
A LEGAL-PHILOSOPHICAL POSITIONING AGAINST THE METAPHYSICS OF THE “ISMS”: AN ANALYSIS ON ANIMALS

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ABSTRACT

Initially, this paper proposes a historical resumption of the relationship between humans and other animals, from its prehistoric origin to domestication. Then, from Heidegger, the text criticizes metaphysical positions that intend to ground the human relationship with other animals, because they are arbitrary. It also criticizes the resumption of classical authors to justify a certain relationship with animals, using Kant as an example, because it is insufficient. Finally, the text is concerned with the construction of public policies that consecrate animal health and the protection of the life of all beings. Since single health is not adopted in Brazil and in the criminal sphere the life of the domestic animal is not even protected, the proposal is that the animals be treated for the simple fact of being. The research is theoretical-bibliographic and presents deductive reasoning.

Keywords: Animals; Prehistory; Domestication; Health; Heidegger; Bioethics.

*UM POSICIONAMENTO JURÍDICO-FILOSÓFICO CONTRA A
METAFÍSICA DOS "ISMOS": UMA ANÁLISE SOBRE OS ANIMAIS*

RESUMO

Inicialmente, o texto propõe uma retomada histórica da relação entre seres humanos e demais animais, desde sua origem pré-histórica até a domesticação. Depois, a partir de Heidegger, faz uma crítica a posições metafísicas que pretendam fundamentar a relação humana com os outros animais, por serem arbitrárias. Também critica a retomada de autores clássicos para justificarem determinada relação com animais, utilizando Kant como exemplo, por ser insuficiente. Por fim, o texto se preocupa com a construção de políticas públicas que consagrem a saúde animal e a tutela da vida de todos os seres. Uma vez que a saúde única não é adotada no Brasil e que, no âmbito penal, a vida do animal doméstico não é sequer tutelada, a proposta é de que os animais sejam tratados pelo simples fato de serem. A pesquisa é de cunho teórico-bibliográfico e apresenta raciocínio dedutivo.

Palavras-chave: *Animais; Pré-história; Domesticação; Saúde Única; Vida; Heidegger; Bioética.*

INTRODUCTION

The origin and evolution of species, natural selection, food and domestication were historical milestones of the approximation between men and animals, which today is object of studies that identify the emergence of this relation for reasons of survival and the development of it due to animal domestication by the human being.

Eating habits and metabolism provided a physical and cranial identity that differentiated beings, and domestication, in three evolutionary stages, marked the coexistence among all.

Today, however, this relation gains theoretical boundaries, now studied under the anthropocentric perspective, sometimes under the biocentric or ecocentric aspect, in order to put in evidence the man or the beings themselves in general.

However, treating the human-animal relationship in such an anthropocentric or biocentric and ecocentric way reveals the eventuality or ephemerality of the relationship itself, though susceptible to arbitrary interpretations, subject to the accidents of convenience and without proper reflection.

On the basis of this, the text presented here proposes a philosophical approach that has in Heidegger a reference that leads to the reflection of traditional metaphysical arbitrariness, questioning the essentialist presuppositions of beings, men and the world, still hidden in the different areas of knowledge, including Law. Man, while a world shaper, therefore, has the capacity to perfect the relationship with other animals, which is not conditioned to the present problems.

The analysis also covers Bioethics, and has in Hans Jonas (2004) another important theoretical reference, in order to illustrate the misconception of the study of the relations between man and animal that the traditional theorists take up, adapting them to the new times, as, for example, in relation to the kantian categorical imperative. The proposal is another categorical imperative that, in the context of a new Bioethics, breaks with the individualist paradigm and propagates itself to the public, to the present and future society, including other beings and ecosystems.

Based on this philosophical proposal and the new Bioethics, the text recommends a vision of public policies that welcome human beings

and animals for their own dignity, the purpose of a single health policy and of more appropriate penal laws that protect animal life, as well as human, as such, which, however, has not been seen and practiced, especially regarding the guardianship of the life of the domestic animal.

There is, therefore, an issue that concerns the purpose of public policies that consecrate the single health for the benefit of all beings and the criminal protection of animal life. The hypothesis, fulfilled in Heidegger and Jonas, is that animals are deserving of these juridical constructions because they are, without that falling off labels drawn from metaphysics.

In the inaugural chapter will be treated the human-animal relationship since prehistory, subject that will follow up with the philosophical reflection developed from Heidegger.

The next chapter will take care of developing the new categorical imperative proposed by Hans Jonas that presents itself as a more adequate reference for the treatment of the relations between man and animal for not developing, in essence, constructions settled by the anthropocentric rationality, in which the human individuality, but rather solidarity among beings in general.

The final chapter discusses the single health as a public policy more adequate for the protection of beings, in view of the theoretical framework previously studied, which also justifies the criticism of the absence of criminal law that consecrates domestic animal life in Brazil.

The research is therefore interdisciplinary, theoretical and bibliographical, and employs the deductive reasoning that solidarity among beings is a reason for establishing legal practices that will enshrine the protection of other animals.

2 PHILOSOPHICAL REFLECTION ON THE RELATIONSHIP OF THE HUMAN BEING WITH THE OTHER ANIMALS

The relationship between men and animals goes back to prehistory itself, which is why it is convenient to realize the historical contextualization of this approach so that the philosophical reflections on the theme are initiated and developed. This is what will be done hereafter.

