

**A Critical Study of the Moral Status of Non-human
Animals in Western Ontology and Ethics**

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Batı Ontolojisi ve Etiğinde İnsan Harici Hayvanların Ahlaki Statüsü Üzerine
Eleştirel Bir Çalışma

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ABSTRACT

The aim of this research study is to provide an overview of ontological and ethical paradigms on nonhuman animals in Western philosophy and the accounts those paradigms give on the moral status of animals, in the sense that whether interests of nonhuman animals or nonhuman animals themselves morally matter for their own sake. Instead of strictly following a chronological order; this study is maintained on three key concepts that are related to the subject: First, the Antique Greek concept of « logos » in the sense of reasoning and meaningful speech, then the concept of « sentience » which refers to a certain form of consciousness that enables a being to experience pain and pleasure, and finally the concept of « moral personhood » which designates a being who possesses inviolable moral (prelegal) rights. By focusing these concepts, the historical relationship between the “invention” of *logos* as a characteristic that is distinctively human and the exclusion of nonhuman animals from moral concern is inquired, as well as, practical implications and limitations of utilitarian ethics that propose the equal consideration of suffering and interests of nonhuman animals. After having presented and discussed these concepts along with the different theories that have contributed to their shaping, the work concludes that a moral rights approach that holds sentience as the only prerequisite for the equal moral consideration is a consistent and justified position and in practice this position would mean that account of nonhuman animals as a ‘thing’ or as a ‘resource’ is needed to be abandoned.

Keywords : Animal Rights, Speciesism, Anthropocentrism, Nonhuman Animals, Ethics, Sentience

ÖZET

Bu çalışmanın amacı Batı felsefesinde insan harici hayvanlar hakkındaki ontolojik ve etik paradigmlar ve bu paradigmların insan harici hayvanların –çıkarlarının ya da kendilerinin kendi içlerinde ahlaki olarak önem taşımaları manasında- ahlaki statüleri hakkında ortaya koyduğu açıklamalar üzerine genel bir bakış sunmaktır. Çalışma katı bir tarihsel sıra izlemek yerine konuyla ilgili olan üç kavram üzerine odaklanır: İlk olarak Antik Yunan felsefesinde akıl yürütme ve anlamlı konuşma manalarına gelen «logos», ardından acıyı ve hazzı deneyimlemeyi mümkün kılan bir bilinç formu manasına gelen «hissedebilirlik» ve son olarak da çiğnenemez ahlaki (yasa öncesi) haklara sahip olan bir varlığı tanımlayan «ahlaki kişi» kavramları. Bu kavramlara odaklanarak, *logos*un insana özgü bir karakteristik olarak “icadıyla” insan harici hayvanların ahlaki kaygıdan dışlanmaları arasındaki ilişkiyle birlikte, insan harici hayvanların çektikleri acının ve çıkarlarının eşit gözetilmesini öneren faydacı etik kuramların pratik sonuçları ve sınırlılıkları da sorgulanmıştır. Bu kavramların şekillenmesine katkıda bulundukları kuramlarla birlikte sunulmalarının ve tartışılmalarının ardından çalışma, hissedebilirliği eşit ahlaki gözetim için tek önşart olarak kabul eden bir ahlaki haklar yaklaşımının tutarlı ve gerekçelendirilmiş bir görüş olduğu ve bu yaklaşımın pratikteki anlamının insan harici hayvanların bir ‘şey’ ya da ‘kaynak’ olarak tanımlanmalarının terk edilmesini gerektireceği sonucuna varmıştır.

Anahtar Sözcükler: Hayvan Hakları, Türcülük, İnsanmerkezcilik, İnsan Harici Hayvanlar, Etik, Hissedebilirlik

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**A Critical Study of the Moral Status of non-human
animals in Western Ontology and Ethics**

Introduction

Michel Foucault states that “For millennia, man remained what he was for Aristotle: a living animal with the additional capacity for a political existence; modern man is an animal whose politics places his existence as a living being in question”¹. This statement might be admissible, but we can also argue that the concept of animal has always been a matter of discussion -both in ontological and ethical sense- in Western philosophy since the old Greek.

This research study is based upon the historical ontological and ethical paradigms on nonhuman animals in Western philosophy and upon the accounts those paradigms give on the moral status of animals. Instead of strictly following a chronological order; I intend to focus on three key concepts : first the Antique Greek concept of « logos » in the sense of reasoning and meaningful speech, then the concept of « sentience » which refers to a certain form of consciousness that enables a being to experience pain and pleasure, and finally the concept of « moral personhood » which designates a being who possesses inviolable moral (prelegal) rights.

I want to explain the use of concepts *morals* and *ethics* in this work briefly: Although it is possible to make a distinction between the concept of *morals* and the concept of *ethics*; there is a tendency to use them in an interchangeable manner in the field of modern animal ethics; for instance both Singer and Regan states that they use the terms interchangeably.² However, there are also objections to this interchangeable use, for instance amoralist thinkers argues for amoral

¹ Michel Foucault, *History of Sexuality: Volume I An Introduction*. trans: Robert Hurley. New York : Pantheon Books, 1978.p. 143

². See Peter Singer, *Practical Ethics*, 3rd edition. Cambridge: Cambridge University Press, 2011 p. 1 and Tom Regan, *The Case for Animal Rights*, California : University of California Press, 1983, 1983 p. 122

animal rights.³ In this work, while I generally use the term *ethics*, I elaborately used the terms exactly in the same way the theorists use them if I refer to their works.

The term « moral status » refers to that if an entity or interests of that entity morally matter to some degree for the entity's own sake. David DeGrazia, a philosophy professor who works on bioethics, introduces a series of questions to be answered when it comes to nonhuman animal ethics:

“How are we to understand the moral status of animals? Are animals due any moral consideration at all? Of not, why not? If so, do animals deserve consideration at all? If not, why not? If so, do animals deserve consideration simply because of the way our treatment of animals affects *us humans*? Or is it because animals’ interests have moral importance *in their own right*? If animals’ interests matter in their own right, how much do they matter? Should they be given as much consideration as human interests? If so, what does that mean, exactly? What would such equal consideration amount to? And if not, in what way- or how much- do animals’ interests matter?”⁴

One might simply come up with easy solutions to answer or solve these moral questions, because there are ready-made answers that are provided especially by religions and cultural conventions. But these questions are not easy to answer for moral theorists; moral assumptions on nonhuman animals have already been made in the early days of philosophy, for instance by Pythagoras (6th

³ For instance Joel Marks. "Animal Abolitionism Meets Moral Abolitionism." *Journal of bioethical inquiry* 10.4 (2013): 445-455

⁴ David DeGrazia. *Taking Animals Seriously: Mental Life and Moral Status*. Cambridge : Cambridge University Press, 1996. p.36

century BCE) who was advocating for dietary restrictions and supported the idea of abstaining from animal flesh for moral reasons⁵.

On the other hand, Richard Sorabji, a philosophy professor and historian who works on old Greek philosophy, and Aristotle in particular, asserts that Aristotle's denial of reason to nonhuman animals has engendered a crisis for both theories of mind and theories of morality.⁶ The term Aristotle uses is *logos*, a concept that refers to the capacity of rational thinking and meaningful speech that is understood as the expression of inner thoughts. After Aristotle's denial of reason to nonhuman animals and Stoic's exclusion of nonhuman animals from moral concern, *logos* became and still continues to be one of the key concepts in discussions that concern the moral status of nonhuman animals.

In the late 18th century, Bentham's utilitarian philosophy brought along a new thinking and approach to the moral status of nonhuman animals. Bentham asserted what should be morally considered or valued is not whether a being is able to speak (possess the faculty of language) or reason but whether a being is able to feel pain.⁷ Bentham's influence on great number of areas such as economy and ethical, legal and political philosophy and Peter Singer's revision of Bentham's utilitarian ideas on the moral status of animals in late 20th century⁸ have favored

⁵ Porphyry, "The Life of Pythagoras" trans. Kenneth Sylvan Guthrie), in *The Pythagorean Sourcebook and Library: An Anthology of Ancient Writings Which Relate to Pythagoras and Pythagorean Philosophy*, ed. David R. Fideler. Massachusetts :Red Wheel/Weiser, 1987.p. 124 (7)

⁶ Richard Sorabji, *Animal Minds and Human Morals: The Origins of the Western Debate*. Vol. 54. New York : Cornell University Press, 1995. p. 12

⁷ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, Oxford: Clarendon Press, 1907 (reprint of 1823 edition). Ch.XVII§1 Footnote 122

⁸ See. Peter Singer, *Animal Liberation*, 2nd Edition. New York : Harper Collins, 2002.

the emergence of *sentience* as a key concept in the field of moral theory in general and in questions regarding the moral status of animals in particular.

Finally, the third key concept that takes place in ethical discussions on nonhuman animals is *animal rights*. The arguments supporting animal rights can be traced back to Henry Salt's essay, *Animals' Rights: Considered in Relation to Social Progress*, which was first published in 1894. Salt begins by writing : "Have the lower animals "rights?" Undoubtedly—if men have."⁹ Nevertheless, the idea of animal having « rights » was considered as an absurdity in academic circles until late 20th century¹⁰ One of the elements that provoked the change in this point of view was Tom Regan's book *The Case for Animal Rights*, published in 1983. In his book, Regan and opposes to the consequentialist/utilitarian views on the moral significance of animals and argues for the « negative moral rights » -prelegal rights for not to be harmed or not to be interfered- of animals. Regan's theory is grounded on the concept of *subject-of-a-life* that I will explain in detail in the following chapters.

As Alasdair Cochrane points out, Singer's utilitarian theory and Regan's rights theory became so influential for contemporary studies on animal ethics that the dichotomy between Singer-influenced *animal welfare* views and Regan-influenced *animal rights* views has become a necessary ingredient of all discussions on animal ethics.¹¹ Therefore, it seems crucial to examine

⁹ Henry S. Salt" in *The Philosophical Quarterly* Vol. 33, No. 130 (Jan., 1983), p. 98-100. p. 1

¹⁰ Stephen Clark, "Book Review: Animals' Rights Considered in Relation to Social Progress by Henry S. Salt" in *The Philosophical Quarterly* Vol. 33, No. 130 (Jan., 1983), p. 98-100.

¹¹ Alasdair Cochrane, *Animal Rights Without Liberation: Applied Ethics and Human Obligations*, New York: Columbia University Press, 2013. p. 10

and apprehend the concepts of « sentience », « rights », *subject-of-a-life* and *moral personhood* in order to inquire the changes that have occurred in the moral status of nonhuman animals.

After having presented and discussed these concepts along with the different theories that have contributed to their shaping, I will focus on the animal rights position that is offered by Gary L. Francione¹². I intend to argue that, in claiming that the prerequisite for the membership to the moral community should be only sentience, not any prioritized humanlike mental capacities such as reasoning or meaningful speech (or by modern definition, symbolic communication), Francione offers the only moral position that leads to a possible non-speciesist paradigm.

For that purpose, I have divided my research study into three chapters, intending to examine and to focus in each chapter one of the three key concepts I have presented above.

In the first chapter, I will explore and compare Aristotle's position on animals in denying them the capacity for language and reason, the theories of Stoic philosophers who excluded animals from moral concern by referencing to their lack of reason, and Descartes' mechanistic theory of animal physiology in which Descartes claimed that animals are mere machines. I will also mention the theories that have challenged these accounts, such as Darwin's position who claimed that human and nonhuman mind are continuous instead of having a difference in kind. Further on, I will examine the modern claims of moral and legal rights that are based on etiological indications regarding the possession of humanlike mental characteristics by some nonhuman animals such as primates; for instance Singer and Cavalieri who advocate for the obtention of a moral and legal status for the nonhuman animals that they claim to have mental capacities that

¹² For details regarding this theory see Chapter III Section 3

are similar to capacities of human mind, such as primitive forms of reasoning and symbolic interaction. I will also mention criticisms made against these claims. Throughout this chapter; I will restrict my examination and my enquiry to humanlike characteristics such as language and reasoning in order to understand the implications of the animal moral significance.

In the second chapter, I will primarily focus on the concept of sentience, examine how this concept has affected the accounts on nonhuman animals and how sentience has been associated to the moral status of nonhuman animals. In this perspective, I will first focus on Jeremy Bentham's hedonistic utilitarian philosophy that recognizes the ability to feel pain and pleasure as the main elements of moral concern. Further on, I am going to move forward two centuries to focus in order to present Peter Singer's interest utilitarian theory, its implications and offerings for the moral status of nonhuman animals. Finally, I will discuss the critical views offered by Tom Regan and Gary L. Francione on Singer's animal moral theory. In dealing with these critical approaches, I intend to question the limits of a utilitarian position and inquire its connections with the moral tradition that is based on the prioritization of logos. I also intend to emphasize the importance of the concept of *sentience* in a non-anthropocentric moral theory that takes nonhuman animals into moral consideration.

In the last chapter, I will ground the discussion upon animal right claims that are based on nonhuman subjectivity and moral personhood, and examine the practical implications of these claims. This will lead me first to Kant's distinction between « persons » and « things », as well as his way of positing animals in the category of « things ». In a second step, I will focus on Regan's theory that is based on his concept of *subject-of-a-life* and discuss the limitations of Regan's theory of animal rights. This I am going to pass to Francione who interconnects

arguments on sentience and arguments on rights to form a theory of rights that includes all sentient beings in a rights paradigm. Then I will discuss criticisms that are made by other right theorists.

In the conclusion part, I am going to have a detour on how the concept of logos had been an element of exclusion nonhuman animals from moral concern and how the concept of sentience that is offered by utilitarian theory is changed the perception of moral concern. Following the criticism of the logocentric exclusion of nonhuman animals, I will focus on sentience as an inclusive position for nonhuman animal suffering but also discuss how this inclusion operates as an exclusion of nonhuman animals from the *personhood*. At that point I am going to turn back to my main claim that an animal rights approach that is based on sentience is a consistent and justified position and in practice this position would mean that account of nonhuman animals as a ‘thing’ or as a ‘resource’ is needed to be abandoned.

Even though the title and the subject of the study also recalls Heidegger’s ontological views and his discussion of animal question and Derrida’s work on the same subject, to limit the study, I will not discuss their work. But their work and connections between their ideas and the thesis of this work might be a discussed in a further study.

1. Nonhuman Animals and Logos

In this chapter, I will primarily focus on the (historical) relationship between the formation and the valorization of *logos* and the status given to animals. Logos is ancient Greek term that can be translated into English both as language and reason; in that sense, it designates a specific sort of language which, having been progressively associated with reason, has been “invented” and established as being distinctively human and as grounding the very possibility of politics and ethics. Starting from Greek Antiquity, (non human) animals have often been ontologically identified and categorized as *alogos*, literally deprived of *logos* understood as both language and reason, in many theories of Western philosophy. Most of the time, this identification has served to legitimate the exclusion of nonhuman animals from the sphere of ethical concern.

After having inquired in which way these views deny nonhuman animals the status, I will contrast them with the Darwinian account of animals and claim for the moral significance of nonhuman animals based on cognitive ethology researches. Finally, based on this analysis, I intend to argue that, despite the fact that they are rooted in Western philosophy, *logos* and the anthropomorphic system that follows from it are not a relevant prerequisite criteria for moral significance.

Some of the accounts and debates of the late 20th century on nonhuman animals focus on the mental capacities of animals; these views estimate the existence (or not) of moral significance by inquiring whether or not nonhuman animals possess certain humanlike characteristics that are claimed to be related to the moral significance. Moreover, ethical and political theories -such as

Rawls's Theory of Justice¹³ argue that the ability for symbolic communication (language) is a prerequisite for the constitution of a moral status, since beings are able to claim their moral status only insofar as they are able to assert and communicate it by the means of a reasonable and meaningful speech¹⁴. According to these theories, morality is based upon a contract, a mutual agreement of the parties based upon rational reflection and vocalization.

In the field of nonhuman animal ethics, two main approaches are dealing with the problematics of logos: theories for instance Francione's animal rights theory¹⁵ argue that the relation between anthropomorphous mental capacities and moral significance is a fallacious claim; theories such as the one presented in Singer and Cavalieri's *The Great Ape Project* argue on the contrary that there is a relation between reason, language and moral significance, but that certain species of nonhuman animals such as primates possess those capacities in lesser or more primitive forms; according to this second approach, this allows nonhuman animals for being given some sort of a moral status. Following this perspective, I will first focus and examine the later approach and inquire the former one in the next chapters.

Contemporary thinkers such as Gary Steiner¹⁶ and Stephen T. Newmyer¹⁷ emphasize that Stoics were the first philosophers, in Western philosophy, to establish human rationality as the basis for

¹³ John Rawls, *A Theory of Justice*, Massachusetts: Belknap Press of Harvard University Press, 1971.

¹⁴ Such as John Rawls, Op. Cit. and Peter Carruthers, *The Animals Issue: Moral Theory in Practice*. Cambridge : Cambridge University Press, 1992.

¹⁵ Gary L. Francione, *Introduction to Animal Rights: Your Child or the Dog*, Philadelphia, PA: Temple University Press, 2000.

¹⁶ Gary Steiner, *Anthropocentrism and its Discontents: The Moral Status of Animals in the History of Western Philosophy*. Pittsburgh, PA : University of Pittsburgh Press, 2010.

the claim of superiority of human beings in ethical order over all nonrational species. According to Steiner, this was the first time that human rationality used as the basis for a categorical claim for the superiority of humans over other animals. Along with the modern theories that are focused, from an anthropomorphous approach, on reasoning and symbolic communication that is inherited or challenged the philosophical tradition that is invoked by Stoic ideas, Stoic ideas were already criticized by Plutarch on the grounds that nonhuman animals are also capable of a level of reasoning (such as ability to desire and seek and object). The contemporary debates on animal consciousness and ability to use symbolic communication, which are related to nonhuman animals' moral status bear traces of the debate that took place between Stoics and Plutarch himself. It is possible to trace these ideas that bind mental capacities of reasoning and symbolic communication with moral significance in the thoughts of modern philosophers. Among these modern philosophers, Descartes, who with his mechanist theory of "machine-animals" considered nonhuman animals as deprived of soul- therefore of reason- and characterized them upon the model of the machine and its autonomous movement, and Kant who claimed that human beings have no sort of moral obligations/duties towards nonhuman animals were following this tradition of thought.

Newmyer asserts that, in order to understand the contemporary debate upon the status of nonhuman animals, one has to contextualize it historically and acknowledge the historical precedents of these contemporary debates.¹⁸

¹⁷ See. Stephen T. Newmyer, "Speaking of Beasts: The Stoics and Plutarch on Animal Reason and the Modern Case against Animals." *Quaderni Urbinati di cultura classica* (1999): 99-110.

¹⁸ Ibid p. 110

1.1. The Exclusion of Nonrational Beings From the Sphere of Ethical Concern

Apart from the Stoics, Aristotle also argued that animals lack the rational parts of the soul. Aristotle considers the soul as the distinguishing mark of animate beings and distinguishes five active abilities of the soul: nutrition, appetite, sensory perception, locomotion and thought/intellect. Nutrition is defined as the fundamental vital ability of a living body, since mortal bodies need to feed themselves and all have the power of self-nutrition. Plants on the other hand have no other ability than that of nutrition. According to Aristotle's soul theory, some other living organisms also have the ability of sensory perception. All animals possess at least one sensory power which enables them to sense pain or pleasure; this means that they perceive certain things as pleasant and others as painful. Since these living organisms possess the ability of sensory perception and thus find some things pleasant, they also possess the appetite which is defined as the ability to desire. On the other hand, some animals possess the ability for locomotion. Finally, according to Aristotle, "man and possibly another order like man or superior to him" possess "the power of thinking, i.e. mind."¹⁹

In the third book of his treatise upon the soul, *De Anima*, Aristotle makes a clear distinction between sense perception and practical thinking (*phronesis*) and claims that the philosophers before him assumed that these two were the same. The ability for sensory perception can be found in all animals whereas practical thinking is accessible to only a small part of them.²⁰

¹⁹ Aristotle, *On the soul*, Ttranslated by. J. A. Smith, The Internet Classics Archive Web Atomic and Massachusetts Institute of Technology, Web. 26 May. 2015. <<http://classics.mit.edu/>> Book II Part 3

²⁰ Ibid Book III Part 3

In Aristotle's theory, sense perception is limited to "proper" and to "common objects". "Proper objects" are those which are only perceivable by the means of one sense; for instance, colors are perceivable by the sense of seeing such as sweetness is perceivable by the sense of taste. Motion, rest, number, shape or size are "common objects" of perception, meaning objects that can be perceived by more than one sense.

