

*The becoming of the non-human animals in a post pandemic  
world /*

O devir dos animais não-humanos em um mundo pós-  
pandêmico

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**ABSTRACT**

This work aims at bringing an ecocritical look upon the non-human animals taking into consideration their becoming in a post-pandemic world, focusing on anti-speciesism, since most Literature that deal with the relationship between human beings and other species does it under an instrumental perspective, considering human interest and the animal's value while an object, as for example the preservation of wild animals as elements that belong to the fauna. Here will be pointed out the way how the shared abilities between human and non-human individuals conjoin to the characterization of this personality. As well as the considered ideal of human dignity is necessarily linked to the concept of existential minimum and the subsequent list of basic rights for its self-preservation, in a post-pandemic future – concurrently and respected the due proportions – it becomes mandatory the comprehension of non-human individuals

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while equally subjects with rights, with the construction of a proper dignity that as though is derived from human dignity is not interchangeable with it.

**KEYWORDS:** Anti-speciesism; Animal Becoming; Animal right; Non-human individuals.

#### RESUMO

*O presente trabalho visa a trazer um olhar ecocrítico sobre os animais não-humanos a partir da consideração sobre o seu devir em um contexto pós-pandêmico, com enfoque antiespecista, posto que boa parte da literatura que retrata a relação entre seres humanos e demais espécies o faz sob uma perspectiva instrumental, considerando os interesses humanos e o valor do animal enquanto objeto, a exemplo da preservação dos animais silvestres enquanto elementos componentes da fauna. Aqui será apontado de que maneira as habilidades compartilhadas entre indivíduos humanos e não-humanos confluem para a caracterização dessa personalidade. Assim como o ideal de dignidade humana considerado está necessariamente atrelado ao conceito de mínimo existencial, com o conseqüente rol de direitos mínimos para sua autopreservação, em um devir pós-pandêmico -paralelamente e guardadas as devidas proporções - faz-se necessário a compreensão dos indivíduos não humanos enquanto – também- sujeitos de direito, com a construção de uma dignidade própria, derivada da dignidade humana, mas que com ela não se confunde.*

**PALAVRAS-CHAVE:** Antiespecismo; Devir animal; Direito animal; Indivíduos não-humanos.

## 1 Introduction

The analysis and reanalysis of existential values is indispensable for the constant evolution of the social and human structure. The man always tested the creation of your own culture based on his current belief systems and limitations. Due to those restrictions, throughout history, the way that the humanity developed and develops its own ethical-moral narrative has always been manifested, in somehow or other, in exclusions and privileges.

Groups were segregated by their skin color, issues of genres, age and geographic characteristics, religious choices etc. Through that segregation, there were violence and stigmas, both very well-reasoned for theirs time. Many argue that the exclusion structure of individuals is part of the natural game of supremacy which defined the bases of society and, therefore, in addition to be inevitable elements, they would also be required and even desirable to ensure the constitution and development of own civilization and ultimately of the *homo sapiens* species.

Such justifications were the basis for naturalistic fallacies that legitimized over time violence and segregation of spaces, achieving unimaginable asymmetries for our current ethics. However, being the ethics while a valuation on the morality, condition which generates the value ballast of own humanity, what would the modern ethics say about the current and social structure?

Many times, the narrative that tries to unite the *homo sapiens* in his dignity increased on universal values – if it is dedicated to achieve the eradication of the scourges of humanity such as social gaps, diseases, war and hunger –, and the same as that denies the human responsibility

about the unspeakable suffering of other species, whose suffering is unnecessary in the vast majority of times. With regard to the subject, Yual Hoah Harari exposes that:

Since human and animal bodies were the only energy conversion device available, muscle power was the key to almost all human activities. Human muscles built carts and houses, ox muscles ploughed fields, and horse muscles transported goods. [...]. Unfortunately, the evolutionary perspective is an incomplete measure of success. It judges everything by the criteria of survival and reproduction, with no regard for individual suffering and happiness. Domesticated chickens and cattle may well be an evolutionary success story, but they are also among the most miserable creatures that ever lived. The domestication of animals was founded on a series of brutal practices that only became crueller with the passing of the centuries. (HARARI, 2014, p. 83-84)