2.1 Historical analysis

The relationship between humans and animals has a long history. To characterize it, it is interesting to go back to the origins, reporting the very evolution of the human species. There are times biologists and anthropologists have been working on aspects that made possible the emergence of the human species. Countless theories have been raised. However, in the last years, it has consolidated the hypothesis that natural selection acted in this process.

One of the fundamental elements for natural selection is food. It has been argued that nutrient and accumulated energy were fundamental to the physiological changes of species.

A study (LEONARD; ROBERTSON, 1994) compared different primate species to men, arriving at the finding that body sizes are related to the types of nutrients eaten. Gorillas and Orangutans have large bodies because they eat foods that are difficult to eat and low in nutrients, such as leaves and barks. On the other hand, small primates eat insects and sap, foods that are easier to eat and have a higher level of nutrients. Modern hunter-gatherers, who would represent the primitive condition of *Homo sapiens*, in turn, feed on a diet with a high caloric level due to its metabolic needs (LEONARD, ROBERTSON, 1994, p. 78-81).

Another hypothesis raised for different energetic diets between species is the size of the brain. Studies with 31 species of primates show that humans consume three to four times more brain metabolism than other primates, which means that the evolution of hominids depended, among other factors, on the amount of metabolic energy in the brain, which did increase it in size:

These results imply that changes in diet quality during the evolution of hominids are related to the evolution of brain size. The shift to a more calorically dense diet was probably necessary to substantially increase the amount of metabolic energy used by the hominid brain. So while nutritional factors alone are not enough to explain the evolution of large brains, it seems clear that certain dietary changes were necessary for a substantial brain development to occur (LEONARD; ROBERTSON, 1994, p. 83).

From the collected analyzes it can be deduced that the human

alimentary needs depended on the metabolism of the human brain, bigger than those of the other primates. The question that arises is at what point in the evolutionary process did the food and metabolic changes that led to the brain increase occur. Even if the answer revolves around hypotheses, the analysis of hominid fossils offers some clues. Brain and body sizes of primate specimens can be used as a comparison between them by assessing the relationship between brain size and its metabolic rate (LEONARD; ROBERTSON, 1994, p. 83).

Leonard and Robertson (1994) compared six species of fossil hominids, taking into account cranial capacity, estimated body weight and resting metabolic rate, which means the expenditure of body energy to keep the body functioning. Comparing *Homo habilis* and *Homo erectus*, the first species of the genus *Homo*, with the *Australopithecus*, we can see that the brains of species of the genus *Homo* are larger than the previous species, *Australopithecus*, which coincides with the fact that the species *Homo* have learned to collect and share resources, which has led to food change, including increased consumption of animal diet.

Specifically, archaeological and morphological evidence indicates that these early members of the genus *Homo* incorporated larger amounts of animal material into their diet than the australopithecines (Bunn, 1981; Wolpoff, 1980). With initial *Homo*, there is the first clear evidence of home bases, implying that the resources were collected and brought back to a central location where they were shared (Potts, 1988). Therefore, it is likely that what supported the rapid expansion of brain size in *Homo habilis* and *Homo erectus* was both the higher quality and the greater stability of the diet. (LEONARD; ROBERTSON, 1994, p. 83-84).

Compared to other primates, humans consume more meat. 30% on average of their energy base comes from animal-based foods, since chimpanzees consume between 5 and 7%: "The adaptation to this calorically dense and easy to digest diet is evident in our intestinal morphology, since humans have a digestive tract relatively small compared to most other primates". (SUSSMAN, 1987; CHIVERS and HLADIK, 1980; MILTON, 1987). (LEONARD; ROBERTSON, 1994, p. 85).

According to Leonard and Robertson (1994), on average, primates spend 8 to 9% of their resting metabolic rate on the brain. The species that spend proportionally more of this rate on their brain, have a

better quality diet. In turn, small brains need low-quality diet foods. On humans it is possible to state that: “Humans represent the positive extreme, having a high quality diet and a brain responsible for 20 to 25% of the resting metabolic energy” (LEONARD, ROBERTSON, 1994, p. 85). Thus, a possible relation between the resting metabolic rate and the brain size can be affirmed.

Fossil registers indicate that for the emergence of the genus *Homo*, with the consequent change (increase) of the brain, a new diet was key. This period, about 2.5 million years ago, was also marked by climate changes that affected the behavior of hominids. Vrba (*apud* LEONARD; Robertson, 1994, p. 86) states that there was a great era of cooling on the planet during that period, increasing in Africa the arid and open environments. There was a greater abundance of animals in these new lands, which implied, specifically for the genus *Homo*, in the greater demand of these animals as supplies, whereas the *Australopithecus* continued to consume more fibrous feeds, like vegetables (although they ate meat, eventually). Such attitudes would determine the consequent increase of the brain of the species of the genus *Homo* and its perpetuation.

Different species of hominids of the same time seem to have adapted to environmental drought in different ways. **Early members of the genus *Homo* (*H. habilis* and *H. erectus*) appear to have included larger amounts of meat in their diet**, while those of the robust australopithecine lineage (eg *A. robustus*, *A. boisei*) continued to subsist largely in fibrous vegetable foods of lower quality. Thus, these ecologically initiated changes in behavior and diet probably provided the basis for the sustained selection for rapid brain evolution in early members of the genus *Homo*. (LEONARD; ROBERTSON, 1994, p. 86, tagged).