Thinking (*Nous*) is broader than perception; it is not limited, on the contrary "everything is a possible object of thought,"²¹. Humans are able to conceive and think about not only things that they are able to perceive but also about those they are not able to; such as virtues. Moreover, thinking can be distinguished from the body because it is not connected to a body organ as perception is. Besides, since human beings are able to think about thinking itself, their thinking is also reflexive. One does not choose to perceive, therefore perception is rather an affection; on the contrary, thinking is something one actively does.

Thinking (*nous*) on the other hand, includes for Aristotle imagination (*phantasia*) and judgement (*hupolepsis*).. Explaining the difference between imagination and judgement, Aristotle argues that if those two were the same, all animals would equally possess them, only animals such as ants, bees do not have it. In this perspective, we may argue that in Aristotle's view, nonhuman animals possess imagination which is a part of thinking. Yet, as he explains, they only possess sensitive imagination (*aisthētikí*); whereas deliberative (or calculative, *logistikḗ*) imagination is only possessed by those who are able to calculate, meaning by human beings.²²

²¹ Ibid. Book III Part 4

²² Ibid Book III Part 10

In Aristotle's theory, only human beings can generalize their particular experiences and abstract concepts from these. This also means that the use of abstract concepts in speech is also specific to human beings. Following from that, Aristotle claims that nonhuman animals are not able to make distinctions between different objects of desire, consequently they cannot make informed choices between them; instead, since they are governed by a sensitive soul, nonhuman animals' actions are caused by external objects of desire whereas human beings' actions are caused by deliberation or free choice. Moreover, only human beings can perceive and distinguish the good from the evil, the right and the wrong as well as other moral qualities.²³ Aristotle clearly states that there is no justice for nonhuman animals and slaves or between them.²⁴

Stoics go on from that point and define rationality as the capacity to use impressions in a reflective manner. What they mean by reflective manner is related with what they conceptualize as *assent*. For example, in a passage by Epictetus, old Greek deity Zeus describes human with "this faculty of pursuing an object and avoiding it, and the faculty of desire and aversion, and, in a word, the faculty of using the appearances of things"²⁵

Stoics agree with Aristotle's statement, according to which animals lack the rational part of the soul and a capacity for belief; they also claim that, in opposition to rational beings who are

²³ Aristotle, *Politics*, *Aristotle in 23 Volumes*, Vol. 21, translated by. H. Rackham. Cambridge, MA, Harvard University Press; London, William Heinemann Ltd. 1944 Accessed on Perseus Online Library Web. 26 May 2015. <<http://perseus.tufts.edu/>> 1, 1253a

²⁴ Aristotle, *Nicomachean Ethics*, in *Aristotle in 23 Volumes*, (Vol. 19), translated by. H. Rackham. Cambridge, MA, Harvard University Press; London, William Heinemann Ltd. 1934. Accessed on Perseus Online Library Web. 26 May 2015. <<http://perseus.tufts.edu/>> 1161a30-1161b2

²⁵ Epictetus. *The Discourses of Epictetus, with the Encheiridion and Fragments*. trans. George Long. London : George Bell and Sons. 1890. Accessed on Perseus Online Library Web. 26 May 2015. <<http://perseus.tufts.edu/>>1.1

capable of distinguishing appearances and either assent them or withdraw assent from them, animals lack the capacity to withdraw assent from perceptual appearances or impressions; instead, they are immediately moved by the impressions. This means that animals are giving reaction to the stimuli of what modern epistemologists have called the “milieu” of an animal and have no control over their reactions: their behaviour is guided by what they perceive of the conditions they are in.

Stoics generally agree upon the idea that all animals possess a soul, yet, only human soul is perfect. At birth both human and animal souls’ possess what Chrysippus calls the “governing principle” [hēgemonikon]; the difference is that the governing principle of a child develops to become a faculty of reason, whereas the governing principle of nonhuman animals only develops to the limit where it is capable of exhibiting impulses.²⁶

Nonhuman animals experience impressions which consist in the perception of appearances. Both humans and nonhuman animals perceive, but human perception and nonhuman perception are distinguished on the basis that the first one is rational whereas the latter is defined as non-rational. Epictetus argues:

“Many, indeed, in us only, of which the rational animal had peculiar need; but you will find many common to us with irrational animals. Do they then understand what is done? By no means. For use is one thing, and understanding is another: God had need of

²⁶ Stephen T. Newmyer. *Animals in Greek and Roman Thought: A Sourcebook*, New York : Routledge, 2011. p. 3

irrational animals to make use of appearances, but of us to understand the use of appearances.”²⁷

A nonrational perception is a pre-conceptualized and direct one; in contrast, a rational perception is mediated through cognition and verbal expression.

As Seneca points out:

“Dumb animals lack the emotions of man, but they have certain impulses similar to these emotions. Otherwise, if they were capable of love and hate, they would also be capable of friendship and enmity, discord and harmony; and some traces of these qualities do appear in them also, but the qualities of good and bad are peculiar to the human breast. Wisdom, foresight, diligence, and reflection have been granted to no creature but man, and not only his virtues but also his faults have been withheld from the animals.”²⁸

According to this view, animal perception is not mediated through cognition and verbal expression; this implies that animal behaviours are not rational responses to perceptions but only reactions to stimuli; in other words, there is no process of assertion or withholding assertion. This also means that animal behaviours are neither good nor bad, neither right nor wrong. Because animals lack rationality, they have no relation to the good and no share in the virtue of good.

At this point, it is possible to see similarities with what Aristotle’s considerations of virtue when he asserts that nonhuman animals are not capable to discriminate between good and evil, or right

²⁷ Epictetus, *op. cit.* 1.6

²⁸ Lucius Annaeus Seneca. "On Anger". *Seneca: Moral and Political Essays*. ed. and trans. John Cooper. Cambridge University Press, 1995. I. iii. 3-7

and wrong. Both in Aristotle's and the Stoics' view, nonhuman animals do not possess the preconditional abilities to pursuit virtues.

Seneca emphasizes that nonhuman animals do not possess language; they merely possess *phone* (voice) and the capacity to make sound, but on the contrary of human beings they cannot poeticize their voice, are unable to form a speech and they are not in control of their actions; instead they are ruled by their impressions. Even though nonhuman animals experience emotion-like states, those are weak and change quickly. Seneca writes:

“They have a voice, it is true, but it is unintelligible, uncontrolled, and incapable of speech; they have a tongue, but it is shackled and not free to make many different movements. So likewise in them the ruling principle itself is lacking in fineness and precision. Consequently, while it forms impressions and notions of the things that arouse it to action, they are clouded and indistinct. It follows, accordingly, that while they have violent outbreaks and mental disturbances, they do not have fear and anxiety, sorrow and anger, but certain states similar to them. These, therefore, quickly pass and change to the exact reverse, and animals, after showing the sharpest frenzy and fear, will begin to feed, and their frantic bellowing and plunging is immediately followed by repose and sleep.”²⁹

For human beings, the capacity of meaningful speech, which is considered as a *vocalized reason*, arises in the governing principle; but, because the governing principle of nonhuman animals is imperfect, they are denied of meaningful speech. The imperfect nature of their governing principle limits their abilities, nonhuman animals are not able to develop a capacity of reason or

²⁹ Lucius Annaeus Seneca, *op. cit.* I. iii. 7-12

speech. According to the Stoic ideas, following the concept of *oikeiosis*³⁰ which means “appropriation”, ethical duties are only held towards other rational beings and because nonhuman animals are not considered as rational, human beings have no natural kinship with them.

Oikeiosis is the doctrine of belonging, community or “loving devotion”. Although Stoics agree that all animals have a sense of belonging in some degree, they argue that this sense of belonging is restricted to natural parental bonds. Human beings and other animals are believed to have a special bond with their offsprings, from the perspective of generation. According to this view, certain animal species possess this sense of belonging not merely for their offspring; they also form, on a broader sense and independently from kinship, social groups that depend on mutual benefits and such groups can sometimes be interspecies ones.

According to Stoic philosopher Cicero, this natural bond is the basis for the formation of communities and only human beings are capable of developing this specific sense of belonging that extends to all human specie. He says:

“But it appears that we must first recall what things in nature constitute the foundations of community and human society; the first principle is observable in the universal kinship of the human race. Bonding agent of that kinship is reason and speech”³¹

³⁰ According to the Stoics, virtue consists in living according to Nature, which leads to the development of *oikeiosis*, the capacity of each living being to acknowledge oneself and acknowledge what is “appropriate” for oneself. The Greek term *oikeion* also means what is akin to oneself. *Oikeiosis* also refers to belonging, or one’s kin or relations.

³¹ Marcus Tullius Cicero, *On Duties*, ed. M.T. Griffin and E.M. Atkins, Cambridge : Cambridge University Press, 1991. I.50

Cicero explains that nonhuman animals such as ants, bees or wolves can cooperate within their own specie and develop social bonds but they never understand this bond as a universal one that involves all of the ants or bees or wolves. These species are deprived of the sense of fairness or injustice, precisely because they lack reason and speech. Such as in the case of all other animals, (human) children are believed to consider only their own interests. According to Cicero, children become progressively adult and rational agents, and they acquire the sense of community in the company of other rational beings, that is human beings³².

To be owed the duties of justice is associated with the possession of reason or rather with “being rational”, a quality or a virtue that is reserved only to Gods and to human beings, yet not in the same way. To be more precise, human beings are rational animals insofar as they benefit from God’s benevolence. God’s benevolence allows for human beings to carry a certain portion of him; in this way, the human mind is a part of God’s mind. Seneca asserts that even though human beings are in many ways weaker than other animals and that they remain vulnerable because they lack natural weapons, God has granted them reason and fellowship to make them the most powerful of all creatures and to provide them the means to master all other beings. In Seneca’s words :

“God has given to him two things, reason and fellowship, which, from being a creature at the mercy of others, make him the most powerful of all; and so he who, if he were isolated, could be a match for none is the master of the world. Fellowship has given to him dominion over all creatures; fellowship, though he was begotten upon the land, has extended his sovereignty to an element not his own, and has bidden him be lord even upon the sea; it is this that has checked the assaults of disease, has made ready supports

³² Marcus Tullius Cicero, *On Ends*, ed. Julia Annas, Cambridge : Cambridge University Press, 2001 3.62

for old age, has provided solace for sorrow; it is this that makes us brave, this that we may invoke as a help against Fortune.”³³

Human beings have differences but they commonly share reason, which is the mark of their privileged bond to God and God’s presence in themselves and fellowship and this forms a community. Both God and human beings understand conceive and understand the world by the means of reason.

Following these theoretical premises, Stoics attribute a status of superiority to human beings over all nonrational beings in the cosmic scheme of things and beings. Unlike God who is perfect also in the sense that its being depends on nothing external to itself (self-sufficient) and needs nothing to be complete or to be, human beings also have physical needs which are fulfilled by the natural resources provided by nature itself; this means that natural elements, plants and animals are meant to serve and fulfill human needs. Human beings are superior to the nonhuman world in the sense that all the nonhuman world has been created by God in order to serve human kind. In this perspective, Epictetus argues that:

“Well then God constitutes every animal, one to be eaten, another to serve for agriculture, another to supply cheese, and another for some like use; for which purposes what need is there to understand appearances and to be able to distinguish them? But God has introduced man to be a spectator of God and of His works; and not only a spectator of them, but an interpreter. For this reason it is shameful for man to begin and to end where irrational animals do, but rather he ought to begin where they begin, and to end where

³³ Lucius Annaeus Seneca. "On Benefits". *Seneca: Moral and Political Essays*. ed. and trans. John Cooper. Cambridge University Press, 1995 IV. xviii.

nature ends in us; and nature ends in contemplation and understanding, in a way of life conformable to nature.”³⁴

Epictetus claims that among all creatures and beings existing in the world, human beings are the only ones who are interpreter of the God. This status of superiority comes from the premise that, human beings are the only ones who are not merely affected by the senses but also act with these affections; the only ones who understand, think about and can conceive the world.

As Epictetus declares the superiority of human beings over nonhuman beings which are part of the cosmos, he also come to the point of ultimate exclusion of nonhuman animals from the sphere of duties of justice. Epictetus reduces the status of animals to mere means either to be eaten, to be used on farming, to provide food and clothing or to serve in any other ways. According to Epictetus, animals are “not made for themselves”, instead they are made for human use and their nature is constituted in such a way that we do not need to take care of them, by giving them clothing or shelter for example.

“For, animals not being made for themselves, but for service, it was not fit for them to be made so as to need other things. For consider what it would be for us to take care not only of ourselves, but also about cattle and asses, how they should be clothed, and how shod, and how they should eat and drink. Now as soldiers are ready for their commander, shod, clothed and armed: but it would be a hard thing, for the chiliarch to go round and shoe or clothe his thousand men; so also nature has formed the animals which are made for

³⁴ Epictetus, *op. cit.* 1.6

service, all ready, prepared, and requiring no further care. So one little boy with only a stick drives the cattle.”³⁵

On the other hand, Cicero illustrates Chrysippus’ ideas according to which the existence of nonhuman animal soul is for the sake of human beings’ palate pleasure, because it functions “like salt” to preserve pigs flavor when humans ate pigs.³⁶

These claims seems similar to Aristotle’s discourse upon the fact that nature has done nothing in vain, so animals must be here for the sake of human beings:

“In like manner we may infer that, after the birth of animals, plants exist for their sake, and that the other animals exist for the sake of man, the tame for use and food, the wild, if not all at least the greater part of them, for food, and for the provision of clothing and various instruments. Now if nature makes nothing incomplete, and nothing in vain, the inference must be that she has made all animals for the sake of man.”³⁷

Centuries later, when Descartes claimed that human beings and other animals are not different in degree but different in kind, he was in reality following this tradition of thought. Descartes agrees with Aristotle and the Stoics’ arguments regarding human beings’ ability of speech – being capable of “*arranging various words together and of composing them and of composing from them a discourse by means of which they might make their thoughts understood*”³⁸ - as being proper to human beings, also in asserting that speech is the vocalization of mind. The difference in kind does not occur because of the physical differences, he argues, since for

³⁵ Epictetus, *op. cit.* 1.16

³⁶ Marcus Tullius Cicero, *De Natura Deorum (On the Nature of the Gods)*, trans. Francis Brooks (London: Methuen, 1896). 6/2/2015. <http://oll.libertyfund.org/titles/539> II.64

³⁷ Aristotle, *Politics* 1.8.12

³⁸ Rene Descartes, *Discourse on Method and Meditations on First Philosophy* Eds. and Trans. Donald A. Cress. Hackett Publishing, 1998 V, 57

instance, parrots possess the necessary bodily organs to imitate words but no parrot can use these words in a meaningful sense. The words uttered by a parrot are merely imitations of the human ones, an imitation that can also be achieved by machines. Descartes asserts that the lack of the ability to speak proves that animals are not only inferior in reason but also that “*they have none [no reason] at all.*”³⁹

All these arguments are built upon the premises that intellectual reasoning and meaningful speech are superior attributions and only those who possess these attributions can be included in the sphere of justice. The analysis follows from the observations on nonhuman animals that shows that they lack the mental capacities that humans have and claims that this capacities are the signs of superiority of humans. Aristotle uses a teleological argument in order to argue that since there is a reason for everything that exists in nature, the “reason” of the existence of animals can be explained by the fact that they are created for the sake of man’s needs. Stoics establish a similar philosophy, but argue in addition that since human beings are rational and understand the world in a way that no other creature can, they hold a unique position in the cosmos: they are superior to all nonrational things.

1.2. Difference in Kind or Difference in Degree?

Descartes’ theory of difference in kind is built upon a philosophical tradition that considers nonhuman animals as means to human ends. In terms of the modern conception of nonhuman animals and their ontological as well as ethical status, Darwin’s theory of evolution is as much important as Cartesian thinking ; furthermore, it is challenging to see that their definitions and

³⁹ Rene Descartes, *op. cit.* V, 58

understanding of nonhuman animals are radically different from each other. Darwin's ideas do not only challenge the Cartesian narrative of Enlightenment but also constitute a challenge to the Christian ideology of the time, that vehicle the idea that God has created human beings upon its own image. Expressing to which great extent Darwin's approach to nonhuman animals was revolutionary for the Western tradition of philosophy, Freud argues that Darwin's theory- "which discovers that humankind is not different from other animals and share the same ancestors"- is one of the blows of the narcissistic illusion of men – namely *the biological blow*.⁴⁰

In his essay *Descent of Man*, Charles Darwin writes about human evolution and search for the answer to the question of how humans are created. His answer was evolution and sexual selection, his claim was that humans are not a totally different entity from other animals but humans and other living beings has one universal common descent. He covered human evolution from the universal descent to the most recent common ancestors and explained how humans are not special in creation, not all of the other living beings are not created for sake of humans but they all evolved in the same processes.

Darwin's theory of evolution and emphasis on the existence of similarities between human beings and animals do not only consist in physical attributes; Darwin makes also crucial and revolutionary remarks about "nonhuman minds". Unlike earlier philosophers who denied mind, perception and reason to animals, Darwin is very straightforward about the fact that nonhuman animals also possess these: Accordingly, he writes:

⁴⁰ Sigmund Freud, "A Difficulty in the Path of Psycho-Analysis.", *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, Volume XVII (1917-1919): *An Infantile Neurosis and Other Works*. 1955. 135-144.

“Nevertheless the difference in mind between man and the higher animals, great as it is, certainly is one of degree and not of kind. We have seen that the senses and intuitions, the various emotions and faculties, such as love, memory, attention and curiosity, imitation, reason, etc., of which man boasts, may be found in an incipient, or even sometimes in a well-developed condition, in the lower animals.”⁴¹

Darwin’s statement brings forward a crucial turn not only because the earlier theories regarding nonhuman animals were based on their lack of reason but also due to the fact that, according to him, their mutual difference is not in degree but in kind. Darwin’s theory of evolution intends to prove that these earlier assumptions on animals are not true, that animals possess mental capacities, even capacities that are usually solely attributed to human beings. Darwin also claims that some of the attributes that are considered as human beings’ own only, such as speaking or moral thinking, are not stand-alone unique faculties that are created in form of humans but enhanced forms of some instincts or behaviours in other animals. Darwin concludes that these differences are the result of a gradual evolution:

“If it could be proved that certain high mental powers, such as the formation of general concepts, self-consciousness, etc., were absolutely peculiar to man, which seems extremely doubtful, it is not improbable that these qualities are merely the incidental results of other highly-advanced intellectual faculties; and these again mainly the result of the continued use of a perfect language. At what age does the newborn infant possess the power of abstraction, or become self-conscious and reflect on its own existence? We

⁴¹ Charles Darwin. "The Autobiography of Charles Darwin, ed. Nora Barlow." In *Pickering Masters: The Works of Charles Darwin* 29. New-York: W.W. Norton, 1969. p. 106

cannot answer; nor can we answer in regard to the ascending organic scale. The half-art, half-instinct of language still bears the stamp of its gradual evolution.”⁴²

Darwin asserts that human beings have physical and mental similarities with other animals; moreover, animals are considered by Darwin as conscious, sentient beings with feelings and emotions. When it comes to primates, beyond being merely sentient and conscious, he asserts that they show:

“[...] same senses, intuitions, and sensations,----similar passions, affections, and emotions, even the more complex ones, such as jealousy, suspicion, emulation, gratitude, and magnanimity; they practice deceit and are revengeful; they are sometimes susceptible to ridicule, and even have a sense of humor; they feel wonder and curiosity; they possess the same faculties of imitation, attention, deliberation, choice, memory, imagination, the association of ideas, and reason, though in very different degrees.”⁴³

Darwin claims that not only humans but also other social animals also have social instincts that constitute a sort of moral sense or conscience. This moral sense is developed and acquired by animal by means of natural selection because it is needed for one’s survival. The sense of morality depends on the evolutionary background of each specie. For instance, ants or bees’ social instincts rather take the form of social duties due to their heavily organized way of life but, in the case of animals such as primates, this means helping each other and forming communities that depend on common interests. Yet, since these moral instincts were formed during natural selection, they are mostly related to the one’s own kin, own tribe or own species.