In the 21<sup>st</sup> century, where the possibility of consciousness is full through the ubiquitous scope of information, what our self-criticism as species indicates on the current structure established in suffering of those who need the power? The current ethical-moral thinking tries refocus on almost exclusively to human problematics. In the 21<sup>st</sup> century, the minorities get inevitable visibility before the history. However, a universal consciousness of superspecies responsibility is again denied by narratives fallacies.

More precisely in the context of pandemic, the human relationship with the other species deserves intensified attention, since the extensive raising animals is directly associated to the major biological disasters experienced for humanity, such as Variola, Bubonic Plague, VIH, H1N1, Ebola, among others, according to the work *Pandemics, global health and personal choices* (ALONSO and PAIM, 2020). In the same work, the writers instruct:

We tend to approach independently each new epidemic and public health crisis, rather than concede that they are symptoms of joint thing. The animals have served to humanity for millennia, but in current modern societies, we need to be franks and to admit that the vast majority of animal production systems considered as ultra-moderns added to ultra-primitive ways of obtaining animal protein directly from biodiversity represent a very high risk to public health. The extent of human and financial losses coming from many outbreaks of infectious diseases whose origin referred to that systems, as well as antibiotic resistance, make it a social and economic problem. (ALONSO and PAIM, 2020, p. 57-58)<sup>1</sup>

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<sup>1</sup> In the source text: Tendemos a abordar cada nova epidemia e crise na saúde pública de forma independente, em vez de reconhecer que esses problemas são sintomas de algo comum. Os animais tem servido à humanidade por milênios, mas nas sociedades modernas atuais precisamos ser francos e admitir que a esmagadora maioria dos sistemas de produção animal tidos como ultra-modernos, somada a formas ultra-primitivas de obtenção de proteína animal diretamente da biodiversidade representam um risco para a saúde pública altíssimo. A extensão das perdas

In this sense, there is no way to approach the pandemic theme without, although, refer to one of its main reasons: the relationship between the *homo sapiens* with the other species. According to the previous note, however, there is no a biologic approach about the impacts of animal exploitation on human health. In this context, the need to question the personal and collective choices caused by the worldwide pandemic is used as a request to the least anthropocentric philosophical and legal assessments.

## 2 About the evaluating character of the animal sentience

For a long time, the capacity for feeling from the majority of animals was questioned, and today it is scientifically uncontroversial. It is important to note the relative studies to the animal sentience (ATAÍDE Jr., 2021), area of knowledge responsible to understand the capacity of conscious experience from the beings that brought relevant discoveries about the degree of conscious affectation, both positive and negative, that the non-human individuals are able to experience. Among them, the possibility of the development of complex emotions and phycological sickness. Those findings have fundamental importance to the recognition of non-human animal dignity, as Vicente Ataide Junior explains:

The animal dignity is resulting from the biologic fact of the sentience, in other words, from the capacity to feel pain and to experience physical and/or psychological sufferings. The animal sentience is legally valued when it is confronted with the human interactions and actions, through the fundamental rule of the contemporary Animal Right: the prohibition of practices that submit the animals to the cruelty. (ATAÍDE Jr., 2021, p.48-76)<sup>2</sup>

The sentience as a characterizing aspect of dignity has been shown the most appropriate criterion, since the rationality is embraced as a juridical attribute, that feature would shirk even the human individuals for protection of their dignities, for example, those that, by transitory or permanent causes, have a large reduction of their cognitive ability.

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humanas e financeiras provenientes dos diversos surtos de doenças infecciosas cuja origem se remete a estes sistemas, assim como da resistência a antibióticos, fazem deste um problema social e econômico também.

