



# What are the fundamentals of animal rights?\*

¿Cuáles son los fundamentos de los derechos de los animales?

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**A review of**

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Professor Rosa María de la Torre Torres, in her work *Los fundamentos de los derechos de los animales*, she carried out important investigative work on the rights of animals, which are part of emerging rights. In this same sense, he proposes an interesting articulation of philosophical and legal approaches that give rise to the rethinking of human relations with non-human animals and the inclusion of these in the expansion of the legal community.

The preliminary pages of this work highlight the scientific support that has been recorded in the 2012 Cambridge declaration —known as the *Cambridge Declaration on Consciousness*— and that years later,

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with the Toulon declaration of 2019, it recognized the legal personality of the other animals. This contributed to the opening of a solid and argued debate that invites the displacement of the comfort zone in the moral, political and legal scenario.

The work is organized into three large chapters. In the first of them, the philosophical foundations on the ethical consideration of non-human animals are addressed and a journey is made from the Greek philosophical thought around the animal question. Here she highlights the approaches of Pythagoras in relation to respect and compassion towards animals. This, in turn, represents respect for life, regardless of its form, and refers, on the one hand, to the brotherhood of souls—direct duties—to limit animal abuse; and on the other hand, she highlights that violence and cruelty towards animals predisposes the spirit of humans to insensitivity and violence towards their fellow men and prevents their purification—indirect duties—.

In this same scenario, Professor de la Torre highlights that Plutarch of Chaeronea—who had an influence of Pythagoras in his thinking—expounded, as a defender of life and compassion towards animals, that not eating meat was a superior moral behavior. He also argued that animals should be worthy of moral consideration by manifesting intelligence through their actions and emotions. Added to this are the investigations of Aristotle, who pointed out that non-human animals had technical and understanding capabilities. Furthermore, he underlined the teaching process that many animal species often develop, and which represents said technical and social capacities; and therefore intelligence.

Later, Professor Rosa María recalls that the Renaissance was a very important period in the history of human thought; In addition, the most relevant intellectual foundations and superiority that are imposed today around the animal question were established there. At this time, Descartes is attributed, in the *Discourse on method*, the mechanism established in animals, which makes them unable to feel, reason and experience their environment, as they are not possessors of consciousness. Not being like humans, who have bodies and minds, animals are not worthy of the recognition of moral consideration, as Descartes and his followers argued. Who also denied the existence of an immortal soul for animals. Similarly, he no recognized animal

consciousness, considering that they are incapable of developing language; only those beings endowed with consciousness can develop this capacity.

Professor de la Torre recalls Voltaire's arguments—one of the critics of these arguments—who expressed that it was necessary to resort to the same criteria to categorize other human animals as the one used to consider non-humans who do not speak, since language is not the only means to express emotions or feelings.

Despite the above, the author of this work makes sure to refer to what Cristina Ramírez (2011) pointed out about the epistolary exchange between Descartes and Henry Moore, called *the Cartesian confession*, at least in terms of the capacity to feel. There, Descartes, before he died, finally recognized non-human animals.

In another section, Professor Rosa María de la Torre highlights the authorship of Humphrey Primatt with the work *A Dissertation on the Duty of Mercy and Sin of Cruelty to Brute Animals*, published in 1776, who advocated an ethical treatment of animals from the principle of moral equality, based on a critique of anthropocentrism. She later points out that Jeremy Bentham, in his work *An Introduction to the Principles of Morals and Legislation*, took up these arguments and reiterated the need to include all sentient beings.

Professor de la Torre emphasizes that this last text is better known and has served as an epistemic and philosophical foundation for the welfare and animal utilitarian currents that have been consolidating with the writings of Peter Singer, insofar as they demand from the moral subject the ethical duty to show compassion for all creatures capable of pain and suffering. Thus, the ability to suffer is constituted as a criterion for inclusion in the moral community and those who have it would be recognized as such. This has meant a significant advance for the time, before the Cartesian postulates and the Kantian and Lockean assumptions, which rejected any moral allusion to non-humans. This meant a modification of certain cruel practices to transform them into more humane ones, but without really changing the moral status of animals, as they continue to be considered as property objects. The author also refers to the fact that the utilitarian heirs of Bentham—such as Peter Singer—aim more for the equality of interests than for the equality of rights, because, according to them, it is not a legal demand but a moral one.

