the veil of ignorance is, "on Rawls's own view, to guarantee impartial consideration of principles" (VANDEVEER, 1979, p. 372). The proper path would challenge Rawls' real assumption of impartiality, i.e. restricted impartiality regarding moral persons in a position of equality in the original position. Indeed, Rawls (1999a, p. 165) advocates a kind of impartiality. However, he

is interested in the impartiality of the parties defined as free and equal persons in the original position. As we have seen, justice as fairness is modeled for free and equal citizens (moral persons) in modern democratic societies. The original position is a device of representation that aids in both public and self-clarification (RAWLS, 2001, p. 17) of a philosophical design limited to the scope of justice and the basis of equality. In short, the very idea of a social contract theory loses its figurative appeal if it encompasses every sentient being. The mere modification of the veil of ignorance, as a means to ensure impartial consideration and, thus, excluding knowledge about having a conception of the good, does not answer why the contractual heuristic device is appropriate. The theoretical gain in thinking the original position to formulate principles of justice focuses on eliminating personal inclinations about the good life and biases of race, place of birth, gender, class, religious affiliation, and other social categories that apply in the human sphere of societal cooperation. The ease with which the original position can be suitably adjusted to serve as an informative framework for raising and answering moral and political questions within the domain of a multispecies theory of justice seems to be lacking.

More recently, another author who proposed the integration of nonhuman animals within the scope of a contractualist theory of justice was Mark Rowlands (1997, 2009). According to Rowlands (1997, p. 238), one path to formulating the principles of justice is by investigating the resulting principles from the method of reflective equilibrium. The other argument was through the social contract. In this approach, the argument about the moral arbitrariness of the natural lottery becomes a natural extension of what Rowlands calls the intuitive equality argument (IEA). According to Rowlands (1997, p. 238), Rawls is committed to the intuitive equality argument that sets his main view against any principle allowing the arbitrary distribution of primary social goods. The intuitive equality argument runs as follows:

- * “If a property P is undeserved, then it is morally arbitrary and one is not morally entitled to it. If one is not morally entitled to P, then one is also not morally entitled to whatever benefits stem from the possession of P” (ROWLANDS, 1997, p. 242).

Indeed, Rawls²⁶ (1999a) asserts that justice, by its very nature, opposes the presence of distributive arbitrariness when observed through a moral point of view. The elimination of arbitrariness aligns with the intuitive equality argument, as it highlights that certain factors such as race, gender, sector, class, or wealth are beyond an individual’s control or agency. Consequently, these factors should not dictate the uneven distribution of primary goods in the pursuit of realizing the two moral powers because they are not under one’s moral responsibility.

However, Rowlands (1997, 2009) proposes that the intuitive equality argument should also incorporate rationality as a morally arbitrary element. After all, the notion of accidentality

²⁶ Direct mentions of the notion of moral arbitrariness and its relation to justice can be found extensively in TJ (p. 5, 14, 63-65, 87, 104, 122, 129, 274, 284, 446-447).

applies to both rationality and social or species membership, as emphasized by Brian Barry (1989)²⁷. The points made by Rowlands (1997) are enumerated as follows:

1. Rationality is an undeserved property since individuals have no control over whether they possess it or not.
2. According to the intuitive equality argument, since rationality is a morally arbitrary property, individuals are not morally entitled to possess it.
3. Consequently, individuals are not morally entitled to the benefits or advantages that arise from possessing rationality. Restricting the beneficiaries of contractual protection solely to rational agents would imply a violation of the intuitive equality argument.
4. “Therefore, when Rawls’ argument is properly understood, it is seen that knowledge of one’s own rationality must, for the sake of consistency, be bracketed in the original position” (ROWLANDS, 1997, p. 243).

Yet, justice as fairness is modeled to serve as a normative device for thinking about free and equal (moral) persons in modern democratic societies. Anticipating this evident objection, Rowlands (1997, p. 244) claims that Rawls’ proposed inconsistency reflects an unfinished process of unreflected intuitions induced by common sense that has not yet been subjected to the scrutiny of the right application of consistency across *considered judgments*.

I argue, however, that Rawls is not committed to the intuitive equality argument and that, even if he were, the contractualist framework does not offer the best method to assess the rights and duties of justice. Firstly, as noted by David Svolba (2016), Rawls does not endorse the IEA, but something close to the intuitive-equality-of-persons principle (IEPP):

- *’ “For any person, P, in a political society, S, if P possesses a property, Y, and if P’s possession of Y is undeserved, in the sense that P is not responsible for, or has done nothing to merit, Y, then P’s possession of Y cannot justify assigning to P a greater or lesser share of primary social goods relative to other persons in S” (SVOLBA, p. 978).

This version incorporates fundamental elements of justice as fairness. As we saw earlier, “the most fundamental idea in this conception of justice is the idea of society as a fair system of social cooperation over time from one generation to the next” (RAWLS, 2001, p. 5). There is a

²⁷ “To say that something is fortuitous is to say that it comes about by chance (Latin *fors*); the idea of good or ill fortune (*fortuna*) comes from the same root. Now, there may be some very deep (or perhaps it is very shallow) sense in which it is an accident, lucky or unlucky, that I am who I am and not, say, a slave girl in the court of Rameses II. But to the extent that that is an intelligible remark, it seems to me no less so to suggest that it is an accident, lucky or unlucky, that I am not a corgi in the court of Elizabeth II. Construed as serious hypotheses, they are equally subject to Leibnitz’s reply to a man who said he wished he were king of China: that what his wish amounted to was, first, that he should not exist and, second, that there should be a king in China” (BARRY, 1989, p. 208-209).

normative premise between contribution and desert in the distributed share. The conception of society as a fair system of cooperation treats the political regime as a system in which everyone, in theory, contributes to development. This normative theory about the value of the social contribution is present in JaF from the notion of justice as reciprocity or mutuality (RAWLS, 1999a, p. xv). This “tendency to answer in kind” (RAWLS, 1999a, p. 433) underlies the theory of what fairness is found in TJ.

Reciprocity plays a significant role in establishing a stable and enduring social order. The perception of fair treatment and reciprocation of contributions among individuals engenders a sense of trust and justice within society (RAWLS, 1999a, p. 403). This sense of trust and perceived fairness contribute to social stability by fostering greater adherence to the principles of justice and governing rules. When a practice aligns with the notion of reciprocity, none of the participants feel exploited or compelled to concede to claims they deem illegitimate (RAWLS, 2001, p. 208). The sense of justice “leads us to promote just schemes and to do our share in them when we believe that others, or sufficiently many of them, will do theirs” (RAWLS, 1999a, p. 236). Accordingly, Rawls is more inclined to favor the idea of mutuality and exchange than the IEA, as justice as fairness is built on the concept of fair cooperation of free persons.

A central feature of social contract theories of justice is the equivalence between the authors of moral principles and the agents bound to this hypothetical agreement. On a critical note, “the social contract tradition conflates two questions that are in principle distinct: ‘By whom are society’s basic principles designed?’ and ‘For whom are society’s basic principles designed?’” (NUSSBAUM, 2006, p. 16). The primary structure of contractualism commands the agreement between members equally capable of understanding and acting from the principles. The idea of a contract between non-rational agents loses its initial intuitive appeal of a social contract between moral personalities capable of mutually recognizing each other as members of a reciprocal relationship. Since the ideal of a contract must serve as an instructive representation of justice (or morality in Scanlon’s case), the inclusion of severely disabled humans or nonhuman animals in a bargain between equals takes away the basic properties of an instructive scenario for thinking about justice. As discussed earlier, the authority of agreed principles of justice in contractualism results from the mutual relationship of recognition within the agreement between persons.

Rawls conception of society and persons in his theory of justice hampers any attempts to picture nonhuman animals as subjects of justice in JaF. The criterion of reciprocity also hardly limits the considerations of justice to rational and reasonable beings. Suggestions to assimilate individuals without moral personality alter the contractualist initiative. Given that contractualism is not the only moral (or political) theory available, the heuristic device of a hypothetical contract loses its attraction if we reject the core assumptions about the rationality of the parties to the agreement. Even if the warpings to Rawls’ framework are far more stringent than credited by Rowlands or VanDeVeer, the question about the selection of the contractual as a means to reach principles regulating multispecies justice device remains open. In other words,

the intuitive equality argument can be as valid as informative. Still, it remains to be explained how this conception of equality arises and whether the social contract argument profits our judgments.

Rawlsian contractualism focuses on the principles of justice that suitably situated parties (or litigants, if preferred) would all accept. The “suitably situated” configuration applies, in Rawls’ case, ii) the equality condition, ii) the principle of reciprocity, and iii) restrictions on specific information. It works out principles of justice from within the scope of social cooperation among free and equal persons. Rawls’ conception of justice developed in TJ carries a *procedural* character that aims the establishment of principles participants would agree to under specific hypothetical conditions, such as the original position behind a veil of ignorance. It focuses on reaching agreement rather than identifying intrinsic properties or qualities that determine rightness. It provides a structure for decision-making that retains morality’s demand for impartiality given a particular setting. The two principles of justice have normative force for the parties to the agreement precisely because they would be chosen by fair procedure. The contractual framework can be interpreted as a facilitator and a device (or tool) to formulate principles of justice under a higher level of abstraction away from particularities. It fundamentally enables us to think about principles and justification. By showing that the X principles would be accepted by parties in the original position, the mechanism serves not only for formulation purposes, but also for justification.

The contractual argument as a device of representation calls for further clarification on the agreement’s design. The design of the contractualist device invariably consists of three main components:

1. A *definition of the members* concerned in the mutual agreement: The contractualist abstraction may include members of a city, a residential condominium, members of the human species, holders of both moral powers, and so on. The definition of the contract members undoubtedly affects the final outcome, as the promoted interests will differ depending on the selected group.
2. The *interests* of these participants (or litigants, trustees, etc.): The contractual device must establish which interests are defended and promoted by the participants. In the case of Rawls, for example, he grants the original position parties the power to defend the fundamental interests of the beneficiaries, the higher-order interests that guide aims of life, and certain subordinate aims that enable individuals to fulfill their fundamental objectives.
3. The *informational constraint* to which the agreement participants are subjected: The information provided to the members of the agreement varies and also affects the outcome. Rawls (1999a, p. 111), for instance, included the knowledge of a moral sentiment among the participants toward the next generation to allow for intergenerational considerations of justice.

However, the original position as a device of representation for multispecies justice faces several obstacles. As participants, the contractors need to be sufficiently rational (and reasonable) to propose principles of justice. Therefore, it excludes the possibility of direct inclusion within the scope of participants. An attempt to overcome this challenge is through the notion of trustees as representatives who would act on behalf of the fundamental interests of nonhuman animals (SCANLON, 1998, p. 183)²⁸ or individuals with severe cognitive disabilities (FREEMAN, 2018). The trustees would act as guardians of the fundamental interests of their beneficiaries by offering principles that encompass the well-being of animals. This solution is unsuitable, as we will explore in greater detail in Chapter III, because it ultimately theorizes that rights and duties toward animals stem from an indirect moral commitment to other persons. Under the usual contractual theory, ethical consideration arises not because their interests *matter* but because they are represented by humans who truly matter. Therefore, this account of suffering limits the boundaries of a moral theory (in the case of Scanlon) or a theory of justice (in the case of Rawls). Lastly, the contractual device is not fruitful for examining our duties towards animals because the implicit idea of a contract is ill-suited to address moral obligations towards non-rational creatures. In summary, there is no theoretical appeal to formulate principles of justice for animals from a contractualist heuristic if there are better alternatives for explaining duties towards members of other species.

Until this point, the present section has been centered on examining the foundational assumptions of John Rawls' justice as fairness and exploring its theoretical implications concerning the dimensions of justice. To summarize the key claims elucidated in this section:

1. **John Rawls' social contract:** The concept of justice as fairness put forth by John Rawls is founded on the idea of a social contract. Hence, the principles are chosen by rational parties unaware of their own social position or personal abilities.
2. **Rawlsian theory: conception of society and moral personality:** Rawlsian theory is built upon fundamental ideas that do not easily accommodate the inclusion of beings without moral personality. The theory assumes i) that society is a fair system of cooperation from one generation to another, and ii) it emphasizes the moral powers that human beings possess, such as the capacity for a sense of justice and the ability to form and pursue a conception of the good.
3. **The original position as a device of representation:** The original position is a hypothetical apparatus that serves as a device of representation in Rawls' theory. It assists individuals and the public in gaining clarity and insight, especially his audience, assumed to be any able citizen. By imagining themselves behind a veil of ignorance, unaware

²⁸ As we will see in Chapter III, Scanlon rejects this hypothesis and instead favors limiting the scope of his account of morality to express the notions of what we owe to each other as (rational) individuals.

of their own characteristics, individuals can think impartially about what principles of justice should regulate social affairs.

4. **OP reaffirms notions of impartiality and justice rather than deducing them ab initio:** The original position as a heuristic device reaffirms Rawls' considered judgments about impartiality within democratic societies. By employing this thought experiment, individuals can reflect on their intuitions. His argument from moral arbitrariness is not derived from the original position (OP), but rather its purpose is to be reaffirmed and strengthened by it.
5. **Testing for coherence:** Considered judgments in Rawls' theory of justice are tested in light of the idea of mutual support (and consistency) between judgments, principles, and background theories. This ensures that the chosen principles of justice are coherent and align with other moral and theoretical foundations. The original position helps to visualize that the selected principles of justice are fair and consistent with other principles, judgments, and background theories (on the self, society, the nature of morality, etc.). In Chapter III, I contend that the criterion of moral personality, which Rawls and other scholars work to determine the subjects of justice, does not pass the test of consistency within the framework of the method of reflective equilibrium.
6. **Arguing against morally arbitrary distribution of primary goods:** JaF's argument does not endorse intuitive equality but rather argues against the arbitrariness of the natural lottery within political communities that work as cooperative ventures. He stresses the need to address the unfairness of inequalities of primary social goods arising from circumstances beyond individuals' responsibility.
7. **Limitations of the original position for nonhuman animals:** Despite the comprehensive nature of Rawls' original position, I suggest that this heuristic mechanism does not adequately help us formulate the necessary task of devising principles of fundamental equality to include nonhuman animals within the scope of justice. I argue that principles such as equal consideration of interests for nonhuman animals are best understood without relying on a contractual framework.

2.2 Animal Rights and the Domain of the Political: The Limits of Rawls' Political Liberalism

The space for nonhuman animals within the area of justice has developed to be even more challenging in subsequent works following *A Theory of Justice*. After TJ, Rawls identified issues with his account of normative stability and focused on proposing justice as fairness as a *political conception of justice* rather than a *comprehensive doctrine*. Beginning in the 1980s,

Rawls (1985; 1987) revised some of the points in TJ to accommodate new understandings of political conceptions of justice, the problem of normative stability, and the fact of reasonable pluralism. The transition towards a “political turn” can be attributed to several new perceptions on the political domain. Several papers and an extensive review assembled the work *Political Liberalism* (PL) that fits as the core basis for the present examination. Within this revised framework, the principles of justice are not endorsed by any particular comprehensive doctrine but rather through a consensus among diverse, at times conflicting, doctrines. Political Liberalism directs that state coercion fulfill the requirements of liberal legitimacy, i.e. legitimate only when necessary to fulfill the principles of justice agreed upon in the overlapping consensus. The well-being of animals as a matter of justice relies, in this construction, on an agreement between comprehensive doctrines inclined to protect the interests of other sentient creatures.

Reasonable citizens, acknowledging both the equality among citizens and the burdens of judgment, are committed to supporting fair institutional arrangements while refraining from invoking their own comprehensive doctrines when proposing principles governing the constitutional essentials and matters of basic justice. In sum, the political conception of justice offered in *PL* significantly limits nonhuman animals’ political (and moral) significance by modeling free and equal citizens of modern democratic societies as creators of reasonable comprehensive doctrines constrained solely by the requirements of justice adopted in an overlapping consensus. As the moral and political center pivots to the idea of free and equal citizens of modern democracies, there are no necessary entitlements of justice for nonhuman animals unless this is agreed upon in an overlapping consensus of comprehensive doctrines sympathetic to the fundamental interests of animals. The position concerning nonhuman animals in *PL* is that the

status of the natural world and our proper relation to it is not a constitutional essential or a basic question of justice, as these questions have been specified (§5). It is a matter in regard to which citizens can vote their nonpolitical values and try to convince other citizens accordingly. The limits of public reason do not apply. (RAWLS, 2005, p. 246).

The liberal principle of legitimacy that stems from this revised theory demands that the regulative principles of justice must be ones that all citizens can reasonably accept and endorse from their own comprehensive doctrines. Questions regarding animals are located within the area of comprehensive doctrines, outside the domain of the political. If the main question in TJ was about which principles of justice would be selected by free and equal persons under fair circumstances, *PL* is primarily concerned with “how is it possible that deeply opposed though reasonable comprehensive doctrines may live together and all affirm the political conception of a constitutional regime” (RAWLS , 2005, p. xviii). Subsequently, it will become evident that

Rawls' (2005)²⁹ political conception of justice raises *additional* hindrances in recognizing and extending justice to animals beyond what was present in TJ. Before addressing the direct implications of Rawls' political liberalism for the possibility of multispecies justice, it is expedient to present the main components of a political conception of justice and its attempt of neutrality between doctrines.

2.2.1 The structure of political liberalism

According to Rawls (2005), one key aspect missing in his earlier work was a proper account of political liberalism. In his view, *A Theory of Justice* models that all citizens endorse a comprehensive doctrine. Yet, Rawls (2005, p. xvi) recognized that this convergence to a comprehensive doctrine was unrealistic for addressing the practical challenges of a (reasonable) pluralistic society. He claimed that justice as fairness should be supplemented with a political conception that accommodates diverse and incompatible comprehensive doctrines held by individuals within a modern democratic society. In *Political Liberalism*, Rawls (2005) sought to fill this gap by providing an understanding of reasonable pluralism and the idea of an overlapping consensus in which a liberal society can reconcile its diversity of doctrines. *A Theory of Justice* supposedly failed to differentiate between a comprehensive doctrine and a political conception of justice. According to Rawls, the contrast between comprehensive philosophical doctrines and conceptions that belong to the political sphere was not adequately addressed. In PL, Rawls sought to elucidate this missing point.

Rawls (2005, p. 245-246) implies that considerations toward nonhuman animals belong to the domain of non-political values that shall be held from within comprehensive doctrines. There is no shortage of examples of what Rawls coins as comprehensive doctrines. For Rawls (2005, p. 6), a political conception is *liberal* when: First, it designates a list of basic rights; second, it takes special priority to those rights, freedoms and opportunities when contrasted with other values; third, it ensures the effective exercise of these freedoms and opportunities for all citizens. Political conceptions of liberalism take for granted the practical impossibility that all State action will succeed in being neutral, given the wide diversity of conflicting and incompatible doctrines. Contemporary State action goes far beyond criminal law, covering areas such as the environment, culture, science and education. Here the definition of neutrality results from the support of all reasonable doctrines, which greatly narrows its scope. Indeed, political liberalism has a modest claim to the scope of neutrality (BARRY, 1995, p. 327). The proper kind of liberal neutrality is *procedural*, that is, several possible outcomes of the political

²⁹ It is worth noting that a political conception of justice was also introduced by Charles Larmore (1990, 1993) around the same time as John Rawls, also presenting unique contributions at that time.

structure can be equally just as long as the political process is equitable – procedurally neutral. It seeks a neutrality of justification of the principles that regulate the basic apparatus of the State and a neutrality on the constitutional essentials that does not prioritize any specific doctrine.