⁴² *ibid.*

⁴³ *ibid.*, p.70

1.3. Exclusion and Inclusion

There is a very interesting passage in Epictetus' *Discourse* where he explains the conditions for an ass to be equal with humans so as not to be used by them to carry heavy loads. He explains:

“For the ass, I suppose, does not exist for any superiority over others. No; but because we had need of a back which is able to bear something; and in truth we had need also of his being able to walk, and for this reason he received also the faculty of making use of appearances, for otherwise he would not have been able to walk. And here then the matter stopped. For if he had also received the faculty of comprehending the use of appearances, it is plain that consistently with reason he would not then have been subjected to us, nor would he have done us these services, but he would have been equal to us and like to us.”⁴⁴

This passage implies that, if a nonhuman animal possesses certain humanlike characteristics such as the faculty of comprehending the use of appearances (reasoning), it would be included to the moral sphere on equal terms with human beings. This might seem impossible to Epictetus, but Plutarch claims that his observations on nonhuman animal behaviours indicate that all animals possess reason⁴⁵. Plutarch argued that the ability of several birds to discipline and master their voice in order to imitate sounds is the proof that *in some* measure they are endowed both with rational utterance and with articulate voice.⁴⁶ Plutarch claims that this ability results not only

⁴⁴ Epictetus, *op. cit.* 2.8

⁴⁵ Plutarch, "Whether Land or Sea Animals are Cleverer", *Moralia Vol. XII of the Loeb Classical Library edition*, Massachusetts: Harvard University Press, 1957

⁴⁶ *ibid.* 972F-973A

from an imitation but also from an inner reflection on sounds; according to Plutarch, this is a product of the reason they possess. Newmyer thinks that the researches of modern ethologists corroborates the arguments already raised by Plutarch against Stoic claims.⁴⁷

Darwin's theory of evolution opened up a new possibility to think about moral significance of nonhuman animals by claiming that nonhuman animals have minds that is not different from human mind in kind but different in degree. After two centuries, studies on animal cognition for the empirical evidences of similar capacities of reasoning and symbolic communication and research projects upon the similarities on human and non-human animals' mental faculties follows the path that is inspired from Darwin's idea of continuous minds between species.

In 1993 Paola Cavalieri and Peter Singer published the book *The Great Ape Project* as a part of the eponym project; the aim of the project was to the obtention of basic rights for life and freedom and the prohibition of torture for great apes, the extension of the moral community to great apes, based on the affirmation that they have the "mental capacities and an emotional life sufficient to justify inclusion within the community of equals."⁴⁸ as the *Declaration on Great Apes* that accompanied the book states. The project was based upon the idea that great apes are similar to humans in many ways and that boundary between the two species is not as sharp as it is generally thought to be. Singer writes:

"When we group chimpanzees together with, say, snakes, as "animals," we imply that the gap between us and chimpanzees is greater than the gap between chimpanzees and

⁴⁷ Stephen T. Newmyer, S., *op. cit.*, pp. 109

⁴⁸ Paola Cavalieri & Peter Singer (eds.). *The Great Ape Project*. New York : St. Martins Press, 1993 p.5

snakes. But in evolutionary terms this is nonsense. Chimpanzees and bonobos are our closest relatives, and we humans, not gorillas or orangutans, are their closest relatives.”⁴⁹

The project was also supported by the primatologists Jane Goodall and Dawn Prince-Hughes, the evolutionary biologist Richard Dawkins, and the legal scholar Steven Wise. In the book, Goodall argues that even though the studies show that chimpanzees are rational and sentient beings, the difference of species, or simply their non-human being still prevents us from including them into the moral community; she says:

“If we could simply argue that it is morally wrong to abuse, physically or psychologically, any rational, thinking being with the capacity to suffer and feel pain, to know fear and despair, it would be easy - we have already demonstrated the existence of these abilities in chimpanzees and the other great apes. But this, it seems, is not enough. We come up, again and again, against that non-existent barrier that is, for so many, so real - the barrier between 'man' and 'beast'.”⁵⁰

Dawkins criticizes this barrier between humans and nonhuman animals by pointing to the type of thinking that supposes arbitrary lines of classifications as *discontinuous mind*⁵¹. The “discontinuous mind” is defined as a type of mind that represents the world in fixed and sharp categories, but this kind of world description is deceiving, for instance it is humans who

⁴⁹ Peter Singer. "Great Apes Deserve Life, Liberty and the Prohibition of Torture.", *The Guardian* 27 (May 27, 2006): 450-87. Web Article <<http://gu.com/p/ne3v/stw>> (Last Accessed April 2, 2015).

⁵⁰ Jane Goodall. "Chimpanzees—bridging the gap." *The Great Ape Project: Equality beyond Humanity* ed. Paola Cavalieri and Peter Singer (1993). New York : St. Martins Press 10-18

⁵¹ Richard Dawkins. "Gaps in the Mind." *The Great Ape Project*, ed. Paola Cavalieri and Peter Singer (1993). New York : St. Martins Press 80-87

categorized creatures with discontinuous species names. Evolution is a continuous process and in that perspective, humankind does not constitute an exception. Humans are cousins with chimpanzees in the evolutionary sense; Dawkins claims that humans are *apes* and there is no natural classification that would include chimpanzees, gorillas and orangutans but exclude humans. Why is this continuity important, why would it be morally significant to have a common ancestor or similar cognitive capacities without sharing the capacity to suffer? How is it justifiable to ask for legal rights for a chimpanzee but not for a cow? Also addressing these questions, Dawkins answers by referring to the social common sense :

“Humans may be taxonomically distant from cows, but isn't it more important that we are brainier? Or better, following Jeremy Bentham, that humans can suffer more - that cows, even if they hate pain as much as humans do (and why on earth should we suppose otherwise?), do not know what is coming to them? Suppose that the octopus lineage had happened to evolve brains and feelings to rival ours; they easily might have done. The mere possibility shows the incidental nature of cousinship. So, the moral philosopher asks, why emphasize the human/chimp continuity? Yes, in an ideal world we probably should come up with a better reason than cousinship for, say, preferring carnivory to cannibalism. But the melancholy fact is that, at present, society's moral attitudes rest almost entirely on the discontinuous, speciesist imperative.”⁵²

In his article upon animal rights, Marc Bekoff also asks the same question with Dawkins's fictional philosopher of the quote above: *Why emphasize the human/chimp continuity?* He argues that The Great Ape Project should be expanded to Great Ape/Animal Project in order to include

⁵² Ibid. p. 85

all animals into what he calls “the Community of Equals”⁵³. He calls the approaches that are limited to apes and primates as narrowmindedly *primatocentrist* and speciesist. He argues that the mental continuum and genetic similarities are not only limited with humans and apes but it covers all of the animals. He also argues that the categorization and distinction between “lower animals” and “higher animals” is misleading, since each animal has its own capacities; in his words:

“We must not think that monkeys are smarter than dogs for each can do things the other cannot. Smart and intelligent are loaded words and often are misused: dogs do what they need to do to be dogs – they are dog-smart in their own ways – and monkeys do what they need to do to be monkeys – they are monkey-smart in their own ways – and neither is smarter than one another. The misunderstanding and misapplication of the notions of smartness and intelligence can have serious consequences for nonhuman animals.”⁵⁴

Bekoff’s approach seems broader than classic post-Darwinian discourse grounding on human-great ape similarities, and because this approach assigns some sort of reason to all nonhuman animals, it is also closer to what Plutarch argued against Stoic denial of rationality to nonhuman animals.

1.4. Exclusion by Inclusion?

Even though The Great Ape Project has a great amount of supporters from various fields, there are also problems about this project. In this section, I will discuss some of those criticism from moral philosophy.

⁵³ Marc Bekoff. "Deep Ethology, Animal Rights, and the Great Ape/animal Project: Resisting Speciesism and Expanding the Community of Equals", *Journal of Agricultural and environmental Ethics* 10.3 (1997): 269-296.

⁵⁴ Ibid. p. 273

In her book *Without Offending Humans*, Elisabeth de Fontenay claims that the approach developed by Singer and Cavalieri is *offensive* against the most vulnerable members of the human community⁵⁵ and she accuses them of being *misanthropic*⁵⁶. De Fontenay claims that although it is necessary to take responsibility for nonhuman animals, Singer and Cavalieri are bringing and emphasizing criteria that are based on integrity and performance; a among living beings that are based on integrity and performance, which is *opposite* of taking responsibility for them.

Fontenay argues that Singer's utilitarian theory, which I will examine in the next chapter, clears the species barrier which provides rights for every human being and brings criteria that are based on mental capacities. Following this perspective, the claim for an equal treatment between a mentally disabled child and an adult primate might also justifies the categorization of mentally disabled people as *subhuman*. She points out that this philosophy might end up in denying human rights from those already vulnerable because of their mental disabilities. Fontenay claims that extending human rights to non-human great apes brings forward these sorts of cautions and that, instead of allowing these animals *mimetic rights*, we should conceive animal rights which are not an extension of the human rights. In her own words :

“For other animals, farm animals for example, and for those which law calls ‘livestock,’ what would become of them, and of the eventual establishment of their protection once the extension of the rights of man was locked in, as it were, to the sole advantage of

⁵⁵ Élisabeth De Fontenay. *Without Offending Humans: A Critique of Animal Rights*. trans. William Bishop. Minneapolis, MN : University of Minnesota Press, 2012. p. 56

⁵⁶ Ibid. p. 57

primates? It would seem more astute and more just to make the great apes the first among beasts and not the last of men.”⁵⁷

Fontenay also points out that, by following a utilitarian logic, Singer uses the term *rights* merely as a convenient way of presenting certain demands but not in an adequate way to consider the interests of animals. She claims that in using the term “rights”, neither Singer or Cavalieri present preliminary arguments to justify their claims on a philosophical or legal basis.

Fontenay quotes Cardinal de Polignac, a poet, diplomat and philosopher of the 18th century who agreed with Descartes’ mechanist approach and doctrine of the “animal-machine” and once said “Speak and I will baptize you” to an orangutan that was caged in the king’s gardens. Fontenay argues that Singer and Cavalieri are not any different from this 18th century’s figure when they assert that human rights should be extended to the great apes on the basis that they are capable to communicate among each other and with human beings. She says “It would certainly seem that logocentrism has quite a few tricks left up its sleeve.”

While she addresses possible conclusions regarding capability-centered ethics on the grounds of non-speciesist morality, Fontenay seems to be refusing to renounce the form of kinship which was set by the Stoic arguments on the grounds of logos through her disagreement with the idea of blurring the boundaries between species.

Gary L. Francione, in his article “Taking Sentience Seriously”⁵⁸, claims that the problem with the Great Ape Project and other similar mind centered approaches stands in their attempt to link

⁵⁷ Ibid. p.62

cognitive abilities with moral significance. Francione claims that the Great Ape Project follows Bentham's lead, reminding that Bentham asserted on the one hand that humans should morally consider the animal's pain but argued on the other hand that it is acceptable to kill animals painlessly because they lack certain mental capacities. According to Francione, following this view, modern ethologists are pursuing their research in aiming to seek animals whose minds might be sufficiently humanlike, and ironically, Francione points out, they do those researches often through animal experiments.

Francione sheds light on the problems that are engendered by the similar mind centered approach. First of all, he claims that this approach would postpone our confrontation with our own moral obligations towards other animals. He says:

“The flipside of the similar- minds theory is that those nonhumans who are merely sentient—capable of experiencing pain and suffering but who lack these other cognitive capacities—are still things, entitled to “humane” treatment but not the preferential treatment that we are obligated to accord nonhumans with minds like ours.”⁵⁹

Steve Sapontzis' article “Aping Persons — Pro and Con”⁶⁰ also emphasizes that if one thinks that not only apes but all non-human animals should be freed from human exploitation, one has to overcome speciesism and anthropocentric prejudice. Sapontzis emphasizes that asking for rights for apes because they have human-like minds and share the same evolutionary background is actually anthropocentric. Yet, he asserts that it would be “[...] politically astute to emphasize

⁵⁸ Gary L. Francione, "Taking Sentience Seriously", in *Animals as Persons, : Essays on the Abolition of Animal Exploitation*, New York: Columbia University Press, 2009

⁵⁹ Ibid. 130

⁶⁰ Steve F. Sapontzis, "Aping persons—Pro and con." *The Great Ape Project: Equality Beyond Humanity*, ed. Paola Cavalieri and Peter Singer (1993). New York : St. Martins Press 269-278

the human-like characteristics of nonhuman great apes and to seek the moral and legal protection of their interests as persons before seeking such protection of interests for all feeling animals and it would take advantage of anthropocentrism and other human imperfections..”⁶¹

Sapontzis seems to be arguing that, instead of challenging anthropocentrism, it is pragmatically helpful to make use of it and obtain legal protection at least for some of the nonhuman animal species. This approach, Francione asserts, would create new speciesist hierarchies that would consider certain non-human animals such as the great apes into a privileged group and continue to view others as mere objects that lack any moral significance. In addition, even for the animals that possess certain mental capabilities, the minimum or sufficient limit of capacity to be morally significant remains never clear. The criterium established for moral significance is a principle of similarity between nonhuman animals and human beings, that is a human likeliness; but what should be the extend of this similarity? Francione argues the critical concern regarding mind centered theories is a legitimate one, since all these theories are actually identical in establishing as a prerequisite condition that non-human animals possess the exact same cognitive capacities than humans to be morally equal.

Francione also questions the reason why mental capacities such as the self-recognition in a mirror or the use of language for communication are morally significant.

“The similar mind theory begs the moral question from the outset because it assumes that our abilities are morally more valuable than their abilities. There is, of course, no justification for this position other than that we say so and it is in our interest to do so.”⁶²

⁶¹ Ibid. p. 277

⁶² Gary L. Francione, *Op. Cit.* p.141

In this sense, claiming that a non-human animal can have a moral significance only insofar as it possesses certain special characteristics that are similar to human ones becomes highly controversial and problematical. Following Francione's emphasis, "The problem with this game of special characteristics is that nonhumans can never win"⁶³ because the degree of similarity or human likeliness requisited in order to be valued as a moral being is arbitrary.

Francione suggests that these kinds of approaches that value certain cognitive capacities should be abandoned altogether and be replaced by an approach that values instead sentience for moral and legal consideration.

1.5. Final Remarks

Darwin's theory of evolution and claim in favor of the existence of a continuous mind may indeed have challenged the anthropocentric paradigm. Yet, we can hardly assert that the post-Darwinian approaches to the animal question have challenged the Western philosophy tradition that predicates *logos* as a prerequisite of moral significance.

Logos was once a basis of human kinship that was coined by Stoics; further on, it became a prerequisite of social contracts in secular and liberal contract theories. Medieval Christian philosophers, such as St. Augustine and Thomas Aquinas adopted Aristotelian and Stoic theories. The Cartesian philosophy has also adopted the main theories on animals, they lack reason, they lack language so they lack moral significance.

⁶³ *ibid.* p. 140

I have quoted previously a passage from the Stoic philosopher Epictetus, in which he argues that if a donkey possessed a humanlike mind capable of reasoning, this would imply that humans have equal moral responsibilities toward that donkey. The approach of The Great Ape Project as well as that of other approaches which are based on similarities between human minds and minds of certain non-human species share the same idea and searches for certain cognitive or mental capacities or evolutionary bounds with non-humans.

This approach surely raises questions regarding the criteria of belonging to a certain species - humankind- to be a part of the moral community, but it also bases itself upon logocentric western tradition that feature reasoning and language as morally significant mental capacities and reproduce its supposed non-speciesist version instead of challenging the existing paradigm that bases being a member of the moral community on that capacities. This is a *slippery slope* that not only nonhuman animals might never win, but also that some humans might lose.

Throughout the chapter I observed the theories from old Greek philosophy to contemporary ethics and in these theories, the duty of justice that is owed to humans or moral significance of human beings are based on their rational capacities.

I also observed the attempts to extend the moral community to include nonhuman animals that shares same or similar rational capacities with humans.

Some of the criticisms to that attempts were based on the risk of endangering mentally disabled humans in the situations where the moral significance is not based on species membership, but mental capacities. That criticisms were claiming that, if we accept some nonhuman animals to

the moral community due to their mental capacities, we might have to exclude some humans from moral community due to their lack of those capacities.

Yet this criticism fails in its own terms and reveal the problem with the justification of moral elitism of humans with a reference to the mental capacities. This criticism implies that it is not the rational capacities that humans have but the species membership is what constitutes moral significance. Even though, the philosophers attempt to justify moral elitism that is based on species membership by making logical arguments based on mental capacities, this example itself shows that species membership is nothing but an arbitrary characteristic.

The theories on human kinship or human exception were mainly grounded on the basis of the intellectual superiority of humans. But, to be a member of a given specie or to possess certain mental capacities is not a valid reason to hold the position of a moral elite. Despite the fact that *logos* is deeply rooted in Western philosophy, it might be claimed that *logos* or the anthropomorphic considerations on intellectual faculties and capacities is not a legitimate prerequisite criteria for moral significance.

In the next chapter, I will examine the approaches that focus on sentience as a predicate to moral significance and show how some of these approaches were also influenced by the same Western tradition that emphasizes the superiority of *logos*.

2. Sentience and Nonhuman Animals

In the previous chapter, I primarily focused on the historical relationship between the formation and the valorization of logos and the moral status given to animals. I also inquired how this moral status was challenged by the Darwinian accounts which lead to the philosophical arguments on expansion of the sphere of moral concern to certain nonhuman animals that possess humanlike characteristics which are claimed to be related to the moral significance. At the end of this chapter, I argued that these arguments takes the moral significance that is attributed to the mental capacities for granted and by this way they are not challenging to the antropomorphic system is itself based on *logos*.

In this chapter, in order to challenge the views presented previously , I will primarily focus on utilitarian ideas that are constructed around the concept of sentience. Two utilitarian philosophies that I will primarily focus on are Jeremy Bentham's hedonistic utilitarianism from 17th century and Peter Singer's preference utilitarianism from 20th century. Even though Bentham and Singer are two thinkers from different historical eras, I intend to discuss their theories together because of the emphasis on the sentience in both of the philosophies. These two utilitarian thinkers consider sentience or the suffering of humans and nonhuman animals as a prerequisite for moral significance. After I present my observations on both of the theories, I also intend to address the limitations of utilitarian views and the connections between these limitations and the earlier framework.

Bentham is the founder of utilitarian philosophy and one of the most influential modern thinkers of political philosophy and philosophy of law. Bentham's philosophical standpoint argued against the link between *logos* and moral significance. In his famous quote on nonhuman animals, he says:

“The day may come when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor. It may come one day to be recognized, that the number of legs, the villosity of the skin, or the termination of the os sacrum, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason, or perhaps, the faculty for discourse?...the question is not, Can they *reason*? nor, Can they *talk*? but, Can they *suffer*?”⁶⁴

Jeremy Bentham's hedonistic utilitarian philosophy is based on the principle of utility which Bentham defines as a *principle which approves or disapproves of every action whatsoever according to the tendency it appears to have to augment or diminish the happiness of the party whose interest is in question: or, what is the same thing in other words to promote or to oppose that happiness.*⁶⁵

⁶⁴ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, Oxford: Clarendon Press, 1907 (reprint of 1823 edition).Ch.XVII§1 Footnote 122 Emphasis in original.

