

Wojciech Jankowski, MA

Faculty of Law and Administration

Department of Theory and Philosophy of State and Law

Abstract of doctoral dissertation

entitled "The status of animals from the perspective of social contract theory"

A change in the perception of the status of animals, combined with the development of industrial farming and growing awareness of human impact on the environment, sparked an important ethical debate in the second half of the 20th century—a debate about the moral status of animals. The two most popular concepts concerning the moral status of animals are Peter Singer's utilitarian theory and Tom Regan's deontological theory. Although they come from different philosophical traditions, their arguments for including animals in moral consideration have a similar core. The arguments put forward by Singer and Regan focus on questioning the significance of the differences between humans and animals. Although both researchers acknowledge that differences between humans and animals exist, they do not consider them morally relevant. For them, the fact of possessing language, self-awareness, culture, or highly developed intelligence is not a determinant of moral obligation towards a particular being.

However, some representatives of contemporary social contract theory, among others, disagree with this. In social contract theory, norms are seen, first, as negotiated in a hypothetical contract between rational and selfish entities in a so-called situation of justice, and second, as those that free and rational persons would agree to in order to maximize their own benefits. From this perspective, the only relevant criterion for moral status is rationality, which seems to be a trait unique to humans. Rationality in this case is defined as broadly as possible—as a set of traits required to negotiate the terms of a contract and then understand and be able to impose the obligations arising from it. In this case, it is pointed out that it is impossible to "conclude" a social contract with animals because: 1) they cannot negotiate a contract even in a hypothetical sense because they are not sufficiently rational, and 2) they are also unable to regulate their behavior based on the terms of the contract, so they will not comply with it. The following conclusion can be drawn from this: animals are not rational enough to enter into a contract or comply with its provisions, so they cannot be covered by it. Therefore, it is widely believed that

social contract theory is unable to take into account the direct status of animals. This position is found among both supporters and opponents of the direct status of animals. Those interested in seeking theories related to animal protection are directly advised to do so outside of social contract theory.

In this dissertation, I criticize the position that social contract theory is inapplicable to determining the status of animals and hypothesize that social contract theory, both in its contractualist and contractarianist forms, can be successfully used to grant them direct moral status and to evaluate legal regulations concerning animal protection.

The dissertation consists of an introduction, three chapters, and conclusions. The first chapter, entitled *Historical Sources of Animal Status: Between Rationality and Sensibility*, concerns the historical and philosophical conditions of the discussion on animal status. In it, I present the development of theories addressing the issue of animal status, from ancient gradualism to Cartesian separatism, and outline two traditions of thinking about animal status, based respectively on reason and sentience. At the same time, I point out that the former seems to be represented much more strongly by European philosophers, including classical representatives of social contract theory (Hobbes, Locke, Kant). This tradition is, in a sense, ignored after Descartes by opponents of including animals in the sphere of morality (who have since focused on their lack of sentience), and after Bentham by its supporters (who, conversely, focus on the fact that animals can feel). I conclude the first chapter with the observation that while in the post-Darwinian world the argument denying animals the ability to feel has weakened, the tradition associated with the social contract and denying them rationality remains alive.

The second chapter is entirely devoted to social contract theory (SCT). In it, I present a general characterization of SCT, focusing on its development: starting from the concept of the state of nature, I discuss the distinction between the historical and hypothetical approaches to the contract, characterize the participants in the contract, and analyze the growing role of game theory in its contemporary versions. Later in the chapter, I present an overview of the most important reservations and criticisms formulated against SCT. On this basis, I reconstruct a typical argument put forward by representatives of social contract theory, which—assuming that animals lack rationality—denies them direct moral status. I confront it with the response of animal liberation thinkers, based on the argument of "*marginal* cases." I then introduce John Rawls' theory, especially the concept of the "original position" and the veil of ignorance as an example of a contemporary version of TUS (chapter 2.5). The choice of Rawls is dictated primarily by the enormous influence he had on the revival of interest in the idea of the social

contract in the 20th century, as well as the fact that it is his theory that is at the center of the first wave of discussions on including animals in the framework of TUS. The presentation of Rawls' thought experiment does not imply an in-depth analysis of his entire theory of justice, but rather a focus on those assumptions of his experiment that become a point of reference in chapter three (especially in the concepts of Carruthers and Rowlands, chapters 3.2 and 3.4). An analysis of the initial attempts to include animals in the social contract leads to the conclusion that the disagreement over the inclusion of animals in the TUS stems from the multitude of interpretations of the purpose and function of the TUS itself.

Therefore, in chapter three, entitled *The Status of Animals: Between Contractualism and Contractarianism*, I use a division into two traditions—contractarianism and contractualism—which perceive the very purpose of using the tool of "contract" in different ways. This, in turn, leads to different ways of interpreting the role of the requirement of rationality of the parties to the contract. Adopting this division, in the following subsections I present five key contemporary concepts of the status of animals within TUS. The first two deny animals direct moral status: Jan Narveson's pure contractualism grants animals only indirect protection, while Peter Carruthers' quasi-contractualism is *de facto* close to the classical form of contractualism, in which animals also have indirect moral status, but in Carruthers' view it is only conditional. Next, I discuss three concepts that grant animals direct moral status within TUS: Mark Rowlands' neo-Rawlsian contractualism, which postulates granting animals direct moral status (chapter 3.4); Andrew I. Cohen's "incomplete contractualism," which introduces the concept of direct second-order moral status (chapter 3.5); and Chris Tucker and Chris MacDonald's "full contractualism," in which the requirement of rationality of the parties to the contract is replaced by the requirement of responsiveness (chapter 3.6). In analyzing the latter, I also review the current state of knowledge regarding animals' capacity for reciprocity, which can be seen as a qualified form of responsiveness. After a detailed reconstruction of each of these positions, I conduct a critical analysis of them, identifying both their strengths and potential theoretical gaps, and I point to the theses within the discussed positions whose correctness depends on the results of in-depth empirical research.

In the conclusions section of chapter three, I propose how the above five positions could serve as an evaluation tool for animal protection law regulations. For this purpose, cases that best fit the "perspective" of a given theory were selected for evaluation. This chapter is therefore hypothetical in nature, as it is based on a certain counterfactual assumption of adopting only one theory as the basis for evaluating a given legal solution, somewhat detached from the legal

system as a whole and its real axiological entanglement. The aim of this approach is to show how social contract theories can serve as an axiological basis for evaluating specific legal solutions concerning animals, even though they have so far been largely ignored in this context, especially by representatives of the animal liberation movement. In the last part of the work, I draw attention to the conditionality of the decisions made and present research perspectives for the future.

The issue of the status of animals in the context of contemporary data on human impact on their welfare and the growing number of calls for regulation of this issue deserves special attention and further study. Certainly, the exploitation of animals and the conflict between the values associated with the need to protect animals and the aforementioned constitutional freedoms of humans is a growing problem that also requires philosophical and legal reflection, as it is the assumptions developed within the framework of legal philosophy that will form the basis for the creation of appropriate legal solutions that will translate into the creation and application of law.