In Mill (2015), the value of *autonomy as a sphere of individuality* plays a central role in the construction of his liberalism. For T. H. Green (1883), the value of *autonomy as self-realization* underlies a liberalism with strong perfectionist traits. *Autonomy as self-legislation* is the centerpiece of Kant’s practical philosophy, as reason holds the ability to determine itself and thus ‘proves’ the circumstance of free will in the noumenal realm. Like Green and Mill, Kant also anchors his theory of rights in his own conception of dignity and autonomous persons, for different reasons. On these grounds, Rawls – based on his writings in the 1980s – classifies him, along with Mill, as an example of comprehensive liberalism at the time when he conceives this distinction that was not present in his works before. The presumed fault of these authors was that they did not conceive of a special domain of the political, a sphere that requires different forms of justification.

Indeed, the biggest theoretical change that takes place between A Theory of Justice (TJ) and Political Liberalism (PL) is the distinction between the comprehensive and the political conception of justice as fairness, which was not presented in TJ (RAWLS, 2005, p. xvi). Once this distinction was made, Rawls concluded that the problem of normative stability in Part III of TJ was incompatible with the formulation of principles of justice under a veil of ignorance, where no party knows its conception of the good. In Theory, autonomy plays a substantial role in the stability and in the shaping of a sense of justice in the members of the well-ordered society, as the parties in the original position agree at the same time on the necessary arrangements to make these principles effective in their conduct. This implies that moral instruction must provide the instruments necessary for members of a well-ordered society to develop a sense of justice to better express their nature as free and equal rational beings (in accordance with the Kantian conception of justice as fairness expressed in § 40). “Thus moral education is education for autonomy.” (RAWLS, 1999a, p. 452).

The political conception of liberalism targets neutrality in the face of different conceptions of the good, not allowing itself to privilege any particular doctrines. However, this same central theme for liberalism is also a point of common criticism about the so-called false neutrality, since the conditions to justify the liberal regime would be a manifestation of a comprehensive doctrine that privileges individualism through a strong notion of autonomy. It is important to separate what I will identify as substantive and second-order substantive conceptions of the good.

- (a) **Substantive Conception:** A substantive conception of good “is an ordered family of final ends and aims which specifies a person’s conception of what is of value in human life or, alternatively, of what is regarded as a fully worthwhile life” (RAWLS, 2001, p. 19).
- (b) **Second-Order Conception:** A second-order conception of good does not specify the

content of the substantive conception, but assigns value to some external requirement.

The first definition is clear, as presented by Rawls. A substantive conception of the good specifies an individual conception of what is valuable. A religious doctrine, for example, expresses a substantive conception of the good. This conception includes a set of values that belong to the list of moral precepts about what constitutes a worthwhile life. Charity, chastity and abnegation are part of the set of moral beliefs shared in Christianity. On the other hand, the second-order conceptions³⁰ do not specify the internal elements of a substantive conception, but gives value to some external requirement. A recognizable and simple example of a second-order conception is preference utilitarianism. Preference utilitarianism does not specify the content and value of preferences, but assigns ultimate value to the satisfaction of those preferences. The set of ends and desires concerns the freedom of the individual to build on his preferences, his ends and his higher-order moral desires.

A conception of the good as autonomy is also a second-order conception. The condition for the individual's conception to have value is that it be self-directed by his will. A substantive conception of the good will have more or less value depending on how it arose, that is, if it is the result of its authorship or if it is a conception constituted by an outside influence. In the words of Brian Barry (1995, p. 325) "a conception of the good, on this view, has to have not only an acceptable content but also the right kind of history". Consequently, it is not unexpected that one of the characteristics of an autonomy-based liberalism is its openness to the pluralism of values, since the esteem of autonomy allows for a space for the individual creation of one's own substantive conceptions. However, these own conceptions only have *moral value* if they are generated from autonomous deliberation on the part of the rational agent.

The *strong perfectionism* – linked to the perfectionist ethics of Leibniz, Spinoza and Green – is also compatible with the second-order conception, since the improvement of human nature can also be plural if it admits plural capacities and ends. In contrast to individual autonomy³¹, ethical perfectionism may have a version that demands a set of values and substantive ends for the perfecting of the individual, but it is not necessarily incompatible with value pluralism. Like autonomy-based liberalism, (strong) perfectionist liberalism can also suggest institutional adaptations for the protection of the autonomous sphere or the promotion of circumstances that maximize the realization of the perfection of human nature. But the claim to

³⁰ This terminology is due to the contribution of Brian Barry (1995, p. 129).

³¹ The distinction between autonomy and achievement of the best skills is not dispensable. There is a separation of concepts that is relevant, as the improvement of autonomy must be distinguished from the perfection of capabilities. Kant, in Collins' lecture notes, expresses this divergence from Baumgarten's Wolffian perfectionism: "[...] the perfection of a man does not yet signify morality. Perfection and moral goodness are different. Perfection here is the completeness of the man in regard to his powers, capacity and readiness to carry out all the ends he may have. Perfection can be greater or less; one man can be more perfect than another. But goodness is the property of making good and proper use of all these perfections: So moral goodness consists in the perfection of the will, not the capacities." (KANT, 1997, p. 58).

liberal neutrality is severely compromised, even in the plural version, as it leaves room for reasonable objections to individual autonomy as a universal value. It was not until the 1980s that the distinction between comprehensive liberalism and political liberalism emerged.

Is it possible to establish the list of liberal rights without reference to the idea of moral autonomy, a particular notion of moral personality or individuality? John Rawls' political liberalism seeks references to strictly *political values*³², moving as far away from strong ethical assumptions as possible about what constitutes value for the course of a lifetime, a "method of avoidance". It is quite surprising that political liberalism took so long to be explicitly defined in the literature, despite the fact that TJ's construction of principles of justice from the veil of ignorance is consistent with the idea of political liberalism³³. As one of the main building blocks stems from the notion of reasonableness (and public reason) the first task is to establish the parameters of a reasonable person. In Rawlsian vernacular, a reasonable person has two basic features: i) he or she is willing to propose principles as fair terms of cooperation and willingly obey them if the other party also has the same disposition (RAWLS, 2005, p. 49) and ii) he or she accepts the consequences of the burdens of judgment (RAWLS, 2005, p. 54). In other words, reasonable citizens are those who share the elements of good faith and common reason, "those who think and converse in good faith and apply, as best they can, the general capacities of reason that belong to every domain of inquiry" (LARMORE, 1996, p. 168).

Reasonable disagreement should not be mistaken with value pluralism like that of Isaiah Berlin. Value pluralism is a thesis concerning the nature of values, characterized by the claim of irreducibility to an ultimate value (e.g., pleasure) and that, sometimes, values conflict with each other and that this conflict can be insoluble. Freedom and security, for example, are two values apt to conflict and there may be no universal procedure or a broad moral philosophy that provides a solution for all clashes between different values. When Berlin wrote about incompatibility and incommensurability, the main rationale is the rejection of ethical monism, that there is some measure capable of serving as a common currency to serve as a tool for achieving a single correct answer.

The "fact of reasonable disagreement" (or reasonable pluralism for Rawls) recognizes that reasonable people under conditions of freedom will incur disagreement over various realms of knowledge, not only over what values constitute the good life, but also over metaethical assumptions³⁴. Democratic societies have a permanent doctrinal diversity of incompatible formulations. It is worth highlighting these two central characteristics of reasonable disagreement:

³² Charles Larmore (1987) also played an essential role in the development of 'political' versions in recent literature, but the weight of Rawls' writings in the contemporary debate qualifies him as a canon to be explored.

³³ Rawls (2005, p. 374f.) also showed his astonishment in the face of this apparent theoretical mystery in which no one had ever explained the development of liberalism as a freestanding conception, independent of comprehensive doctrines.

³⁴ "Pluralism itself is one of the things about which reasonable people disagree" (LARMORE, 1996, p. 12).

doctrinal diversity and its permanent character. Both properties result from the limits of practical reason. Rainer Forst (2013) has called the finitude of reason, while Rawls forged the idea of “burdens of judgment”³⁵. This fact can be succinctly described as follows: human reason does not have the capacity to settle the causes of disagreement, making the convergence of moral knowledge a practical impossibility.

In Rawls’ scheme, the powers of reason as they exist limit the ability to agree on the good life (or its meaning) within the framework of free institutions of a constitutional democracy, and this limitation of understanding is the source of deep disagreements. However, this practical impossibility is probably more a result of the incompatibility of doctrines itself than a result of free institutions. For this reason, Forst is more emphatic in determining that this challenge is caused by the characteristic attribute of the ‘finitude’ of the faculty of reason itself (FORST, 2013, p. 489).

Rawls (2005, p. 56-57; 2001, p. 35-36) describes six sources of moral disagreement:

- (a) The evidence bearing on a case may be conflicting and complex, and thus hard to assess and evaluate.
- (b) We disagree about the weight of moral claims.
- (c) To some degree all our concepts, and not only our moral and political concepts, are vague and subject to hard cases.
- (d) The way we assess evidence and weigh moral and political values is shape by our profoundly different biographical experiences.
- (e) Often there are different kinds of normative considerations of different force on both sides of a question and it is difficult to make an overall assessment.
- (f) We face great difficulties in setting priorities and ranking our cherished values.

At first glance, there is an apparent paradox of toleration: how is it possible for people to assert the truth of their doctrines while being asked to tolerate what is morally wrong? The burdens of judgment (or the finitude of reason) do not precondition a skeptical attitude on the part of the members who recognize it, mainly because someone can maintain their conviction about some moral truth while recognizing that the convictions of others can also be false, but reasonable. Two jurors can assert opposing verdicts on a complex case, establishing the truth of their convictions while recognizing the reasonableness of the opposing position given the limits that reason imposes. Permanent disagreement does not imply skepticism, but demands the criteria of reciprocity through equal consideration of claims.

³⁵ In fact, the first appearance of burdens of judgment was made in the article “The Domain of the Political and Overlapping Consensus” (RAWLS, 1999b) as “burdens of reason”.

In the Rawlsian framework, the political conception is a module that is and can be supported by several reasonable comprehensive doctrines that endure in the society it regulates (RAWLS, 2005, p. 12). The “overlapping consensus” depends on the assertion of the political view from within different reasonable doctrines, from different reasons, that is, a consensus on public principles of justice, not a consensus of reasons for endorsing those principles. In this sense, the doctrines affirm the principles of justice from within their constellation of values, and cannot be confused with a ‘mere modus vivendi’, that is, with a Hobbesian balance of forces. A prudential equilibrium would be manifested by a conception as a mutual advantage created by the strictly rational calculation of members of a society. It is through the concept of reasonableness that Rawls’ version distances itself from Hobbes’ doctrine exclusively about the rational (among other things, of course). Normative stability and fidelity to the political conception of justice as fairness from one generation to the next may benefit from the looseness of conceptions of the good that can be revised or adjusted in case of conflict with the political conception.

A direct consequence of recognizing the fact of reasonable disagreement is the practical impossibility of convergence to a single conception of the good shared by all members of society. The permanent character of disagreement is a reflection of the faculty of reason, an aspect that persists indefinitely, especially under democratic institutions that guarantee basic liberties. Hence, this vision of inescapable pluralism rejects Alasdair MacIntyre’s (1984) optimism for the return of a Saint Benedict. For MacIntyre, modernity has fragmented the moral landscape in such a way that we have to choose between two paths: either Nietzsche or St. Benedict. The image of St. Benedict is an analogy to the attempt to recompose the moral life from shared conceptions of the good in a community. For political liberalism, this image is not only utopian (in a bad way), but portrays a communal past that never existed. Now that the main elements of political liberalism were presented, let’s turn to the theoretical implications of political conceptions of justice concerning the interests of nonhuman animals.

2.2.2 Rawls’ political domain and the plight of animals

The political liberalism found in Rawls’ (2005) later writings emphasizes the need for an overlapping consensus on basic principles of justice that can accommodate different doctrines about the good life. However, this approach excludes the idea of constitutional protection for animals’ fundamental interests through entitlements of justice. Since animals are not modeled to be considered free and equal citizens within a democratic constitutional order, *PL* implies that the basic structure of society is not required to protect animal interests as a matter of justice. Regarding the issue of animal rights, Rawls suggests that the question of how animals should be treated is a matter that falls within the realm of comprehensive doctrines. He treats animals and nature simultaneously, further suggesting a considered belief in human-nature detachment (RAWLS, 2005, p. 21; RAWLS, 2005, p. 214; RAWLS, 2005, p. 245). In current modern

democratic societies, moral considerations surrounding animal treatment and their rights (if any) vary significantly among individuals due to their comprehensive doctrines. These doctrines encompass various views, including religious beliefs, philosophical perspectives, and moral frameworks that shape people's attitudes toward nonhuman beings. Hence, it is unforeseen that there will be an overlapping consensus on the burdens and benefits due to animals. This means that animals lack direct entitlements of justice, and the state is not bound to guard their claims established on reasons grounded in the animals themselves (or their ability to suffer) but on the equality and freedom of citizens and their moral powers in the *political* sphere. Borrowing from Rawls (2005, p. 135-136) and Larmore (1996, p. 136-137), the domain of the political specifies special relationships characterized by two main parts:

- (i) Belonging to modern political communities has an involuntary nature: the involuntary character marks the political power relations in arrangements that we enter at birth and only leave by death (RAWLS, 2005, p. xliii). The lack of an exit option is a crucial element of political structures.
- (ii) The political relationship is defined primarily from the use of force and the vocabulary of coercion: “for an association is political precisely insofar as it relies upon the legitimate use of force to secure compliance with its rules” (LARMORE, 1996, p. 137).

Since the political domain is characterized by force, the answer lies in the principle of reciprocity: the exercise of political power is legitimate only if there is a genuine belief that other equal citizens can reasonably accept the reasons presented to justify the political (coercive by nature) actions. The domain of the political

is distinct from the associational, which is voluntary in ways that the political is not; it is also distinct from the personal and the familial, which are affectional domains, again in ways the political is not. Taking the political as a special domain, let us say that a political conception formulating its basic values is a “free-standing” view. It is a view for the basic structure that formulates its values independent of non-political values and of any specific relationship to them (RAWLS, 1999b, p. 482-483).

One rationale for introducing the concept of public reason comes from the understanding that political power is inherently coercive, backed by the government's exclusive control over the use of force (RAWLS, 2001, p. 90). In a democratic system, however, political power is also derived from the collective authority of the public, comprised of free and equal citizens. As organized by free and equal citizens, the idea of public reason states that the political authority should be exercised in a manner that can be publicly endorsed by all citizens, particularly when addressing matters of constitutional importance and fundamental justice. This principle of political legitimacy is the standard that justice as fairness seeks to fulfill (RAWLS, 2001, p. 91). Public reason is a concept that pertains to the collective reasoning employed by citizens in a plural democratic society when deliberating on matters concerning constitutional essentials and

matters of basic justice. It emphasizes the necessary engagement of citizens in a form of reasoning that is publicly shared and accessible to all, ensuring that they interact with one another on a benchmark of equality. The principle of public reason validates the legitimacy of citizens' exercise of political power.

Some citizens may argue for substantial animal rights from within their comprehensive doctrines, while others may hold more anthropocentric perspectives that prioritize human interests. Rawls maintains that a proper political conception of liberalism should be neutral on controversial issues deeply rooted in diverse comprehensive doctrines. Animal affairs are not ingrained in the lexicon of justice and constitutional essentials but should stand in the legislative process regulated by the neutral principles of justice. This account of justice starts with adult citizens and expands from them (RAWLS, 2005, p. 245). Sarah Roberts-Cady (2020) recently proposed the inclusion of the fundamental interests of nonhuman animals within the Rawlsian political conception of justice by applying the properties of public reason.

The original position is noted as a model of public reasoning (ROBERTS-CADY, 2020, p. 280). In sum: in the OP, the participants are presumed to know the general features of the world but are unaware of their own attributes or conceptions of the good. The original position models acceptable restrictions on reasons and public reason since, not knowing their own conception of the good, they choose principles that can be seen as reasonable by all parties regardless of their personal beliefs. Her main idea is that

when one asks if political obligations to animals would be chosen from behind Rawls's veil of ignorance, one is asking this: are there reasons that could be offered for including legal obligations to animals that are consistent with equal respect for all persons and can be grounded in public reason? (ROBERTS-CADY, 2020, p. 281).

If the contractual argument draws informational limitations on conceptions of good, class, gender, race, etc., established on circumstances of equality and reciprocity (i.e., fair conditions), the principles proposed in the original position, and their justification, must observe the criteria of public reason. The standards of justice depend on justifications that could be persuasive to any reasonable person. Roberts-Cady draws on the argument from species overlap to apply the idea of public reason in extending legal rights to animals. She notes that the standards of justice rely on reasonable consensus rather than existing consensus (ROBERTS-CADY, 2020, p. 282). The argument from species overlap, employed by her as the *argument from consistency*, questions the rationality criterion for determining who should have rights. It argues that if a lack of rational capacity does not rule out humans from having legal rights against battery, then it should not be a reason to exclude animals from having such rights (ROBERTS-CADY, 2020, p. 283). This line of reasoning via the species overlap argument would respect the rules of public reason requiring that the reasons offered be acceptable and intelligible by all citizens, regardless of the comprehensive doctrine maintained. Because this argument is grounded in public reasons, rather than any specific doctrine of the good, it shows respect for citizens in a pluralistic society

(ROBERTS-CADY, 2020, p. 283-284).

Roberts-Cady's proposal (2020) encounters some serious objections. First, justice as fairness is a normative arrangement operating from free and equal citizens in modern democratic societies marked by intense doctrinal conflicts. In both *A Theory of Justice* and *Political Liberalism*, the members of reference are human beings (or any other creature not yet known) endowed with the two moral powers of a sense of justice and the ability to formulate and revise a conception of the good. By suggesting the extension of the scope of justice to nonhuman animals from the notion of public reason, Roberts-Cady assumes a *convergent factor* of reason rejected by Rawls' political conception of justice. It assumes that public reason can serve as a basis for formulating principles of justice by "arguments of consistency" alone. The overlapping consensus of reasonable doctrines is not a model designed to generate principles of justice from the use of rationality alone per se. It models rational beings as having the ability to consistently promote their ends. However, the use of reason is conditioned to serve the equality of citizens. The use of public reason is expressed within the framework of free and equal citizens who determine their ends and reach reasonable agreements on matters of justice.

In other words, the purpose of Rawls' "political turn" was precisely to account for the burdens of judgment that provoke profound disagreements about the good life. The argument from consistency seems to ignore crucial parts of the moral structure of the Rawlsian framework. Acceptance of the limits of our judgment is one of the defining factors of a reasonable citizen. Modern pluralistic society allows for profound disagreement over the treatment of animals and their respective rights. The duty of civility (RAWLS, 2005, p. 217) requires citizens to provide reasons that others understand and can accept. In a nutshell, within Rawls' theory of justice, the argument of species overlap is not binding because comprehensive doctrines in modern democratic societies may reasonably reject it. The next chapter focuses on the contractualism that rejects the assumption of mutual advantage as a fundamental idea for thinking about justice. Without the basic idea of society present in Rawls' contractualism, the focus on impartiality rather than reciprocity seems more friendly to the fundamental interests of nonhuman animals. I shall examine T. M. Scanlon's (1982, 1998) moral contractualism and Brian Barry's (1995) contractualist political conception of justice influenced by the former.

3 CONTRACTUALISM II: JUSTICE AS IMPARTIALITY AND ANIMALS

This chapter introduces, presents, and examines the theoretical repercussions for nonhuman animals of a theory of justice that does not required the cooperative ingredients found in justice as fairness (JaF). Without the idea of society as a fair cooperative venture for mutual gains, justice as impartiality seems, at least initially, more friendly to the inclusion of animals in its scope. Brian Barry's justice as impartiality focuses on a strong conception of fundamental human equality that retains three parts averse to the inclusion of animals within the language and duties of justice: i) it retains a ratiocentric conception of persons — and the basis of their equality; ii) it relies on a contractual explanation of just relations between rational and reasonable beings; and iii) it is concerned with neutrality between persistently conflicting comprehensive doctrines of the good among reasonable (human) citizens in democratic societies. In distinct ways, these three elements impede the inclusion of animals in Barry's contractualism.