Although other factors are intricate for brain enhancement, the animal-based diet was central to this event. Climate change forced species of the genus *Homo* to relate to animals, that is, a contingency factor, but that allowed the species to evolve into *Homo sapiens*.

It can be verified that the relationship between humans and other animals began millions of years ago, due to eventual factors and survival.

Another key moment in this relationship was the domestication of animals by humans. Domestication took a gradual time and depended on both intentional and unintentional human interventions, as well as on

the modification of the environments provoked by humans, as specialized doctrine states: “[...] animal domestication took place on accessible timescales through archeological evidence and was driven by selection pressures created by unintentional and deliberate human actions, as well as by man-made environments”.(LARSON; FULLER, 2014, p. 116).

One of the most interesting hypotheses, proposed by Melinda Zeder (2012), states that domestication occurred in three ways. The first is called *Commensal Pathway*. *Initially, there was no human intention to attract wild animals to their localities*. When humans began to adjust the environment for themselves, the animals were attracted by their presence, benefiting from this relationship by feeding, for example, of food leftovers:

This path is traveled by animals that feed on garbage around human habitats, or by animals that attack other animals attracted to anthropogenic environments. These animals begin their journey to domestication by establishing a commensal relationship with humans - a relationship in which one partner benefits and the other reaps little or no benefit or harm. At some point in this association with humans and anthropogenic environments, these animals develop closer social or economic ties with their human hosts, who begin to derive some tangible benefit from the association. This new reciprocity puts the former commander and his human host on a path to a domestic relationship.(ZEDER, 2012, p. 171)

Less aggressive animals, such as certain species of wild wolves, which would become domesticated dogs, are examples of animals that have approached men by the way of commensalism, which is supposed to have occurred between 15,000 and 14,000 years ago: Placing young dogs at human burials at a site in southern Levante suggests furthermore that a special social bond had been formed between humans and dogs. (Davis and Valla 1978; Tchernov and Valla 1997; Morey 2005)” (ZEDER, 2012, p. 172).

The second route, called *Prey Pathway*, *took place when humans began to domesticate mainly cattle*. *Such animals were already prey to men, who used them for food*. *Over time, humans began to select species that best suited this management*.

Domestication of these prey species was probably initiated when, perhaps in

response to localized pressure on the animal's supply, humans began to experiment with hunting strategies designed to increase prey availability. Over time and with responsive species, [...] these strategies were developed in herd management strategies that included sustained multigenerational control over the movement, feeding and reproduction of the animals, characteristics of the domestic relationship. (ZEDER, 2012, p. 173-174).

Sheep, goats, pigs and oxen are examples of species that have been domesticated in this way since the 12th century BC. Genetic and archaeological studies have contributed to seek the origins of this domestication (ZEDER, 2012, p. 174-176).

A third type of domestication is called the *Directed Pathway*, which is characterized by being a process done by humans in a more deliberate and directed way, in order to obtain resources with the domestication of animals that were at first estranged in relationship to humans. This stage probably arose after the consolidation of the previous routes. It may be further stated that features found in certain domesticated animals may not have existed before.

Animals domesticated through this intention-driven process probably do not possess many of the major behavioral characteristics that pre-adapted certain species to domestication. As a result, the domestication of these animals requires a more deliberate effort on the part of humans to work with (or around) behaviors initially incompatible with domestication, with the growing technological assistance necessary for many of the species domesticated in this way (ZEDER, 2012, p. 176).

Horses and camels, for example, have been domesticated in this way and have long been tamed by humans. However, elephants, cheetahs and hawks, for example, used in hunting or other work, are not kept in captivity because of difficulties in keeping them. However, when captured young, they end up being handled.

In a way, these animals qualify as domesticated because they are engaged in a sustainable, multigenerational relationship with humans, in which humans take considerable control over their movements, feeding and protection to extract specific resources. And yet, since they are not bred in captivity, the normal set of selective factors responsible for the creation of domestic genotypes in other domesticated

animals never comes into play. Instead of plowing the selected traits of domestication for each new generation, the process of domestication begins again with each animal tamed for these purposes (ZEDER, 2012, p. 177).

In a way, recent domestications are on the Directed Pathway, since in the last 200 years several wild animals are kept in captivity, with the purpose of supplying meat, skin and delicacies, such as foxes and deer, for example, and fish. (ZEDER, 2012, p. 177-178).

Domestication of animals has been occurring for the last 17,000 years, and depended on different factors (cultural, climatic, geographic and evolutionary). Together with the beginning of consumption of animal derivatives, which has a long history (2.5 million years on average), it should be noted that the relationship between humans and animals predates any philosophical, political, economic and ideological vision. Such factors should be taken into account for a better understanding of this relationship, which does not mean an understanding that humans are doomed to biological and behavioral determinism. We are results of evolutionary processes, but not only. Therefore, philosophical reflection should be contextualized in the debate about human-animal, which will be done hereafter.

2.2 Philosophical analysis

There is a common and banal accusation that the way humans behave towards other animals is based on a prior philosophical conception. The analysis of the origins of the history of this relation demonstrates that such an assertion is problematic, since it has its origin in prehistory itself.