Contrary to the above, Professor de la Torre reiterates that animal rights activists, theorists and philosophers have considered the contributions of Bentham's utilitarianism to be insufficient. Faced with this situation, Henry Salt emerged for more than a century as the defender of the idea that non-human animals have rights. He points out that they have individuality and their own reason; and, therefore, they are subject to a set of optimal rights that allow them to exercise these characteristics, since animals *live their own lives*. These same arguments were collected by Tom Regan, as heir to the legal tradition that considers the individuality and interests of each animal as its own and affirms that non-human animals are *subjects of a life* and therefore have a value in themselves, an inherent value that makes them subjects of rights.

Professor de la Torre also highlights that the central argument of Salt, in his book *Animals rights*, was to broaden the concept of humanity to include other animal species, becoming the founder of theories of direct duties towards animals. Such a proposal extended moral consideration, in those times, also to women and children.

In the second chapter of this work, Professor Rosa María de la Torre Torres addresses a very important issue: the philosophical and moral foundations of the rights of non-human animals. In this order of ideas, she refers to speciesism as a discriminatory measure. Thus, the question of moral progress becomes an inclusive perspective for non-humans, both from indirect duties towards non-humans or ethical consideration in direct duties towards non-humans, such as the recognition of their rights. The author closes with the approaches on the value of humans and the dignity of animals.

De la Torre reiterates that the paradigm of human supremacy has been prevailing, and this has justified the use and abuse of non-human animals for the benefit of humans, without having any ethical or moral considerations that limit animal exploitation, since animals are not included within the moral community defended by Kantian thought. This has also been expressed in the incorporation, in language and in practice, of the concept of speciesism, proposed by the British psychologist Richard Ryder and taken up years later by Peter Singer in his work *Animal Liberation*. Here he defines it as: "a partial prejudice or attitude favorable to the interests of members of our own species and against those of others" (p. 12). Among other

things, said negative discrimination has implied a principle of injustice, as has racism, xenophobia or sexism, ethically unacceptable forms of discrimination. Nevertheless, for Kantian ethics there is a set of indirect duties towards animals, since the lack of autonomy and dignity in themselves does not authorize humans to be cruel against them.

On the other hand, the issue of animal consciousness is still under debate, despite the scientific evidence that supports that not only humans are possessors of this attribute. They are also subject to discrimination by maintaining the Cartesian idea that non-humans do not have a language as an expression of rational thought, unlike humans, despite the existence of studies and scientific research that demonstrate the communication skills between animals. Aristotle himself, in *De interpretatione*, differentiated between the articulated and unarticulated voices of these.

In addition to the above, affirming that non-human animals lack a written language does not invalidate that they do possess communicative abilities of their emotions, thoughts, among others, since communication between non-human animals becomes undeniable, which, of course, is different from the human. Therefore, these are nothing more than speciesist arguments, as Professor Rosa María de la Torre Torres refers, who invites us to accept the idea of moral progress as a constant, and not as an exception, which implies a profound change of thought and action.

Thus, the author mentions that moral progress becomes evident to the extent that the feeling of compassion expands, which is not only an exclusively human capacity, as has been shown in different scientific studies. She adds that the idea of justice has to do with moral progress, which is understood as the extension of the sphere of compassion. Therefore, non-human animals cannot continue to be subjected to such exclusions. And, consequently, from the moral progress that this ethical consideration is made to nature, a new paradigm is constituted that states the existence of moral duties towards Mother Earth. This has been reflected in countless judicial decisions in different courts of justice in the world, which, among other things, point towards the configuration of a theory of justice, a global interspecies justice according to what was mentioned by

Martha Nussbaum and many other academics, who advocate that the doctrines of the social contract that cover the denial of this cease the justifications of animal abuse and exploitation.

Regarding indirect duties, Professor de la Torre Torres points out that, on the path of moral progress that humanity has been experiencing since time immemorial, human beings have had the same roots of ethical consideration towards non-humans. Examples of them are *ahimsa*, the ethical principle of non-violence, Jain philosophy and Buddhism, as Eastern references that have influenced Western classical philosophy. However, these have not completely permeated, since the perspective of indirect duties emanates from them—clearly anthropocentric—, in which the moral obligation to treat nonhumans well is of benefit to humans. Thus, a common denominator between Kant, Schopenhauer, Bentham and Singer is that they consider that moral duties towards animals do not derive from a recognition of their inherent value or their rights, but from the right of human beings to be treated with respect, which places them on the edge of being utilitarian or welfarist with respect to animals.