⁶⁵ Ibid p. 1

Bentham held the belief that acting on maximum utility -seeking for pleasure and avoiding pain- was part of human nature, but that the unquestioned beliefs and tendencies of asceticism (what he calls *superstitions*) held us back from living our nature. Bentham was a social reformer and his utilitarian moral project was committed to remove *superstitions* from moral thinking and to replace them with a rational model that would contribute to increase the ammount of happiness for all individuals. According to Bentham, the moral value of an act should not be judged by considering the motives or intentions of this act ; it should rather be estimated according to the consequences of this act, according to whether it causes happiness or not. Bentham's principle implies that pain is inherently evil and pleasure is inherently good, no matter whose pain or pleasure it is. From the individual and the societal perspectives, greatest happiness means an estimation of total pain and pleasure.

2.1. The Principle of Equal Consideration

Bentham's thinking upon sentience implies that when one decides whether to take or not a being's pain into consideration, this decision should not be made on the grounds that this being is rational or capable to speak (or not). According to Bentham, these are irrelevant criteria for the judgment of moral status. To estimate an act's moral value, we should consider any pain we might inflict on humans or nonhuman animals, and not doing that is not justifiable. Bentham provides arguments contrary to the earlier framework which considers nonhuman animals as mere *things* and does not take into consideration their suffering:

“Other animals, which, on account of their interests having been neglected by the insensibility of the ancient jurists, stand degraded into the class of things.”⁶⁶

Singer distinguishes his own approach of «preference utilitarianism» from Bentham’s hedonistic utilitarianism. Preference utilitarians are concerned with the satisfaction of preferences rather than experiences of suffering or happiness. According to Singer, pleasure is not the only inherently positive value since the satisfaction of preferences is also one, whereas the inherently negative value is the frustration of these preferences. Singer argues that by saying «*can they suffer?*», Bentham points to the capacity for suffering as a vital characteristic that gives a being the right to equal consideration.⁶⁷ He argues that Bentham holds suffering as not just a capability among others but the only capability that is both necessary and sufficient condition to be able to have interest in the sense that having a well-being that could get better off or worse off.

Singer gives the example of stone as a being that is not sentient⁶⁸, he argues that a stone has no interests because it does not suffer or take pleasure and nothing one does to a stone would affect the stone’s welfare⁶⁹. But unlike stones, human and nonhuman animals are sentient which means

⁶⁶ Ibid. Ch.XVII§1-IV Emphasis in original.

⁶⁷ Peter Singer, *Animal Liberation*. p 7

⁶⁸ Ibid p. 8

⁶⁹ Although Singer’s example of *stone* recalls Heidegger’s phrase ‘stone is worldless’ he never cites Heidegger or discuss his ideas on nonhuman animals. According to Heidegger, stone has no world, animals are poor in the world, they are deprived of the world and humans are world makers. (See. Martin Heidegger. *The Fundamental Concepts of Metaphysics: World, Finitude, Solitude*. trans. by William McNeill. Indiana: Indiana University Press, 2001, p. 289-90 §47)

Even though Singer uses stone to explain non-sentience, the example might be considered as problematic and unclear because of other characteristics of the stone. For instance besides not being

that they have the capacity to suffer and/or experience enjoyment, thus they possess the necessary and sufficient requirement to have interests and equal consideration; In this perspective, Singer remarks:

“If a being suffers there can be no moral justification for refusing to take that suffering into consideration. No matter what the nature of the being, the principle of equality requires that its suffering be counted equally with the like suffering-insofar as rough comparisons can be made-of any other being.”⁷⁰

Following Bentham’s principle of *each to count for one, and none for more than one*, Singer argues that the basic principle of equality is the principle of equal consideration of interests, which means to give equal weight in moral deliberations to the *like interests* of all those affected by an action. Singer argues that the principle of equal consideration is crucial because it prohibits valuing or devaluing others’ interests, depending on their abilities or other characteristics, apart from the characteristic of having interests. Singer explains how this principle works as such:

“The essence of the principle of equal consideration of interests is that we give equal weight in our moral deliberations to the like interests of all those affected by our actions. This means that if only X and Y would be affected by a possible act, and if X stands to lose more than Y stands to gain, it is better not to do the act. We cannot, if we accept the principle of equal consideration of interests, say that doing the act is better, despite the

sentient, stone is also not a living being. One might argue that it has no interest because it is not alive and because of that nothing can kill it.

⁷⁰ Peter Singer, *Animal Liberation*. p.8

facts described, because we are more concerned about Y than we are about X. What the principle really amounts to is: an interest is an interest, whoever's interest it may be.”⁷¹

Singer argues that, on this point of view, race or sex would be irrelevant characteristic for the consideration of interests because, for instance, it would be both irrelevant to ignore someone's pain because of her race or to ignore her pain because of the day she was born. Further more, he states that the principle of equal consideration of interests is not restricted to human interests ; it includes interests of all sentient beings. He claims that the fact that nonhuman animals' interests are not taken into consideration is a prejudice which is not different from a white slave owner's who commits prejudices against the interests of persons from other races.⁷²

Singer's approach stands against those -such as the ones discussed on previous chapter- that would acknowledge the moral significance of a being's suffering or interests only if this being is rational or intelligent; Singer claims that establishing the boundary of equal consideration upon nothing else but sentience is arbitrary, and emphasizes that mental capacities do not form a boundary in the case of human beings. In Singer's view, although certain animals have the same or a similar mental capacity than human beings with serious mental disabilities, we are refusing to consider and acknowledge the interests of these animals while we take into consideration the interests of humans with the same or similar mental capacities ; the explanation for this unequal consideration is simply based on the difference of species. This is an arbitrary characteristic for consideration. Since this arbitrariness functions in the same way than in the case of skin color for

⁷¹ Peter Singer, *Practical Ethics*, p. 20.

⁷² Ibid. 49

racists or sex for sexists, he coins the term *speciesism*⁷³ to designate this sort of discrimination.

Singer define « speciesism » as such :

“Racists violate the principle of equality by giving greater weight to the interests of members of their own race when there is a clash between their interests and the interests of those of another race. Sexists violate the principle of equality by favoring the interests of their own sex. Similarly, speciesists allow the interests of their own species to override the greater interests of members of other species.”⁷⁴

By coining the term « speciesism » and drawing connections between sexism and racism, Singer also draws connections between what he calls the *animal liberation movement* and other liberation movements (such as women's liberation movement or black liberation movement).

Singer emphasizes that equal consideration does not mean equal treatment or equal interests. For instance, it is not speciesist to say that humans have interest in university education but pigs do not, because this difference between interests is not based on a difference between species but based on a difference between the capacities of the individuals of each specie and their needs. The Equal consideration of suffering might also mean (or lead to) different treatments; Singer exemplifies this as such :

“If I give a horse a hard slap across its rump with my open hand, the horse may start, but it presumably feels little pain. Its skin is thick enough to protect it against a mere slap. If I slap a baby in the same way, however, the baby will cry and presumably does feel pain, for the baby’s skin is more sensitive. So it is worse to slap a baby than a horse, if both

⁷³ The term *speciesism* was introduced for the first time by Richard Ryder in 1971, in his article "Experiments on Animals" in Stanley Godlovitch *et. al.* (eds.) *Animals, Men, and Morals: an Enquiry into the Maltreatment of Non-humans*. New York: Taplinger Publishing Company, 1972.

⁷⁴ Peter Singer, *Animal Liberation*, p.9

slaps are administered with equal force. But there must be some kind of blow – I don't know exactly what it would be, but perhaps a blow with a heavy stick – that would cause the horse as much pain as we cause a baby by a simple slap. That is what I mean by 'the same amount of pain', and if we consider it wrong to inflict that much pain on a baby for no good reason then we must, unless we are speciesists, consider it equally wrong to inflict the same amount of pain on a horse for no good reason."⁷⁵

The principle of equal consideration but unequal treatment leads to the conclusions about killing nonhuman animals and that are need to be discussed in detail. We might agree with Singer on the point that if nonhuman animals are sentient in the sense that they are able to suffer, this means that they have interest in not suffering. But do they also have an interest in not to be killed ? On the following section I will focus on this question and inquire utilitarian answers on this question.

2.2. The Killing of Nonhuman Animals in question

In his book *Animal Liberation*, Singer describes several methods of modern animal agriculture, methods of scientific experiments on nonhuman animals and animal use in entertainment business. He argues that these forms of animal use by human beings cause extensive amounts of suffering inflicted on billions of nonhuman animals, and states that most of these uses are trivial. Singer points that, if animal sentience is valued morally, this would mean that most of the animal experimentations cannot be justified; in that perspective, factory farming that causes enormous pain for nonhuman animals should be abolished and individuals should stop consuming and asking for animal meat. Singer gives his support to a vegetarian diet which, he claims, "underpins, makes consistent, and gives meaning to all our other activities on behalf of

⁷⁵ Peter Singer, *Practical Ethics*, p. 51

animals.”⁷⁶ He also argues that certain ways of production of other animal products should be regulated because they cause unacceptable amounts of suffering to nonhuman animals.

Singer does not argue for *vegetarianism* as a deontological obligation. He says that he rejects all forms of *moral absolutism* and claims that his position of vegetarianism is certainly a utilitarian one. In fact, Singer addresses the utilitarian arguments that might be claimed by others against his vegetarian position as such:

*“There are three ways in which a utilitarian condemnation of the treatment of farm animals might fall short of entailing that we should switch to a vegetarian diet. Firstly, if the objection is not to all raising and killing of animals for food, but only to particular methods of raising and killing them, it would seem that we can avoid the necessity of vegetarianism by restricting our diet to the flesh of animals not reared or killed by methods involving suffering. Secondly, one might argue that, bad as factory farming is, the consequences of abolishing it are not clearly better than the consequences of continuing it. And thirdly, those who admit that it would be better if factory farming were abolished may deny that there is any utilitarian connection between this conclusion and the obligation to avoid consuming the products of factory farms.”*⁷⁷

As a response to the second utilitarian argument against vegetarianism, he argues that any negative consequences that would be caused by the abolishment of factory farming (such as, negative consequences that would cause for the workers in animal industry like massive job losses, economic instability) would be outweighed by its benefits for both nonhuman animals and humans when we consider the ongoing negative consequences of factory farming on

⁷⁶ Peter Singer, *Animal Liberation*, p. 159

⁷⁷ Peter Singer, "Utilitarianism and Vegetarianism." *Philosophy & Public Affairs*(1980): 325-337, 331

environment, human health and world hunger. He also remarks that the loss of utility would only happen once, whereas the benefits of the abolishment of factory farming would have long term effects. As a response to the third argument, Singer claims that the refusal of animal meat by a great amount of consumers would be a long term economic boycott which would have an impact upon supply and demand chains and which would force factory farms to reduce their production gradually.

Singer's response to the argument on killing seems more complicated and blurry. This blurriness arises because of his ideas on killing; indeed, his arguments in favor of vegetarianism or animal interest does not mean that he claims it is a moral wrong to kill nonhuman animals. To understand Singer's position on the issue of killing nonhuman animals in utilitarianism, his own conception of preference utilitarianism needs to be addressed in more detail.

Bentham clearly pointed that the consideration for nonhuman animal suffering does not mean that we should not kill animals for nutrition purposes or make use of their bodies as long as it gives us pleasure. As Bentham claims:

"If the being eaten were all, there is very good reason why we should be suffered to eat such of them as we like to eat: we are the better for it, and they are never the worse. They have none of those long-protracted anticipations of future misery which we have. The death they suffer in our hands commonly is, and always may be, a speedier, and by that means a less painful one, than that which would await them in the inevitable course of nature. If the being killed were all, there is very good reason why we should be suffered to kill such as molest us: we should be the worse for their living, and they are never the worse for being dead. But is there any reason why we should be suffered to torment

them? Not any that I can see. Are there any why we should *not* be suffered to torment them? Yes, several."⁷⁸

Bentham argues that it is morally wrong to inflict suffering on animals for trivial reasons. Yet, it is acceptable to kill them if they will be eaten, although we should still seek for ways that can reduce the suffering at the moment of killing. Further on, Bentham argues that the killing of an animal by humans is likely a less painful killing than if its death happened in nature. For Bentham, the killing of a nonhuman animal is not counted as *inflicting suffering* or as a *morally wrong act* per se, since animals are viewed as beings which cannot project themselves into future or which lack the sense of future because of their inability to abstract reasoning. Bentham did not regard the killing of nonhuman animals as a harmful act against them as long as it does not cause pain at the moment of killing; in addition, the pain inflicted can be justified due to the positive consequences. The situations when the animals are killed for the use of their flesh as food is an example to that: The pain that would occur during the killing could be justified by considering the pleasure it will cause for those who will consume the flesh.

After Bentham, Stephens argued that nonhuman animals have the strongest interest in the demand for meat :

"The pig has stronger interest than anyone in the demand for bacon. If all the world were Jewish, there would be no pigs at all. He has to pay for his privileges by an early death; but he makes a good bargain of it."⁷⁹

⁷⁸ Jeremy Bentham, *op. cit.* Ch.XVII§1 Footnote 122. Emphasis in original.

⁷⁹ Leslie Stephens, *Social Rights and Duties: Addresses to Ethical Societies*. Vol. 1. New York: Macmillan & Co., 1896

This argument is called the «replaceability argument»; according to this argument, if we consume meat and make other uses of animals, we are responsible for bringing an animal to life and for the pleasures that the animal benefits before being killed; and even when we kill one animal, we can replace it with another: as long as the latter has the same welfare as the former, total amount of happiness that is shared by the animals still alive remains unbroken.

In the first edition of *Practical Ethics*, Singer maintained the view that it is a logical fallacy to debate about the interests of a non-existing being to be brought to life or to discuss about harming a non-existing being; but in the third edition of his book, admitting that he has changed his mind on the subject, he expresses his doubts about whether the loss of utility –loss of the pleasures that animals might benefit if their killing would not occur- caused by the killing of nonhuman animals can be compensated by the birth of same number of new nonhuman animals which would have equally pleasant lives.⁸⁰

Singer's defense of vegetarianism or animal interests does not lead to the claim that it is morally wrong to kill animals. In both *Animal Liberation* and *Practical Ethics*, he argues against what he calls the « sanctity of life argument » as he defines doctrine of the special significance of taking a personal life.⁸¹ He remarks that the belief of the « sanctity » of human life is a speciesist approach and asserts that if we are to claim a right to life in general, we should look for better qualities or principles than the species boundary :

“While self-awareness, the capacity to think ahead and have hopes and aspirations for the future, the capacity for meaningful relations with others and so on are not relevant to the

⁸⁰ Peter Singer, *Practical Ethics*, p. 108

⁸¹ Ibid. p. 100

question of inflicting pain-since pain is pain, whatever other capacities, beyond the capacity to feel pain, the being may have-these capacities are relevant to the question of taking life. It is not arbitrary to hold that the life of a self-aware being, capable of abstract thought, of planning for the future, of complex acts of communication, and so on, is more valuable than the life of a being without these capacities.”⁸²

As I have already mentioned it in the previous chapter, Singer refers to contemporary ethology researches to support the idea that certain nonhuman animals -bonobos, orangutans, elephants and some birds.- possess mental capacities that are similar to those of humans, such as the capacity to make plans for the future, as well as those of symbolic communication and self-awareness.

In Singer’s view, considering the life of nonhuman animals that possess mental capacities that are similar to those of humans, as more valuable than that of other nonhuman animals who lack that capacities would not constitute a speciesist approach, because it is not an arbitrary discrimination that is based on the membership to a given specie; but it constitutes an unequal treatment that is justified with interests that are evoked by these capacities such as to be able to make plans for the future, to be able to form symbolic communication and self-awareness. Singer argues that since some nonhuman animals –such as bonobos, orangutans, elephants- are rational and self-conscious beings, aware of themselves as distinct entities with the perception of past and future, they can be classified as « nonhuman persons ».⁸³ He adds that even though it is not yet scientifically approved, it is likely that dogs, cats, pigs and mammals in general are self-aware

⁸² Peter Singer. *Animal Liberation* p. 20

⁸³ Peter Singer. *Practical Ethics*, p. 94

animals and because some birds are known to be self-aware it is possible that chickens might be self-aware too, but admits on the other hand that the self-awareness of fish remains unclear.

Singer says that a preference utilitarian can distinguish between self-aware individuals leading their own lives and willing to preserve it, and those with no future-directed preferences. He calls the latter « merely conscious beings ». According to him, beings which lack a conception of themselves as living beings with a future are impersonal. Since they have no future-directed preferences, killing them painlessly and instantly would not constitute a wrong act for any of their preferences ; in other words, it would not mean doing a personal wrong against them.

Singer establishes a distinction between self-conscious beings and merely conscious beings ; even though he agrees that it is hard to determine for sure which nonhuman animals are not self-conscious, he asserts that it is reasonable to think that some of them would enter the category of « merely conscious beings »⁸⁴. « Merely conscious beings » have an interest in not suffering because they are capable of feeling pain, but they have no interest in not to be killed. Their experiences starts with birth and ends with death, yet ceasing to experience does not constitute a loss for them since they have no desire for future experiences.

With this distinction, Singer's answer to the question of replaceability is that; only conscious beings are replaceable and self-conscious beings are not. He emphasizes that the replaceability of « merely conscious beings » does not mean that their interests do not count, they have an interest in not to suffer and to have the most pleasure possible as long as they keep on living, yet killing

⁸⁴ Ibid. p. 85

them painlessly is not a harm to them and it is possible to replace their pleasure with pleasure of other beings.

Singer also argues that the argument of replaceability fails indirectly because any nonhuman animal brought to life for the purpose of human consumption will have a life full of suffering in the modern agricultural settings. In that perspective, killing a sentient being in order to fulfill human desires to take pleasure from the consumption of its dead body would lead to consider sentient beings as means to human ends, and this status of mean might end up treating them in painful ways. He explains:

“In time we will come to regard pigs, cattle, and chickens as things for us to use, no matter how strong our compassion may be; and when we find that to continue to obtain supplies of the bodies of these animals at a price we are able to pay it is necessary to change their living conditions a little, we will be unlikely to regard these changes too critically. The factory farm is nothing more than the application of technology to the idea that animals are means to our ends.”⁸⁵

This argument Singer makes depends on the assumption that as long as humans kill animals to consume their flesh, even when they do it in ways that does not cause pain or cause very low amounts of pain, it would still means that animal bodies are regarded as objects. Even in the settings where humans are killing animals in painless ways or as painless as possible, he assumes that, since they would still be treating bodies of nonhuman animals as objects, there will always

⁸⁵ Peter Singer, *Animal Liberation*, p 160

be a possibility of (re)establishment of the conditions of modern factory farms, which he thinks, would cause painful lives and deaths for nonhuman animals.

In his article named « Utilitarianism, Vegetarianism and Animal Rights », Tom Regan argues that Singer's argument for vegetarianism remains weak as long as it is constructed as a utilitarian argument.⁸⁶ He argues that even though Singer claims that the equal consideration of animal interests implies on a practical level that human beings stop consuming animal meat, Singer fails to give a utilitarian basis for his objections against the consumption of meat. According to him, Singer's argument for vegetarianism might not be a utilitarian one:

“Of course, if Singer were to insist that, whatever the consequences of treating animals differently, the fact remains, that treating them as they are treated now is a clear violation of their rights and so ought to be stopped-were he to insist on this, apart from considerations about long-term consequences, then he would have a decidedly different argument, one that did not turn out, after all, to be utilitarian.”⁸⁷

Francione also claims that, the introduction of the term « speciesism » in Singer's consequentialist theory creates a tension; because Singer “[...]argues both that we ought to avoid speciesism irrespective of consequences and that the rightness or wrongness of particular acts is dependent only on the consequences of actions.”⁸⁸ According to Francione, it could even be said that with Singer's theory some sorts of nonhuman animal use might be ruled out, while others will still be allowed due to the fact that they are beneficial for humans; since Singer is a

⁸⁶ Regan, Tom. "Utilitarianism, Vegetarianism, and Animal Rights." *Philosophy & Public Affairs* (1980): 305-324 p. 318

⁸⁷ Ibid.