However, one cannot abandon the notion that the way humans deal with animals can be contributed by a conception of the world. Despite all the goodwill of those who seek to affirm the need for a passage from a supposed anthropocentric worldview to a biocentric or ecocentric vision, for example, it incurs a misconception that goes unnoticed. Anthropocentrism, broadly understood, can be considered as the notion that man is at the center of nature, an arbitrary view. In the same way, when one affirms biocentrism, which would try to equalize all forms of life, or ecocentrism, the perception that all beings have the same value, as positions to be followed, in order to change the relationship with animals, it also focuses on arbitrary positions. The arbitrary term in this context means starting

from assumptions without an incisive reflection.

The point is that the defense of such notions can also be modified at any time and for any interest, because they are eventual visions. Thus, the point that follows is the critique of such arbitrary positions so as to re-reflect the relationship of humans and other animals.

Although the biological process has been determinant for human being, it cannot be reduced to it. The point is that the very claim that the individual is determined genetically/biologically already takes into account a pre-understanding of the world of man.

In *Being and Time* (1927), Heidegger (1889-1976), in seeking the answer for the question of Being, turns to the entity capable of formulating this question: Dasein (being-there), that is, man as a question by Being. The work is an analysis of Dasein. For Heidegger Dasein is existence, that is, “the very being with which the presence¹ can behave in this or that way and with which it always behaves in some way.[...] The question of existence can always be clarified by the very existence.” (HEIDEGGER, 2005, p. 39). Dasein is not determined by an essence, in the sense of being a definite and finished being. “The ‘essence’ of pre-sence is in its existence.” (HEIDEGGER, 2005, p. 77). Hence, it is a problem to define man arbitrarily as “rational animal”, “image of god,” “*res cogitans*”, or “consciousness”, for example, as such definitions are taken for granted (HEIDEGGER, 2005, p. 85-87), but which, in fact, already carry within themselves a (metaphysical) conception of reality. Speaking of ethnology, and implicitly about the other sciences, Heidegger states that it is embedded in “certain prior conceptions and interpretations of the human pre-sence in general” (HEIDEGGER, 2005, p. 88). When science intends to understand the world at large, it also carries within itself a pre-comprehension about reality.

When talking about an essence of the human being or reality, the important point to note is that such visions are anchored in a previous metaphysical position, which can be taken as discretionary. In fact, since being human would not have an essence, in the sense of traditional metaphysics, the possibility exists that its relation with other animals can always be improved, without the need to presuppose any “isms”, such as anthropocentrism, ecocentrism or biocentrism.

¹ Pre-sence is the term used by the translator of this Portuguese version of the work *Being and Time* to designate Dasein.

In the letter on Humanism (1946), addressed to his French interlocutor Jean Beaufret, Heidegger, in analyzing what humanism would be, draws attention to this same criticism, on the other hand, of “isms”:

I wonder if this is necessary. Or is it that the misfortune that expressions of this nature provoke is not sufficiently manifested? There is no doubt that the “-isms” have long been suspected. But the market of public opinion constantly demands new ones. And you are always willing to cover this need.” (HEIDEGGER, 1979, p. 150).

But Heidegger, in speaking about Humanism, goes beyond a critique of “isms” as explanations of common sense. In fact, his analysis touches on the issue presented here that such definitions are based on a metaphysics and presuppose a foundation (which depends on a view of reality). Taking up the Western tradition, Heidegger affirms that for Marx, what makes man a man is society, for the Christian is to be “son of God”, for the Romans, influenced by the Hellenics, is to possess virtues through the *paidea*, a vision which will be constantly taken up by the Western tradition. The common point is that:

As much as these species of humanism are distinguished according to their goals and foundations, according to the manner and means of each realization, according to the form of their doctrine, they all concur in this that the *humanitas* of *homo humanus* is determined from the point of view of a fixed interpretation of nature, of history, of the world, of the foundation of the world, and this means, from the point of view of the being in its totality.

All humanism is based on a Metaphysics or it is postulated as the foundation of such. Every determination of the essence of the man who already presupposes the interpretation of being, without the question of the truth of being, and does not know whether or not he knows it, is Metaphysics (HEIDEGGER, 1979, p. 153, italics in the original).

For Heidegger, all humanism takes as the essence of man and metaphysical interpretation the notion that he is *animal rationale*, presupposing even what is life. And so he asks:

Similarly with “animal,” *zon*, an interpretation of “life” has already been proposed

which rests necessarily on an interpretation of the being as *zoé* and *physeis*, in the midst of which the living being is manifested. In addition to this, and before anything else, it remains, finally, to ask whether the essence of man as such, originally - and thus by deciding everything beforehand - actually lies in the dimension of the *animalitas* (HEIDEGGER, 1979, p. 154).

In the letter About Humanism, Heidegger takes up the definition of Being and Time that man is his existence (ec-sistence). In his words: “Being placed in the clearing of being I call the ec-sistence of man. This mode of being is only proper to man”. (HEIDEGGER, 1979, p. 154). Heidegger distinguishes man from other beings without returning to any kind of anthropocentrism. This characteristic of man causes him to criticize again the classical notion that man is a rational animal:

Such considerations throw a strange light on the current, and therefore always tentative, determination of man as an animal rationale. Because plants and animals are immersed, each within their own environment, but they are never freely inserted in the clearing of being - and only this can be the “world” - that is why they lack language. And not because they lack language, they are suspended without world in their environment. [...] Language is the enlightening advent-watcher of very being. (HEIDEGGER, 1979, p. 155-156).