3.1 Scanlon's Contractualism

Not long after its publication in 1998, T. M. Scanlon's *What We Owe to Each Other* received widespread acclaim as one of the most significant works of moral philosophy of the twentieth century (HOOKER, 2002, p. 53; WALLACE, 2002, p. 429). The book emerged after almost eighteen years of reflection and the development of several important themes in the field of Ethics, including moral reasons, moral motivation, responsibility, and well-being. During its formulation, excerpts from the work were shared through academic Lectures, which later each contributed to the complete work. Scanlon's contractualism presents noteworthy implications for normative theory, one reason being that it serves as a potent alternative to the prevailing utilitarian conceptions that dominated the first half of the previous century. However, the objective here is not to assess the internal consistency of Scanlon's theory of right and wrong, or if it is empty or circular. This section aims to introduce his contractualism as i) support to Brian Barry's grounding of justice as impartiality and ii) an alternative that will be further criticized in chapter IV. Accordingly, the primary focus of examination pertains to the extent of morality within T. M. Scanlon's contractual framework and the key factors that undermine the moral consideration of nonhuman animals. The chief question revolves around who is included in the *morality of right and wrong*, as Scanlon (1998, p. 6) defines his contractualism, and why the chosen principles are consistent with his view of moral motivation. To achieve this, a discussion on these crucial elements is necessary.

Scanlon's positive thesis on the nature of morality contains a central premise of substantive value about a) the priority of moral reasons and b) the root of the force of normative judgments. But before approaching these main premises, it is necessary to expose the elemen-

tary concepts underlying the theory, namely reasons, rationality, and reasonableness. Scanlon (1998, p. 17) views reasons as *fundamental*, i.e., an unexplained notion “that counts in favor of something”. Further, the classification of attitudes for which normative reasons can be asked for or offered is described as “judgment-sensitive attitudes” (SCANLON, 1998, p. 20). These are attitudes that depend on judgments about reasons. Clear examples of judgment-sensitive attitudes include respect, contempt, and resentment in contrast to brute feelings such as hunger and tiredness. As Scanlon (1998, p. 20) puts it, these are within the “class of attitudes for which reasons in the sense I have in mind can sensibly be asked for or offered”.

These considerations about reasons and judgment-sensitive attitudes underlie the concept of rationality and irrationality. A rational creature is represented as having the capacity to recognize and be moved by reasons and, therefore, to have judgment-sensitive attitudes (SCANLON, 1998, p. 23). According to him, this capacity applies to theoretical and practical reasoning, encompassing beliefs, intentions, and other judgment-sensitive attitudes. He ultimately defines irrationality as the failure to be affected by a recognized reason in one of the relevant ways (SCANLON, 1998, p. 25). It applies to situations where rational persons acknowledge something as a reason but do not respond or act accordingly. He adopts a narrower sense of irrationality in theoretical and practical domains. In Scanlon’s understanding, irrationality refers to the failure to respond to recognized reasons while leaving open the question of whether there are additional standards for irrationality based on accepting specific considerations as reasons. Therefore, confining the term “irrational” to the narrower sense, which refers to the failure to respond to recognized reasons, would be more in line with the ordinary use of the language.

This toolkit of concepts makes it possible to understand the differences between idealizations and hypotheses about the social contract in several contract theories. The idealized rational agent differs from the rational creature living *in concreto* in three crucial dimensions. First, the idealized agent has complete information about the relevant case. Second, he has access to all possible reasons, i.e., all considerations in favor of something, which apply to the situation in which he finds himself. Finally, the fully idealized rational agent impeccably uses her reasoning. So, in short, “‘the (most) rational thing to do’ would thus be ‘the course of action that is best supported by all the relevant reasons given a full and accurate account of the agent’s actual situation’” (SCANLON, 1998, p. 32).

Scanlon (1998, p. 194) contrasts reasonableness with rationality, where reasonableness is concerned with assessing objections to possible moral principles and the suitability of these principles for mutual recognition. In circumstances of power imbalance, for example, it may be rational but unreasonable for the powerful to reject terms of cooperation with their peers. He gives the example of water access with the unevenness between the landowner who has no rational incentives to enter cooperation but where it would be unreasonable to deny due access to water to his neighbors (SCANLON, 1998, p. 192-193). While rationality is committed to formulating and achieving aims, reasonableness brings the significant substantive values of equality and mutual recognition. Scanlon acknowledges that some philosophers may prefer

to rely solely on rationality, particularly in determining what principles no one could rationally reject given a specific aim. As a canonical example, David Gauthier's (1986) version of morality as an agreement between self-interested and rational parties. Another contractarian theory is the work of Jan Naverson (1988), who proposes libertarian principles of justice. However, he argues against this approach because it is likely to be understood as a strategic question to achieve agreement on principles rather than a substantive moral judgment³⁶. Reasonable judgments are not positioned on advancing interests or achieving agreement under specific circumstances (such as the original position) but on principles that enable mutual recognition.

There is a broad range of values beyond the moral domain, but if judgments of right and wrong always or almost always carry primacy over other values, "this requires explanation" (SCANLON, 1998, p. 148). The source for the special strength of moral reasons over others is what his contractualist conception of morality attempts to answer by employing the substantive value of mutuality and justifiability. He notes the special potency of moral reasons over other reasons as a matter of *priority* of values. Scanlon (1998, p. 148-149) discusses two forms of why moral reasons possess a special force that requires some basis. The first aspect pertains to our shared perception of individuals unaffected by considerations of right and wrong. This lack of responsiveness is seen as a serious fault, distinct from merely disregarding other categories of reasons, such as aesthetic or natural values. Remember that unresponsiveness to moral reasons is equated to unreasonableness under his framing. It is considered a more significant failing, deserving of a special kind of explanation. The second aspect involves the special importance attached to considerations of right and wrong compared to other kinds of reasons. Not only are moral failings deemed more serious from a moral standpoint, but there is also a broader sense in which the failure to be concerned with moral considerations carries more weight and has graver implications. Scanlon refers to this as the problem of explaining the special *importance of moral reasons*, highlighting the need to account for the distinction associated with moral failings in contrast to other types of failures.

His theory tries to demonstrate the substantive values behind moral judgments' reason-giving force. According to his form of contractualism, an act is wrong

if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement (SCANLON, 1998, p. 153).

Individuals are motivated by the *shared* desire to reach an agreement that no one could reasonably reject. The common aim is to find principles that are justifiable to all, regardless of their

³⁶ The strong precept of equality as a theory constraint is explicitly rejected from contractarianism in favor of a principle of cooperation for the mutual benefit of parties. I shall not argue here my contention that contractarian conceptions of justice are rather alternatives to the proper concept of justice as usually understood.

specific interests. Morally wrong acts possess, accordingly, a wrong-making property of unjustifiability to others under principles they would reasonably reject. Hence, contractualism states that ϕ -ing is wrong because performing ϕ would be disallowed by principles regulating general behavior. A rival account of moral motivation is the substantive proposition of utilitarianism that assigns value to states of affairs and maximizes happiness (or other indexes of well-being). In utilitarianism, good and evil are associated with pleasure and suffering. Straightforwardly and directly, the wrong acts injure the promotion of the greatest happiness to the greatest number. In contractualism, on the other hand, the substantive moral content focuses on respect (or disrespect) for the moral practice of living together. In his words,

the contractualist ideal of acting in accord with principles that others (similarly motivated) could not reasonably reject is meant to characterize the relation with others the value and appeal of which underlies our reasons to do what morality requires. This relation, much less personal than friendship, might be called a relation of mutual recognition. Standing in this relation to others is appealing in itself—worth seeking for its own sake. A moral person will refrain from lying to others, cheating, harming, or exploiting them, “because these things are wrong.” But for such a person these requirements are not just formal imperatives; **they are aspects of the positive value of a way of living with others** (SCANLON, 1998, p. 162, my emphasis).

This characterization of the morality of right and wrong is relational in asserting a substantive moral value relative to the sphere of moral relations of more than one person. This moral way of living describes the relationships of the moral failure of those who accept to live based on principles that would be reasonably rejected. It is this dimension of morality that Scanlon seeks to capture with his contractualism. Therefore, contractualism is not expected to serve as a basis for explaining possible duties to oneself. It describes the special character of our (moral) relations with others. Our moral judgments are not solely focused on individual outcomes or abstract principles but are guided by a concern for the impact of our choices on the lives of those with whom we share these relations.

A crucial difference between Scanlon’s contractualism and Rawls’ justice as fairness is their scope. While the former is an attempt to describe the normativity of moral relations of right and wrong between reasonable persons, the latter focuses on the much narrower concept of justice as the primary virtue of political institutions. The first is concerned with the governing rules regulating general behavior, while the second limits itself to rules shaping the constitutional essentials that ultimately regulate political relations in a modern democratic society. Hence, Scanlon’s contractualism has a broader scope as it describes the normativity of moral relations of right and wrong between reasonable persons. It aims at principles that oversee moral decisions beyond the confines of political institutions. The “morality of right and wrong” contains a wide range of moral concerns that fall beyond the fundamental laws regulating the basic structure of society, including interpersonal relationships, moral obligations, and individual conduct.

Another part that estranges the two formulations is the theory involving the actual con-

tent of the original contract. Scanlon's version denies the conception of principles under the specific circumstances in which the participants in the original position find themselves. The hypothetical agreement which underpins the morality of what we owe to each other does not impose informational constraints such as justice and fairness limits under the veil of ignorance. The original position serves a practical purpose as a device of representation where individuals propose and decide on principles of justice from behind a veil of ignorance, unaware of their specific characteristics, social class, or particular interests tied to personal biases. The appeal to self-interest behind a veil of ignorance is renounced. Scanlon's account of moral motivation bars the notion of self-interest coupled with mutual disinterest. Instead, it concentrates on finding principles that others, *who share this aim*, could not reasonably reject.

In other words, a vital force for erecting moral thinking, according to Scanlon, is the substantive value of a particular conception of moral thinking in a relational forum. The concern of justifiability of principles regulating general behavior is "not because we might, for all we know, actually *be* them, or because we might occupy their position in some other possible world, but in order to find principles that they, as well as we, have reason to accept" (SCANLON, 1998, p. 191, author's emphasis). He is not interested in modeling political principles and therefore dispenses an underlying social theory of what a society is, its primary political institutions, and laws. Hence, the concept of society is expendable in favor of being limited to the idea of persons and their moral relationships. His moral theory does not assume that society is a fair cooperative venture for mutual benefit from one generation to another³⁷. Hence, the cooperative element of justice as fairness (JaF) is not employed in the broader form of contractualism.

What does Scanlon's contractualism have to say about who has moral status (and under what criteria)? Morality, in this conception, includes all those with whom one has strong reason to justify his or her action. In his seminal article "Contractualism and utilitarianism", Scanlon (1982, p. 114) suggests that the scope of the morality of right and wrong is conditioned to i) the capacity to have well-being, ii) be something in which the idea of justifiability makes sense and iii) the sense that the good of the being is minimally comparable. Within contractualism, the scope of moral status is determined by the individuals who have a justifiable claim to be affected by our actions. Only beings with a stake in something can be worst off (or better off). It is, therefore, unsurprising that non-sentient objects are not part of the morality of right and wrong. But what about nonhuman animals?

First, this version of contractualism differs from the rationality and cooperation requi-

³⁷ As he notes: "What distinguishes my view from other accounts involving ideas of agreement is its conception of the motivational basis of this agreement. The parties whose agreement is in question are assumed not merely to be seeking some kind of advantage but also to be moved by the aim of finding principles that others, similarly motivated, could not reasonably reject. The idea of a shared willingness to modify our private demands in order to find a basis of justification that others also have reason to accept is a central element in the social contract tradition going back to Rousseau. One of the main reasons for calling my view "contractualist" is to emphasize its connection with this tradition" (SCANLON, 1998, p. 5).

rements for mutual advantage found in Gauthier's (1986) contractarianism. One key difference between Scanlon and Gauthier lies in their understanding of the moral status of nonhuman animals. Scanlon argues that their pain and well-being are relevant to our moral considerations. In contrast, Gauthier's rational choice contractarianism primarily focuses on human exchanges and the purpose of self-interest. Further, Scanlon traces the idea of justifiability to others as the main feature of morality, proposing that moral commitments regard treating others in accordance with principles they could not reasonably reject. In contrast, Gauthier's framework models individual rational choices and agreements that promote mutual gains rather than the justifiability of actions to others. In short, Gauthier understands that moral principles are the resultant vector of agreements for mutual gains, while Scanlon suggests that moral principles survive the test of non-rejectability by others.

He recognizes that pain is a *prima facie* normative reason. Scanlon (1998, p. 183) suggests that a contractualist view can address this intuition by adding the concept of trustees representing creatures who lack the capacity to assess and respond to reasons. Trusteeship³⁸ refers to a trusted representative acting on behalf of the fundamental interests of someone who may lack the capacity to protect or advance their own interests. The representatives act as equal creators of the principles that regulate general behavior. Trustees, as representatives, are expected to consider objections that the animals could raise if they had the capacity to do so. However, Scanlon introduces the idea of trusteeship only as a suggestion and ultimately argues that he prefers to interpret duties to nonhuman animals inside only to the "broader" notion of morality. Finally, he writes that his contractualism does not "settle the question of the moral status of nonhuman animals" (SCANLON, 1998, p. 185). This conclusion is similar to the one found in his 1982 article where he claims that his contractualist account does not settle the issue of the moral status of animals (SCANLON, 1982, p. 114).

Indeed, contractualism better captures the particular way that rational beings can be harmed. As well articulated by Nozick (1974, p. 42) and his experience machine, autonomy contains a value that cannot be easily understood in terms of pleasure or happiness. Practicing unjustifiable acts to the other represents an injury to autonomy in a way that non-rational beings do not experience. Yet this does not mean superiority; what this means is that there is no *simpliciter* summarizing all the components of well-being. Autonomy is just *one more* way humans can be harmed beyond the physical and mental sphere. This relationship of equality grasped by the moral failure of being unable to justify one's acts provides a form of understanding equality among autonomous beings who, by their nature, have an additional reflective aspect transcending the merely sensorial. However, the conscience that spawns the capacity for feelings of guilt, resentment, shame, and regret does not exhaust or define who the moral community is.

On the scope of morality, Scanlon argues that infancy and childhood are stages in the

³⁸ This idea is also employed by Rawls (2001, p. 84) when describing the participants of the original position.

life of a being who will eventually possess the capacity for judgment-sensitive attitudes, which justifies extending moral consideration to infants. Although they may currently lack these capacities, their future development merits their moral status. Scanlon addresses the question of severely cognitively impaired humans who may never develop the limited abilities required for judgment-sensitive attitudes. Scanlon contends that despite their cognitive limitations, there are strong reasons to accord all humans the same moral status. The “same human nature account” of equality and the “relational account” of equality offered by Scanlon are both examined in detail and criticized in Chapter IV. The purpose of this section is to present the contractual argument in this version of contractualism. Consideration of infants and those temporarily impaired would be accommodated via trusteeship than the inclusion of animals because there is a more intelligible sense of justifiability from the indirect application of “what they could reasonably reject if they were currently capable of understanding the moral question”. This easier understanding is also due to the greater comparability of the good involved in severely impaired humans than with the massive range of good and cognition found in individuals from other species. Nonetheless, the substantive value of justifying oneself to others standing in a relation of equality no longer has the explanatory effect for wrongdoing towards beings who never were or will be able to comprehend and respond to reasons.

The limitation of Scanlon’s contractualism in accounting for nonhuman animals’ fundamental interests is subject to objections. First, as Martha Nussbaum points out (2006, p. 137-138),

Guardianship is not intrinsically incompatible with treating these people as full-fledged citizens and equal subjects of justice. In a social contract doctrine, however, it is not obvious that this equality could be adequately modeled. It is bad enough that people with mental disabilities are altogether excluded from the framing of principles, since many may be capable of active citizenship. More serious still is the fact that the group of people for whom principles are chosen is the same group as the people who choose the principles.

By its structure, the contractualist framework models the principles that are agreed upon by participating members. If nonhuman animals are not directly part of the contractual device, this treats them outside the representation of an agreement between equal parties to whom each other has a moral duty to justify oneself. This objection is not limited to Scanlon’s contractualism but rather to every form of contractualism. Another objection by Nussbaum (2006, p. 138) is that the idea of trusteeship retains the rationalist conception of persons derived from Kant. As seen in Chapter I, Kant starts from a sterile division between the rational world and the rest of nature concerning moral status.

Peter Carruthers (1992) argues that contractualism does not serve to explain our moral duties to nonhuman animals. Indeed, he claims that no contractualism will guarantee direct duties to animals. According to Carruthers (1992, p. 104), since every rule will inevitably conflict with someone’s concerns, rejecting rules based on personal interests alone would undermine the aim of reaching free and unforced general agreement. While individuals may care about animal

well-being, others may prioritize personal/human interests. Suppose one can reasonably reject rules that disregard animal interests. In that case, others could equally reasonably reject rules that impede her freedom to dress, engage in sexual activity, or practice their preferred form of worship. In a sense, the equilibrium will tend to reach a primary principle that accords respect for the autonomy of rational agents. Hence, the non-rejection framework for moral principles could not generate protections for animals. This line of argumentation misses the suggestion of trustees as equal representatives in the process of rejecting principles that negatively affect the fundamental interests of the animals they represent. It also misses the purpose of Scanlon's condition of full information that requires all the parties to fully aware of the situation and the consequences of possible lines of action.

The idea of guardianship is dismissed even for people with disabilities in favor of an argument from stability. According to Carruthers (1992, p. 116), the slippery slope argument contends that rational participants would not exclude the severely cognitively impaired as a matter of normative stability. Rational agents "should therefore select moral principles that will provide a stable and easily understood framework within which ordinary people can debate questions of right and wrong" (CARRUTHERS, 1992, p. 116). As there is no clear boundary distinction of rationality, agents would choose to include all humans to avoid their undue exclusion from the scope of morality. On the other hand, the disparity between humans and other species would allow the choice of stable principles without considering the interests of animals. So, to avoid a slippery slope, contractualism extends moral and political consideration to cognitively impaired humans for reasons of normative stability. This conception shares the problem (now in explicit form) of not adequately explaining the moral force of moral obligations to animals. According to this conception, moral duties are null for nonhuman animals and only indirect in the case of humans with cognitive disabilities. As a matter of moral theory, it proposes only a limited view of our robust moral intuitions regarding animals. It fails to establish a morally relevant distinction between the sources of the wrongness of hastily inflicting pain on a rational human being or a dog.

Andrew Cohen (2007, p. 196), defending the contractualist account against objections of scope, states that there need be nothing intrinsically degrading in having its interests valued because a third party advances it — their interests count as much as the similar interests of others. However, the real challenge to contractualism is to explain, as a moral theory, moral motivations satisfactorily. The fundamental problem is that contractualism, as a theory, proposes that the moral motivation to act rightly towards animals can be understood from the notion of guarantors and not from animals *per se*. Even if we assume that the idea of trusteeship grants equal strength to the basic interests of animals, this force is indirect. And that doesn't seem to explain our strongest intuitions about maleficence properly. The moral reaction towards an animal suffering under improper captivity is comparable to other moral values affecting human relations. The most a contractualist account has to offer is that it is wrong to act under a principle that a trustee would reasonably reject in the name of an animal's interest. It is too far

from our moral perception that pain is a *prima facie* moral reason to prevent it. From a theory acceptance point of view, the utilitarian account seems much more parsimonious in this regard.