<sup>2</sup> In the source text: A dignidade animal é derivada do fato biológico da senciência, ou seja, da capacidade de sentir dor e experimentar sofrimentos, físicos e/ou psíquicos. A senciência animal é juridicamente valorada, quando posta em confronto com as interações e atividades humanas, pela positivação da regra fundamental do Direito Animal contemporâneo: a proibição das práticas que submetam os animais à crueldade.

In such context, considering that the rationality and its resulting attributes as culture, language, among others, constitute the main difference between the human species and the others, another able criterion would remain to distinguish properly the beings that have or have not dignity. According to Pedro Henrique Freire:

In addition, the only characteristic that all human beings from the animals of others species is the own specie. However, it is of an indefensible arbitrariness and the similar to other forms of prejudice equally reprehensible. If all the human beings are owner of dignity and, thus, of rights generated from it as the right to life, to freedom, to physical and psychological integrity, there is no reasonable justification to deny the same dignity to non-human animals alike to many of these humans in everything that is morally relevant. What is the possible justification to handle differently similar cases? (FREIRE, 2013, p.59-77)<sup>3</sup>

Then, there is a need for an ethical position targeted for those individuals. It is worth that the sentience is valued in Brazilian legal system as where is regulated the interaction between human and non-human individuals, with the prohibition of practice of cruel actions set out in Art. 225 §1 VII of the Brazilian Federal Constitution – although mitigated by the constitutional amendment nº 96 (PEC of vaquejada) - as well as by the Environmental Crimes Law, in article 32. Recently, the article was altered to expand the penalty for the crimes committed against cats and dogs.

It is important to emphasize that, although the laws are positive, the devices have a low efficiency while a way to tutor appropriately the concerns of the non-human individuals and to prevent future violations, particularly those species upon which the classical civil perspective still prevails that analyzes the non-human animals as analogous legal assets to the inanimate beings, like the animals which are traditionally slaughtered for food. Elsewhere, it is possible to verify that the protection does not happen in a homogeneous way among the species, for example, the law 1095/19, that escalates the penalty for the crimes committed against cats and dogs, though there are no justified differences between those species compared to the others, except the value culturally attributed to those by the human in Brazil.

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<sup>3</sup> In the source text: Para além disso, a única característica que distingue todos os seres humanos de todos os animais de outras espécies é a própria espécie. Porém, essa característica é de uma arbitrariedade indefensável e similar a outras, igualmente reprováveis, formas de preconceito. Se todos os seres humanos são possuidores de dignidade e, portanto, de direitos dela decorrentes, como à vida, à liberdade e à integridade física e psíquica, não há justificativa razoável para negar a mesma dignidade para animais não-humanos, iguais a muitos desses humanos em tudo que é moralmente relevante. Qual a possível justificativa para tratar casos similares de maneira diferente?

### 3 Animal Dignity and Human Dignity

We cannot talk about Animal dignity without referencing that to humanity, since if human dignity is an unconditional metaphysical system of man's valorization for the global society, not from its abilities, but by its inherent moral value. Therefore, the animal dignity emerges while a natural unfolding, a direct consequence from its shared attributes, particularly the ability of conscious experience.

Then, the animal dignity represents an ecologic expansion, escaping to anthropocentric standard that until now is presented, while adapt to under the same principles.

Immanuel Kant was one of the main thinkers to establish the foundations that would be today the human dignity. Nevertheless, he catalogues the rationality while essential requirement to the characterization of status as "person", also understood while individual, removing other species from that analysis. As previously explained, the criterion of rationality does not seem appropriate for the characterization of dignity, be it human or animal dignity, since it does not encompass even all the human individuals.