The human being is distinguished from other beings by existing, having language and owning a world. Man exists as he questions being through language. Already in Being and Time, Heidegger (2005, p. 90) had defined Dasein as being-in-the-world. The other beings become beings properly so-called in the world: “These other beings can only encounter ‘with’ the pre-sence insofar as they can themselves appear within a world.” (HEIDEGGER, 2005, p. 96). In short, there is only one world because of Dasein, which gives meaning to other beings and relates them within the world. World, then, is the domain of the manifestations of referential relations. World is a Dasein formation.

At work *The Fundamental Concepts of Metaphysics* (1929), Heidegger returns to the theme of the present world in Being and Time, with developments that, to a certain extent, have already been illustrated in the analysis of the letter On Humanism. The philosopher starts from the comparative thesis that: “1. the stone (the material) is *without world*; 2. the

animal *is world poor*; 3. Man is the *maker of the world*.”(HEIDEGGER, 2011, p. 230, italics in the original).

Heidegger begins his analysis from the second statement: the animal is poor of world. Compared to man, the animal is bound by circumstance. Each animal is limited in its relations to certain beings, just as it is also restricted in its accessibility to beings, however “the discourse of world poverty and world formation should not be taken in the direction of a derogatory order of values.” (HEIDEGGER, 2011, p. 251). Heidegger clarifies that “the animal has its environment and moves in it. During his life, the animal is enclosed in its environmental world as in a tube that does not widen or narrow.” (HEIDEGGER, 2011, p. 256).

For their part, material objects, represented by Heidegger by the stone, cannot be deprived of the world, for they do not possess them, hence the thesis “the stone has no world”, which will differ material beings from animals. The stone has no link with another being. She is under the ground, for example, but has no relation with it, because:

has absolutely no access to something diverse as such, it also cannot be absolutely deprived of. The stone is. That is: it is this or that, and it is as such here or there. It is or is not simply given. It is - but to its being belongs the essential *absence of access*, under the domain of which it is in its own way (to be simply given. The stone is without world. The absence of the world of an entity in question and that precisely characterizes each time this way of being. (HEIDEGGER, 2011, p. 254).

Finally, Heidegger dwells on the claim that “man is the maker of the world.” To speak of the world one must speak of what is manifest, of the beings that are before man in his daily life, that is, of the relation of man to other beings. (HEIDEGGER, 2011, p. 352-354). Heidegger emphasizes the intrinsic relation between man and world, stating that the world “is the *opening of the being as such in the totality*.” (HEIDEGGER, 2011, p. 365, italics in the original).

The entity of which Heidegger speaks in the preceding sentence is man, and the totality corresponds to the sum of the manifestations of beings to man. “As such”, in turn, reveals something like “A while B”, which is even though the proposition “A is B”: “According to this structure, therefore, the ‘while’ forms part of the simple *enunciative proposition*. The ‘while’ is a structural moment of the structure of the proposition in the

sense of the simple enunciative proposition.” (HEIDEGGER, 2011, p. 369, italics in the original). The enunciative proposition is fundamental to the construction of the world.

In addition, when talking about the “while”, as “A is B” is necessarily speaking of “is”, of being. Heidegger criticizes the notion of being taken as entity (which, in his view, made all western metaphysics), thus proposes the difference between being and entities, the ontological difference². In dealing with this difference, “we understand the *problem of the world*” (HEIDEGGER, 2011, p. 457, italics in the original). What will allow this difference (being and entities) is what Heidegger (2011, p. 463) calls the original structure of the fundamental event, and this is the project: “*The project as the original structure of the event quoted is the original structure of the formation of world [...] project is world project. The world prevails in and for a letting viger who owns the character of designing.*” (HEIDEGGER, 2011, p. 465, italics in the original). Again Heidegger emphasizes the relationship between man and world, so when he speaks of the design of man, this is reflected in the design of the world.

The consequence of this analysis is that the world exists with man, but not as something definitive. Dasein has innumerable possibilities in the world, which is projected in a referential context of signification. Thus, however much a human being may find himself in an already constituted world, because there is no definite essence, he can project new ways of dealing with animals without returning to metaphysics. And, of course, Law participates in this project.

3 THE RETURN OF BIOETHICS TO ITS MULTIPLE REFERENCES OF CONSIDERATION.

Henceforth, a brief examination will be made in Animal Ethics without drawing more deeply into sentience. The option to exclude, in this text, the sentience is given for three main reasons: 1) This is already the most common and accepted reasoning in the means of debates about animals. 2) The sentience is something scientifically verifiable, although we can make reservations about different degrees of sentience. We can even refer to the consciousness of some animals. 3) Sentience leads to a restrictive protection, that is to say, animals that have been proven to feel

² Already placed in Being and Time §2.

pain, but not animals that have a radial, ganglionic or reticular nervous system, whose comparatively simpler formation does not allow such verification.

Therefore, the arguments will be erected on a foundation that is intended to be broader: Bioethics itself. But not the medical bioethics, also restrictive, but Bioethics that works with multiple reference points of consideration and, therefore, is not restricted to the animals that admittedly present a high degree of sentience.

Those who study Bioethics should know, but it is always good to remember that the term Bioethics was first written in 1927 by the German philosopher Fritz Jahr in his article "Bioethics: a panorama of ethics and the relationships of the human being with animals and plants."

Jahr (1927) proposed a bioethical imperative of respect for all forms of life as an end in itself. Bioethics would be an academic discipline, a principle and a virtue, which, as such, would impose moral obligations on all living beings.