⁸⁸ Gary L Francione. "Animal rights theory and utilitarianism: Relative normative guidance." *Between the Species* 13.3 (2003): 5 p. 17

consequentialist, he does not have a theoretical ground to assert that institutionalized exploitation is always wrong. In Francione's view, this is in contradiction with the rejection of speciesism. Regan elaborates a criticism of Singer's approach on the grounds that the equal consideration of interests remains insufficient to overcome speciesism:

“It is not enough to count the interests of, say, pigs and children equally, if we are to avoid speciesism; it is also essential that we treat both fairly *after* we have done this, something that is not guaranteed merely by respecting the equality principle.”⁸⁹

Regan argues that to form a consistent argument for vegetarianism, we should go beyond utilitarianism. He claims that utilitarianism would imply that, in practice, one should not stop eating meat but should accept to pay a certain price for the meat that is produced in certain conditions. Singer disagrees with Regan and claims that the aforementioned quote from *Animal Liberation* is indeed a « slippery slope » argument, not a Kantian one.⁹⁰ He explains what his argument means as such :

“[...]no matter how humane our original intentions [are], as long as we continue to eat animals there is a danger of our sliding back into the methods of treating animals in use today”⁹¹

Yet, in a later edition of his book *Animal Liberation* (2002), Singer describes a situation in which animal flesh is consumed and he would *respect* :

“At the most, the argument from the benefit of bringing a being into existence could justify continuing to eat free-range animals (of a species incapable of having desires for

⁸⁹ Tom Regan, *The Case for Animal Rights*, University of California Press, 1983, p.231

⁹⁰ Peter Singer, “Utilitarianism and Vegetarianism”, p. 332

⁹¹ Ibid.

the future), who have a pleasant existence in a social group suited to their behavioral needs, and are then killed quickly and without pain. I can respect conscientious people who take care to eat only meat that comes from such animals - but I suspect that unless they live on a farm where they can look after their own animals, they will, in practice, be very nearly vegetarian anyway”⁹²

And in the 2011 edition of *Practical Ethics*, his argument on vegetarianism is based on the uncertainty of the sources of animal products in urban areas and treatment. The argument seems to be a call for an economic boycott instead of a moral statement:

“In any case, the important question is not whether animal products could be produced without suffering, but whether those we are considering buying were produced without suffering. Unless we can be confident that they were, the principle of equal consideration of interests implies that their production wrongly sacrificed important interests of the animals to satisfy less important interests of our own. To buy the results of this process of production is to support it and encourage producers to continue to do it.”⁹³

Singer suggests that, in any irreconcilable conflict between a human and a self-conscious non-human animal, it is not speciesist to override interests of the nonhuman animal, because it would give priority to the lives of those with a biographical sense of their life and a stronger orientation towards the future. In practice, this means that it is okay for certain people to kill any nonhuman animal to eat (regardless of whether the animal is self-conscious) if it is hard for them to find non-animal food. This also means that, even though he objects to most of animal

⁹² Peter Singer, *Animal Liberation*, p. 229-230

⁹³ Peter Singer, *Practical Ethics*, p. 56.

experimentations on science, he would support any experiment on nonhuman animals that would provide enough benefits to humans.

2.3. The Limits of Utilitarian Ethics for Nonhuman Animals

In the previous chapter, I have discussed the ontological and ethical accounts that hold *logos* as a criterion required for moral significance and come to the conclusion that reasoning or meaningful speech are not relevant prerequisites to be included in the sphere of moral concern. Utilitarianism is one of the first philosophical traditions which claims for the establishment of direct moral duties towards animals. Singer's own utilitarian approach to the question of the moral status of nonhuman animals is one of the fundamental approaches among animal ethics modern studies. Yet, Singer's concept of preference utilitarianism has crucial limitations. First, even though the utilitarian approach is grounded on sentience, mental/cognitive capacities still play an important role in ethical questions such as animal killing. Secondly, since the utilitarian approach cannot provide a normative guideline regarding the treatment of nonhuman animals, it is difficult to justify positions such as vegetarianism and the protection of nonhuman animal interests when competing human demands are involved.

Singer's view on the moral status of nonhuman animals is grounded on the principle of equal consideration which leads to taking nonhuman animal interests into consideration. Singer claims that in order to diminish animal suffering, most of us must avoid consuming animal flesh (meat) (except the cases which a nonhuman animal, that lacks the capacities to be able to make plans for the future, killed painlessly after a happy life), and practices such as vivisection (except in the circumstances which vivisection is needed for saving human lives or diminish the suffering of

sentient beings) and factory farming should be abolished due to the important suffering they cause. But when it comes to killing nonhuman animals or any possible interests beyond that of non suffer, Singer claims for the necessary existence of further cognitive or mental capacities. According to Singer, only nonhuman animals that possess humanlike mental capacities (such as the capacity of projection and anticipation of future to be able to make plans for the future, the capacity of to be able to form symbolic communication) can be considered as having an interest in continuing to live or in not being killed. And even when the interests of those animals are at stake, Singer suggests that human interests are always superior to those of nonhuman animals since humans have a stronger « biographical sense of their own lives » and a stronger sense of projection towards the future. «Biographical sense of a life» is a term, Singer borrows from Gary Verner, that refers “to the ability of humans to tell stories about their lives, weaving narratives that bring together where they have come from, where they are now and what they hope for in the future.”⁹⁴ Having a biographical sense of life is highly related to the ability to use language, and the way it is described is the description of the way humans use language to reflect on their own lives. Singer’s argument to say that interests of beings that have a biographical sense of life is superior to those who do not have it is estimating values of the interest due to a characteristics only humans have. This point recalls Gary L. Francione’s criticism of the Great Ape Project that I discussed on the previous chapter; he argues that amount of similarity to be counted as moral equals is arbitrary and when the moral significance (or superiority) is estimated by the mental or physical human characteristics, nonhuman animals will never be similar enough to be counted as equals in moral sense. If we agree with Singer, nonhuman animals will be considered as equal members of the moral community if only they actually share exactly the same mental and

⁹⁴ as quoted in Peter Singer. *Practical Ethics*. p. 103

physical characteristic as human, and have them at the same level. But, that seems to mean that they need to be human to be considered as moral equals.

Although the utilitarian emphasis on the moral value of sentience challenges the views which exclude nonhuman animals from the sphere of moral concern, Singer seems to bring humanlike capacities into question whenever the discussion goes beyond the question of the diminishment of the suffer caused by institutionalized animal agriculture and animal experiments that are not needed in order to save human lives. Yet, the amount of suffering remains a relative term, since it is not clear how much suffering can be acceptable. And for most cases, Singer claims, killing an animal does not constitute harm to animals. This point makes Singer's arguments for vegetarianism quite unclear, as he himself approves the ways he assumes to be *humane* to consume animal meat. He also argues that even though most of the animal experimentations are simply replaceable with non-animal alternatives or could be dismissed, in some cases, in order to save thousands of humans, it would be acceptable to apply vivisection on few nonhuman animals.

According to Singer, arguing that it is not morally wrong to kill merely conscious animals as long as there is no suffering involved is not a speciesist approach, because this assertion is not grounded on a species centered difference, but rather on a difference of interests ; that are evoked by differences of mental capacities between humans, nonhuman persons and nonhuman animals who are merely conscious. Yet, as I have discussed it in the previous chapter, the moral elitism of humankind or *speciesism* is based on mental capacities such as symbolic communication and rational thinking in the first place. Although, Bentham's formula "the question is not, can they *reason*? nor, can they *talk*? but, can they *suffer*?" is quoted numerously, when it comes to

questions of debates such as “Is it acceptable to kill nonhuman animals?” or “Is overriding nonhuman animal interests morally acceptable if to do so would be beneficial for humans?”, Singer formulates these, contradictorily, as such “Can they reason?” or “Can they speak?”. This means that human life is more valuable than the nonhuman animal one; and the priority that is given to human life is being justified by the means of a difference in mental capacities. In this perspective, this approach does not seem radically different from the anthropocentric Western philosophical tradition.

Regan argues that Singer’s utilitarian arguments for vegetarianism is not well grounded and not justified, and adds that in order for animal interests to be protected, the approach should be based on rights and assert that whatever the consequences of treating animals differently is, the fact remains, that treating them as they are treated now is a clear violation of their rights and that is why it ought to be stopped.⁹⁵ Francione also argues that the equal consideration principle can only be applicable if one basic right is recognized for all sentient beings; this right is the right not to be treated as a property.

Despite limitations, Singer’s theory provides three main premises which are also premises of Francione’s approach to animal rights that will be discussed in the next chapter:

1. Nonhuman animals are sentient beings.
2. Being sentient means to have interests.
3. Interests should be considered equally.

⁹⁵ Tom Regan, “Utilitarianism, Vegetarianism and Animal Rights”, p.318

In the next chapter, I will question whether a theory that acknowledges these three premises and that grounds itself on a discourse upon rights (protective moral shields of certain interests) can overcome the limitations that I have presented above. To conduct this inquiry; I will focus on the theories brought by Tom Regan and Gary L. Francione.

3. Nonhuman Animal Subjectivity and Personhood

In the previous chapters, I have traced in Ancient Greek philosophy the origins of the logocentric Western tradition that has established logos as a prerequisite for moral significance; further on, I have examined the utilitarian approaches of Bentham and Singer which claim that it is sufficient for a being to be sentient in order to be considered morally. In the end of the second chapter, I argued that Singer's theory has certain limitations and I presented Regan's arguments on the necessity of a theory of rights to provide protection for the claims of nonhuman animal interests not to be suffered.

Following this background, I intend to discuss in this chapter two different theories of animal rights ; first I will examine Tom Regan's theory which is based on the concept of « subject-of-a-life » and then focus on Francione's theory which rather emphasizes « nonhuman personhood » and sentience.

In his moral theory Regan argues for the concepts of moral rights as he defines:

“Possession of moral rights (by which, again, unless otherwise indicated, I mean negative moral rights) confers a distinctive moral status on those who have them. To possess these rights is to have a kind of protective moral shield, something we might picture as an invisible No Trespassing sign.”⁹⁶

Unlike legal rights –rights that are owed by laws by legislation-, moral rights defined as prelegal and universal rights that are owed even when they are not recognized by the law. Regan

⁹⁶ Tom Regan, *Animal Rights, Human Wrongs: Introduction to Moral Theory*, Maryland : Rowman & Littlefield Publishers, 2003. p. 26

emphazise that his theory is about *negative rights*; rights not to be harmed or non-interference contrary to positive rights that are rights to be helped or assisted.

As I already stated on previous chapter, Francione's moral theory recognizes three premises offered by Singer : Nonhuman animals are sentient beings ; being sentient evokes interests ; interests should be considered equally. But he also argues that for equal consideration, nonhuman animals should be recognized as moral persons that possess one negative right not to be treated as property of others. He defines rights as a tool to protect interests in general:

“[...]a right is a particular way of protecting interests. To say that an interest is protected by a right is to say that the interest is protected against being ignored or violated simply because this will benefit someone else.”⁹⁷

Even though both of the definitions share a common ground as they both define rights as protective means, they differ in several ways that I will explain further in following sections. To summarize briefly : First ,while in Regan's theory in order to have moral rights it is required to have cognitive abilities that make it possible to have subjective awareness, Francione's theory requires merely sentience for possession of moral rights. Second , while Regan's theory derives from a Kantian and liberal background, Francione's theory that is based on the recognition of the basic right not to be treated as property derives directly from principle of equal consideration. Francione's animal rights view implies that, even one does not endorse a rights theory in general, as long as one accepts that nonhuman animals are not mere *things without any moral significance* one *must* stop treating them as mere resources.

⁹⁷ Gary L. Francione, *Introduction to Animal Rights: Your Child or the Dog*, Philadelphia, PA: Temple University Press, 2000 p. xxvi

3.1. Animal Rights and The Concept of « Subject-of-a-life »

Regan presents the term « subject-of-a-life » as a response to a lexical gap he claims to exist. According to him, this gap originates and derives from the dichotomy established by Kant, in his moral theory, between persons and things. In building a sharp distinction between persons and things, Kant claims that a « person » is a being who has moral obligations as well as moral rights and that in order to be a person, it is required to be a rational being. In addition, Kant defines a person as an end in itself, in opposition to a « thing » that he defines as means for the end of a person:

“Beings whose existence depends not on our will but on nature have, nevertheless, if they are not rational beings, only a relative value as means and are therefore called things. On the other hand, rational beings are called persons inasmuch as their nature already marks them out as ends in themselves.”⁹⁸

Kant establishes a direct relationship between being a person and being rational and argues that those who lack rationality are also deprived of value except values that are conditioned by inclinations and needs.

In Kant’s view, one must regard oneself and other persons (rational beings) as ends in themselves and consequently, not treat them as mere means to an end:

“Now I say that man, and in general every rational being, exists as an end in himself and not merely as a means to be arbitrarily used by this or that will. He must in all his actions, whether directed to himself or to other rational beings, always be regarded at the same time as an end. All the objects of inclinations have only conditioned value; for if there

⁹⁸ Immanuel Kant, *Grounding for the Metaphysics of Morals* [3 ed.]. trans. James Ellington. Indiana : Hackett Publishing, 1993, 428

were not these inclinations and the needs founded on them, then their object would be without value.”⁹⁹

Kant limits the set of individuals who are morally valuable to humans who are persons, meaning individuals who possess mental capacities that are required to be rational and autonomous. Since nonhuman animals do not count as rational beings, Kant classifies them in the category of *things*¹⁰⁰. Regan claims that this community of moral persons also excludes nonhuman animals and humans who are not *rational* such as newborn babies and children.. Kant’s concept of « person » is restrictive and, Regan argues, covers a minority of humans, but it is not sufficient to replace this term with *human* in order to include all humans in the « person » category. To overcome Kant’s dichotomy between things and persons, Regan coins the term « subject-of-a-life » which he explains as such :

“We bring to our lives the mystery of consciousness. Never satisfactorily explained by philosophers or scientists, this fact remains: we are not only in the world, we are aware of it, and aware, too, of what transpires “on the inside,” so to speak, in the realm of our feelings, beliefs, and desires. In these respects, we are something more than animate matter, something different from plants; we are the experiencing *subjects-of-a-life*, beings with a biography, not merely a biology. We are *somebodies*, not *somethings*.”¹⁰¹

Regan’s views and arguments upon regarding the question of which beings can be considered as « subjects-of-a-life » has varied through time. In his book *Case for Animal Rights*, he claims that

⁹⁹ Ibid, 428

¹⁰⁰ Immanuel Kant, *Lectures on Ethics*. ed. and trans. Peter Heath. Cambridge : Cambridge University Press, 1997 p. 156

¹⁰¹ Tom Regan, *Animal Rights, Human Wrongs* p. 80 (emphasis in original)

all mammals of a year or more of age and not profoundly mentally retarded or otherwise quite markedly mentally impoverished (e.g. permanently comatose) to be considered as « subjects-of-a-life »¹⁰². Regan adds that that some non-mammal animals can also possess mental capacities similar to these mammals and it is possible that they also might be subjects of a life. In *Animal Rights, Human Wrongs*, he says : “At least in the case of mammals and birds, then, the conclusion we reach is simple: as a matter of fact, these animals, as is true in our case, are subjects-of-a-life”¹⁰³, he also argues that there is a strong basis that allows to include fish in the category of « subjects-of-a-life », yet he chooses to restrict this category to the least controversial cases which are mammals and birds.¹⁰⁴

Regan emphasizes that, unlike inanimate objects or living beings without consciousness, *subjects-of-a-life* are not merely biology but also a biography. To be a biography means to have an *inside*. It is a unique state of being and it is different from being a mere animate object or a living being without any consciousness. This formulation recalls Thomas Nagel’s thought experiment in *What is it like to be a bat ?*¹⁰⁵ Nagel proposes that most of the nonhuman animals have conscious experiences and those experiences are unique to them. He argues that it is not logically possible to know what it is like to be another being, but still, there is a thing that we call *to be a bat*. To be conscious is having unique experiences and having a biography, to be *someone*.

On the contrary of utilitarian views that value the *interests of individuals*, a theory of rights values *the individuals who have interests*. In this case, it is the persons themselves, instead of «intrinsically valuable» things such as the positive or negative feelings they experience, who

¹⁰² Tom Regan, *Case for Animal Rights*, University of California Press, 1983, p. 78

¹⁰³ Tom Regan, *Animal Rights, Human Wrongs*, p. 93

¹⁰⁴ Ibid p. 37

¹⁰⁵ Thomas Nagel. "What is it like to be a bat?." *The philosophical review* (1974): p. 435-450.

possess a fundamental moral value. Regan uses the concept « inherent value » to designate the value of individuals who have interests. The value this concept refers to, Regan says, is similar to what Kant designates to persons. By introducing the concept of *inherent value*, Regan contrasts his views with utilitarian views that regards sentient beings as mere receptacles of instinsincky valuable experiences and argues that, inherent value of individuals that are subjects-of-a-life are not reducable to the total of the instrinsic values of their experiences. By this view, we cannot determine that the individuals who have more plesant lives have greater inherent value than those who have less pleasant lives. Regan argues that, all animals that are subjects-of-a-life have equal inherent value, even when their experiences might have unequal instirincic value. This means that, whatever experiences subjects-of-a-life have, those experiences do not change the value they own regardless of any of those experiences.

According to Regan, the inherent value beings have bring forth the direct duty of respect. Regan emphasizes that the duty of respect is the central tenet of his moral theory. He defines and explains this specific « duty » as such :

“[...]duty of respect, by which I mean the following: Those individuals who possess inherent value are owed the direct duty of respectful treatment. The reverse is true as well. Those individuals who are owed the direct duty of respect possess inherent value. As for the duty of respect, the requirement is simple and, again, Kantian in spirit. Individuals who have inherent value are never to be treated as if they were of instrumental value only. Whenever this occurs, whenever they are treated “merely as

means,” as if they had the value of things, these individuals are treated with a lack of respect.”¹⁰⁶

The duty of respect is a moral principle requires that we ought to treat those who owns inherent value in ways that respect their value. This means that we should never treat beings with inherent value as mere instruments for our ends, to reduce beings with inherent value to a mere instruments would be disrespectful to them. This also means that individual who possess inherent value ought not to be interfered, harmed or killed. This principle is more than *Kantian in spirit*, while it follows Kant’s view that one must regard oneself and other persons (rational beings) as ends in themselves and consequently, not treat them as mere means to an end ; it replaces the term persons with the term *beings with inherent value*.

Following this explanation, Regan introduces his definition and conception of morally right acts: “Acts are right when inherently valuable individuals are treated with respect, wrong when they are treated with a lack of respect.”¹⁰⁷ In this formula, the inherent value of individuals is understood as a value that is categorically distinct from any instrumental value that things may be endowed with, and the duty to treat others with respect means that individuals who are « inherently valuable » ought to be treated in ways that do not alter or reduce their value to being mere means.

Regan establishes a distinction between « moral agents » and « moral patients ». Moral agents are rational and autonomous beings who understand moral obligations and freely choose to or fail to choose to act morally. Because of this ability, it is fair to hold them morally responsible for

¹⁰⁶ Tom Regan, *Animal Rights, Human Wrongs*, p.68

¹⁰⁷ Ibid. p.68

their actions. The term agency refers to the awareness of rational being about the action ; moral agents are those who have the abilities to understand moral principles and contemplate on what is morally right to be done, and having freedom to whether choose to do it the way morality as they conceive it requires.¹⁰⁸ Regan assumes that adult humans who have no mental disabilities that would restrain understanding morality or acting freely are moral agents. He also notes that, moral agents are also get affected by the acts of other moral agents. The acts of moral agents affect and/or involve each other. This, Regan argues constitutes a « *moral community*».