This version of contractualism fails, firstly, to serve as a satisfactory account of our direct duties to animals because it necessarily relies on the fundamental idea of justification and agreement. Second, Scanlon does not adequately account for the supposedly relevant moral difference between moral motivations for humans and everyone else. On the latter issue, the explanation of the difference between moral failure between harm an animal and harm a human is problematic. As Will Kymlicka (1990, p. 111) put it, “the reason we give moral consideration to a child has nothing to do with the idea that we can address a justification to a trustee. We give moral consideration to children because they can suffer or flourish”. The same applies to moral obligations towards animals. Torturing an animal causes moral indignation of a similar quality to other forms of torture, regardless of species. This similarity in maleficence and the moral aversion to harming others transcends the species category and is not easily explained by principles no one could reasonably reject. A proper account of moral motivation must comprehend wrongness beyond the concept of justifiability.

3.2 Brian Barry’s Justice as Impartiality and the Rights of Animals

As discussed so far, the social contract tradition is not a single, indivisible model. Gauthier’s justice as self-interested bargaining is only one framework. And Rawls’ justice as fairness has both elements of mutual advantage and “fair play” in forming the two principles of justice³⁹. Brian Barry’s (1995) *justice as impartiality (JaI)* tries to purge the pieces of mutual advantage from the contractual scheme founded on Scanlon’s theses on wrongness and moral motivation of parties in the agreement. Thus, JaI also aims to eliminate incompatibilities between the idea of mutual advantage and the robust idea of equality stated in JaF (BARRY, 1989; BARRY, 1995, p. 60). Without the fundamental idea of society as a cooperative venture for mutual advantage (from one generation to another), justice as impartiality removes a major hindrance to the inclusion of nonhuman animals as recipients of justice. This section argues that, despite not requiring a notion of self-interested rational cooperation, justice as impartiality:

1. Retains Kant’s conception of persons — and the basis of their equality;
2. Relies on a markedly contractual structure of justification;

³⁹ A more explanatory way of classifying the division between Gauthier’s contractarianism and Rawls’ ‘Kantian contractarianism’ is to call them *justice as self-interested reciprocity* and *justice as fair reciprocity*, respectively (BUCHANAN, 1990). While the former argues that morality can only get off the ground if it explains (perhaps ironically) the usefulness of justice, the latter’s agreement presumes an equitable relationship between the parties.

3. Is concerned with neutrality between different comprehensive doctrines of the good in formulating regulative principles of political relations among reasonable citizens in democratic societies.

In distinct ways, these three factors hamper the proper inclusion of animals in Brian Barry's framework.

First, Brian Barry's conception of justice draws its contractual device from Scanlon's contribution. Therefore, members are fully informed and motivated by the search for reasonable agreements that others could not reject. These two features distance justice as impartiality from the Rawlsian framework. In the latter, the representatives of the original position have informational restrictions on race, class, gender, doctrine of the good, etc. Furthermore, on equal footing, the parties serve as trustees for the fundamental interests of their constituents, adhering to the original contract if the circumstances of justice hold. For justice as impartiality, the political motivation for entering into and remaining in agreements is the same moral motivation that regulates Scanlon's theory of right and wrong: persons are similarly motivated to reach principles of justice that no one could reasonably reject. Entering and remaining in the political arena, therefore, does not result from a strategic calculation but from the will to reach a reasonable agreement with others. The unity of society is in sharing the motivation to (politically) justify oneself to each other.

In Brian Barry's contractualism, there is no veil of ignorance. The principles must be reasonably sanctioned by all, fully informed of the circumstances and consequences of the paths to be taken. Politically, the information requirement requires that people know "the bare facts about their society but also that they know that other societies do things differently and that their own could be different in various ways" (BARRY, 1995, p. 107). Furthermore, the flow of politically relevant information is itself regulated by the principles of justice; "laws and government policies must arise from a process of 'open justifications openly arrived at'" (BARRY, 1995, p. 103). The practical repercussions of this informational requirement are public funding of political parties and restrictions on private campaign donations (BARRY, 1995, p. 108). The *circumstances of impartiality* (BARRY, 1989, P. 347-348) emanate from the "disposition to see fellow citizens as equals" (BARRY, 1995, p. 107) and also from the capacity of the procedures to lead to results that reproduce the shared aim of reasonable non-rejectability. Political institutions need to generate results compatible with the best ideas rather than vulgar majoritarianism. In a more direct and concise formulation, I can write that:

- The principles of *justice as impartiality* must result from fully informed citizens of democratic societies, similarly motivated to reach agreements in a position of equality, writing in terms that no one can reasonably reject. (JaI)

Having discussed the motivational and information requirement, I can now turn to the meaning of "the position of equality" in Barry's contractualism. In the case of utilitarianism,

equality can be expressed by the “equal claim of everybody to happiness” (MILL, 2015, p. 175) or the tacitly or explicitly accepted principle of equal distribution of happiness. In JaI, equality of power is expressed by reasonable vetoes to the proposition of others similarly motivated to find agreements. Consequently, the “criterion of reasonable acceptability of principles gives some substance to the idea of fundamental equality while at the same time flowing from it” (BARRY, 1995, p. 9). Straightforwardly, Barry (1999, p. 96) states that “the premise from which I start is one of the fundamental equality of human beings” in an axiomatic fashion. It is Axiomatic because it is offered as a moral proposition that does not require antecedent justification. Indeed, it is endorsed by all relevant perspectives within contemporary normative political theories. With the exception of Nietzsche, human inequality seems to be inevitably viewed through a negative lens.

The political relationship through which this equality materializes is shaped by the reasonable non-rejectability of the principles that govern the laws and, more wholly, the just system. Thus, the derivation of equal rights does not demand the device of the OP parallel to justice as fairness. Equal rights are more parsimoniously derived from the ideas of justifiability and veto. Suppose groups are equally willing to design principles of justice. Consider that group A proposes that the right to vote is an exclusive privilege and simultaneously disregards morally or cognitively relevant justifications. In that case, the other groups can reasonably reject this principle. This illustration may seem dull until one can quickly remember that universal suffrage is relatively recent and that suggested justifications for exclusion based on skin color or gender were as arbitrary from a moral point of view as they were frequent. It is, therefore, uncomplicated to identify the mechanism by which veto power coupled with an equal motivation to reach reasonable agreements can generate a list of equal basic rights. A similar strategy can be used to see the reasonableness of equal rights to freedom of expression, association, fundamental procedural privileges, etc.

However, Brian Barry is only committed to the fundamental equality of human beings. When discussing the meaning of justice and injustice, Barry (1999, p. 95) wrote:

[...] it does not seem to me that the concept of justice can be deployed intelligibly outside the context of relations between human beings. The reason for this is, I suggest, that justice and injustice can be predicated only of relations among creatures who are regarded as moral equals in the sense that they weigh equally in the moral scales.

This passage reveals two theoretical commitments; one explicit and one implicit. What is unambiguous is the firm conception of equality whereby justice as impartiality shares premises with Scanlon’s terminology. Justice as impartiality claims that inequalities in rights and opportunities must have proper justifications (BARRY, 1996, p. 358). Stated differently, equality is the initial benchmark, and deviations are allowed as long as all parties agree to the terms. The equality standard brings a formal restriction. The criteria of a reasonable deviation are only known from the shared value of relational equality and the moral motivation to reach agreements in

equal circumstances. The second commitment is with a Kantian definition of personhood as a relevant background theory to support the contractual structure. The contractual arrangement of justifiability not only implies that moral persons be endowed with equal absolute worth – i.e., equal *dignity*. It also *demand*s a conception of persons as rational and reasonable beings for whom the value of moral justification makes the most sense. Both Rawls and Scanlon explicitly disavowed the inclusion of nonhuman animals in their respective contractualist frameworks. For the latter, direct denial follows because the moral value of justifiability is best grasped from the interaction between autonomous beings. Otherwise, it is theoretically expensive to ask readers to imagine an explanation of wrongness that lives in the moral failure of being unable to justify oneself.

As discussed, justice as impartiality does not start from the idea of society as a cooperative venture for mutual advantage. Thus, any remnants of bargaining and rational strategy constituting justice as fairness are eliminated from JaI's contractualist architecture. Also, the claims and entitlements of all human beings do not derive from contributory criteria for the system. Therefore, inequalities between natural talents and cognitive endowments cannot justify unequal distributive shares. Yet, unlike Rawls and Scanlon, he does not discuss the political and moral repercussions for cognitively impaired humans arising from the exclusion of animals from the scope of justice beyond stating that JaI includes them (BARRY, 1995, p. 60). The introduction of trustees as political representatives of the fundamental interests of those cognitively incapable of entering into a reasonable agreement is also not mentioned. However, the argument in favor of including all human beings from the species' point of view is far from obvious. It is no coincidence that Scanlon (1998) devoted a portion of his work to addressing this issue openly. As I shall argue in Chapter IV, the exclusion of all animals and the inclusion of all humans is a serious theoretical problem.

Justice as impartiality demands a Kantian conception of persons, or something close to it, because the device of representation expressed by the idea of a contract loses theoretical appeal if applied to beings incapable of recognizing and responding to normative reasons. The capacity to assess and address reasons precisely defines Scanlonian irrationality (SCANLON, 1998, p. 25). Having equal weight on the moral scale implies some substantive valuation of human worth, shared with common morality, that the interests of human beings should not be counted unevenly. And on this point, the Kantian definition of dignity aligns with the precepts of common-sense morality. However, one can expect that a theory of justice for the 21st century should provide adequate rationales to define its own scope. Consequently, it is possible to understand that the first two obstacles mentioned above, the Kantian conception of people and the contractualist structure, are interconnected. Indeed, Barry (1999, p. 95) agrees with Rawls that cruelty to animals is an "uncontroversial" moral wrong. However, both conclude that animals are part of a broader scope that escapes the particular domain of justice. Despite initial enthusiasm for not relying on a contributory idea of cooperation, there are only a few works on Scanlonian versions of justice and the inclusion of animals. Robert Garner (2012) is the only

author to devote an article to the possibility of including animals in JaI and concludes, as he does here, that justice as impartiality does not provide a good route to think about justice for nonhuman animals. Paul Kelly (1996) criticizes JaI within a comparative perspective of various themes (one being the animal issue) where utilitarianism would be less objectionable.

Finally, the third obstacle to the inclusion of animals is that JaI is presented as a political conception of justice. In more expanded terms, Barry's justice is, like Rawls' later work, concerned with dealing with the burdens of reason that yield the deep moral disagreements encountered in democratic societies. Citizens "when debating 'constitutional essentials' [...] should leave their conceptions of the good at the door" (BARRY, 1994, p. 326). In this sense, justice as impartiality has the same claim as justice as fairness: it seeks to establish adequate procedures that regulate the basic laws and institutions of democratic societies. Given the perennity of reasonable disagreement, just societies must respect persons as free and equal by respecting the plausibility of comprehensive doctrines and the practice of their content. The only restriction is on applying public reason to define basic procedures and constitutional essentials, where doctrines about the good life are dispensed with in favor of a type of public reasoning that recognizes the equality of citizens in a society where reasonable pluralism is inevitable. The defense of liberalism as a political conception of justice, therefore, tries to anchor itself not in specific values of a comprehensive doctrine but in shared political values. Hence, the terminology of 'political rather than metaphysical'.

It is, therefore, unsurprising that the inclusion of animals in a political conception of justice defined in these terms is hampered. In a political form of liberalism, at least in the terms employed until now, citizens maintain multiple comprehensive doctrines concerning the treatment of animals. A citizen can believe in secular anthropocentric doctrines, Catholicism, and even ecological conceptions about the objective value of nature. Given this reasonable plurality of what constitutes the right treatment of animals, political liberalism responds that the best method (the method of avoidance) to respect citizens as free and equal is through neutrality between comprehensive doctrines within the scope of constitutional essentials and the later definition of protections (or their lack of) for animals. The duty of civility applies to human citizens capable of establishing that polity. The fundamental interests of nonhuman animals fall outside the scope of justice. Potential obligations to them are located within morality seen more broadly. The challenge of political conceptions of justice is reconciling the political claim while reserving a moral space for animals outside of justice. The most important currency of the burdens and benefits that justice distributes are the rights and duties of the members of the political community. Political liberalism not only entitles a group, or society as a whole, to practice brutal and degrading treatment of animals as a practice licensed by its doctrine(s). More than that, it postulates that injustice is only intelligible in the political (and moral) lexicon if other groups push to eradicate this tradition by recognizing the fundamental interests of sentient creatures as an authentically *political* matter.

The incompatibility of political liberalism with the inclusion of animal rights can be

understood by locating its first task as normative political theory. Political liberalism's primary task is the conception of a just organization of a society founded on political principles that would find support in societies characterized by profound moral conflicts about what constitutes good and evil (LARMORE, 1995; GALSTON, 1995; RAWLS, 2005; BARRY, 1994). For all the aforementioned authors, the moral center of justice is located in the citizens of democratic societies. This frame implies that due respect for citizens as persons free to conceive, revise and practice their doctrines does not directly collide with the interests of nonhuman animals. For Martha Nussbaum (2006, p. 388), political liberalism can include the fundamental interests of animals if it demonstrates that overlapping consensus is *possible* rather than realized in the present. This strategy has similarities with Sarah Roberts-Cady's (2020) proposal through public reason that would allegedly exclude anthropocentric arguments.

The difficulty, however, is in the definition of the political domain. Suppose the political category is defined in terms of beings capable of proposing, revising, and adopting comprehensive doctrines. In that case, it will leave room for justice to allow complete disregard for the interests of animals. If impartial justice permits both consideration and total disregard, justice may become muddled with the duty of charity. Yet, the meaningful difference between justice and charity lies in the obligatoriness of its rules. If only the possibility of justice for animals is demonstrated, this theoretical framework limits the scope of duty away from the duties of justice. The crucial lexicon of *entitlement* loses its effect if the political conception of justice is shown to allow the disregard for the interests of sentient creatures. Where charity limits itself to authorizing, justice demands as a matter of principle.

According to Barry (1996, p. 364), the unavoidable reality is that decisions regarding the legal standing of trees or protecting the interests of fetuses, nonhuman animals, and future generations ultimately rest in the hands of present-day humans. Rather than thinking about the ways of properly integrating them into a theory of justice, the crucial question lies in determining just *procedures* for making these decisions in a morally sound manner. Since, after all, human beings have the 'power of the pen', the contingent protection of rights can only be thought of from a human-centered framework. On the one hand, this argument may be trivially true. Indeed, moral disputes can only be advanced by moral beings, and just constitutions can only be considered from the moral perception of beings duly qualified for such a task. On the other hand, this argument is, at best, circular. The circularity comes from the claim that a political conception of justice is defensible because the administrators of justice will be moral agents. It is precisely the anthropocentric view of citizenship grounding the political conception of justice that is the object of questioning by those who understand animals as recipients of justice. According to the latter group, conceptions of justice founded only on human-citizens would be mistaken in assuming that the interests of nonhuman animals do only *exist* if they are humanly recognized in a political community. The next chapter proposes the inclusion of animals within the scope of justice. It defines the political domain similarly to the literature but extends the moral centrality to sentience rather than the consequences of cooperation or rational nature.

4 ANIMAL RIGHTS AND THE SCOPE OF SOCIAL JUSTICE

Several theories of social justice try to model the distribution of burdens and benefits with the idea of human equality as a premise. This equality is often justified under arguments considering species membership as a morally or politically relevant characteristic to delimit the scope of justice. Section 4.1 examines three assertions regularly offered to support species partiality and claims that they all fail as accounts of moral standing. The following section contends, in the first instance, that rights can serve to specify the sphere of protection of animal interests and that attempts to demarcate the notion and function of rights strictly for humans (or persons) lead to indefensible results. Second, the lexicon of justice is inseparable from the language of rights. The third section revisits the principle of equal consideration of the good, suggesting that similar fundamental interests should be associated with similar rights and opportunities. The last section argues that the essential political concepts of coercion, legitimacy, and domination can also adequately describe the contemporary relations between humans and nonhumans.

4.1 (Some) Problems of Species Partiality

The publication of Peter Singer's *Animal Liberation* in 1975 flared a passionate debate about the unequal consideration of interests at the expense of other species. Most people believe that the moral status of human beings is higher than that of other creatures. This section presents and criticizes some plausible defenses of species membership (or *personism*) as a relevant moral marker. Most works on human rights and international covenants settle dignity on elusive definitions of *humanity* without further development. However, in recent decades it has produced a vast literature on the foundations of fundamental human equality, justice, and the philosophy of moral standing. As it is practically unattainable to examine all defenses of species partiality, three arguments are analyzed here: i) Bernard Williams (2006) suggests that the importance of belonging to the human species (or at least the characteristics associated with personhood) is a product of the *inevitability of the moral perspective* as human beings, ii) human *relationships* are especially morally relevant (SCANLON, 1998; WALDRON, 2017, p. 246; STEINBOCK, 1978), and iii) the equality of kind can be expressed from the "norm" or *telos* of the group (species) to which the individual belongs (some examples can be found in SCANLON, 1998; WALDRON, 2017; LEE and GEORGE, 2008; BENN, 1967; FINNIS⁴⁰, 1980; Kagan, 2016).

⁴⁰ The natural law ethic can traditionally be associated as the forerunner of the precise argument of equality-of-a-kind as the basis of human equality.

After presenting the three arguments separately, I claim that these attempts to defend species bias fail to establish the discounting or disregard of similar interests rooted in the association of a kind, species, or personhood.

Before directly engaging with the arguments, some conceptual cleaning up between speciesism and “personism” is needed. Many ignore the interests of nonhuman animals, while others may consider animal interests at a discounted rate to humans. Shelly Kagan (2016, p. 9) suggests that most people are truly *personists*. They grant grander moral status to beings with the characteristics of greater cognitive development, such as moral capacities and the ability to react to reasons. He argues, *contra* Singer, that most people would generally agree that Superman’s being of another species would be irrelevant in considering the hypothetical anguish he would suffer from Kryptonite; Or ETs, anomalous rational creatures, or any imaginable science fiction fable of a *nonhuman person*. Therefore, according to Kagan (2016, p. 9, author’s emphasis), “we are not speciesists, but *personists*. That is, the line we think is important is whether someone is a person or not, not whether or not they are *Homo sapiens*”. This differentiation is undoubtedly significant and has been touched upon here earlier when Kant was described as ratiocentric rather than speciesist or anthropocentric. Yet, common morality is (also) speciesist. Most regard the interests of humans with severe cognitive impairments in higher status than nonhuman animals comparatively closer to the standards of rationality and self-awareness that canonically define personhood. Ultimately, Kagan (2016, p. 12) characterizes personism as partiality towards an individual of any kind “whose typical adult members are persons”. This position converges with the human nature/norm argument examined later. I shall assume here that the argument from norm or telos applies as much to *Homo sapiens* as it does to any species that hypothetically approximates the characteristics that define personhood.

Bernard Williams (2006) upheld the moral importance of humankind in a posthumously published essay. His major insistence is that “if there is a human prejudice, it is structurally different from those other prejudices, racism and sexism” (WILLIAMS, 2006, p. 141). Unlike racial or national discrimination, the human condition does not require justification in moral thinking (WILLIAMS, 2006, p. 140). When one thinks of “we”, he or she is probably reasoning in terms of humanity: the human being is the only known creature capable of articulating language, reacting to reasons, accumulating technologies and cultures, etc. He notes that critics of species partiality sometimes anchor their moral assumptions through the idea of an impartial observer who judges actions from a cosmic point of view. Williams’ primary criticism is precisely that there is no such point of view. Consequently,

We are surrounded by a world which we can regard with a very large range of reactions: wonder, joy, sympathy, disgust, horror. We can, being as we are, reflect on these reactions and modify them to some extent. We can think about how this human estate or settlement should be run, and about its impact on its surroundings. But it is a total illusion to think that this enterprise can be licensed in some respects and condemned in others by credentials that come from another source, a source that is not already involved in the peculiarities of the human enterprise (WILLIAMS, 2006, p. 147).