Tom Regan (2004), whereas, contrasts and exposes the Kant's approach, in that he moves the legal origin of dignity, removing and bringing it from the rationality for the capacity to feel and live. Therefore, it means that the Regan's ethics is based on the similarities of human and animals whereas opponents to the rights of animals searches incessantly to find differences. (FREIRE, 2013, 59-77)

### 4 The Abolitionist Ethical Imperative

Recognized and valued the physical and psychological integrity of the animal, it is common in the field of discussion of ethics and animal dignity, the presentation of welfare proposals that aim to improve the quality of life of these animals without necessarily breaking with the circuits of instrumentalization of others species. Welfare is a line of thought in animal law, whose central element is the promotion of well-being and reduction of suffering of the animals. In this scenario, the use of these species for consumption, entertainment, clothing, transport, among other

purposes, is admitted, provided that minimum parameters of well-being and comfort for these animals are established and complied with.

To illustrate this trend, we have at the national level, the PEC of vaquejada (50/2016), which opposed the prohibitive interpretation of the Supreme Court regarding the practice of vaquejada, understanding that such events would configure cruel practices prohibited in the magna letter in its article 225. Thus, the text of the amendment is presented as follows:

§7 For the purposes of the final part of item VII of §1 of this article, sports practices that use animals are not considered cruel, provided they are cultural manifestations, pursuant to §1 of art. 215 of this Federal Constitution, registered as an immaterial asset that is part of the Brazilian cultural heritage, and *must be regulated by a specific law that ensures the welfare of the animals involved* (emphasis added).<sup>4</sup>

In this scenario, it is noticeable that this aspect legitimizes the use of these animals for entertainment purposes, provided that some legal parameters of animal welfare are safeguarded. This current receives a lot of criticism, especially from the abolitionist part, both for the low effectiveness of the proposals in improving the quality of life of animals (due to the lack of inspection and guarantee of certifications) and for perpetuating the circuits of animal exploitation.

The abolitionist current, on the other hand, treats the life of non-human animals as an intransmissible value “Abolitionists defend fundamental rights for subjects-of-a-life: to life; to physical and psychic freedom (to sexuality, to the pursuit of one's own good without handling or restriction, to non-enslavement)” (FELIPE, 2017, online).

Nevertheless the divergences between the two theories, it is possible in a specific case that abolitionist and welfarist activists accept the same proposition that implies improvements to animal welfare. It so happens that, for them, its final objective would remain fulfilled, while for those, this solution would be just a half-step. In the words of Sonia Felipe:

Abolition does not negotiate in installments the restitution of property extorted from animals, nor does it adopt the idea of reducing mistreatment or reducing the scope in which it is inflicted on animals (welfarism). To abolish is to put an end to the complete practice, deconstruct its scaffolding and remove the moral supports that have supported it for millennia. To abolish is to extinguish at the root the belief in the moral legitimacy of the exploitation and killing of animals by humans for eating, traction,

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<sup>4</sup> In the source text: §7º Para fins do disposto na parte final do inciso VII do § 1º deste artigo, não se consideram cruéis as práticas desportivas que utilizem animais, desde que sejam manifestações culturais, conforme o § 1º do art. 215 desta Constituição Federal, registradas como bem de natureza imaterial integrante do patrimônio cultural brasileiro, devendo ser regulamentadas por lei específica que assegure o bem-estar dos animais envolvidos (grifo nosso).

beautification, entertainment, treatment, hygiene, and serving any other purpose. (FELIPE, 2017, n.p.)<sup>5</sup>

From the Kantian perspective, the value attributed to human life gives it dignity in the sense of constituting the individual as an end in itself. Thus, the instrumentalization of the human for purposes other than their ethos is not admitted. Similarly, animal dignity cannot be mitigated, even if this instrumentation - whether for entertainment, transport, food, among others - does not necessarily imply physical or psychological suffering to the animal. In this sense, the mere deviation from the inherent value of the life of non-human animals in order to meet human needs and interests would constitute an ethical violation of animal dignity.

As a way of illustrating this thought, I carry an event and legal precedent of human experience, in which the city hall of the French city of Morsang-sur-Orge banned a nightclub that promoted a “dwarf throwing” event with the use of cannons, on the grounds that that spectacle would be an attack on the dignity of the human person and consequently on public order (VALE, 2015). In this case, there was no evidence of psychological or physical damage to the person thrown, on the contrary, Mr. Wackenheim pleaded for the revocation of the prohibition, arguing that he would be enjoying his individual autonomy to exercise the activity.