Moral patients are those who have inherent value but lack the abilities that would enable them to control their behaviour in ways that would make them morally accountable for what they do.¹⁰⁹ It is possible that they can act in ways that would be detrimental to the welfare of moral agents or other patients, but it is not possible for them to reflect or understand the moral value of their act. Even when their acts cause serious harm on other's welfare, it is not possible to say that they did what is wrong. Only the actions of moral agents can be classified as right and wrong actions. Even though moral patients cannot do right and wrong actions, they still might get affected by the act of other moral patients and moral agents.

Contrary to Kant who states that the direct moral duties are solely owed to the ones who are moral agents whereas « indirect moral duties »¹¹⁰ might be owed to those Regan calls moral

¹⁰⁸ Tom Regan, *Case for Animal Rights*, 151

¹⁰⁹ Ibid, 152

¹¹⁰ For instance, Kant argues that being kind to animals would make persons better in a moral perspective, whereas persons who act inhumanely against nonhuman animals might end up acting cruel against humans too; therefore, it is a moral duty to be kind to nonhuman animals, but it is not a moral duty

patients, Regan argues that since both « moral agents » and « moral patients » have equal inherent value and can suffer, they can get positive or negative feelings from their experiences and that they experience death as a loss , there is no reason to deny direct moral duties towards moral patients.

In that perspective, Regan defines the moral community as such :

“[...]comprising all those individuals who are of direct moral concern or, alternatively, as consisting of all those individuals toward whom belongs to the moral agents have direct duties.”¹¹¹

This definition includes all subjects-of-a-life, whether they are human or not, to the moral community.

The practical implications of this theory of rights brings us to the conclusion that it is morally wrong to use most if not all of the nonhuman animals (those that are considered as « subjects-of-a-life ») as means. This implies that it is morally obligatory not to consume the flesh of these « morally valuable » animals as food and not to lead experiments on these animals, even if these experiments would make contributions to human knowledge or medical science.

3.2. The Lifeboat Scenario and Comparable Harm

Several thinkers who work on animal ethics, including Peter Singer and Gary L. Francione, oppose to Regan’s arguments about situations when it becomes inevitable to override rights, that

directly owed to nonhuman animals. See. Immanuel Kant. “We Have No Duties To Animals”, *Ethical Theory: An Anthology* ed. Russ Shafer-Landau, Wiley-Blackwell, 2013. p. 359

¹¹¹ Tom Regan, *Case for Animal Rights*, p. 152

he develops in his book *Case for Animal Rights*. According to Regan's *miniride principle*, when we must choose between overriding the rights of many innocent beings versus the rights of few innocent beings, when each individual involved would be equally harmed in a *prima facie* comparable way, we ought to choose to override the rights of the few in preference to overriding the rights of the many.¹¹²

Regan explains how this principle works by exemplifying it with the scenario of 51 miners stuck in underground shafts¹¹³. Fifty miners are stuck in a shaft, while one miner is stuck in a parallel shaft. The only way to save the fifty is to create an escape route by blowing up the shaft where there only one miner is stuck. Regan argues that one ought to blow up that shaft, when the only other option is to wait until all of them die.

Regan argues that it is possible to quantify the magnitude of the harm caused and that the principle explained above is applicable if only the harms are comparable in magnitude. In a situation where one has to choose between a decision that will cause a great harm for a few and a decision that will cause a small harm to many, one has the moral obligation to choose the latter, as Regan puts in principle –*worse-off principle* as he names it-:

“[W]hen we must decide to override the rights of the many or the rights of the few who are innocent, and when the harm faced by the few would make them worse-off than any of the many would be if any other option were chosen, then we ought to override the rights of the many.”¹¹⁴

¹¹² Ibid. p. 305

¹¹³ Ibid. p. 300-302

¹¹⁴ Ibid. p. 308

Following this principle, Regan provides another hypothetical scenario of four adult human beings who are not profoundly mentally retarded and a dog on a lifeboat. The problem is that the lifeboat can only support four of them. In that way, either the boat is going to sink and all of them are going to die or they are going to throw one of the survivors off the boat. Accordingly, Regan argues that they must throw the dog off the boat because:

“The magnitude of the harm that death is, it has been argued, is a function of the number and variety of opportunities for satisfaction it forecloses for a given individual, and it is not speciesist to claim that the death of any of these humans would be a *prima facie* greater harm in their case than the harm death would be in the case of the dog.”¹¹⁵

Regan claims that since humans have more opportunities for future satisfactions, death is a greater harm for them than it is for a dog. This does not mean that the dog has lesser inherent value ; five of the individuals own equal inherent value. The difference is that in the case of death, the instirinsic value of the future experiments the dog would lose is considered as lesser than instirinsic value of the future experiments each of human counterparts would lose.

He adds that the number of dogs to be thrown overboard does not bear importance in terms of value:

“Indeed, numbers make no difference in this case. A million dogs ought to be cast overboard if that is necessary to save the four normal humans, the aggregate of the lesser

¹¹⁵ Ibid. p.351

harms of the individual animals harming no one in a way that is *prima facie* comparable to the harm death would be to any of these humans.”¹¹⁶

Regan explains that, to attempt to make a counter-argument by saying that sum of the loses of a million dogs casted overboard would be more than the lose if one of four humans were casted overboard would be against the respect principle. Due to the respect principle, we cannot sum up pleasures and pains individuals feel and ignore them as individuals. Despite the overall lose a million dog would have if they were cast overboard, any each of the dogs themselves as an individual would lost less than any of the humans on the boat would lost in the case of death. The focus is not on the overall lose, but on the loses of each individual. Regan explains:

“For there is no individual [. . .] who is harmed by the deaths of ten dogs, or the hundred, or the million. There is only the harm that death would be for each of the humans compared with the harm that the death would be for each of the ten, or the hundred, or the million dogs. And (in each case) the death of any one of the human beings would represent a greater harm, because of a greater loss, than death would for each of the ten, or the hundred, or the million dogs.”¹¹⁷

In this equation, the harm caused and experienced is not calculated by additioning the harms that individuals are facing and by comparing them in order to calculate the least total harm. Regan suggests that each of the million dogs faces lesser harm than each of the four adult humans positioned in the lifeboat.

¹¹⁶ Ibid. p.325

¹¹⁷ Ibid.

Yet, Regan emphasizes that this scenario does not bring the conclusion that it is always acceptable to sacrifice nonhuman animals in order to save humans and that his conclusion that it is the dog that should be casted overboard is not inconsistent with his categorical rejection of harmful experiments on nonhuman animals whom he considers as « subjects-of-a-life ». In the metaphorical scenario of the lifeboat, the dog's risk of dying is assumed to be the same as each of the human survivors, provided in addition that none of the survivors has been forced or tricked to be on the lifeboat. They are on the lifeboat, because the(ir) ship has sunk.

In response to Regan's lifeboat metaphorical scenario, Singer offers another hypothetical scenario where it could be acceptable to conduct experiment on dogs if we followed Regan's theory :

“Suppose, for instance, that a new and fatal virus affects both dogs and humans. Scientists believe that the only way to save the lives of any of those affected is to carry out experiments on some of them. The subjects of the experiments will die, but the knowledge gained will mean that others afflicted by the disease will live. In this situation the dogs and humans are in equal peril and the peril is not the result of coercion. If Regan thinks a dog should be thrown out of the lifeboat so that the humans in it can be saved, he cannot consistently deny that we should experiment on a diseased dog to save diseased humans.”¹¹⁸

¹¹⁸ Tom Regan & Peter Singer "The Dog in the Lifeboat: An Exchange." *New York Review of Books* 32.7 (1985): 56-57. Web: <<http://www.nybooks.com/articles/archives/1985/apr/25/the-dog-in-the-lifeboat-an-exchange/>> (accessed April 11, 2015).

Singer also criticizes Regan's theory of rights on the basis that in the two given scenarios, the theory of rights allows for much more harm and increases the risk of death than a utilitarian theory would allow.

Francione also criticizes Regan's lifeboat scenario.¹¹⁹ Francione argues that it is *unnecessary* for Regan to discuss the lifeboat example, because Regan's theory is about the question whether nonhuman animals have basic rights to be treated with respect, and not about the conflicts that might rise between possible nonhuman rightholders and human rightholders. Francione claims that the reason why the lifeboat scenario is debated can be explained by a confusion between issues concerning « membership in the class of potential rightholders » and issues concerning « conflicts between right holders ».¹²⁰ He adds that if Regan's scenario offers to resolve conflicts between nonhuman and human right holders, this resolution is going to be in favor of human rightholders in every single conflict. Francione says:

“Once animals are no longer treated as property, then it will become necessary to determine what particular rights are or should be possessed by animals. At this juncture, it may be permissible to take the presence or absence of certain virtues to resolve conflicts between or among rightholders. It is, however, problematic to say that rights theory requires that we throw the dog—or a million dogs—overboard, just as it would be problematic to say that a human rights theory about the abolition of human slavery requires that we always throw overboard the human with the least intelligence.”¹²¹

¹¹⁹ Gary L. Francione, “Comparable Harm and Equal Inherent Value: The Problem of Dog in the Lifeboat” in *Animals as Persons: Essays on the Abolition of Animal Exploitation*, New York: Columbia University Press, 2009. p. 210-229

¹²⁰ *ibid.* p. 224

¹²¹ *Ibid.* 224

Francione claims that it is a speciesist approach to choose a human over a nonhuman being in any conflictual situation on the basis of mental characteristics and capabilities. The idea that death is a greater loss and thus is more harmful for human beings since it forecloses more opportunities for the satisfaction of living is based on the mental capacities of humans. This kind of differentiation would imply that there is a nonarbitrary way of attributing different values to the basic interests of humans and nonhuman animals on the basis of mental capacities. Francione insists that sentience alone is a sufficient condition for full membership to the moral community and that mental capacities should not be deterministic for the moral concern.

3.3. Property Status and Nonhuman Personhood

Francione offers another hypothetical scenario related to exceptional cases.¹²² In this scenario, a dog and a human being are the occupants of a burning house ; neither of them is known to us and there is only a single chance of saving one of the two. Francione argues that there is no nonarbitrary way to choose between these two occupants. He also argues that, even if we always choose to save humans in every conflictual situation that is similar to that of a burning house, this still does not mean that nonhuman animals do not have the basic right not to be treated as *things*.¹²³

Francione's theory of animal rights, claims for the acknowledgement of the moral personhood of all sentient beings and affirms that there is an obligation to extend to animals only *one* prelegal

¹²² Gary L. Francione, *Introduction to Animal Rights*, p.xxii

¹²³ *Ibid*, p. xxx

right—the right not to be treated as the property of humans¹²⁴. As mentioned before, Kant builds a sharp distinction between « things » and « persons ». Since things are that are merely means to an end, there is no moral obligation toward them; whereas since persons are ends in themselves, it is considered as morally wrong and disrespectful to treat a person merely as a means to an end. Francione acknowledges this dichotomy and points out to the property status of nonhuman animals in both the legal and moral frameworks, which means that animals are nothing more than *things*.

Francione emphasizes that after the 18th century, Western thinking has distinguished *sentient things* from inanimate objects and recognized moral duties towards the former. Bentham's utilitarian theory on suffering, which I have covered in the previous chapter, has influenced both the moral and legal aspects of especially Anglo-Saxon culture. Francione describes the mainstream moral position regarding animals as such :

“Although we believe that we ought to prefer humans over animals when interests conflict, most of us accept as completely uncontroversial that our use and treatment of animals are guided by what we might call the *humane treatment principle*, or the view that because animals can suffer, we have a moral obligation that we owe directly to animals not to impose unnecessary suffering on them.”¹²⁵

Since Bentham's utilitarian theory and laws concerning animal welfare have both influenced society, the act of inflicting unnecessary suffering on nonhuman animals has been widely accepted as a cultural norm or a social convention. Francione points out that the principles of

¹²⁴ Ibid. p. xxxi

¹²⁵ Gary L. Francione, “Animals- Property or Persons” in *Animals as Persons: Essays on the Abolition of Animal Exploitation*, New York: Columbia University Press, 2009 p. 32 (emphasis in original)

humane treatment and animal welfare laws aim to balance the interests of nonhuman animals in comparison to human interests in order to determine which kind and amount of animal suffering can be considered as « necessary ». The humane treatment principle implies that, if humans are going to use animals, they ought to inflict the least pain is possible in doing so. If the pain is unavoidable when animals are being used for human interests, this pain is considered as « necessary ».

Francione also points out that although the view according to which inflicting unnecessary suffering on animals is wrong has become a cultural norm and a social convention, most animal use that cause great pain and harm to nonhuman animals are justified merely with recourse to habits, pleasure or convenience. These animal uses include sport hunting and entertainment purposes, animal agriculture, eating and clothing with animal products, as well as materials produced by animal counterparts.¹²⁶ Francione adds that even the necessity of animal use for scientific or medical experiments is open to serious questioning¹²⁷ and claims that the inconsistency between how we think about animals and how we behave towards them is related to the property status we give them. He explains the importance of property status in Western culture, and the property status of animals in particular as such:

“The status of animals as property has existed for thousands of years. Indeed, historical evidence indicates that the domestication of animals is closely related to the development of the concepts of property and money. The property status of animals is particularly important in Western culture for two reasons. First, property rights are accorded a special

¹²⁶ Ibid. p. 37

¹²⁷ Gary L. Francione, “The Use of Nonhuman Animals in Biomedical Research: Necessity and Justification” in *Animals as Persons: Essays on the Abolition of Animal Exploitation*, New York: Columbia University Press, 2009. p. 210-229, p. 171-185

status and are considered to be among the most important rights we have. Second, the modern Western concept of property, whereby resources are regarded as separate objects that are assigned and belong to particular individuals who are allowed to use the property to the exclusion of everyone else, has its origin in God's grant to humans of dominion over animals.”¹²⁸

Francione emphasizes that nonhuman animals are regarded by humans as properties; they are given the status of property both on a legal and moral terrain. Although they have started to be regarded as sentient beings after Bentham's theorization and certain protection laws exist, nonhuman animals are still valued as much as their human owners value them. The property status of nonhuman animals, he argues, makes it meaningless to legislate for anti-cruelty laws in order to protect nonhuman animals from unnecessary pain, because the owner of an animal has every legal right to own the animal physically, use or make profit out of it, as well as exchange or trade it. By this status, nonhuman animals are objectified; the owners are entitled to protect nonhuman animals for their own interests, and necessity is determined by whether the pain inflicted to the nonhuman animal by the owner is unavoidable or avoidable. Francione explains:

“It is, of course, absurd to suggest that we can balance human interests, which are protected by claims of right in general and of a right to own property in particular, against the interests of property, which exists only as a means to the ends of humans. Although we claim to recognize that we may prefer animal interests over human interests only when there is a conflict of interests, there is always a conflict between the interests of

¹²⁸ Gary L. Francione, *Animals- Property or Persons* p. 37, supranote 29

property owners who want to use their property and the interests of their animal property.

The human property interest will almost always prevail.”¹²⁹

Francione claims that the status of animals as properties renders meaningless our claim for rejecting the status of animals as things and that, in reality, we commonly treat nonhuman animals as some moral equivalents of inanimate objects that are deprived of morally significant interests.¹³⁰ He proposes two options to overcome this inconsistency: The first option is to discard the humane treatment principle and acknowledge that animals are morally insignificant and they are merely things that we use for our interests. The other option is to take the claim of animal interests seriously and apply the “*principle of equal consideration*—the rule that we ought to treat like cases alike unless there is a good reason not to do so—to animals.”¹³¹

Francione emphasizes that, although there are differences between humans and nonhuman animals, there is one important similarity: Both human and nonhuman animals are sentient, they both have the capacity to suffer, as opposed to everything else in the universe that is not sentient. Consequently, provided that similar cases ought to be treated alike, nonhuman animal suffering should be taken as serious as human suffering is taken. Yet, considering human and nonhuman animal suffering equally might imply that, if in case of a conflict between human and nonhuman animal interests, human interests weigh more, the suffering of a nonhuman animal can be justifiable- which is what Bentham has already offered as we have seen previously. In Francione’s view, Bentham was wrong in thinking that equal consideration can be applicable to

¹²⁹ Ibid. p.38

¹³⁰ Ibid. p. 44

¹³¹ Ibid. (emphasis in original)

animals which are considered as property. Indeed, as long as nonhuman animals are considered property, any interest of the property owner would override the interest of the property and in this case, the highest protection that can be provided for animals is the point where any trivial interest of the human property owner begins.

Francione draws a parallel between the moral and the legal status of animals and the history of slavery in North America :

“The institution of human slavery was structurally identical to the institution of animal ownership. Because a human slave was regarded as property, the slave owner was able to disregard all of the slave’s interests if it was economically beneficial to do so, and the law generally deferred to the slave owner’s judgment as to the value of the slave. As chattel property, slaves could be sold, willed, insured, mortgaged, and seized in payment of the owner’s debts. Slave owners could inflict severe punishments on slaves for virtually any reason. Those who intentionally or negligently injured another’s slave were liable to the owner in an action for damage to property. Slaves could not enter into contracts, own property, sue or be sued, or live as free persons with basic rights and duties.”¹³²

Francione explains how all the laws concerning the slaves’ welfare failed to protect their interests because slaves were chattel property ; in the same way, animal welfare laws fails to protect animals. Francione points out that, today, our society condemns human slavery no matter how well a slave owner treats his/her slaves. After the abolishment of human slavery in North America, each individual acquired the basic right not to be treated as someone else’s property which means that a person’s interest of not being a property of others can not be ignored, denied

¹³² Ibid. p. 46

or violated simply because it would be beneficial for others to do so. Francione explains the importance of this right in these terms:

“The right not to be treated as the property of others is basic and different from any other rights we might have because it is the grounding for those other rights; it is a prelegal right that serves as the precondition for the possession of morally significant interests.”¹³³

Nonhuman animals, like humans, have interest in not suffering. Yet, as long as they are considered as property, neither the moral claim of the principle of equal consideration nor the laws applying for animal welfare are able to protect them. Their interests will always be counted less valuable than their the owners’ interests. Francione suggests that, in order to take animal interests into serious consideration, it is obligatory to extend the right not to be the property of others to nonhuman animals. The implication of this idea is that nonhuman animals will not be used by humans as commodities and resources.

Francione’s theory of animal rights offers only one prerequisite for the membership to the moral community: Sentience. No other cognitive characteristic or ability is required to be part of this community; moreover, Francione asserts that the claim for requirements that are beyond sentience, such as having similar mental or cognitive capacities with humans, constitutes a speciesist approach. The claim of speciesism depends on the idea that the prioritization of human capacities such as language or rationality in moral sense amounts to the prioritization of humankind itself. In Francione’s view, as long as those anthropocentric capacities are prioritized, the moral status of nonhuman animals will always be seized depending on how much they are

¹³³ Ibid. p. 49-50

similar to humans. In practice, this will lead to the point that human interests will always outweigh the interests of nonhuman animals, because nonhuman animals will never be humanlike enough to be considered equally.¹³⁴

In this sense, Francione opposes Bentham's and Singer's views on the lesser significance of death for animals. As I mentioned earlier, both Bentham and Singer assert that even though animals are sentient beings and their pain is morally significant, death is not a harm for them because they lack humanlike mental characteristics. On the other hand, Regan also thinks that death is a lesser harm for nonhuman animals because it encloses fewer opportunities to enjoy life in comparison with what it would enclose for humans. Francione claims that sentience is a means for the preservation of life. To claim that a being is sentient but does not have interest in staying alive, Francione says, is a *peculiar* position to take.¹³⁵ According to him, killing an animal is both a harm and a violation of the right not to be used as a property.