Bernard Williams' *perspectivism* likely uses the term 'cosmological' to counter the vocabulary employed by Henry Sidgwick. Sidgwick (1907, p. 382) invokes the "point of view of the universe" to articulate (for him) self-evident principles, in particular, a principle of equality of the same good among individuals. Interestingly, this is precisely the principle of equal consideration reformulated and employed by Singer (2002). Yet, the point of view mentioned by Sidgwick (1907, p. 113) assumes that morality and goodness are necessarily predicated on their relation to "human existence, or at least to some consciousness or feeling". The point of view of the universe is nothing more than an appeal to the impartiality of moral judgment capable of experiencing good and evil knowable by sentient minds. The cosmic view of the classical utilitarian recognizes goodness and badness without the distinction of species as the relevant category. There is no need to appeal to an impossible external source but only to the notion of the sentience of beings capable of experiencing better or worse lives. Furthermore, Sidgwick (1907, p. 209-210) and other utilitarians generally reject attempts to derive principles of morality from formal structures of deduction alone. Thus, the utilitarian enterprise is usually concerned with systematizing the moral intuitions of conscious creatures in which the concept of goodness and badness is intelligible — human or not.

Similarly, Williams also overlooks the plausibility of equally considering the interests of nonhuman animals from a human point of view. He does not consider the possibility of philosophy recognizing the moral irrelevance of species membership from a moral sentimentality centered on the experience of vulnerability, fear, physical and mental pain, trauma, and domination that humans and nonhumans share. In other words, adopting a human perspective (or assuming that it is inescapable) does not imply granting unequal consideration of the suffering and pleasure experienced by individuals of other species. Finally, Williams (2006) does not develop the concept of "us" as a species. Unreflected intuitive group solidarity is rigorously the distinguishing feature of past and present racism and other forms of discrimination. The lack of justification for slavery in the moral thinking of many white inhabitants of the Antebellum South does not qualify their perspective. Besides, the bare fact that only humans are capable of moral agency (in the known world) does not seem to be sufficient reason to separate all humans from all nonhumans in the moral field. After all, most people recognize that morally relevant experience extends into good and bad experiences beyond the species category. Basic moral intuitions are more parsimoniously (and better) theorized by the idea of harm as a *prima facie* moral reason than by the idea of what species the harmed individual belongs to.

Another potential reason for differentiating moral status is the distinctiveness of human relations. Scanlon (1998, p. 185) writes that “the mere fact that a being is ‘of human born’ provides a strong reason for according it the same status as other humans”. Jeremy Waldron (2017, p. 246) also briefly mentions the significance of species membership when recalling that

Every disabled person who suffers impairment of the range properties relevant to human equality is related to someone who has those properties, and in that sense the profoundly disabled person belongs to the human community. There is no other community of carers for the profoundly disabled person, no other community except the human community to which they belong.

Therefore, the partiality of human relationships would be comparable with the partiality commonly assumed for members of the same family or friendship. The “tie of birth” that unites the moral sensitivity towards the suffering of other humans would be a relevant moral factor to consider the interest of humans over nonhumans unequally. However, the human community is nothing more than a disputed biological definition that does not seem to resemble the relationships of social proximity between parents, children, and friends. Let us assume the biological definition of species as a group of living creatures capable of interbreeding and generating fertile and viable offspring. Species partiality stands far from carrying the same moral importance as close relationships between family members and close friends. Species is a taxonomic picture of beings. The “human community” is designed to categorize and organize biological diversity⁴¹. The taxonomic work of separating classes of individuals into different groups needs a degree of arbitrariness—and it is limited. Species can be described from biological concepts (such as interbreeding with fertile and viable offspring), morphological (physical attributes), and ecological (the role in the ecosystem), among others. Belonging to a group of biologically/morphologically/ecologically situated individuals does not express the same moral significance as being in a close social relationship with family or friends. It is challenging to attribute moral importance to such a discretionally (from a moral point of view) designed concept.

Third, the unequal consideration of humans over nonhumans can be upheld by reference to the typical characteristics of an adult human. In the words of Stanley I. Benn (1967, p. 71, author’s emphasis),

⁴¹ S. Matthew Liao (2010) offered a genetic source of fundamental human equality. This appeal to the genetic basis intends to overcome objections about the lack of personhood, in the philosophical sense of the term, in children, comatose, and people with severe cognitive impairments without resorting to the idea of potentiality or range property. The genetic basis of moral agency is an entirely morally irrelevant trait, however. Suppose that a hypothetical congenital anomaly is directly responsible for the derailment of moral agency. If moral status depends on the genetic basis, people afflicted with this hypothetical illness would not possess the same moral status because their genetic code thwarts the emergence of moral agency. This moral status account is, to say the least, peculiar.

Still, we respect the interests of men and give them priority over dogs not insofar as they are rational, but because rationality is the human norm. [...] For if someone is deficient in this way, he is falling short of what, in some sense, he *ought* to have been, given the species to which by nature he belongs; it is, indeed, to be deprived of the possibility of fully realizing his nature.

This position on fundamental human equality and the ensuing disparity between humans and nonhumans is the most recurrent within the literature. Jeff McMahan (2005, p. 355) calls this norm-based reasoning the *nature-of-the-kind argument*. This view bases the moral standing of individuals based on their membership in a particular group. An individual's moral status and inherent value are derived from the essential properties that define the nature of the kind to which they belong, usually according to the 'norm' or 'typical' adult member. If a specific trait or set of traits is essential to the nature of a group (or species), then individuals possessing those traits are morally considerable in the same terms. Moral status depends, therefore, not only on morally relevant characteristics (such as rationality, capacity for moral reasoning, etc.) but also on "being a certain kind of thing, that is, having a specific type of substantial nature" (LEE; GEORGE, 2008). Therefore, individuals lacking the hallmark traits for moral relevance still share the same moral status because they participate in the same set of essential properties that characterize the group/species. In the case of humans, for instance, possessing human DNA or having the capacity for human biological reproduction could be considered "essential properties" to membership in the human group.

Yet, this theory of moral standing seems inferior to other available accounts. Morally significant properties of a kind, which are crucial for determining the ethical considerations related to that group, cannot be automatically attributed to an individual just because she possesses the essential properties necessary for membership in that kind. Merely being a member of a particular species or group does not automatically confer all the morally relevant properties associated with that group. Returning to Shelly Kagan's argument (2016, p. 12), the moral status of personhood depends on whether the individual is a person or whether the individual belongs to a 'person species'. According to Kagan (2016, p. 9), most people are not speciesists but personists. However, this ignores the brute fact that most people privilege the fundamental interests of humans that are farther removed from the characteristics associated with personhood than the interests of nonhuman animals with comparatively greater reasoning and communication capabilities — e.g., a severely impaired human versus a fully able elephant in captivity. This general disposition to privilege the interests of *all* humans over *all* other animals suggests speciesism instead of personism.

Normative theorists may profit from wielding caution in differentiating moral standing between humans and nonhumans. This caution is warranted due to two factors: i) the potential evolutionary explanation of speciesist prejudice and ii) the positive relation between speciesist attitudes with other forms of discrimination, such as racism, sexism, and homophobia. The potential evolutionary explanation of speciesist bias suggests that certain cognitive biases and predispositions might have evolved in early humans and influenced how they perceive and in-

teract with other species. The need for self-preservation and reproduction of the species can be sources of unsubstantiated prejudices from a moral point of view. Although studies in evolutionary psychology are not definitive for the knowledge of moral philosophy, shunning the causes of intuitions is not a good strategy for those who use these intuitions as infallible sources. A relevant inclination is the in-group bias, which refers to the tendency to favor and cooperate with members of one's own social group. In early human history, forming cooperative social groups was crucial for survival, as it provided protection, resources, and support. When applying this in-group bias to humans, it might manifest as speciesist prejudice, favoring one's own species over members of other species⁴². Even with skepticism towards evolutionary theories of human psychology, the history of group bias calls for caution in justifying speciesist moral intuitions.

Likewise, the theory of generalized prejudice notes that individuals who hold prejudiced views toward one group are more likely to carry bigoted views toward other groups as well (ALLPORT, 1954). Several studies show a positive relationship between racism, homophobia, sexism, and human partiality (COSTELLO; HODSON, 2014; DHONT; HODSON; LEITE, 2016; COSTELLO; HODSON, 2010; BASTIAN et al., 2012)⁴³. These studies investigate the underlying psychological mechanisms that may contribute to discriminatory attitudes in different contexts. Some of these mechanisms may include the tendency to categorize people and groups into "us" and "them" and the search for a sense of belonging and group identity. These instruments can lead to a differentiated treatment of groups considered "others". The social hierarchy bias suggests that individuals tend to value the groups to which they belong and simultaneously perceive other groups as less important or inferior. In summary, psychology studies stress the importance of addressing these discriminatory attitudes as part of a broader system of prejudices. Therefore, these empirical facets must be assessed if moral intuitions discounting moral status based on species membership are to be reckoned under greater critical scrutiny.

⁴² The fact that evolutionary forces shape human evaluative attitudes need not be antagonistic to the idea of objectivity and moral truth in Ethics. Moral principles can be known from understanding and reacting to reasons. Such insights could overextend mere survival-oriented considerations and lead someone to recognize certain moral truths that are not directly connected to our reproductive success. Knowledge of moral principles can therefore be similar to knowledge of abstract and complex mathematics in that both do not deliver direct effects beneficial to the reproduction of the species. The same ability to reason that allows for better reproductive success may also be responsible for understanding physical laws or universal moral principles.

⁴³ For a recent and comprehensive study of the moral psychology of species partiality, see Caviola, Everett, and Faber (2019). Consistent with other studies, this analysis found that speciesist attitudes were positively associated with racism, sexism, and homophobia among participants.

4.2 Sentience, Rights, and the Scope of Social Justice

As examined, the contractualist theories of John Rawls and Brian Barry acknowledged the well-being of nonhuman animals as belonging to the moral domain but outside the scope of justice. In sum, both recognized the moral bearing of the welfare of nonhuman animals but did not extend principles of justice to include them within the scope of social justice. Instead, they regard animal welfare as a moral concern apart from the realm of justice delimited to all humans (in Barry's case) or humans who possess a necessary minimum of both moral powers (in the case of Rawls's model). For instance, Ruth Abbey (2007) argues that one must look beyond the 'rights discourse' to capture our ethical concern toward other animals. The rights allotment discourse, therefore, would limit the range of possible ethical considerations concerning nonhumans. In the present work, social justice generally involves the principles of justice that regulate and distribute the burdens and benefits of political societies. The language of rights is the main currency of the system of duties within social justice. Rights protect and advance the fundamental interests of co-participants in the scheme of justice while also define the corresponding duties of other members. Compassion, charity, and other forms of ethical consideration belong to the field of morality but are usually contrasted with the *compulsory* character of the duties of justice. Although the duties of justice are only a subfield of morality as a whole, animal rights theorists dispute the criterion of species as morally relevant to delimiting the scope of social justice. Instead of moral agency, rational nature, or humanity, sentience — the capacity for well-being for which life can go best or worst — is considered sufficient for an individual to be regarded in the scope of justice.

For animal rights theorists—e.g., Tom Regan (1983), Alasdair Cochrane (2012), Gary Francione (1995), Robert Garner (2005), and Paola Cavalieri (2001)—the criterion of sentience best characterizes the area of social justice. Unlike the other standards usually associated with humanity, the individual's ability to possess her own good is the relevant ethical foundation. Indeed, sentience explains much of the moral considerations one can have towards people with severe cognitive impairments not captured by the appeal to rational nature. Thus, overcoming the gaps and objections brought by the argument of species overlap is possible. Human and nonhuman individuals without the capacity or potentiality to exercise their rational and moral nature are easily understood within the moral consideration of sentient beings — children, the cognitively impaired temporarily or by birth, etc. The method of wide reflective equilibrium (DANIELS, 1996; DANIELS, 1979) enables organizing the components of the theory to be adjusted in the presence of arguments that reveal its inconsistencies. A normative theory primarily seeks to *explain* moral evaluations through concepts and ideas. Thus, the existence of unjustifiable speciesism based on sedimented considered judgments about humans “at the margin” demands adjustments in principles and background theories. If it is not possible to renounce considered judgments about the moral consideration of humans without the capacity or potentiality of rational nature, other components of the theory may be improved. In the domain of

theory acceptance, if a moral (or political) theory is as good in other respects as contractualism but superior in its account of moral standing, it has an advantage (HOOKER, 2000).

Moreover, a multispecies theory of justice need not consider sentience a necessary criterion for being the object of justice. A theory of justice that includes nonhuman animals need only to argue that the possession of well-being is a *sufficient* property for that entity's considerability. In this scheme, rights serve as a sphere of protection and advancement of the fundamental interests of individuals capable of bearing a good. Thus, this allows nature and non-sentient beings to be possible objects with rights and direct moral consideration. The relationship with ecology is increasingly part of people's moral intuitions. An animal rights theory does not necessarily require associating rights with the presence of interests as Cochrane (2012) does. Multispecies justice, however, only needs to demonstrate that the species barrier as a demarcating parameter does not survive reflection while offering an alternative and more plausible explanation of the normative bases of the legal system.

Scientific evidence supporting animal sentience — a capacity for pain, pleasure, and other modes of conscious experience — is increasingly accepted and developed by the scientific community⁴⁴. It is generally accepted that vertebrates are capable of experiencing pain and pleasure (BUTLER; HODOS, 2005)⁴⁵. All vertebrates share a centralized nervous system comprising the brain and spinal cord. Additionally, vertebrates possess a range of neurotransmitters that underlie the transmission of nerve impulses⁴⁶. Sentience refers to animals' ability to have subjective experiences, such as emotions, feelings, and broad sensations. Although it is practically impossible to access and fully understand the consciousness of nonhuman animals, the thesis supported by evidence that other animals (at least most mammals) also experience pain can be affirmed beyond reasonable doubt (SHRIVER, 2006; ALLEN; TRESTMAN, 2017; SNEDDON et al., 2014). Also, the shared ancestry between humans and other animals supports the idea that sentience is not unique to humans and is compatible with evolutionary theory. Therefore, the unfeasibility of accessing animal minds does not prevent one from adopting the principle of caution, given current knowledge about biology and the ample and growing evidence suggesting experiences and mental states in other living creatures.

The relationship between suffering and moral standing was expressed within classical utilitarianism by Jeremy Bentham's much-quoted footnote (1823, p. 311) with the inquiring reflection on the adequate criterion for ethical consideration: after all, "The question is not, Can

⁴⁴ For a comprehensive view of the literature concerning animal cognition, see Bekoff, Allen, and Burghardt (2002) containing a collection of studies on several different species.

⁴⁵ On the common history of vertebrates and our brains, see recent work by Striedter and Northcutt (2019) and Jerison (1973).

⁴⁶ The subjective experience and capacity for pleasure and pain in invertebrates is still an open and inconclusive area of discussion in the literature. For a review of academic literature on consciousness in invertebrates, see Elwood (2011). A comprehensive (and bestselling) book on cephalopod intelligence was recently authored by Godfrey-Smith (2016).

they reason?, nor Can they talk? but, Can they suffer?’. In contrast to other candidates for moral standing, the capacity for suffering is repeatedly pointed out by animal rights theorists as a more plausible alternative to ground moral considerations or duties of justice. In the summarizing words of Gary Francione (2004, p. 121),

Although there may be many differences between humans and animals, there is at least one important similarity that we all already recognize: our shared capacity to suffer. In this sense, humans and animals are similar to each other and different from everything else in the universe that is not sentient.

Animal rights advocates often propose this conception of the similarity of subjective experiences. Borrowing Joel Feinberg’s stylized definition (1984, p. 33-34), ability by interest in X means having a stake in X — winning or losing depending on the condition of X. Ability to be harmed is the possibility of having setbacks to interests. Therefore, being harmed can be defined as a setback in well-being. Here, I shall adopt a minimalist strategy of integrating animals into the scope of justice. Instead of identifying sentience as a necessary and *unique* criterion for determining the recipients of justice, it is possible to argue that the threshold of sentience is morally *sufficient* and explains most of the gaps unfilled by contractualist theories of justice. The desire for unity in moral theory may unduly exclude consideration of direct obligations to great works of art, ancient trees, and other objects or ecosystems increasingly covered by the legal system as rights holders. Sentience, therefore, can be described as one among other possible sources of rights.

Hence, the argument from species overlap tests consistency between principles, considered judgments, and background theories⁴⁷. Confronted with a fragile equilibrium, one or more components adjust until mutual support exists among the three parts. Weakness can result from inconsistent judgments, erroneous principles, or background theories that do not satisfactorily explain what they intend to illuminate. The argument from species overlap emphasizes the overlapping of diverse traits that humans and nonhumans have. Furthermore, it recognizes the biological overlap between evolutionary forces, the neurological and subjective experience similarities between vertebrates, and how humans are part of an animal continuum. This overlap includes cognitive abilities, emotional experiences, capacity for suffering, social complexities, and the ability to form meaningful relationships. It highlights the commonalities in capabilities and experiences between humans and (at least vertebrates) nonhuman animals. The species overlap argument acts as a valuable tool for assessing the coherence and mutual support of the ethical premises and developments adopted by a theory of social justice. If our considered judgments regarding the welfare of permanently disabled humans survive reflection, and if there is no credible explanation (theory) that manages to separate all humans from all other animals,

⁴⁷ For a more in-depth discussion of wide reflective equilibrium and its three components (considered judgments, principles, and background theories), see the seminal work of Norman Daniels (1979).

this process of achieving coherence requires a reformulation of the potential foundations of the fundamental human equality that is not anchored in rationality, moral agency or the like. One way to directly apply this argument to the legal theory of nonhuman animals is to test different theories regarding the functions of rights. I assume here, concurring with the most accepted view in the philosophy of law, that there is a correlativity between rights and obligations: rights entail obligations and vice versa. If X has a right to Y, someone else or others must have a corresponding duty or obligation to respect and uphold that right to Y. Since the language of rights is inseparable from the lexicon of justice, the recent interest in the inclusion of animals in the range of justice and the defense of its congruence with the idea of rights and duties is not surprising.

Theories on the functions of rights diverged in the 20th century into two main approaches: the interest theory of rights and the will theory of rights. Roughly speaking, the former is associated with Jeremy Bentham's tradition and the latter with Kant's legal philosophy. According to the interest theory, the primary (or only) function of rights is to promote its holder's well-being (RAZ, 1986; FEINBERG, 1984). According to this theory, rights are instrumental to human (or animal) well-being. For example, a person has a right to life, liberty, and property because these protections are crucial to her overall well-being and flourishing. Promoting and protecting well-being is the grounding concept and fundamental function of rights. On the other hand, the will theory of rights states that rights are grounded on the notion of autonomous will or choice. According to the will theory, a person has a right to something when she has a legitimate claim because she expresses it through her voluntary actions or decisions. This perspective emphasizes the importance of individual autonomy and self-determination in establishing rights. Will theorists argue that individuals have rights to the extent that they can freely exercise their will without interference or coercion from others (see STEINER, 1994; WELLMAN, 1985). In the words of H. L. A. Hart (1982, p. 182), "the idea is that of one individual being given by the law exclusive control, more or less extensive, over another person's duty [...]". For Hart (1982, p. 185) "substantive merit of this approach" is revealed by the fact that few consider that animals deserve rights. As more legal systems embrace the rights of animals and even nature, this passage seems to have become anachronic. Following the Kantian legal philosophy, will theory is concerned with protecting the sphere of freedom. Interest theory, on the other hand, finds its explanatory force in preserving and promoting welfare.