In this way, it would extend the ethical reference in force to its time to reach all living beings. This broad ethic would be Bioethics. He uses the considerations of Francis of Assisi and Schopenhauer and says that the need to extend Ethics to animals is irrefutable. (JAHR, 1927)

The term Bioethics became popular, however, from the 1971 book "Bioethics: Bridge to the Future" by the American oncologist Van Rensselaer Potter. The name of the book is suggestive: Potter (2016) proposed the construction of an Ethical bridge, capable of mediating the relations between Sciences and the Humanities, focused on environmental problems and health issues.

Born as an Ethics of Life, with environmental and human health concerns, Bioethics, especially in the 1970s and 1980s, moved away from its ecological matrix and reinforced its concerns with the advancement of Medical Sciences.

This shift in focus was due to discussions of medical dilemmas at Georgetown University, especially under the leadership of André Hellegers. The central idea was to allow such dilemmas to be debated not only by doctors but also by philosophers and theologians. (NAVES; REIS, 2016)

However, the view was restrictive: questions about the environment or other living things were not considered bioethical problems.

This restrictive position was further strengthened by the creation, in 1974, also in the United States, of the National Commission for the Protection of Human Interests of Biomedicine and Behavioral Research. This Commission, four years later, presented the Belmont Report with the basic ethical principles guiding experimentation with human beings: respect for people, beneficence, and justice. (NAVES; REIS, 2016)

It seems that man has not yet realized that it is impossible to discuss health issues without discussing environmental issues and also that it is impossible at the same time to work ethics without taking it to the consideration of other living beings.

In the last decades, however, we have lived a movement that tries to value, in Bioethics, the broader discussions, although its performance has not always been rigorous.

The assertion that some research on extended bioethics is not always strict is mainly based on the failure of the philosophical framework to justify values intrinsic to other living beings, including animal dignity.

In no way do we disregard the efforts of researchers seeking to find ethical grounds for their theses on animal protection. However, methodologically, many of these attempts fail because they chose as the founding ground philosophers who did not have the animals for consideration or even an ethics that surpassed reciprocity.

For example, in the case of legal professionals who wish to justify the dignity of animals, it is still common to use the Kantian Ethics.

Now, Kant is a philosophical framework for the development of Ethics, but his theory focuses on the human being as agent and moral reference. Kant's categorical imperative places the human will, and consequently freedom, at the center of the Ethics of the First Modernity. Ethical action would always depend on the agent's ability to evaluate his conduct rationally. The supreme freedom of the will would be to be bound to duty, to the duty imposed by reason itself. (KANT, 1997)

The reading that can be made of this Ethics is that the absence of rationality in extra-human life would prevent the Ethics from reaching other living beings, since they would not have a moral action.

Thus, Ethics, with Kant, assumed as a condition the rational otherness or reciprocity, restricting itself to the human being as subject and recipient of his action. To this day, based on Kant, authors maintain

that Ethics does not apply to animals because they are not subjects that can have moral duties.

Therefore, using Kant to ground an Ethics for living beings or the dignity of animals proves to be methodologically wrong. A re-reading of Kant is not enough, because its anthropic presuppositions would require the use of a completely different framework of arguments and principles.

Therefore, the transforming effort must be much greater. This was the case of the work undertaken by Hans Jonas (1903-1993), which suggests a new categorical imperative, which will extend into the future. It is worth reading a short excerpt from his proposal:

Kant's Categorical Imperative said, 'Act so that you too may want your maxim to become general law' [...] for an imperative more fitting to the new kind of human action: 'Act so that the effects of your action are compatible with the permanence of an authentic human life on Earth' [...].'' (JONAS, 2006, p. 47)

With the reformulation, the Kantian imperative towards individuality and the private one takes on another aspect, which spreads to the public, to the present and future society, including to the other beings and ecosystems.

Jonas (2006) also affirms the extinction of the traditional idea of rights and ethical duties, by which my duty is the reflected image of the duty of others. With the presupposition of reciprocity or rational otherness, human individualism is put aside to raise a new proposal of Ethics.

The projection of Jonah's ethics into the future leads even to a "subject" who does not exist, does not claim and does not have his rights harmed: future generations. Moreover, it also addresses other forms of life, since ethics becomes a part of the philosophy of nature. (JONAS, 2006)

The new Ethics is concerned with being and not only with the human being:

[...] only an ethics based on the amplitude of being, and not only on the singularity or the peculiarity of the human being, can be of importance in the universe of things. It will have this importance if the human being has it; and if he has it, we will have to learn it from an interpretation of reality as a whole, or at least from an interpretation of life as a whole. [...] Therefore, as long as extra-human ontological research can

lead us to the universal theory of being and life, it has not really departed from ethics, but has gone after its possible grounding. (JONAS, 2004, p. 272)

Thus it is quite feasible for animals, not only those with a high degree of sentience, but all of them, including other living beings, to receive moral consideration of the new Bioethics. A Bioethics that has multiple references of consideration and that thinks for the future of the planet.

And it is from this Bioethics that it must influence the basis of Law. Some, more pessimistic about the current situation, may even say that this is very difficult, since the Right Law is anthropocentric!

The truth is that law is neither anthropocentric nor biocentric or ecocentric. Social values can even be classified as anthropocentric or biocentric, but the law, the law is none of them. Because law is not value, but it contains value. But not fixed values, even because the law is nothing without interpretation.