Francione explains what how he understands the concept and the category of *moral person*:

“If we extend the right not to be property to animals, then animals will become moral persons. To say that a being is a person is merely to say that the being has morally significant interests, that the principle of equal consideration applies to that being, that the being is not a thing. In a sense, we already accept that animals are persons; we claim to reject the view that animals are things and to recognize that, at the very least, animals

¹³⁴ Gary L. Francione, “Taking Sentience Seriously”, in *Animals as Persons: Essays on the Abolition of Animal Exploitation*, New York: Columbia University Press, 2009.

¹³⁵ Gary L. Francione, *Animals- Property or Persons*, p. 55

have a morally significant interest in not suffering. Their status as property, however, has prevented their personhood from being realized.”¹³⁶

He also explains that to recognize and apply personhood for nonhuman animals does not imply that that they are persons in the same sense humans are (rational, morally accountable for their actions) or that they should have the equal rights with human persons. Considering nonhuman animals as persons too means that humans should not use other animals as properties and resources such as for the purposes of food, clothing or entertainment. In this perspective, Francione supports and asks for the abolition of institutionalized exploitation, as a result of the claim that animal interests will necessarily be discounted or denied if animals continue to be considered as property.

On an individual level, Francione claims that the animal rights theory prescribes a gradual change in the form of « *ethical veganism* »¹³⁷ and he considers ethical veganism as a moral baseline. He explains ethical veganism as:

“Although veganism may represent a matter of diet or lifestyle for some, ethical veganism is a profound moral and political commitment to abolition on the individual level and extends not only to matters of food but also to the wearing or using of animal products. Ethical veganism is the personal rejection of the commodity status of

¹³⁶ Ibid. p. 61

¹³⁷ The term « *vegan* » was coined in the first issue of the journal *Vegan News*, November 1944 by Donald Watson. The term *veganism* refers to the idea that humans should live without exploiting other animals. In practice, those who identify themselves as *vegans* abstain from consuming or using food, clothing and other materials made from animal bodies or animal bodies, body fluids and any other means of using animals. (For the history of the formation of the term, see, Leah Leneman. *No Animal Food: The Road to Veganism in Britain, 1909-1944*, Society and Animals, Volume 7 Number 3, The White House Press, Cambridge:1999)

nonhuman animals, of the notion that animals have only external value, and of the notion that animals have less moral value than do humans. Indeed, ethical veganism is the only position that is consistent with the recognition that for purposes of being treated as a thing, the lives of humans and nonhumans are morally equivalent.”¹³⁸

Francione suggests that we should stop bringing domestic animals into existence. He claims that the conflicts between animal interests and human interests are caused by institutionalized animal use. He says:

“If we recognize that animals have an interest in continued existence that is necessarily ignored by their status as our property and that there is no moral justification for our continued treatment of nonhumans as our property, we will abolish institutionalized animal exploitation and stop producing nonhumans for human purposes.”¹³⁹

His offer to stop and eradicate domestication has been criticized by Donaldson and Kymlicka¹⁴⁰. These two thinkers agree with the animal rights theories on the point that domesticated animals have been selectively bred to serve human ends for food, protection, or companionship and that became dependent on their relationship to human beings; they also acknowledge the fact that the domestication process had caused problematic mistreatments such as forced captivity, forced breeding, forced labour, usually ending in premature death. Yet, they disagree on the point that domestication is irredeemable and should be prevented or prohibited.

¹³⁸ Gary L. Francione, and Robert Garner. *The Animal Rights Debate: Abolition or Regulation?*, New York: Columbia University Press, 2010, p.62

¹³⁹ Gary L. Francione. “Equal Consideration and The Interest of Nonhuman Animals in Continued Existence: A Response to Professor Sustein”, *Animals as Persons: Essays on the Abolition of Animal Exploitation*, New York: Columbia University Press, 2009, p. 164

¹⁴⁰ Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights*, New York : Oxford University Press, 2011

Donaldson and Kymlicka claim that domesticated nonhuman animals have their right to be a part of the society in a non-exploitative way, in other words to be co-citizens in a political community. The point Donaldson and Kymlicka make is a different one from the claims of membership to the moral community, because this is not merely a call to consider nonhuman animal interests or suffering. The concept of co-citizenship is defined as being a member of a political community that consists of persons who share a territory and generates distinctive rights and responsibilities, beyond the moral rights owed to all persons.¹⁴¹ For instance in a foreign country when one –a human being- is not a citizen of , she/he would still have the right not to be killed or not to be harmed; but if there are no special arrangements or conventions, she/he would not have the right or permission to work or benefit from the healthcare system of that country. Because the former ones are negative moral (prelegal) rights, latter ones are positive rights or privileges that are determined by laws and political membership to a society.

What Donaldson and Kymlicka proposes when they use the term *citizenship* is that, by taking their rights not to be killed or harmed for all humans and nonhuman animals as granted, because domesticated animals are a part of the societies humans have formed, these animals should also be defined as rightholders and benefit from the welfare of the society but at the same time their duties and obligations should also be decided and defined by law.

In this sense, nonhuman animals are not considered as mere passive participants of a community where they are owed duties not to be interfered with or not to be harmed by the rational and

¹⁴¹ Ibid p.13

autonomous members, yet owe no duties towards others- ; they are considered as active participants where they are also expected to be educated to follow the rules that are legislated by the governments, actively participate to the production of common goods for the society and in return, they gain distinctive rights to benefit, such as right to residency, health care and legal protection in cases of conflict.

Briefly, extending the concept of citizenship to domesticated animals means to define positive rights¹⁴² –such as rights for healthcare, residency, education- beyond negative rights –such as rights for not to be interfered or not to be harmed- that ought to be protected for all nonhuman animals but this also means that they should have to fulfill defined responsibilities toward society and their co-citizens. Donaldson and Kymlicka claim that there is nothing wrong with dependency itself but what is important is how we act within and with dependency ; they also consider that there is nothing « unnatural » or « intrinsically wrong » about a human nonhuman relationships where they benefit from each other or make use of each other in ways that are not harmful for humans and nonhuman animals.

Donaldson and Kymlicka argue that domestication has not made citizenship only necessary and obligatory but also possible. By a mixed political community with humans and domesticated nonhuman animals, they claim, it is possible to form non-exploitative cooperation:

“To think of animals as co-citizens, and hence to think of our political community as a mixed human-animal community, presupposes the possibility of cooperation and

¹⁴² The concept of *positive rights* refers to the rights to be helped or assisted, as oppose to *negative rights*, which are rights not to be harmed or interfered with. (See Tom Regan, *Animal Rights, Human Wrongs*, p. 23-25)

interaction between humans and animals, including relations of trust, the ability to communicate one's good, and the ability to exist in physically proximate and socially meaningful relations."¹⁴³

They argue that co-citizenship of domesticated animals would provide them an equal legal protection. They also might benefit from public spendings such as healthcare systems and urban spaces can be designed in a way that would protect their interests.

The two authors stand against the cognitivist restrictions on citizenship that require not only rationally negotiated forms of cooperation in social life, but also to be able to reflect on and deliberate about the terms of this cooperation; they claim that these restrictions will also exclude children, mentally disabled persons, or persons suffering from dementia and those who are temporarily fragilized by an illness or an injury. In their claim, they refer to the disability movement's new approach to citizenship ; an approach that depends on trust-based 'dependent agency'¹⁴⁴; according to them, domestication renders domesticated animals capable of forming relations with humans that allow them to manifest their preferences of « subjective good »¹⁴⁵, to

¹⁴³ Sue Donaldson and Will Kymlicka, *Zoopolis*. p. 5

¹⁴⁴ Donaldson and Kymlicka draw attention to the discussions around the disability movement, upon the issue of citizenship. In the traditional sense of citizenship, they explain, people with disabilities were considered as a co-citizens in the sense that (I) they had a right to reside and return to the country and (II) they were recognized as members of the society which the state governs but they were treated as passive recipients of paternalistic policies by the government. The authors cite the motto of the modern disability movement, 'nothing about us without us', to show that the movement has insisted upon rights to agency, participation, and consent. (see Ibid, p. 59)

¹⁴⁵ The two authors of the work differentiates what they call *subjective good*, from *reflective good*. Having the capacity to have *subjective good* only requires sentience, if an individual is sentient, that individual has the ability to suffer or take pleasure. If that individual also have a capacity to reflectively endorse a conception of the good, that individual also has the capacity to have *reflective good*. Authors claims that,

cooperate, and to participate in society -in short, domestication renders nonhuman animals capable of being citizens.¹⁴⁶

On contrary to Francione and Regan; Donaldson and Kymlicka claim that some uses of domesticated animals for animal labor and animal products are acceptable in from the perspective of animal rights, such as using guide dogs or police dogs, using sheep as a wool resource, keeping backyard chicken to provide eggs, keeping dogs to protect flock of sheep etc. They claim that this kind of uses are not incompatible with nonhuman animals' instincts and they cause harm or pain. They argue that:

“In a world that views domesticated animals in overwhelmingly instrumental terms, this may be an appropriate gesture for unsettling widespread human attitudes about our right to use animals”¹⁴⁷

and add:

“Citizenship is a cooperative social project, one in which all are recognized as equals, all benefit from the goods of social life, and all, according to their ability and inclination, contribute to the general good. Turning one group into a permanently subordinated caste that labours for others is a denial of citizenship, but refusing to consider that group as potential contributors to a common good is also a way of denying citizenship.”¹⁴⁸

They argue that, from the citizenship perspective, domesticated animals should be regarded as potential contributors to the society ; they claim that to do so would not be degraded them to

since subjective good does not require rational reflection or concepts, it is also not required to be able to form meaningful speech to manifest subjective good. (see. Ibid p. 103-105)

¹⁴⁶ Ibid. p. 103

¹⁴⁷ Ibid. p. 136

¹⁴⁸ Ibid. p. 137

the level of mere instrument, in fact it is only possible to regard them as cocitizens if society benefit from nonhuman animals as workforce or resources. Such as in the case of cow milk, it seems that citizenship rights are mostly for the animals considered as useful for human needs or animals that will bring commercial profits for humans ; they say:

“This does not mean that there will be no cows, just not very many. There will always be people who want to have cow companions (or pig companions), but the reality is that since these animals are less 'useful' (under non-exploitative conditions), fewer of them would be brought into the human-animal community. On the other hand, cautious commercialization of the use of cow's milk could lead to it becoming a luxury good, resulting in a limited but stable cow community.”¹⁴⁹

Donaldson and Kymlicka are not arguing in favor of reproductive rights for domesticated animals; they state that it is not always wrong to control and limit nonhuman animal fertility, but the conditions of permitted or non-permitted animal use are not clearly stated .¹⁵⁰ Although they stated that the arguments in favor of the continuation of breeding domesticated animals might be a pretext for ongoing exploitation and various theories are nothing but another version of welfare reforms ;¹⁵¹ the example of the cow and milk production recalls the same criticism for their own citizenship approach.

In comparison to the other views on animal rights, besides negative rights such as not to be killed or not to be harmed and suffer, the citizenship approach seems to be proposing positive rights to

¹⁴⁹ Ibid. p. 139

¹⁵⁰ Ibid. p. 81

¹⁵¹ Ibid. p. 95

be protected (such as having health insurance). Yet this is an antropocentric approach because in order to be given these rights by the humans, the nonhuman animal has to be useful to the human society such as in the example of the cow. According to this approach, humans are in charge of deciding whether the animal have any positive right at all and what those rights will be. This means that for the rights to be given by humans requires to be domesticated in ways that is useful to humans. This approach recalls Francione's criticism of animal welfare laws; as Francione points out, animal interests are already protected by animal welfare laws as long as it is profitable for the animal owner to protect these rights. Although, Donaldson and Kymlicka do not argue in favor of nonhuman animal ownership, it is unclear how this approach rearranges the continuation of breeding the individuals that belong to domesticated species. From an abolitionist animal rights view, the citizenship approach seems to be a gradually extensive version of the humane treatment principle.

For a critical approach to abolitionist theories that call for the end of breeding domesticated animals, they give the example of the abolition of North American slavery and how the abolitionists worked for the citizenship rights of the slaves who were brought from Africa to North America, instead of sending them back to Africa.¹⁵² They state that the citizenship approach is in favor of symbiosis, fair terms of interaction, instead of a forced participation.¹⁵³ But this statement raises further questions to be asked; for instance, is it ever possible to talk about the consent of nonhuman animals made available for human use. Even if the principle that, it is morally wrong to treat a sentient being or a « subject-of-a-life » as a mere instrument, is recognized, when humans are considered, it is still permissible to ask a human for her/his help or

¹⁵² Ibid. p. 89

¹⁵³ Ibid. p. 88

it is not considered problematic that a human to be useful for others, as long as the consent of that person is involved. But when animals are considered, is it possible to understand whether, for example the cows, consent to use of their bodies for the production of milk? Is it possible to see the interaction between the cow and the milk producer as a cooperation in the sense that the cow produces milk and gets healthcare, shelter and enough food in return? And even when it is possible to overcome the barriers of language (due to the absence of a common language between human and nonhuman animals) in order to get an animal's consent, is it morally acceptable to take this consent in consideration if domesticated animals are brought to life as dependent beings throughout centuries of selective breeding? The theory does not seem to provide any justification or any answer to these questions.

The ethicist Alasdair Cochrane also formulates a criticism of the animal rights theories that are presented by Regan and Francione. Cochrane argues that moral rights are based on strong interests which he defines as an interest that is an essential aspect of an individual's well-being on a level that is sufficient to impose a duty on another. Following this perspective, he claims that although all nonhuman animals have strong interests in not suffering and not being killed, most of them have no interest towards « liberty » (in the sense of leading freely chosen lives) because they lack the mental capacities to provide an autonomous agency.¹⁵⁴ This means that, most nonhuman animals do not have interests in not being owned (not being a property), used, or captivated.

¹⁵⁴ Alasdair Cochrane, *Animal Rights Without Liberation: Applied Ethics and Human Obligations*, New York: Columbia University Press, 2013. p.11

If the interests of animals and humans are to be considered equally, he argues, we should not privilege human interests and extend them to nonhuman beings but rather understand and acknowledge what the interests of each animal are. Following this, he argues that the property status of animals and ownership are not obstacles that prevent animal rights in this sense. He claims that it is possible for humans to own animals and at the same time to treat them justly; to recognize that they possess a moral status, to assign them rights that would operate on behalf of their interests, and to consider their interests equally.¹⁵⁵ He rejects the idea that « liberty » is an intrinsic interest for all sentient beings. Following that, he claims that most nonhuman animals' interests in « liberty » can only be instrumental, which means that « liberty » is an interest for an animal, only when it is useful in order to increase the well-being of that animal. He concludes that most animals do not possess an intrinsic interest in « liberty » because they lack mental capacities to be regarded as autonomous and this means that it is morally permissible to use and interfere with animals.¹⁵⁶

Cochrane's theory attempts to provide a justification for the property status of nonhuman animals. Although he does not follow a utilitarian perspective, his arguments on the lack of autonomy for nonhuman animal interests in liberty is similar to Singer's rejection of the nonhuman animal interest of not to be killed..

Even if we would agree with Cochrane on the issue of autonomy and nonhuman animals' lack of interest in not being owned, it appears that the property status still would cause tensions when it comes to the interests that this approach precisely intends to protect. According to Cochrane, it is

¹⁵⁵ Alasdair Cochrane. "Ownership and justice for animals." *Utilitas* 21.04 (2009): 424-442.

¹⁵⁶ Alasdair Cochrane. "Do animals have an interest in liberty?" *Political Studies* 57.3 (2009): 660-679.

possible for a human to be a fair nonhuman animal owner. But the status of ownership and the status of property are not merely legal terms. The fact of restricting the idea of ownership to a legal notion might lead us to overlook the social conventions that concern property rights and ownership. The legal limitations, the moral implications of the property status and the social conventions of ownership prevent the equal consideration of the owner's interests and the interests of the owned, meaning of the property. It is possible to bring new moral conventions and legal limitations on the question of how we are to make use of our sentient and non-sentient properties; yet these conventions and laws will always be a subject of debate, since they are always subjected to change by the means of political legislation and moral discussion in society with regard to the prioritized interests of owners. We can argue that individuals should have the liberty to do whatever they want with their properties and as long as nonhuman animals are properties, any legal limitations might be conceived as a limitation of their liberty.

Cochrane also criticizes Donaldson and Kymlicka's approach for assigning group-based rights to three separate groups of nonhuman animals that are categorized according to their relations to humans. Cochrane criticizes this mode of categorization and argues that it would be better to attach rights to individuals primarily according to their mental and physical capacities and interests, as opposed to their membership in different groups.¹⁵⁷ But, Francione's claim that the recognition of the right not to be treated as a property of others -which means the recognition of the moral personhood of all sentient beings- is a prerequisite to consider their interests equally, brings along questions that need to be answered by the theories that are permissive to the animal

¹⁵⁷ Alasdair Cochrane, "Cosmozoopolis: The case against group-differentiated animal rights.", in *Law, Ethics and Philosophy* 1.1 Madrid: Marcial Pons, (2013): p. 127-41.

use and ownership. In other words, Cochrane's claims does not seem to provide sufficient answers to the problems raised by Francione.

3.4. Final Remarks

Although many other thinkers have debated on animal rights, I have chosen to mainly focus on Regan's arguments upon the « subject-of-a-life » and the inherent value that is owned by those classified as subjects-of-a-life and Francione's arguments on moral personhood. In the course of my inquiry, I have also mentioned Donaldson and Kymlicka's citizenship approach as well as Cochrane's interest based rights theory that denies the right for freedom to most nonhuman animals. These two approaches I have focused on offer a normative guideline: Practicing veganism is required on personal level and the abolishment of both animal use and domestication is required on a macro level (yet Regan's theory remains blurry about nonhuman animals in general, except mammals, birds and sometimes fish; Francione's theory includes all sentient animals in the circle of moral concern).

The approach that is presented in *Zoopolis* and Cochrane's interest-based theory allow animal use and the use of animal products as long as animals are not harmed or they do not suffer. It can be said that, on a practical level, the citizenship approach and Cochrane's interest-based approach are closer to the utilitarian views that give support to abstinence from consumption meat, or vegetarianism, but hold other animal uses considered as acceptable with the justifications argued on previous chapter. From a no-use perspective; these approaches might be considered as a regression from Regan's and Francione's abolitionist animal rights claims and

the way they propose to shift focus from how we treat animals while we are using them to the morality of animal use itself.

By focusing on sentience and rejecting the idea that to be considered morally requires to have humanlike mental characters, and by emphasizing the normative guidelines that reject all forms of animal use, Francione's abolitionist theory seems to be the only theory that overcomes the anthropomorphic system that is based on logos or mental characteristics such as reason and meaningful speech.

Conclusion

After having been excluded for centuries from the sphere of Ethics for being considered as deprived of *logos* and being given the status of a mere « thing » or a « means to an end », we can hope for an ethical restoration of nonhuman animals on the basis of a discussion regarding their inherent value. As a conclusion, I intend to discuss the practical implications of the theories that I have discussed in details in the previous chapters and conclude my argument with a claim for a change and shift of paradigm.