In this context, it is inferred that, considering that dignity, both human and animal, constitutes an available legal asset - which is not the object of this discussion - this hypothesis could not be accepted for non-human individuals, since one of the essential requirements for characterizing this availability would be missing, namely: the ability to consent.

Therefore, in light of the animal dignity now being pursued, the welfarist alternatives, although representing an evolution in relation to the complete indifference with which human society treats other species, do not seem the most adequate ethical solution. Since, although it aims to improve the quality of life of these individuals, it perpetuates the core of the problem, as it does not recognize the other species in their subjectivity, whose rights are inherent, unavailable and opposed to third parties.

## Conclusion

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<sup>5</sup> In the source text: A abolição não negocia em parcelas a restituição do bem extorquido dos animais, nem adota a ideia de reduzir os maus-tratos ou diminuir o âmbito no qual eles são infligidos aos animais (bem-estarismo). Abolir é pôr fim à prática completa, desconstruir seus andaimes e retirar os sustentáculos morais que a amparam há milênios. Abolir é extinguir pela raiz a crença na legitimidade moral da exploração e matança de animais pelos humanos para comilança, tração, embelezamento, diversão, tratamento, higiene e atendimento a quaisquer outros propósitos.



Formal recognition of the individuality of non-human animals is essential for building a sophisticated and effective protection system. Since it is not possible to attribute rights or interests to objects, as they are typical characteristics of subjects, such as dignity. In the same sense, recognized animal dignity is necessarily linked to the need to have it respected, as Ataíde Júnior explains:

As all dignity must be protected by fundamental rights, dignity cannot be conceived without a minimum catalog of these rights, so animal dignity must be understood as the axiological basis of fundamental animal rights, which constitute the object of Animal Law. (ATAIDE JUNIOR, 2018, p 48-76) <sup>6</sup>

Considering that rights can also be understood as the protection of interests, it was justified for a long time, under a classical perspective, that the interests involved in animal protection would be human, like the collective environmental right to preserve fauna. However, with the advance of essentially animalistic norms, which protect the animal's well-being and integrity, from the perspective of its own interests, this reasoning has lost space.

To have rights, you have to be someone, technically a subject of rights. What is incongruously observed in the Brazilian legal system is the animal bivalence represented. Sometimes the civil code refers to other species as legal assets, and therefore objects, sometimes they perceive them as subjects, even if not expressly, when considering their private interests, prohibiting the practice of cruel acts in their disfavor.

It so happens that law, as a science deeply marked by social values and customs, reproduces the same socially observed incongruity in relation to other species, which partially recognizes these rights while disobliging to respect them. The animal is then considered a “subject-thing”, whose subject rights are listed, without necessarily losing the status of thing and its servile characteristics.

Despite the existence of bill nº 27/2018, which attributes legal personality to non-human individuals, disregarding them as an object, this consideration must encounter strong social resistance. Not because of the animal's lack of social assimilation as a subject, but because of the resulting changes.

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<sup>6</sup> In the source text: Como toda dignidade deve ser protegida por direitos fundamentais, não se podendo conceber dignidade sem um catálogo mínimo desses direitos, então a dignidade animal deve ser entendida como a base axiológica de direitos fundamentais animais, os quais constituem o objeto do Direito Animal.

Therefore, it is necessary not only to recognize the existence of this subjectivity, but also to respect the rights arising from it, refusing any use of animals to human interests. In this sense, if in the past the instrumentalization of animals was necessary for the biological evolution of humanity as specie, today it is incompatible with it.

Hence, it is essential to align human interests in environmental preservation, global health and ethical consistency, in relation to the interests of other species, such as self-preservation, necessarily passing through the recognition of their individualities. This will be animal becoming in a post-pandemic world.

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