Moreover, this classification of values, usually placed dichotomically between biocentric and anthropocentric, has little practical relevance if it is not based on a coherent ethical system.

Law is, above all, a discourse, an argument about a certain semantics of the law. There is no ready meaning for the law. Every sense is built and historically located. And, for this very reason, influenced by values. It is important to read such values in the light of a broad Bioethics.

Understanding is historical and can only be realized in history. Which means that history leads and limits all attribution of meaning.

Law is important, but even more important and definitive is the creation of an ethical framework that underlies and legitimizes social decisions.

Bioethics is necessary, built from the new philosophical paradigms proposed in this and the previous chapter, to compose the horizon that limits the interpretation of the Law that is applicable to animals.

4 SINGLE HEALTH POLICY AND THE PENAL PROTECTION OF ANIMAL LIFE

The philosophical ethical dive of the man-animal relationship and the new Ethics proposed by Jonas in overcoming the Kantian categorical imperative for a new attitude towards other animals must yield fruits that

mirror public animal health policies and turn in favor of the existence and survival of present and future generations of beings, appropriate legislative practices in the area of criminal law, especially with regard to the protection of life.

As for the first, that is, on the issue of single health, a factor that has a great impact on the recognition and effective treatment of animals, it is not a new issue, since it is recognized by the World Health Organization (WHO, *online*) given the approximation of origin between man and animal and the common worldliness, by the Federal Council of Veterinary Medicine itself, which thus expounded the question on its electronic site:

The Unique Health represents an integrated vision of health, considered unique and composed of three inseparable areas: human, animal and environmental. The interconnection of the three health areas is recognized by international organizations such as the World Organization for Animal Health (OIE) and the World Health Organization (OMS). The concept proposes the joint action of Veterinary Medicine, Human Medicine and other health professionals. This integration can contribute to the development of research, increase available scientific knowledge, and improve medical education and clinical care. As a result, the effectiveness of public health actions with reduced risks to global health is increased. Ecological interactions between humans and animals take place in different environments and in different ways. These interactions may be responsible for the transmission of diseases between men and animals, the known zoonoses. According to the World Organization for Animal Health (OIE), about 60% of human diseases are zoonotic. (BRASIL, CFMV, 2018, *online*).

It is seen, therefore, that single health policies would meet the desires of men, animals and the environment in general, in the preservation of beings inhabiting the globe. However, despite the public policy guideline focused on the understanding and effectiveness of single health and, consequently, animal health, the Brazilian reality and in some other countries has been very different - contrary to the one proclaimed by Jonas (2004) and by new Bioethics, which transcends human individuality and cares for beings in general - and is tied to the interests of man, to whom the greatest efforts are dedicated, especially in the budgetary sphere:

[...] According to the legislation pertinent to SUS and Complementary Law 141, of January 13, 2012, the resources of the public health sector in Brazil can not be applied in other public policies. Thus, it is incumbent upon each government sphere - responsible for the application of resources destined to public health actions and services aimed at surveillance, prevention and control of zoonoses and accidents caused by venomous animals of public health relevance - to evaluate judiciously public health policies and differentiate them from public policies on the environment, animal health, animal welfare, public and road safety and cleanliness or any other actions related to the implementation of animal populations [...] (BRASIL, 2014, *online*).

It should be noted, therefore, that, contrary to the notion of public health guided by the new bioethics approaching the man-animal relationship, the Public Power could not neglect animal care (constitutional duty imposed in article 225, §1, VII) and the elaboration of public policies that contemplated them (in line with the idea of single health). After all, as a form of compliance with a single health policy, animals, even in a budget line destined for men, should, in the name of a unitary policy, be given more and better attention by the State to the veterinary services it offers.

However, disrespect for animals does not stop there. This is because contrary to the ethical framework that should guide the matter tract of the animal and therefore criminal policies of animal protection, neither criminal law, known fragmentary and subsidiary, but that includes, for its importance, some criminal types of protection of the fauna, has given an adequate response to conducts that are offensive to animal life, especially the domestic animal.

It must be said that fauna plays a key role in the balance of ecosystems and biological diversity. In fact, all organisms have close relations with each other and with the other components of the environment, whether living or not, guaranteeing the preservation of species. According to Milaré (2011), the fauna, interacting or not with these other elements,

[...] works as one of the biodiversity thermometers in maintaining the ecological balance. For this reason, it is one of the great indicators of the threats that pervade life as a whole on the planet, given what happens in the extermination of species. It is not only a valuable indicator; it is also a warning sign. (MILARÉ, 2011, p. 300).

Because of this importance, the Federal Constitution of 1988

established specific duties to the Public Power (and to the collectivity itself), consistent, in the form of article 225, § 1, VII, in the protection of fauna and practices that jeopardize its ecological function, provoke the extinction of species or subject animals to cruelty.

The concept of fauna, as well as that of the environment, was especially the responsibility of the doctrinators, who extracted it from biology and other transdisciplinary matters to environmental law. Fiorillo (2014, p. 311), for example, understands fauna as a collective of animals of a given region or geological period. The author also emphasizes the subdivision in: a) wild fauna, which includes a group of animals living in freedom, outside the captivity, whose content had already been covered by Article 1 of the also received Law n. 5.197/67 and, b) domestic, understood by animals that do not live in freedom, but in captivity, and coexist generally in harmony with the human presence, even with dependency bond to survive.

The constitutional forecast³ irradiated the tutelage for infra-constitutional legislation and other legal micro-systems.