As I have examined previously, Aristotle built upon Plato's distinction between *polis* and *oikos* and theorized political space and political being upon the exclusion of those who were considered to be in a state of infancy -women, slaves, children and nonhuman animals-¹⁵⁸, in other words those who were considered as non-rational or as lacking the rational part of the soul. One's exclusion from the political space implies that its existence is restricted to biological life, to the reproduction and preservation of life, to survival and to the mere satisfaction of (vital) needs. Following this path, Stoics argue that since nonhuman animals are not rational beings, we owe no duties of justice towards them, they do not ethically matter at all which means that nonhuman animals have no ethical value/place at all. The legacy and the influence of Stoic thinking upon

¹⁵⁸ It is not to say that Aristotle sees slaves, women, nonhuman animals and children at the same level. On *Politics* he says: "And of this we straightway find an indication in connection with the soul; for the soul by nature contains a part that rules and a part that is ruled, to which we assign different virtues, that is, the virtue of the rational and that of the irrational. It is clear then that the case is the same also with the other instances of ruler and ruled. Hence there are by nature various classes of rulers and ruled. For the free rules the slave, the male the female, and the man the child in a different way. And all possess the various parts of the soul, but possess them in different ways; for the slave has not got the deliberative part at all, and the female has it, but without full authority, while the child has it, but in an undeveloped form." (1.1260a)

Western philosophy is important and has certainly contributed to the common idea that nonhuman animals are not rational, that they are created for the sake of human use and for the satisfaction of their needs. This idea became a part of the conventional wisdom, as they are inherited both by Christian philosophers such as St. Augustine and Thomas Aquinas. Even two thousand years after Aristotle, Kant was including nonhuman animals in the category of *things*, which are owed no moral duties at all on the basis that, they are not rational beings.

It would be wrong to argue that these philosophical theories *are* the reason why animals have been regarded as property in the first place, or that they justified animal use. First of all, these theories have risen in societies that were already using animals and consuming animal products.¹⁵⁹ A historical materialist would certainly argue that these ideas were conditioned by the socio-historical context of their time and by a society that highly depended on animal use and consumption (as well as slave labour or sexual division of life and labour). From another perspective, we could also argue that the ethical and ontological accounts on nonhuman animals have been made throughout History with the aim of seeking what is distinctively or properly *human*, and we could understand this search as an attempt to establish the « human » category upon the firm distinction and dichotomy between what is *human* and what is *non human*. This historical process leads us to the concept of an «anthropological machine», as it has been coined and theorized by Giorgio Agamben in his comprehensive enquiry upon the (historical) relationships and antagonisms between humans and animals in the history of Western philosophy ; the « anthropological machine » is presented by Agamben as a symbolic machine

¹⁵⁹ For the historical roots of nonhuman animal use and domestication see. David Nibert. *Animal Oppression and Human Violence: Domestecration, Capitalism, and Global Conflict*. New York : Columbia University Press, 2013.

that presupposes the « human » by articulating at the same time a binarism that brings into conflict the human and the animal and establishes a correlation between the animal and the inhuman.¹⁶⁰ In the first chapter of my study, I have traced back the ontological answer to the question of what is « properly human » to the prerequisite of *logos*, *logos* being acknowledged as a precondition for the inclusion of a being into the ethical sphere. In this perspective, I have argued that actual projects such as the Great Ape Project, which aim at establishing (or protecting) legal rights for nonhuman animals that possess dignified humanlike traits are, in this way, pursuing the Antique Greek valorization of *logos*, language and symbolic communication.

Although the utilitarian approach to the position of nonhuman animals seems to be outside of the paradigm that is in search for dignified human traits in nonhuman animals in order to consider them as morally significant beings, when it comes to the matter of killing them or providing them rights to liberty, this approach questions whether nonhuman animals have a rational mind and self-consciousness (or, which nonhuman animals possess these traits) in a way that is sufficiently humanlike, therefore from an anthropocentric perspective of resemblance that privileges and positions humans as models. Bentham and other utilitarian philosophers have introduced a theory upon the moral significance of suffering which has been part of the moral discussion alongside the question of *logos* since late 18th century. Moreover, the moral concern regarding the suffering and the harm caused to nonhuman animals has further on become part of the conventional wisdom of actual Western societies in the 21st century. For example a poll

¹⁶⁰ Giorgio Agamben. *The Open: Man and Animal*. Trans. Kevin Attell. Stanford, CA: Stanford University Press, 2004 p. 37

organized by Gallup¹⁶¹ in the United States shows that 32% Americans consider that nonhuman animals should be given the same rights as humans to be free from harm and exploitation and 62% share the view that they deserve some protection from harm and exploitation, but it is still appropriate to use them for the benefit of human (details on what type of protection is in question is not specified in poll results). But at the same time, statistics show that approximately 56 billion land animals are reared and slaughtered annually for the purpose of human consumption, and that this number is expected to be doubled by 2050, considering that the increase in amount occurs mostly in developed countries of the world.¹⁶² According to Fishcount (an animal welfare organization that focuses on fishes)- more than a trillion sea animals are being hunted and killed annually only for human consumption as food.¹⁶³

In his Preface to the third edition of his book, *Animal Liberation*¹⁶⁴, Singer claims that in the years that have followed the first edition of his book, there has been achievements by what he calls *animal liberation movement*. He gives examples to that achievements by mentioning several laws that regulate factory farms, such as the regulations that concern the sizes of cages for laying hens or that ban painful experiments on animals. Because of its emphasis on welfare reforms, this position is called the *Welfarist position*. As I have mentioned it in the chapter where I have

¹⁶¹ Rebecca Riffkin, « In U.S., More Say Animals Should Have Same Rights as People », News Article, WEB. <<http://www.gallup.com/poll/183275/say-animals-rights-people.aspx>> May 18, 2015 (accessed on May 28, 2015)

¹⁶² Henning Steinfeld,, et al. *Livestock's Long Shadow: Environmental Issues and Options*. Food and Agriculture Organization of the United Nations (FAO), 2006.

¹⁶³ Mood, Alison. "Worse things happen at Sea: the Welfare of Wild-caught Fish.", *Fishcount.org.uk, Website Material*, <<http://www.fishcount.org.uk/published/standard/fishcountfullrptSR.pdf>> (2010) (accessed on May 28, 2015)

¹⁶⁴ Peter Singer, *Animal Liberation*, p. ix-xiv

discussed Francione's position on animal welfare regulations, Francione argues that these regulations cannot provide *any* significant level of protection for nonhuman animals because of the property status of nonhuman animals; he argues moreover that these *welfare* reforms are counterproductive in a sense that they encourage the persons who have a moral concern for the consumption of animal products to continue consuming them in *humane ways*.¹⁶⁵ Although the utilitarian views included nonhuman animal suffering into the moral consideration and sphere of laws, they also argued that nonhuman animals are not self-conscious¹⁶⁶ and therefore, that killing them can not be seen as a harm. My intention at this point is to clarify how this moral «inclusion» has operated in practice.

The Utilitarian inclusion of animal suffering into the moral consideration explicitly states that if animals are sentient, if they are able to feel pain and if they suffer because of human actions, this means that they are vulnerable –which means, in practice too, that it is possible to hurt them. Although the *alogos* status of nonhuman animals, which implies that they are deprived of language (meaningful speech) and reason, has been presented as a reason to exclude them from the sphere of ethics by the earlier Western philosophical tradition, it is possible to view this *muteness* (which is not any kind of silence and not even silence after all) as a sign of their vulnerability. Whereas those who -women, slaves, people without property- were excluded from polis by Aristotle, struggled for their rights and progressively gained a political status or became

¹⁶⁵ Gary L. Francione, "Animal Welfare Regulation, "Happy Exploitation," and Speciesism", Web blog Post. *Animal Rights: Abolitionist Approach* Web Article: <<http://www.abolitionistapproach.com/animal-welfare-regulation-happy-exploitation-and-speciesism/#.VTKfA62qpBc>> August 2013 (Accessed on: 18.04.2015)

¹⁶⁶ Peter Singer argues that some of them -like primates- are self-conscious because of their humanlike cognitive capacities such as the capacity of forming a symbolic communication.

part of the public political sphere, nonhuman animals remained as property, mere *things* to be used in any ways that might be useful for humans. The inclusion of animal suffering in the field of ethics by utilitarianism, is one of the crucial paradigm shifts that has restored human responsibility towards those who being deprived of the capacity to « speak » are nevertheless able to suffer. At this point, I would like to pursue my enquiry by explaining why the inclusion of animal suffering in the moral consideration and law has engendered their exclusion from *personhood*.

In order to illustrate and exemplify this exclusion, I will analyse an analogy that is mostly used by actual animal protection movements. This analogy builds a comparatist approach by comparing the Holocaust and modern animal agriculture. For instance, Charles Peterson, a social historian who primarily works on the Holocaust , quotes from writer Isaac Bashevis Singer who wrote : "In relation to [animals], all people are Nazis; for the animals, it is an eternal Treblinka (extermination camp)"¹⁶⁷. Yet, this analogy is problematic in many aspects.¹⁶⁸ This analogy

¹⁶⁷ Charles Patterson. *Eternal Treblinka : Our Treatment to Animals and the Holocaust*, New York : Lantern Books, 2002 p. 181

¹⁶⁸ One of the problematic aspects of this analogy with Nazi extermination camps and Holocaust, one might argue, is the ethical problems of using a massive traumatic historical event as an example to understand another instances of violence or repression. For instance, in 2003, *PeTA*, an animal welfare organization, opened an exhibition called "Holocaust on your Plate" and was harshly criticized by Abraham Foxman, a member of *The Anti-Defamation League*, an international Jewish non-governmental organization. (See. David Teather. "'Holocaust on a plate' angers US Jews", *The Guardian*, Web article <<http://gu.com/p/dhbk/stw>> March 3, 2003. (Accessed on May 30, 2015)) I agree with the idea that it is problematic to use the Holocaust images to draw attention to *any* another issue, this kind of use might trivialize the genocide by degrading all of its historical and political complexity and the suffering it caused, to an *example* to use arbitrarily to imply another violent situation which as completely different political and historical background. Using traumatic historical events such as war, genocide and mass killings as an example might lead people to get familiarized with the events. (see also. Susan Sontag, *Regarding the*

concerns the methods that the industry uses to produce animal products and not animal use in itself. This problem gains clarity with the speech the writer Coetzee made for the opening of the exhibition *Voiceless: I feel therefore I am*, using the same metaphor :

“The transformation of animals into production units dates back to the late 19th century, and since that time we have already had one warning on the grandest scale that there is something deeply, cosmically wrong with regarding and treating fellow beings as mere units of any kind.”¹⁶⁹

The relation of this analogy with the *welfarist* paradigm that has been revived by the works of Peter Singer is clear. Although Coetzee’s arguments seem to be influenced or bear the traces of a Kantian or Reganian spirit at first sight (because of his emphasis of the wrongness of considering beings with an inherent value as mere means), his position is in fact closer to what Singer offers in terms of nonhuman animals rights. Coetzee condemns the practices of modern animal agriculture by showing how actual slaughterhouses are similar to the Nazi concentration camps and he starts the commodification of nonhuman animals in the 19th century ; but Coetzee simply ignores and does not mention the fact that nonhuman animals were already units of production of meat, milk, eggs, leather etc. long before the 19th century. Indeed, nonhuman animals have been used as objects and means instruments of production for centuries long. It is obvious that pre-

pain of others. Macmillan, 2004. p. 102) I also think using slaughterhouse images as a way of exposing animal exploitation is problematic for the same reasons.

In addition to that problem, the difference of genocide and any other mass killing is that in the case of a genocide the purpose of eradicating a group of people on the basis of race or any other characteristic is involved. The analogy with animal agricultural practices misses this point, because animal agriculture, let alone eradicating nonhuman animals or a species, is highly depend on the reproduction of them. This analogy is misleading about both animal agriculture and the Holocaust.

¹⁶⁹ John Maxwell Coetzee. "Exposing the beast: factory farming must be called to the slaughterhouse." *Sydney Morning Herald* 22 (2007).WEB <<http://www.smh.com.au/news/opinion/factory-farming-must-be-called-to--slaughterhouse/2007/02/21/1171733846249.html>> (Accessed on May 28, 2015)

industrial or non-industrial animal agriculture is not commonly regarded as being as problematic as modern animal agriculture, and that the pastoral use of non-human animals is not considered equal to treating nonhuman animals as mere units of any kind. As I have examined in detail in the second chapter of study, this is the position that is offered by Singer and modern animal liberation movement that follow the path of Singer's work.

The analogy between the Nazi concentration camp and the modern slaughterhouse evokes Giorgio Agamben's thinking upon the (historical) foundations of modern biopolitics, his conceptualization of « bare life » and the way he on the Camp. Although I won't provide a detailed account of Agamben's theorization of modern biopolitics and sovereign power, I would like to recall the key points of his interpretation and exemplification of the camp. For Agamben, the camp, which is meant to be a « space of exception », is a space that isolates, abstracts, deprives and excludes individuals from a political status in a way that they are reduced to what Agamben coins as « bare life », a form of living that is deprived of political existence.¹⁷⁰ On a broader scale, Agamben bases his critical enquiry on a concept which refers to a figure of Roman law : « Homo Sacer » ("the sacred man" or "the accursed man" in Latin). Homo sacer is the one who has been banned from the city, who may be killed without any legal interruption (whose killing who be legally considered as a murder), but can not be sacrificed in a religious ritual since the sacrifice necessitates a legal representation.¹⁷¹ This brings Agamben to arguing that Homo Sacer, the one who is excluded from sphere of law and at the same time included by this very exclusion, embodies a threshold in itself that articulates and blurs the distinction between

¹⁷⁰ Giorgio Agamben. *Homo Sacer, Sovereign Power and Bare Life*. trans. Daniel Heller-Roazen
California: Stanford University Press, 1998. p.170

¹⁷¹Ibid, p. 70

« zoe » and « bios », the inside and the outside, the human and the inhuman. The difference between « homo sacer » and the prisoners of Nazi concentration camps, Agamben argues, is that unlike homo sacer's ban or total exclusion from the city and the political space, the prisoners of concentration camps were placed by force in a situation where they were suspended in a zone between inside and outside, constantly under the risk of being victim of arbitrary violence. Their exclusion from the legal and political sphere enables their very inclusion at the same time, an inclusion that settles and legitimates sovereign power as well as governmental violence, by subjecting them to sovereign power.

This is the point where the Camp/modern slaughterhouse analogy fails, but at the same time a new possibility opens to understand how utilitarian animal ethics locate nonhuman animals in a precarious state, suspended between an inside and an outside of ethics and law. The animal welfare position is coherent with the current laws in Western countries, which nonhuman animals are recognized as sentient beings, protected from several practices that are labelled as cruel (yet what is labelled as cruel changes from one country to another, or from time to time) but still regarded as chattel property. When the animal welfare concerns started to take place in Western public policies (especially under Bentham's influence), laws in charge of rendering animal treatment more humane were legislated. For instance, today, whereas laws such as the Humane Slaughter Act¹⁷² only permits the methods of slaughtering nonhuman animals for human consumption, organisations such as PeTA (People for Ethical Treatment of Animals) enforce methods such as the Controlled-Atmosphere Killing on the basis that it is a less cruel,

¹⁷² Humane Methods of Slaughter Act of 1958, Pub. L. No. 85–765, 72 Stat. 862 (codified at 7 U.S.C. §§ 1901–1907 (2000))

more profitable method of chicken and turkey slaughter.¹⁷³ Following the paradigm shift that has been provoked by utilitarian animal ethics, nonhuman animals are recognized as sentient beings by law and common knowledge. Animal suffering is represented in legislation. Inflicting « unnecessary » (a term that remains relative and blurry) suffering on nonhuman animals is commonly regarded as wrong. But at the same time the significance of their death and captivity remained insignificant. They are regarded as those who suffer, but their life is worth nothing. They are sentient properties. This implies that they are constantly under the risk of being subjected to the arbitrary violence of their owners.

At the point where the Camp analogy fails, the rights theory offers the possibility for another analogy: the analogy between animal use and North American race-based human slavery¹⁷⁴. This analogy depends on the idea that in the current situation; nonhuman animals are reduced to chattel property and to commodities, as human slaves were in North America from 17th to 19th century. The shift from the Holocaust analogy to the slavery analogy implies a change of focus; indeed, this analogy departs from the methods applied in nonhuman animal use to rather focus on use itself and problematize it by showing the similarities with human slavery. This analogy clarifies that in the same way that there is no *humane* slavery, there is also no *humane* slaughter. The transformation of animals into units of production has not started with industrialized animal agriculture or modern slaughterhouses ; instead, it has started thousand years ago with domestication and still goes on today.

¹⁷³ "The Case for Controlled-Atmosphere Killing". *People for the Ethical Treatment of Animals, Website Material* <<http://www.peta.org/features/case-controlled-atmosphere-killing>> (accessed on May 30, 2015)

¹⁷⁴ Gary L. Francione. *Animal Rights*, "Animal Welfare, and the Slavery Analogy", *Web blog Post. Animal Rights: Abolitionist Approach*. <<http://www.abolitionistapproach.com/animal-rights-animal-welfare-and-the-slavery-analogy>> 2012. (Accessed on May 28, 2015)

The main difference between animal rights positions¹⁷⁵ and Singer's, is that animal rights positions do not value the positive or negative aspects of a being's suffering or pleasure, it rather values the *being* that is able to experience these suffering or pleasure. Therefore, according to the animal rights position, it is not sufficient to kill animals painlessly, one should stop using beings with inherent value as mere instruments.

I have examined in the previous chapter how the animal rights position understands and views the possession of inherent value, by referring to Thomas Nagel's essay *What is it like to be a bat?* where he invites us to think about the very question of this title.¹⁷⁶ Nagel's essay is not about animal ethics, but his inquiry indicates what Regan argues in his animal rights theory; although we are not able to think about what it means « to be being a bat » without falling and being trapped into anthropomorphism, we can still conceive that there is *such a thing* as being a bat; « being a bat » is not being something but being *someone* -not *someone* understood in human terms but rather as being sort of a someone in a particular way-. Regan's arguments for animal rights recognizes that there is such a thing as *being* a nonhuman animal; this is what he calls « subject-of-a-life ». He argues that this means to have an inherent value, in other words to be irreplaceable. This also means to have the right not to be harmed and not to be interfered with. This argument distances and frees the idea of « being someone » from being in a position that is particular and only suitable or available for humans; nonhuman animals are *someones*, and this implies that they should have the rights expressed above.

¹⁷⁵ In this chapter when I use the term *animal rights theories*, I refer to the theories by Tom Regan and Gary L. Francione.

¹⁷⁶ Thomas Nagel. "What is it like to be a bat?." *The Philosophical Review* (1974): 435-450.

Alongside Regan; Francione's theory of rights elucidates that there is a barrier that prevents us from taking nonhuman animal suffering into equal consideration, and that this barrier is the property status of nonhuman animals. As long as this status is not being questioned, nonhuman animals will continue to be regarded as means to any ends we designate. Rejecting this property status and recognising that they are not *something* but *someone* leads to the moral position that it is not justifiable to use animals for any purposes at all. One might see the animal rights theory as a breakaway both from the earlier Western tradition that regards nonhuman animals as mere things, and from the utilitarian/welfarist tradition that regards nonhuman animals suffering morally valuable, but rejects their interest in continuing to live or not to be regarded as property. In practice, the recognition of the inherent value of animals leads to the conclusion that they can't be used, no matter what the conditions of this use are or how they are being treated.

This challenge to the earlier framework by rights theories is not limited to academic circles. In the same way that Bentham's arguments induced a movement for a better treatment of animals - or welfarism-, the animal rights arguments have provided a basis for the animal rights movement that seeks for the abolition of animal use and for the recognition of veganism as a moral guideline. Despite the fact that an increasing number of domesticated animals are brought to life for human use and that an increasing number of animals are being annually killed for the purpose of human consumption, it is also a fact that an increasing number of people are recognizing the moral significance or the personhood of nonhuman animals and organising their lives accordingly to this recognition. This change might favorize a paradigm shift in the near future.

Yet, although the discussion continues in terms of animal rights, one thing remains the same: nonhuman animals have remained what they were already for Aristotle: a living property with no political existence. For a great majority of people, they are still properties, living and sentient resources available for human ends. But at the same time this discussion may lead to a point where, the property status of animals is not taken for granted anymore and there is a possibility for nonhuman animals to be regarded as moral persons.

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