It suffices to assert that the will theory is incompatible with existing rights that protect individuals without the capacity or potential for autonomy. The rejection of will theory based on a consistency test was the method explicitly hired by Neil McCormick (1976) in arguing that interest theory best captures the function of children's rights who are non-autonomous for all legal purposes. Rights are not reasonably explained in terms of their usefulness in protecting children's choices but in protecting and advancing their fundamental interests in being cared for, nurtured, and developed. Even if we include children's potentiality to become autonomous adults as a criterion, this still leaves out the inherent value of persons lacking the potentiality

who the rule of law should cover as members of society. Again, the argument from species overlap operates as a coherence test between judgments and background theories about legal aspects necessary for participation in the system of rights and duties. While not attempting to resolve the centuries-old debate about the nature and functions of rights here, a theory of multispecies justice must reject the normative premises that ground rights in protecting solely the realm of choice. The debate about whether rights perform one or more functions — see Leif Wenar (2005) — need not be defined here to advance a theory of burdens and benefits that is not limited to humans or persons. That said, the capacity for well-being is a candidate widely used by the literature (mainly after Joseph Raz’s definition of rights⁴⁸) to be one of the functions that rights protect and advance.

Nonhuman animals, defined here as individuals with a subjective experience capable of being better or worse, can be holders of rights under the same benchmarks as human beings. In the conception advanced here, capacity for well-being is a sufficient criterion for ground rights and obligations. In contrast, justice as fairness establishes the rights and protections to fundamental interests derived from political standing (the list of primary goods) from the terms of a fair agreement between holders of a necessary minimum for the two moral powers of a sense of justice and a conception of the good. Brian Barry’s justice as impartiality (1999, p 95) starts from the fundamental human equality between entities that are “equal on the moral scale”. Yet, it also does not develop how a contractualist theory would explain the basis of the rights of people who cannot participate in an agreement beyond that. Assuming a pluralistic approach, different aspects of life can affect well-being (GRIFFIN, 1986). Thus, a theory of multispecies justice can ground rights for animals beyond “hedonism for animals, pluralism for humans”. If the interest in freedom of movement affects the well-being of a nonhuman animal beyond its sensory hedonic effect, a right against confinement can be established on a fundamental interest in liberty (or control over one’s environment) and in avoiding suffering (SCHMIDT, 2015; NUSSBAUM, 2023).

John Rawls (1999a, p. 448) and Brian Barry (1999, p. 45) explicitly mention sentience as an essential moral property for determining acts as right and wrong. However, both defend a political conception of justice that excludes wrongs towards other animals from the language of justice. Social justice is, in modern democratic societies, inseparable from the language of rights. The system of rights guarantees the protection of individuals against oppression and domination by individuals or the collective over other individuals. Rights allow individuals to assert their fundamental interests if they are violated or neglected. The principles of justice are

⁴⁸ Joseph Raz’s (1985, p. 166) definition of rights goes as follows: “Definition: ‘X has a right’ if and only if X can have rights, and, other things being equal, an aspect of X’s well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty. Capacity for possessing rights: An individual is capable of having rights if and only if either his well-being is of ultimate value or he is an ‘artificial person’ (e.g. a corporation)”.

administered through rights and duties. The political structure is organized via the distribution of rights. Ideal (and real-world) principles of justice are issued and enforced on the basis of rights. So, there needs to be some convincing evidence that justifies the criterion of species as a delimiting factor of political concepts like vulnerability, claim, authority, domination, and coercion. Suppose no valid justification separates all humans from all other animals. In that case, there is a conceivable theoretical ground for integrating the conscious world within the scope of justice and the political domain. As examined in the next sections, I argue that these moral and political concepts already utilized in theories of justice are also applicable to relations between humans and nonhumans.

4.3 The Principle of Equal Consideration Revisited

For a long time, the moral standing of animals was identified with the classical utilitarianism tradition, which defines the boundaries of ethics within the concepts of sentience, pain, and pleasure as the ultimate evil and good. The utilitarian perspective commonly sees the political realm as just one of the many spheres in which the principle of utility must apply. Accordingly, the theoretical role of legitimacy and coercion does not function beyond the code of maximizing the welfare of sentient members. Classical utilitarianism contains, among other claims, a central thesis and two fundamental properties worth discussing regarding the scope of moral obligations demanded by the doctrine. The distinctive thesis is *hedonistic consequentialism*. Moreover, two components of classical utilitarianism are *aggregation* and *equal consideration*. These three attributes specify the core of classical utilitarianism, understood here as the version put forward by Jeremy Bentham and refined by Henry Sidgwick. Challenges to the utilitarian doctrine are generally associated with problems derived from the principle of aggregation yielded by the conception of persons as mere receptacles of pleasure (WILLIAMS; SEN, 1982). This implies that, within classical utilitarianism, sacrifice by some for the benefit of the general good is both permissible and desirable. Another challenge to utilitarianism is its morally neutral view of intentionality and manipulation. As Nussbaum (2004, p. 303-304) reminds, animals can also be induced to have degrading preferences under fear and adaptation.

However, the principle of equal consideration of the good can serve as a substantive principle of justice for nonhuman animals without fully committing to the utilitarian doctrine. For the father of utilitarianism, a woman's happiness is as much a part of the universal interest as a man's happiness. Furthermore, no reason can be assigned why a person of one sex, as such, should have less happiness than a person of the other sex (BENTHAM, p. 108, 1843b). In his works, the intermittent exclusion of women from the political community is practical

rather than theoretical⁴⁹. Examining the principle of universal consideration of interests and the presumption of intellectual aptitude, “if they apply not with property to both sexes, it seems not easy to say with what property they can be applicable to either” (BENTHAM, p. 463, 1843a). Thus, the *principle of equal consideration* dictates that the primary interest in happiness be impartially counted as morally relevant. Sidgwick’s systematization gives vernacular precision to the principle of equal consideration. The ‘maxim of rational benevolence’ (his formulation of the principle of utility) depends on two self-evident propositions: “as a rational being, I am obliged to aim at the good in general” and on a second, self-evident rational intuition⁵⁰:

- **Principle of Equal Consideration of the Good:** “the good of anyone individual is of no more importance, from the point of view (if I may say so) of the Universe, than the good of any other” (SIDWICK, p. 382, 1907).

Adding the hedonistic element, the unequal consideration of pleasure and pain between individuals solely because they are numerically different individuals does not seem to stand the test of rational reflection. The principle of equal consideration of the good, as I have called it here, reflects the moral arbitrariness of personal relevance or the reasonableness of personal irrelevance when considering the good of different individuals. It should be briefly noted that the hedonistic principle in which pleasure is the only supreme good has no necessary logical connection with the maxims of benevolence and prudence (SIDWICK, p. 381, 1907). The axioms stated above, therefore, would be logically compatible with other conceptions of what constitutes the good, plural or not⁵¹. Pluralistic approaches to well-being, such as objective-list theories, provide an alternative to monistic hedonism (see GRIFFIN, 1986; NUSSBAUM, 2000; ARNESON, 1999; HURKA, 2010). These theories propose that certain elements, such as virtue, knowledge, friendship, and autonomy are intrinsically and fundamentally valuable for a good life. Unlike subjective theories of well-being, which emphasize individual preferences or desires as determinants of well-being, objective-list theories claim that independent aspects of well-being are objectively valuable. Unlike utilitarianism, objective-list theories maintain

⁴⁹ “Why exclude the whole female sex from all participation in the constitutive power? Because the opposition against their admission is at present too general, and too intense, to afford any chance in favor of a proposal for their admission” (BENTHAM, p. 108, 1843b).

⁵⁰ For Sidgwick (pp. 338-341, 1907), a proposition is self-evident when it meets four criteria: i) the terms of the proposition must be clear and precise; ii) the self-evidence of the proposition must be determined by careful reflection; iii) The propositions accepted as self-evident must be mutually consistent and iv) the proposition requires general consent. These four points assist in the proper distinction between opinionated thoughts based on unreflected intuitions and self-evident moral truths.

⁵¹ One can think of William K. Frankena’s (1973) intuitionism that systematizes ethical obligations from the coexistence of beneficence with the principle of justice in similar terms to those used by Sidgwick. It is intuitionist in the sense of not unifying moral dispositions in just one principle (utility or categorical imperative) and allowing the conflict between principles to have no solution specified by an algorithm. It is pluralist in recognizing that the concept of virtue constitutes a fundamental good, separate from happiness or pleasure.

more than one fundamental and non-reducible good beyond pleasure, happiness, or desire-satisfaction. Both objective-list theories and classical utilitarianism are compatible with the principle of equal consideration of good.

Unlike the assumption of fundamental human equality postulated by Brian Barry (1995; 1999), a theory of justice for nonhuman animals might argue that human equality is just one part of a more general principle of equal consideration of good. In the words of Frankena (1966), it is the “fact that all men are similarly capable of experiencing a good or bad life, not the fact that they are equal in some respect (if they are), that justifies the presumption that they are to be treated as equals”. However, as defined by Chaïm Perelman (1963, p. 27), equality of consideration alone only expresses the *formal* content of justice, namely, that similar cases should be treated similarly. Justice needs a *material* content that indicates what the proper distributive principles are. Let’s call it *Justice as Equal Consideration of the Good* (JaECG) to portray the substantive value of equality in similar treatment for similar cases or events that are not limited to humans but to those who have a prudential good.

The material content of justice as equal consideration of the good can accept the same normative strategy engaged by Jeremy Bentham to defend universal suffrage: rights need to be determined under non-arbitrary grounds, i.e., unequal distribution of rights requires justification. For Bentham (1843), similarly to Rousseau, the end of government can be expressed as the advancement of universal interests. The promotion of universal interests is only realized by the rule of virtual universal suffrage. The public interest is only advanced if the codes for the exclusion of voters occur under reasonable criteria and if it is related to the capacity for political exercise. For example, the exclusion of minors and incapable persons meets the standard of intellectual aptitude that might reasonably be required from a voter. The result is as follows:

with exceptions to as small an extent as possible, interests all to be advanced: without any exception, all to be considered. In the character of a means, in this same description is moreover included - if it be not rather the same thing in other words - virtual universality of suffrage (BENTHAM, 1843a, p. 452).

First published in 1817, the *Plan of Parliamentary Reform* contained the argumentative framework of the radical restorations envisioned by the political reformers of the time. Despite drafting a bill in which “universal suffrage” was only extended to all male persons, he also wrote on other occasions that the criterion of sex to remove someone from the political body was morally arbitrary. An analogous process of including animal rights can be replicated in multispecies justice. The procedure questions the basis and role of law in promoting the fundamental interests of the human individual and whether the exclusion is arbitrary or not. Scanlon’s framework (1998, p. 192-193) defines reasonableness from the substantive value of mutual recognition of equal moral agents. Justice as fairness defines reasonableness as readiness to propose principles and standards as fair terms of cooperation (RAWLS, 2005, p. 49). Testing the reasonableness of basic institutions and laws for theories of multispecies justice generally rests on acknowledging the subjective experience of other animals. The mutual perception between

humans and sentient beings, in the conception of mutuality Barbara Smuts (2001), that there is also someone inside, another “I”. If the system of rights and their allocation by the principles of justice departs from the fundamental interests of the members under the political authority, the legitimacy of these same rights needs to undergo a consistency test so that there are no arbitrary criteria for the distribution of burdens and benefits.

The difference between the examined contractualist theories and the extended theory of multispecies justice lies in the fundamental ethical assumptions of mutual recognition; moral standing as sentience rather than rational or moral nature. Multispecies justice can start from two premises: i) sentience as a sufficient criterion for moral and political standing and ii) fundamental equality. As the legal and political system already has material content about the proper sphere of rights for humans, multispecies justice can use the same criterion of equality known to Brian Barry. Justice as impartiality claims that inequalities in rights and opportunities must have proper justifications (BARRY, 1996, p. 358). This implies that equality is the benchmark, and deviations demand some explanation that rules out arbitrary and unfairly unequal treatment. The same may apply to the realm of nonhuman animal interests. If the principle of equal consideration of the good should be satisfied, the unequal distribution of burdens and benefits must be justified based on consistent criteria and always equally considering the fundamental interests of all members involved. A significant portion of harm caused to animals in the contemporary world is perpetuated without any justification that escapes the usual “that’s how things work around here”. One of the fundamental roles of theories of ideal justice is to review and criticize ordinary institutional practices and attitudes propagated more by the force of inertia than by their coherence. This burden of justification differs from Roberts-Cady’s (2020) proposal to integrate other animals into Rawls’s conception of political justice. For Roberts-Cady, it would be possible to incorporate the interests of animals through consistency tests dictated by the use of public reason. The problem with this framework is that it retains Rawls’s theoretical assumptions contrary to the parsimonious inclusion of animals in the scope of justice. Egalitarianism within a justice that gives centrality to the fundamental interests of sentient beings as one of the bases of moral standing, on the other hand, starts from the fundamental idea that justice refers to the scope of direct duties towards sentient beings because they have a life that can have their welfare decreased or increased (COCHRANE, 2012; GARNER, 2005; NUSSBAUM, 2006; NUSSBAUM 2023).

What are the “circumstances of justice” (RAWLS, 1999a, p. 109) for a multispecies theory? For Hume (2007, p. 311-313; 1917, p. 22-23), justice is only intelligible if it is necessary and advantageous, just as the entry of human beings into society is beneficial and vital in compa-

ri-son with the state of nature⁵². For him, the parity of powers is a fundamental circumstance for the duties of justice to be comprehensible. If there is a massive power imbalance between two parties, the stronger party has, at most, charitable obligations to the weaker party. The problem with this description of justice is that it seems unacceptable to deal with relationships without power equivalence (NUSSBAUM, 2006; KORSGAARD, 2018). One can visualize the future relationship between artificial superintelligences and the power imbalance that technological advancement can generate. As examined in Chapter II, for justice as fairness, Rawls (1999a, p. 126) holds that circumstances of justice embody “the normal conditions under which human cooperation is both possible and necessary”.

As in JaF, the circumstances of justice towards nonhuman animals imply that humans only owe justice to other beings when they are able to abide by the principles without compromising their own existence (KORSGAARD, 2018; KYMLICKA; DONALDSON, 2011; NUSSBAUM, 2006; NUSSBAUM, 2023; SAPONTZIS, 1987). Ought implies can. Surely, affairs in the past (and some persist in the present) rendered circumstances in which the existence of humans was in contradiction with the presence of other animals. Nonetheless, contemporary conditions indicate that much of the interaction between humans and nonhumans does not put humans at existential risk. The intense use of animals for clothing materials, testing for aesthetic products, work, and entertainment is not predicated on an existential battle but on the mere presence of utility in exploitation. Suppose a species of mosquito is associated with the spread of a lethal virus to humans (or other species). In that case, there is no reason to apply the duties of justice to that mosquito that is in direct conflict with the very existence of other living beings. Indeed, there are gray areas, such as rodents, population control, and invasive species. Still, these cases do not prevent a theory of justice from establishing a crucial difference between self-defense and mere instrumentalization to achieve any human end. Beyond that, humans are naturally omnivores who, in general, manage to live healthily on vegetarian diets (CRAIG; MANGELS, 2009). Existential conflicts between humans and nonhumans have become less common in modern democratic societies — far from the hunter-gatherer history. Thus, a significant part of the connections between humans and nonhumans occurs within circumstances in which the lexicon of justice is conceivable.

In short, the principle of equality requires a framework of normative justification of

⁵² Indeed, Hume (1917, p. 23) commits the notion of power equivalence as a necessary precondition of the (artificial) virtue of justice in the relationship between humans and nonhumans: “Were there a species of creatures intermingled with men, which, though rational, were possessed of such inferior strength, both of body and mind, that they were incapable of all resistance, and could never, upon the highest provocation, make us feel the effects of their resentment; the necessary consequence, I think, is that we should be bound by the laws of humanity to give gentle usage to these creatures, but should not, properly speaking, lie under any restraint of justice with regard to them. [...] Our intercourse with them could not be called society, which supposes a degree of equality; but absolute command on the one side, and servile obedience on the other. [...] This is plainly the situation of men, with regard to animals [...]”.

unequal treatment under political circumstances. The distribution of rights, privileges, benefits, and opportunities must, from a justice of equal consideration of good, follow a benchmark of equal recognition (mutual or not) of the different “selves” that have their own good. The unequal distribution of these rights and opportunities may, therefore, be under a *burden of justification* where each different treatment requires a coherent demonstration of distinct characteristics or abilities. No animal rights theorist advocates extending the right to vote to dogs or the right to hold political office to ducks. These political rights are allocated to competent adult humans because there is a plausible criterion—necessary cognitive skills—for the full realization of the functions that the law allows. The exclusion of nonhuman animals, minors, and the mentally disabled is *justified* on an impartial basis. The exclusion of women from the right to vote is an example that violates the equal interest in political agency and the ability to represent and choose political representatives.

The exclusion of nonhuman animals from the rights of any rights that protect their fundamental interests against the experiential interests of humans also violates equal consideration. The lack of a sphere of protection (i.e., rights) against potential harm to animals for human entertainment or aesthetic purposes is a more apparent example of violations of the principle of equal consideration. If, for instance, the right to physical and mental integrity are — given that arguments privileging the human species or moral agency are unconvincing — founded primarily on the fundamental interest of preventing suffering, this foundation of the right against harm spreads to any being capable of experiencing pain and suffering, regardless of group or species. If humans and nonhumans have a fundamental interest in avoiding pain, the principle of equal consideration of the good demands a justification of who holds rights against painful experimentation for medical research. Without a convincing argument demonstrating that similar fundamental interests of nonhuman animals should be discounted or disregarded, animal welfare must be weighed equally under the tenet of equal consideration of the good. Consequentially, this implies that the unequal practices that induce harm to animals, from damage to physical integrity to loss of control over their space, require justification beyond species membership.

The use of nonhuman animals for cultural purposes serves as a test case to assess the list of rights. In 2017, the Brazilian National Congress enacted Constitutional Amendment No. 96, which disregards cruelty in sports practices that use animals for cultural purposes. In the Brazilian case, the practice of *vaquejada* is a popular cultural manifestation where an ox is chased by two men on horseback. The aim of the sport is to take the bovine to a place marked by white painted strips where the animal is finally pulled by the tail until it is knocked to the ground with its paws up⁵³. Once the circumstances of justice are satisfied, multispecies justice claims that the well-being of the two humans must be as protected as the well-being of the ox subject

⁵³ Images of *vaquejada* can be easily found on video platforms and social media.

to treatment that causes discomfort and pain beyond a reasonable doubt. Social justice demands that the list of rights be specified based on the recognition of the capacity for well-being.

Assuming that speciesist arguments are unconvincing and that the principle of equal consideration of the good is correct, if there are rights that promote and protect the fundamental interest of human beings to avoid pain, the justification for differentiating protection against pain and cruelty based on group or species is also not convincing. The question that theories of multispecies justice ask is whether belonging to the human species is morally relevant to justify the protection of all human beings against practices that cause the same damage that *vaquejada* brings to the ox while the latter is unprotected from similar protection. If it is not permissible for people to be subjected to *vaquejada*-like practices, the foundations for such a distinction need to be examined with greater scrutiny. If rational nature or moral agency excludes some humans from the scope of justice, other alternative explanations—at least the capacity for well-being—may have advantages.