The following stand out: Law n. 5.197/67, above, on wildlife; Law no. 7.643/87, which prohibits fishing for cetaceans⁴ in Brazilian waters; Law no.10.519/02, regulator of the animal health defense in the execution of rodeo; Law no. 11.794/08, which establishes procedures for the scientific use of animals; Law no. 11.959/09, which regulates fishing activities; Decree-Law no. 6.514/08, related to administrative infractions to the environment; Decree n. 3607/00, concerning the implementation of the Convention on International Trade in Endangered Species of Wild Flora and Fauna.

The constitutional protection of fauna also allowed for the criminalization of certain offensive practices to all animal species, not forgetting the civil and administrative treatment, and this based on § 3 of Article 225, which provides that “conduct and activities considered harmful to the environment shall subject natural or legal offenders to criminal and administrative sanctions, irrespective of the obligation to make good the damage caused “. (BRASIL, 1988).

³ At the international level, Brazil is one of the signatory countries of the Universal Declaration of the Rights of the Animals, proclaimed on January 27, 1978.

⁴ According to the Houaiss definition (2010, p. 157), cetaceans are part of the “order of aquatic mammals”, such as whales and dolphins

This environmental criminal liability was delimited in Law n. 9605/98, which deals with environmental crimes in kind, including those harmful to fauna, as provided for in articles 29 to 37 (BRAZIL, 1988).

The pretension of responding to the protectionist mandate of the Constitution in relation to the legal good ecologically balanced environment, however, did not find complete success with the Environmental Crimes Law, according to diverse and justified critiques (PRADO, 2012, p.184), reaching, however, the peak of criticism, Article 32⁵. This is because this article represented a true warning to the lives of domestic animals (dogs, horses and cats, etc.), especially regarding the absence of prediction of the verb to kill, providing only for the actions of injuring and maiming, besides acts of abuse and mistreatment. Thus, contrary to the provisions of Article 29⁶, which provides for the killing, but which is limited to the protection of wild animals, domestic animals are not even protected under the less lenient branch of law, the criminal law.

In view of this lack of prediction of the biocide in relation to the domestic animals since, as said, the verb to kill only finds prediction in article not dedicated to the domestic animal, Brazil, contradicting the new Ethics that proclaims the co-responsibility of the diverse species in favor of preservation of life, demonstrates, in a legislative context, contempt for animal life and, in a normative scope, failure to comply with the Universal Declaration of the Rights of Animals, proclaimed by UNESCO on January 27, 1978, and which has Brazil as signatory. The aforementioned Declaration, in article 3, “a”, provides that “no animal shall be subjected to mistreatment and cruel acts”; in article 6, “b”, warns that “abandoning an animal is a cruel and degrading act”; in article 10, “a”, states that “no animal shall be used for the amusement of man”; and article 11 states that **“the act that leads to the death of an animal without necessity is a biocide, that is, an offense against life”** (emphasis added).

It is thus observed that, as far as the legal scope is concerned, much remains to be done in Brazil, to the extent that it can be said, as regards the life of the domestic animal, that constitutional and international dictates would suffice as a basis for legislation infrastructure in the protection of

5 Art. 32. “Practicing an act of abuse, ill-treatment, injuring or maiming wild, domestic or domesticated animals, native or exotic: Penalty - detention, from three months to one year, and fine.

6 Art. 29. “To kill, pursue, hunt, catch, use wildlife specimens, native or migratory route, without the proper permission, license or authorization of the competent authority, or in disagreement with that obtained: Penalty - detention from six months to one year, and fine”

legal goods⁷; however, reality shows a law full of deficiencies and that needs to be reformulated to effectively meet the intended objectives.

FINAL CONSIDERATIONS

The relations between men and other animals, which go back to the origin of species, to natural selection and to their own diet in relation to the accumulated energies for the mutation and development of beings, demonstrate, from the historical and biological points of view, the existence of a connection, that of anthropocentric, biocentric or ecocentric nature the authors generally seek to adjectivate.

From a philosophical point of view, however, the text sought, at the outset, to reveal that such anthropocentric and/or biocentric/ecocentric conceptions, if not preceded by reflection, will always be occasional and ephemeral, and may be modified in the light of any interest. Heidegger is a reference that proposes the idea that man, as a teacher of the world, can therefore improve his relationship with other animals.

As a bridge between philosophy and law, a new Bioethics, more solidary and concerned with the breadth of being and not of the human being in particular, presents a new categorical imperative that surpasses Kant in favor of greater and better co-responsibility of the various species for the maintenance of life and that has its greatest exponent in Hans Jonas.

The relation established in the text between Heidegger and the new categorical imperative of the new Bioethics is in the overcoming of metaphysics as a way of adjectivizing the relations between man and animal, which justifies legal practices capable of consecrating policies of single health for man and animal and the necessity of legislative perfection consecrating the solidarity between beings, being the animal, therefore, deserving of a full and effective protection of life through and through law.

A single health ideal already known, but not adopted in Brazil, and an improved criminal law, which guides the life of every non-human animal, including the domestic one, is presented, which was not granted such protection by the existing Article 32 of Law 9605/95.

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7 As underpinned by the “Veredas do Direito”, it is urgent to devise new references to guide and structure the environment, and therefore animal life, “in a solidarity and interdependent way, avoiding exclusions and other forms of domination and exploration” (AQUINO; ZAMBAM, 2017, p.103).

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