A summary of the discussion thus far is expedient: first, the theory of multispecies justice states that one of the main reasons why all humans should be protected from harm is the capacity for well-being; maleficence is a *prima facie* moral reason. Following this first step, it is argued that nonhuman animals have moral rights emanating from obligations of non-maleficence. Thirdly, it is argued that the lexicon of justice is inseparable from the language of rights. Fourth, the principle of equal consideration of good demands justification for deviations from the equal distribution of rights and opportunities. Therefore, the duties of justice apply to animals, and unequal rights and opportunities must be explained in terms of their function as rights (i.e., “Which set of characteristics ground Y the right to X?”). The establishment of rights, in turn, characterizes the domain of justice as a virtue of the political institutions that guarantee and promote these rights. Finally, the following section evaluates human and nonhuman relations within concepts already employed in political theory, such as coercion, legitimacy, and domination.

4.4 The Political Theory of Nonhuman Animals

As examined in the previous chapter, Rawls (2005, p. 135-136), Larmore (1996, p. 136-137), and other liberal conceptions of justice (see BARRY, 1995; NAGEL, 1987) generally specify the domain of the political as special relationships characterized by two main features: i) its *involuntary* and *inescapable* nature and ii) the *use of force* and the vocabulary of *coercion*. On the first point, all relationships between humans and nonhumans are involuntary. As no other animal is autonomous enough in the philosophical understanding of freedom, no interaction between humans and other animals can be considered voluntary from a morally relevant point of view. The power exchange is also inescapable for animals living under human authority in the 21st century, with human interference being ubiquitous even for wild animals living under an

ecological equilibrium shaped by human interchanges with nature. If the realm of the political is primarily characterized by the coercion and inescapability of relationships we unwittingly enter, it is not surprising that proposals for including nonhuman animals within the scope of justice and citizenship have been rising rapidly in recent years—see Kymlicka and Donaldson (2011), Nussbaum (2006), Garner (2013), Cochrane (2012), Horta (2013), Korsgaard (2016); Schmidt (2015)⁵⁴.

I depict here — with the particular purpose of applying this language to the relationship between humans and nonhumans — the domain of the political in the same terms previously explored in previous chapters. *Political* relations are represented (and distinguished from other types of interactions) by two central attributes:

1. **Involuntary:** In the context of political societies, subjects are born into specific coercive arrangements, and even those who may be incapable (or unwilling) to exercise political agency, political membership is non-optional and closed: unlike other ties, individuals are bound by the absence of exit options.
2. **Coercion:** Basic political institutions are coercive, where the government is the only social body with the authority to exercise the use of force or the threat of violence to compel and sanction its subjects. The political sphere imposes restrictions, threats, or forceful measures to compel compliance or obedience from those subjected to it.

Political relationships can be contrasted with the associational realm. Church, friendships, and family are notorious examples of social institutions where authority and its members are linked by strong bonds. The capacity of internal rules to exert influence and control over the participants of the association expresses authority. The principles governing religious unions and the family also regulate the burdens and benefits of each co-participant. Nevertheless, the connection between individuals and associations does not occur in the same closed system of political society because the members “have no prior public or nonpublic identity: we have not come from somewhere else into this social world” (RAWLS, 2005, p. 136). The involuntary involvement in political society is distinct from any social union: with no option of entry or exit, belonging is realized by virtue of purely existing as a living being in a reality in which order, harmony, and the resolution of the inevitable conflict of interests are settled by political authority. In contrast to association, in the political domain the exercise of power can be administered via brute force to achieve the sanction specified by the principles of social justice.

The coercive and involuntary quality of political relations also depicts interactions between humans and nonhumans. Although nonhuman animals are not political agents in the con-

⁵⁴ The list of works cited is incomplete, serving as relevant examples of the broader literature on political conceptions that directly consider nonhuman animals. For a survey of the field of ‘animal political theory’, see Ahlhaus and Niesen (2015).

ventional sense of decision-making or governance, human exchanges with other species exhibit elements of political dynamics. Humans exert coercion over nonhuman animals through practices such as animal husbandry, zoos' captivity, sports, and scientific experimentation. These actions impose control and restraints upon nonhuman animals, representing a form of political power. Furthermore, all interactions between humans and nonhumans are involuntary, as there is no possibility of consent from the nonhuman party. Human activities, such as capturing, domesticating, or using nonhuman animals for various purposes, are usually driven by human needs and interests rather than by the nonhuman animals' voluntary agreement. Additionally, even though animals are still considered legal "things" in most places⁵⁵, they are still subject to the political authority of humans. The rights (protections) of nonhuman animals will invariably depend on the historical and geographical situation where they are situated. Today, the sphere of protection and assistance is still limited in most jurisdictions, but this does not imply that animals are still unrestrained from the reach of political authority—the body capable of exerting influence and control through brute force. Therefore, the interactions between humans and sentient individuals of other species also satisfy the criteria that qualify an eminently political relationship.

Another cognizable political feature applicable to nonhuman animals is the relationship between vulnerability and human rights (CAVALIERI, 2001; KYMLICKA; DONALDSON, 2011). Vulnerability refers to the *state* of exposure to risks and harm that could undermine an individual's fundamental interests. The most vulnerable individuals may include children, the elderly, persons with physical or mental hindrances, war refugees, and those living in extreme poverty. They are more susceptible to injury due to their vulnerable circumstances. Usually, basic human rights are considered fundamental entitlements that all individuals possess by virtue of being human. What animal rights theorists argue is that all these concepts also help to think normatively about the position of nonhumans in the face of the existing power imbalances

⁵⁵ The legal status of animals is not a static and unchanging fact. Political efforts of strengthened green parties in Europe and legal movements in the American continent already show signs of recent change. In a 5-2 decision (STATE OF NEW YORK COURT OF APPEALS, 2022), New York's highest court ruled in 2022 that Happy — an elephant from the Bronx Zoo — was not a legal person and, therefore, was not eligible to be released through a habeas corpus proceeding. Despite the activists' defeat, the case ascertained that two judges from the highest court in New York would grant habeas corpus to a nonhuman. In 2022, the Supreme Court of Ecuador, in a 7-2 decision, recognized broad rights to the monkey Estrellita, recognizing that the "rights of Nature not only protect species but also a particular animal, since it would not be possible to recognize an intrinsic value to Nature as a whole and neglect the same value to its elements; and that to that extent, a wild animal should be protected and be free in its natural habitat" (CORTE CONSTITUCIONAL DEL ECUADOR, 2022, p. 38). The court found that wild animals "have the right not to be hunted, fished, captured, collected, extracted, kept, retained, trafficked, traded or exchanged" (CORTE CONSTITUCIONAL DEL ECUADOR, 2022, p. 38). In Brazil, the Tribunal of Justice of Paraná (TJ-PR) contradicted the understanding of other courts in the country by recognizing and granting the action of two dogs as the principal authors of the petition (TRIBUNAL DE JUSTIÇA DO ESTADO DO PARANÁ 7ª C MARA Cível, 2021). The sphere of protection of the vital interests of animals follows a trajectory of progressive expansion in recent decades — for an exposition of the legislative history of animal protection in the European experience, see Simonin and Gavinelli (2019).

(CAVALIERI, 2001, p. 84). Superior technological achievements explain dominance scenarios among entities, intrahuman or interspecies. The link between vulnerability and basic human rights lies in the moral reason to ensure that those most at risk of rights violations receive the necessary sphere of protection to enjoy a life worth living. Extending the notion of *basic* rights to nonhuman animals calls for recognizing their entitlement to a sphere of protection. These basic rights may include the right to life, the right to be free from human-inflicted physical and mental harm, the right to flourish in their own way as individuals and members of a community, and the right not to be the subject of human entertainment.

On the other hand, the idea of *political legitimacy* is not a concept of normative political theory overtly applied to the domain of nonhuman animals. Often the discussion about the normative source of political legitimacy lies in the notion of consent of the governed (SIMMONS, 2001). This relation of ideas traces its roots to the social contract theories of Hobbes, Locke⁵⁶, and Rousseau writing on political authority. John Rawls' (2005, p. xliv) *liberal principle of legitimacy* states that the “exercise of political power is proper only when we sincerely believe that the reasons we would offer for our political actions may reasonably be accepted by other citizens as a justification of those actions”. If the reasonableness criterion is thought of in terms of fair cooperation as required by the Rawlsian framework, the idea of hypothetical consent still persists among fully capable adults possessing the two moral powers necessary to engage in fair agreement. Therefore, it may seem at first that animals — unable to consent or have laws being justified to them — are not proper subjects of legitimate (or illegitimate) action of a political authority.

The notion of political legitimacy, however, is not foreign to the existence of humans incapable of voluntarily acquiescing to an authority or governing body. Indeed, Samuel Freeman (2018) advances a Rawlsian bid to include humans with severe cognitive impairments within the scope of justice as fairness. For Freeman (2018, p. 201)

[...] the legitimacy and justification of laws and constitutional principles does not depend on the particular circumstances, histories, or desires of those with severe disabilities either. So the obvious fact that laws cannot possibly be justified or legitimated to the severely disabled is of no consequence to their liberal legitimacy. But what is important is that liberal legitimacy and justification does depend upon whether laws adequately address their fundamental interests, including their exceptional needs, and can be justified to trustees who represent their fundamental interests and needs.

⁵⁶ It is worth noting the significant distinction between *actual* and *hypothetical* consent. Rawls follows the interpretation of hypothetical consent by Kant (1996c). On the other hand, for instance, A. J. Simmons (2001, p. 137) follows Locke's actual consent doctrine of political legitimacy in defending that a government has the “exclusive right to impose new duties on subjects by initiating legally binding directives, to have those directives obeyed, and to coerce noncompliers. This right and its correlative obligations constitute a special moral relationship between that particular state and each particular (consenting) subject”.

Freeman employs the idea of trusteeship. Trustees promote and defend the fundamental interests of (human) individuals and participate in hypothetical justification. However, the same thesis also strips the normative force of the justification process and emphasizes the moral role of addressing interests and needs. In fact, highlighting the argument about the legitimacy of a political action that affects humans incapable of consenting or participating in agreements is not very convincing if it begins only with the idea of justification to a guardian, a third party. The normative potential of Samuel Freeman's argument lies in *considering the fundamental interests and needs* — factors that increase or decrease the well-being — of those relevant to political society. Assuming that humans incapable of exercising political agency are universally considered citizens, the consent of the governed cannot be the necessary premise for conceiving the idea of legitimacy.

As crafted by Kymlicka and Donaldson (2011), the concept of citizenship also functions as a mechanism for allocating individuals to territories and specifying the notion of *sovereignty* beyond species membership. The sovereignty of an autonomous agent is expressed by participation in the political arena. But if the concept of sovereignty is exhausted by the notion of political agency, humans unable to participate in the process are automatically excluded. The ideas of legitimacy and coercion are suited to vulnerable humans unable to participate in the political process. In particular, history offers cases of systematic violation of rights during the 20th century. Between early 1940 and August 1941, hospitals across Germany killed more than 70,000⁵⁷ people considered mentally or physically incurable by the Nazi regime (PROCTOR, 1988, p. 191; LONGERICH, 2012). Instances of banality and disregard of vital interests towards mentally challenged humans show historically significant cases of vulnerability and abuse of power. The T4 campaign is an instance where the interaction between Kantian rational beings alone does not sufficiently model the materialization of abuses of power.

The mishandling of power can be further elucidated by drawing on the specific contributions of Ian Shapiro (2016) on the topic of domination. Political domination refers to the exercise of authority in a way that significantly restricts the freedom of those subject to that authority. Shapiro (2016) places the concept of domination in four dimensions. First, domination always compromises someone's freedom (SHAPIRO, p. 20); second, it is generally considered to be performed by those responsible for its freedom in the first place (SHAPIRO, p. 20-21). Third, the degrees of domination are best understood by referencing the importance of the interests at stake, such as the interest in existence or avoidance of severe injury (SHAPIRO, p. 22-23). Finally, domination involves a sense of illegitimacy; although our freedom is often curtailed when we are in the power of others, it only qualifies as domination when that power is somehow abused or pressed into the service of an illegitimate purpose (SHAPIRO, p. 23).

⁵⁷ The exact number of the first phase is 70,273 according to the files kept by the government (LONGERICH, 2012, p. 140).

There are at least two ways of interpreting the fundamental interest in avoiding domination. First, *domination as a violation of the formula of humanity*. This perspective can convey Kantian outlines if we interpret domination as a violation of the categorical imperative in the formula of humanity always to treat humanity at the same time as an end and never merely as a means to an end. Since the good in never being treated merely as a means represents a crucial value of the very notion of humanity, avoiding violation of the maxim of humanity is a fundamental precept of morality. Therefore, the wrong-making property of domination would be to treat the other as a mere tool to an end — individual or collective. However, this conception of domination only applies to autonomous agents and significantly restricts the concept's scope. As discussed earlier, power imbalances — and their abuse — also occur against the vital interests of nonautonomous humans. These humans, in particular, may stand in a state of vulnerability; their rights rigorously protect weaknesses in the face of unequal power distribution. Christine Korsgaard (2018) argues that the humanity formula can also portray the wrong-making property of relations towards nonhumans. Yet, this attempt risks anthropomorphizing the values of animals by considering that there is something wrong with treating sentient beings merely as means. The formula of humanity may capture the wrongness of treating some animals as mere means, but it is not evident that this applies to the entire animal kingdom. A bee may have evaluative states, but it is unclear that they value not being treated as a mere means⁵⁸.

The “crucial interest in avoiding domination” (SHAPIRO, p. 172) can be interpreted in a second way that is consistent with applying the concept to nonhuman animals. *Domination as disregard for interests* denotes the illicit use of power to administer the coercive apparatus without respect for equal consideration of comparable interests. Both in the processes of dehumanization and in the general treatment of animals, governments exhibit that they can be unresponsive to the preferences of individuals directly affected by political authority. The focus on “directly affected individuals” only indicates that this concept is limited to the negative duties of non-violation, the primary concern of this work. Legitimacy may depend on various factors, including the level of political participation, but also on the protection of rights and liberties and the responsiveness of political institutions to the needs and fundamental interests of those relevantly affected by the political regime. Indeed, the discussion of similar interests is challenging in measuring and recognizing the preferences and needs of members of other species. In particular, delimiting what constitutes “similar interest” is a notably complex task. But the systematic discounting (or complete disregard) for the fundamental interests of nonhuman animals is a fact that can better be addressed by theories that do not define the scope of justice by the benchmark of species membership. In Peter Singer's (2002, p. 16-17) remarks on moral

⁵⁸ One reason Kantian moral theory stresses the formula of humanity is the relational account of morality that considers not just states of affairs but *how* actions are fostered. Nonetheless, the discussion about the nature of morality — the weight of modes of relations over the state of affairs — rests outside the coverage of this work.

urgency,

It is probably true that comparisons of suffering between members of different species cannot be made precisely, but precision is not essential. Even if we were to prevent the infliction of suffering on animals only when it is quite certain that the interests of humans will not be affected to anything like the extent that animals are affected, we would be forced to make radical changes in our treatment of animals that would involve our diet, the farming methods we use, experimental procedures in many fields of science, our approach to wildlife and to hunting, trapping and the wearing of furs, and areas of entertainment like circuses, rodeos, and zoos. As a result, a vast amount of suffering would be avoided.

Violating the principle of equal consideration is prevalent and profound to the point that recognizing other animals' well-being as a moral and political imperative has far-reaching practical consequences. Theories of justice consume time and effort in defending coherent principles of fair distribution of burdens and benefits. A notorious source (and parameter) of moral progress also resides in the practical and theoretical reassessment of the area of justice.

CONCLUSION

The present work aims to ascertain that the ideas already operated in normative political theories cannot only be applied to coercive interactions between humans and nonhumans but are more consistently apprehended if we exclude species membership as a morally and politically relevant object. In particular, expanding the realm of justice duties to nonhumans may also enable a better understanding of the bases of equality and human vulnerability. Moral recognition becomes more comprehensive by repositioning the sources of ethical concern to the capacity for subjective experience. And in the realm of normative theorizing, I argue that the gain in consistency outweighs any losses in the degree of simplicity in models founded on human agency and equal dignity. Despite the enormous variability between the modes of subjectivities found in various earthlings, we all share the unity of experiential life. Since morality cannot plausibly exclude all those who lack the potentiality or capacity for moral agency, judgments about the moral community may need adjustment until the *prima facie* moral reason of nonmaleficence is recognized.

One of the recurring points is that the distribution of rights and responsibilities *already* recognizes all humans, regardless of traits or characteristics related to rationality, as direct beneficiaries of justice. The justification for delimiting the political sphere is often omitted from theories. Reflection on the criteria for inclusion (and, in turn, exclusion) implies that the characteristics and traits ordinarily chosen to draw lines are either too restrictive or merely arbitrary. The conditions of violence and misuse of power toward nonhumans are sufficiently analogous that the fundamental political ideas also apply to other species. The *focus on similarities* rather than the *focus on disparities* ultimately indicates that maybe there is still much more to be discovered about the biological and social parallels between animals than the supposed discontinuity of the human predicament.

REFERENCES

- ABBEY, Ruth. Rawlsian resources for animal ethics. **Ethics and the environment**, v. 12, n. 1, p. 1-22, 2007.
- AHLHAUS, Svenja; NIESEN, Peter. What is animal politics? outline of a new research agenda. **Historical Social Research/Historische Sozialforschung**, p. 7-31, 2015.
- ALLEN, Colin; TRESTMAN, Michael. Animal consciousness. In: SCHNEIDER, SUSAN; VELMANS, Max. **The blackwell companion to consciousness**. Hoboken: Wiley, 2017. p. 63-76.
- ALLPORT, Gordon W. **The nature of prejudice**. Cambridge, MA: Addison-Wesley Pub. Co, 1954.
- ARNESON, Richard J. Human flourishing versus desire satisfaction. **Social Philosophy and Policy**, v. 16, n. 1, p. 113-142, 1999.
- BARRY, Brian. **Theories of justice: a treatise on social justice**, vol. 1. Berkeley, CA: University of California Press, 1989.
- BARRY, Brian. In defense of political liberalism. **Ratio Juris**, v. 7, p. 325, 1994.
- BARRY, Brian. **Justice as impartiality**. Oxford: Oxford University Press, 1995.
- BARRY, Brian. Sustainability and Intergenerational Justice. In: DOBSON, Andrew (Ed.). **Fairness and futurity: essays on environmental sustainability and social justice**. Oxford: Oxford University Press, 1999.
- BASTIAN, Brock et al. Don't mind meat? The denial of mind to animals used for human consumption. **Personality and Social Psychology Bulletin**, v. 38, n. 2, p. 247-256, 2012.
- BEKOFF, Marc; ALLEN, Colin; BURGHARDT, Gordon M. (Eds.). **The cognitive animal: empirical and theoretical perspectives on animal cognition**. Cambridge, MA: MIT press, 2002.
- BENN, Stanley I. Egalitarianism and the equal consideration of interests. In: PENNOCK, J. Roland; CHAPMAN, John W. **Equality**. New York: Atherton Press, 1967. p. 61-78.
- BENTHAM, Jeremy. **Bentham's Radical Reform Bill with Extracts from the Reasons**. London: Ed. Wilson, 1819.
- BENTHAM, Jeremy. **An introduction to the principles of morals and legislation**. Oxford: Oxford University Press, 1823.
- BENTHAM, Jeremy. **The works of Jeremy Bentham**, vol. III. Edited by John Bowring. Edinburgh: Simpkin, Marshall, & Co, 1843a.
- BENTHAM, Jeremy. **The works of Jeremy Bentham**, vol. IX. Edited by John Bowring.

Edinburgh: Simpkin, Marshall, & Co, 1843b.

BERKEY, Brian. Prospects for an inclusive theory of justice: the case of non-human animals. **Journal of applied philosophy**, v. 34, n. 5, p. 679-695, 2017.

BUCHANAN, Allen. Justice as reciprocity versus subject-centered justice. **Philosophy & Public Affairs**, p. 227-252, 1990.

BUTLER, Ann B.; HODOS, William. **Comparative vertebrate neuroanatomy: evolution and adaptation**. John Wiley & Sons, 2005.

CARRUTHERS, Peter. **The animals issue: moral theory in practice**. Cambridge: Cambridge University Press, 1992.

CAVALIERI, Paola. **The animal question: why nonhuman animals deserve human rights**. Oxford: Oxford University Press, 2001.

CAVIOLA, Lucius; EVERETT, Jim AC; FABER, Nadira S. The moral standing of animals: Towards a psychology of speciesism. **Journal of personality and social psychology**, v. 116, n. 6, p. 1011, 2019.

COCHRANE, Alasdair. **Animal rights without liberation: applied ethics and human obligations**. New York: Columbia University Press, 2012.

COECKELBERGH, Mark. Distributive justice and co-operation in a world of humans and non-humans: A contractarian argument for drawing non-humans into the sphere of justice. **Res Publica**, v. 15, n. 1, p. 67-84, 2009.

COHEN, Andrew I. Contractarianism, Other-regarding Attitudes, and the Moral Standing of Nonhuman Animals. **Journal of Applied Philosophy**, v. 24, n. 2, p. 188-201, 2007.

CORTE CONSTITUCIONAL DEL ECUADOR. Final-Judgment-Estellita-w-Translation-Certification, Initial Page, 2022. Available at: <<https://animal.law.harvard.edu/wp-content/uploads/Final-Judgment-Estellita-w-Translation-Certification.pdf>>. Access in: 25 de jul. de 2023.

COSTELLO, Kimberly; HODSON, Gordon. Exploring the roots of dehumanization: The role of animal—human similarity in promoting immigrant humanization. **Group Processes & Intergroup Relations**, v. 13, n. 1, p. 3-22, 2010.

COSTELLO, Kimberly; HODSON, Gordon. Explaining dehumanization among children: the interspecies model of prejudice. **British Journal of Social Psychology**, v. 53, n. 1, p. 175-197, 2014.

CRAIG, Winston J.; MANGELS, Ann Reed. Position of the American Dietetic Association: vegetarian diets. **Journal of the American dietetic association**, v. 109, n. 7, p. 1266, 2009.

DANIELS, Norman. **Just health care**. Cambridge: Cambridge University Press, 1985.

DANIELS, Norman. Wide reflective equilibrium and theory acceptance in ethics. **The journal of philosophy**, v. 76, n. 5, p. 256-282, 1979.

DANIELS, Norman. **Justice and justification: reflective equilibrium in theory and practice**. Cambridge: Cambridge University Press, 1996.

DENIS, Lara. Kant's conception of duties regarding animals: reconstruction and reconsideration. **History of philosophy quarterly**, v. 17, n. 4, p. 405-423, 2000.

DHONT, Kristof; HODSON, Gordon; LEITE, Ana C. Common ideological roots of speciesism and generalized ethnic prejudice: The social dominance human–animal relations model (SD–HARM). **European Journal of Personality**, v. 30, n. 6, p. 507-522, 2016.

DONALDSON, Sue; KYMLICKA, Will. **Zoopolis: a political theory of animal rights**. Oxford: Oxford University Press, 2011.

DWORKIN, Ronald M. **Justice for hedgehogs**. Cambridge, MA: Harvard University Press, 2011.

ELLIOT, Robert. Rawlsian justice and non-human animals. **Journal of applied philosophy**, v. 1, n. 1, p. 95-106, 1984.

ELWOOD, Robert W. Pain and suffering in invertebrates?. **ILAR journal**, v. 52, n. 2, p. 175-184, 2011.

FEINBERG, Joel. **Rights, justice, and the bounds of liberty**. Princeton: Princeton University Press, 1980.

FEINBERG, Joel. **Harm to others**. Oxford: Oxford University Press, 1984.

FINNIS, John. **Natural law and natural rights**. Oxford: Oxford University Press, 1980.

FORST, Rainer. **Toleration in conflict: Past and present**. Cambridge: Cambridge University Press, 2013.

FRANCIONE, Gary. **Animals, property, and the law**. Philadelphia: Temple University Press, 1995.

FRANCIONE, Gary. Animals — property or persons? In: NUSSBUM, Martha; SUNSTEIN, Cass. **Animal rights: current debates and new directions**. Oxford: Oxford University Press, 2004. p. 108-142.

FRANKENA, William K. **Some beliefs about justice**. University of Kansas: Department of Philosophy, 1966.

FRANKENA, William. **Ethics**. 2 ed. Englewood Cliffs, NJ: Prentice-Hall, 1973.

FREEMAN, Samuel. Contractarian justice and severe cognitive disabilities. In: (Eds.) CURRISON, Adam; HILL, Thomas E. **Disability in practice: attitudes, policies, and relationships**.

Oxford: Oxford University Press, 2018, p. 172-203.

GALSTON, William A. Two concepts of liberalism. **Ethics**, v. 105, n. 3, p. 516-534, 1995.

GARNER, Robert. Animals, politics and justice: Rawlsian liberalism and the plight of non-humans. **Environmental Politics**, v. 12, n. 2, p. 3-22, 2003.

GARNER, Robert. **The political theory of animal rights**. Manchester: Manchester University Press, 2005.

GARNER, Robert. Rawls, animals and justice: new literature, same response. **Res Publica**, v. 18, n. 2, p. 159-172, 2012.

GAUTHIER, David. **Morals by agreement**. New York: Oxford University Press, 1986.

GODFREY-SMITH, Peter. **Other minds**: the octopus, the sea, and the deep origins of consciousness. New York: Farrar, Straus and Giroux, 2016.

GOODMAN, Nelson. **Fact, fiction, and forecast**. Cambridge, MA: Harvard University Press, 1965.

GREEN, T. H. **Prolegomena to ethics**. Edited by A. C. Bradley. Oxford: Clarendon Press, 1883.

GRIFFIN, James. **Well-being**: its meaning, measurement and moral importance. Oxford: Oxford University Press, 1986.

GRIFFIN, James. **On human rights**. Oxford: Oxford University Press, 2008.

HABERMAS, Jürgen. **Justification and application**: remarks on discourse ethics. Cambridge, MA: MIT Press, 1993.

HART, Herbert Lionel Adolphus. **Essays on Bentham**: jurisprudence and political philosophy. Oxford: Oxford University Press, 1982.

HOOKER, Brad. **Ideal code, real world**: a rule-consequentialist theory of morality. Oxford: Oxford University Press, 2000.

HOOKER, Brad. Contractualism, spare wheel, aggregation. **Critical Review of International Social and Political Philosophy**, v. 5, n. 2, p. 53-76, 2002.

HORTA, Oscar. Zoopolis, interventions and the State of Nature. **Law, Ethics and Philosophy**, p. 113-125, 2013.

HUME, David. **An enquiry concerning the principles of morals**. Chicago: The Open Court Publishing, 1917.

HUME, David. **A treatise of human nature**: a critical edition. Edited by David Fate Norton & Mary J. Norton. New York: Oxford University Press, 2007.

HURKA, Thomas. **The best things in life: a guide to what really matters.** Oxford: Oxford University Press, 2010.

IBGE – INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA. **Pesquisa da Pecuária Municipal.** Brasília, DF: IBGE, 2020.

JERISON, Harry J. **Evolution of the brain and intelligence.** New York, Academic Press, 1973.

KAGAN, Shelly. What's wrong with speciesism? (society for applied philosophy annual lecture 2015). **Journal of Applied Philosophy**, v. 33, n. 1, p. 1-21, 2016.

KANT, Immanuel. Critique of practical reason. In: (Eds.) GREGOR, Mary J. **Practical philosophy.** Cambridge: Cambridge University Press, 1996a. p. 133-272.

KANT, Immanuel. Groundwork of the metaphysics of morals. In: (Eds.) GREGOR, Mary J. **Practical philosophy.** Cambridge: Cambridge University Press, 1996b. p. 37-108.

KANT, Immanuel. The metaphysics of morals. In: (Eds.) GREGOR, Mary J. **Practical philosophy.** Cambridge: Cambridge University Press, 1996c. p. 353-604.

KANT, Immanuel. Moral philosophy: Collins's lecture notes. In: (Eds.) HEATH, Peter; SCHNEEWIND, Jerome B. **Lectures on ethics.** Translated by Peter Heath. Cambridge: Cambridge University Press, 1997. p. 37-222.

KANT, Immanuel. **Critique of pure reason.** Edited by Paul Guyer and Allen Wood. Cambridge: Cambridge University Press, 1998a.

KANT, Immanuel. Religion within the boundaries of mere reason. In: (Eds.) WOOD, Allen; DI GIOVANNI, George. **Religion within the boundaries of mere reason and other writings.** Cambridge: Cambridge University Press, 1998b. p. 31-192.

KANT, Immanuel. **Critique of the power of judgment.** Translated by Paul Guyer and Eric Matthews. Cambridge: Cambridge University Press, 2000.

KANT, Immanuel. **Notes and fragments.** Edited by Paul Guyer. Translated by Paul Guyer, Curtis Bowman, and Frederick Rauscher. Cambridge: Cambridge University Press, 2005.

KANT, Immanuel. Anthropology from a pragmatic point of view. In: (Eds.) ZÖLLER, Günter; LOUDEN, Robert B. **Anthropology, history, and education.** Cambridge: Cambridge University Press, 2007a. p. 227-429.

KANT, Immanuel. Conjectural beginning of human history. In: (Eds.) ZÖLLER, Günter; LOUDEN, Robert B. **Anthropology, history, and education.** Cambridge: Cambridge University Press, 2007b. p. 160-175.

KANT, Immanuel. Natural Right Course Lecture Notes by Feyerabend. In: (Eds.) RAUS-

- CHER, Frederick. **Lectures and Drafts on Political Philosophy**. Cambridge: Cambridge University Press, 2016. p. 81-180.
- KELLY, P. J. Taking utilitarianism seriously. *Utilitas*, v. 8, n. 3, p. 341-355, 1996.
- KORSGAARD, Christine M. **Creating the kingdom of ends**. Cambridge: Cambridge University Press, 1996a.
- KORSGAARD, Christine M. **The sources of normativity**. Cambridge: Cambridge University Press, 1996b.
- KORSGAARD, Christine. A kantian case for animal rights. In: VIŠAK, Tatjana; GARNER, Robert. **The ethics of killing animals**. Oxford: Oxford University Press, 2016.
- KORSGAARD, Christine. **Fellow creatures: our obligations to the other animals**. Oxford: Oxford University Press, 2018.
- KYMLICKA, Will. Two theories of justice. *Inquiry*, v. 33, n. 1, p. 99-119, 1990.
- LARMORE, Charles. **Patterns of moral complexity**. Cambridge: Cambridge University Press, 1987.
- LARMORE, Charles. Political liberalism. *Political theory*, v. 18, n. 3, p. 339-360, 1990.
- LARMORE, Charles. **The morals of modernity**. Cambridge: Cambridge University Press, 1996.
- LEE, Patrick; GEORGE, Robert P. The nature and basis of human dignity. *Ratio Juris*, v. 21, n. 2, p. 173-193, 2008.
- LONGERICH, Peter. **Holocaust: The Nazi persecution and murder of the Jews**. Oxford: Oxford University Press, 2012.
- MACCORMICK, Neil. Children's rights: a test-case for theories of right. *ARSP: Archiv für Rechts-und Sozialphilosophie/Archives for Philosophy of Law and Social Philosophy*, p. 305-317, 1976.
- MACINTYRE, Alasdair. **After virtue: a study in moral theory**. Notre Dame, Ind: University of Notre Dame Press, 1984.
- MCMAHAN, Jeff. Our fellow creatures. *The Journal of Ethics*, v. 9, p. 353-380, 2005.
- MATTHEW, Liao S. The basis of human moral status. *Journal of Moral Philosophy*, v. 7, n. 2, p. 159-179, 2010.
- MIDGLEY, Mary. **Animals and why they matter**. Athens, GA: University of Georgia Press, 1984.
- MILL, John Stuart. On liberty. In: **On liberty, utilitarianism, and other essays**. Oxford:

Oxford University Press, p. 1-114, 2015.

NAGEL, Thomas. Moral conflict and political legitimacy. **Philosophy and Public Affairs**, v. 16, n. 3, p. 215-240, 1987.

NOZICK, Robert. **Anarchy, State, and Utopia**. New York: Basic Books, 1974.

NUSSBAUM, Martha C. **Women and human development: the capabilities approach**. Cambridge: Cambridge university press, 2000.

NUSSBAUM, Martha. Beyond “compassion and humanity”: justice for nonhuman animals. In: NUSSBAUM, Martha; SUNSTEIN, Cass. **Animal rights: current debates and new directions**. Oxford: Oxford University Press, 2004. p. 299-320.

NUSSBAUM, Martha. **Frontiers of justice: disability, nationality, species membership**. Cambridge, MA: Harvard University Press, 2006.

NUSSBAUM, Martha. **Justice for animals: our collective responsibility**. New York: Simon & Schuster, 2023.

O’NEILL, Onora. **Bounds of justice**. Cambridge: Cambridge University Press, 2000.

O’SULLIVAN, Siobhan. **Animals, equality and democracy**. London: Palgrave Macmillan London, 2011.

PERELMAN, Chaim. **The idea of justice and the problem of argument**. New York: Humanities Press, 1963.

PROCTOR, Robert. **Racial hygiene: Medicine under the Nazis**. Cambridge, MA: Harvard University Press, 1988.

RAWLS, John. **A theory of justice**. Cambridge, MA: Harvard University Press, 1999a.

RAWLS, John. **Collected papers**. Edited by Samuel Freeman. Cambridge, MA: Harvard University Press, 1999b.

RAWLS, John. **Justice as fairness: a restatement**. Edited by Erin Kelly. Cambridge, MA: Harvard University Press, 2001.

RAWLS, John. **Political liberalism: expanded edition**. New York: Columbia University Press, 2005.

RAWLS, John. **Lectures on the history of political philosophy**. Edited by Samuel Freeman. Cambridge, MA: Harvard University Press, 2007.

RAZ, Joseph. **The morality of freedom**. Oxford: Oxford University Press, 1986.

RECIPROCITY, *In*: Collins English Dictionary. Glasgow: HarperCollins, 2023. Available at: <https://www.collinsdictionary.com/dictionary/english/reciprocity>. Access in: 25 de jul. de 2023.

- REGAN, Tom. **The case for animal rights**. Berkeley, CA: University of California Press, 1983.
- RICHARDS, David. **A theory of reasons for action**. Oxford: Oxford University Press, 1971.
- ROBERTS-CADY, Sarah. Extending Rawlsian Justice to Nonhuman Animals. In: (Eds.) MANDLE, Jon; ROBERTS-CADY, Sarah. **John Rawls: debating the major questions**. Oxford University Press, 2020. p. 273-284.
- ROWLANDS, Mark. Contractarianism and animal rights. **Journal of applied philosophy**, v. 14, n. 3, p. 235-247, 1997.
- ROWLANDS, Mark. **Animal rights: moral theory and practice**. 2. ed. New York: Palgrave-Macmillan, 2009.
- SAPONTZIS, Steve. **Morals, reason, and animals**. Philadelphia: Temple University Press, 1987.
- SCANLON, Thomas M. Contractualism and utilitarianism. In: (Eds.) SEN, Amartya; WILLIAMS, Bernard. **Utilitarianism and beyond**. Cambridge: Cambridge University Press, 1982. p. 103-128.
- SCANLON, Thomas M. **What we owe to each other**. Cambridge, MA: Harvard University Press, 1998.
- SCHMIDT, Andreas T. Why animals have an interest in freedom. **Historical Social Research/Historische Sozialforschung**, p. 92-109, 2015.
- SEN, Amartya; WILLIAMS, Bernard. **Utilitarianism and beyond**. Cambridge: Cambridge University Press, 1982.
- SHAPIRO, Ian. **Politics against domination**. Cambridge, MA: Harvard University Press, 2016.
- SHRIVER, Adam. Minding mammals. **Philosophical Psychology**, v. 19, n. 4, p. 433-442, 2006.
- SIDGWICK, Henry. **The methods of ethics**. 7. ed. London: Macmillan, 1907.
- SIMMONS, A. John. **Justification and legitimacy: essays on rights and obligations**. Cambridge: Cambridge University Press, 2001.
- SIMONIN, Denis; GAVINELLI, Andrea. The European Union legislation on animal welfare: state of play, enforcement and future activities. **Animal Welfare: From Science to Law**, p. 59-70, 2019.
- SINGER, Peter. **Animal liberation**. 3. ed. New York: HarperCollins Publishers, 2002.

- SMITH, Kimberly K. **Governing animals**: animal welfare and the liberal state. Oxford: Oxford University Press, 2012.
- SMUTS, Barbara. Encounters with animal minds. **Journal of consciousness studies**, v. 8, n. 5-6, p. 293-309, 2001.
- SNEDDON, Lynne U. et al. Defining and assessing animal pain. **Animal behaviour**, v. 97, p. 201-212, 2014.
- STATE OF NEW YORK COURT OF APPEALS. 52opn22-Decision, Initial Page, 2022. Available at: <<https://www.nycourts.gov/ctapps/Decisions/2022/Jun22/52opn22-Decision.pdf>>. Access in: 25 de jul. de 2023.
- STEINBOCK, Bonnie. Speciesism and the Idea of Equality. **Philosophy**, v. 53, n. 204, p. 247-256, 1978.
- STEINER, Hillel. **An essay on rights**. Oxford: Blackwell, 1994.
- STRIEDTER, Georg F.; NORTHCUTT, R. Glenn. **Brains through time**: a natural history of vertebrates. Oxford University Press, 2019.
- SVOLBA, David. Is there a Rawlsian argument for animal rights? **Ethical theory and moral practice**, v. 19, n. 4, p. 973-984, 2016.
- TIMMERMANN, Jens. When the tail wags the dog: animal welfare and indirect duty in Kantian ethics. **Kantian review**, v. 10, p. 128-149, 2005.
- TRIBUNAL DE JUSTIÇA DO ESTADO DO PARANÁ 7ª CÂMARA CÍVEL. acordao-7cc-tjpr, Initial Page, 2021. Available at: em: <<https://animaiscomdireitos.ufpr.br/wp-content/uploads/2021/09/acordao-7cc-tjpr.pdf>>. Access in: 25 de jul. de 2023.
- UN. **Convention on the Rights of Persons with Disabilities**. 2006. Available at: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>> - Access in: 25 de jul. de 2023.
- VANDEVEER, Donald. Of beasts, persons, and the original position. **The monist**, v. 62, n. 3, p. 368-377, 1979.
- WALDRON, Jeremy. **God, Locke, and equality**: christian foundations in Locke's political thought. Cambridge: Cambridge University Press, 2002.
- WALDRON, Jeremy. **One another's equals**: the basis of human equality. Cambridge, MA: Harvard University Press, 2017.
- WALLACE, R. Jay. Scanlon's contractualism. **Ethics**, v. 112, n. 3, p. 429-470, 2002.
- WELLMAN, Carl. **A theory of rights**: persons under laws, institutions, and morals. Totowa: Rowman & Allanheld, 1985.

WENAR, Leif. The nature of rights. **Philosophy and Public Affairs**, v. 33, n. 3, p. 223-252, 2005.

WILLIAMS, Bernard. **Philosophy as a humanistic discipline**. Princeton: Princeton University Press, 2006.

WOLFF, Robert P. **In defense of anarchism**. New York: Harper & Row, 1970.

WOOD, Allen W. Kant on duties regarding nonrational nature: Allen W. Wood. In: **Aristotelian society supplementary volume**. University College London: The Aristotelian Society, 1998. p. 189-210.

WOOD, Allen. **Kant's ethical thought**. Cambridge: Cambridge University Press, 1999.