In this order of ideas, the indirect consideration towards non-humans starts from the following premises: 1) recognize that all human and non-human animals have the capacity to experience pain and suffering; 2) any intentional action that causes them unwarranted or idle pain and suffering is an ethically and morally unacceptable act of cruelty; and 3) These acts of cruelty towards non-human animals also promote in the human mind actions of cruelty towards their fellow human beings.

In the other scenario, that is, from direct duties towards non-humans, it is important to mention that it points towards the recognition of their rights. Therefore, the central theme is not to avoid the pain or suffering of non-human animals, but rather to move towards the consideration that they have complex psychological lives and are capable of experiencing their own lives. It is because of this that they are worthy in themselves, since they are subjects of a life, worthy of respect and moral consideration.

Thus, addressing direct duties towards non-human animals raises a question of justice, with the understanding that, as a moral principle, it can be extended to include non-human animals and their interests. In fact, Tom Regan is the leading proponent of the theory

of direct duties, which is known as the *rights approach*. Regan argues that inherent value is non-reducible and immeasurable under the principle of normative justice; starts from the basis that everyone, both patients and moral agents, has inherent value, and this does not depend on their abilities or actions. The foregoing on the basis that the criterion of being the subject of a life is a sufficient condition to attribute an inherent value to it.

Now, when it comes to the value of humans and the dignity of animals, Adela Cortina (2009) points out that non-human animals have value, but not dignity. Although she accepts the moral duty to treat animals well, such consideration does not give her a recognition of rights, since these are exclusive demands of human dignity and, therefore, of the human species. In sum, it notes that: "it is not necessary to attribute rights or dignity to beings to affirm that they have value" (p. 179). In this sense, Professor Rosa María de la Torre Torres wonders: "What is still the justification for denying them dignity?" to which is answered: "speciesism. They are not members of our species" (p. 119).

The professor emphasizes that continuing with speciesist blindness in the face of the weight of scientific evidence capriciously prevents the recognition of the dignity of non-human animals and is not justified in terms of justice. Given this, the author says that if the premise of equal weighting of interests of Bentham-Singer's utilitarianism, with Regan's deontic approaches and the postulates of Nussbaum's capabilities approach, were taken into account, it could be affirmed that non-human animals are worthy, since, with the aforementioned theoretical approaches, they configure both humans and non-humans as a single essence and, therefore, propose an idea of dignity:

We are all worthy because we have different physical characteristics that despite the difference do not exclude, we have very diverse cognitive and social capacities, not even members of the same species always have the same capacities, we have different degrees of consciousness, but in the end, we all have a unique and special way of experiencing life, which starts from common principles such as experiencing pain and pleasure, like longing for contact with others of our species, with having thoughts and perceptions about our reality. (p. 123)



In the last chapter, the author seeks to present the epistemic foundations of animal law. This, through arguments that can deconstruct the traditional concept of rights, as encouraged by Derrida (2008), in order to include all human and non-human animals. To do this, it highlights the approaches of Cruz Parceró (2007) in relation to the use of language for the deconstruction of the concepts of rights and dignity, articulating it with Tom Regan's rights approach and Martha Nussbaum's capabilities. Finally, it lands all these theoretical approaches in order to contribute to the construction of a theory of animal rights based on interspecies justice.

In this order of ideas, the extension of the legal community to recognize non-human animals as something more than things, objects of property or means to satisfy basic human needs —despite its detractors and resistance—, has been advancing with the support of scientific evidence and other arguments presented throughout this book, which progressively point to the de-escalation of speciesism and inclusion of the *other* animals in the field of moral, political and legal consideration.

The foregoing has called on Professor Rosa María to review those dissident arguments, including Alasdair MacIntyre (2001) and Jacques Derrida, by questioning the foundations of human rights as something exclusively human and that, therefore, would give the possibility of deconstructing the idea of rights and open the door to include non-human animals. The author refers that the critics indicate that the foundation of what is known as human rights is the language. Therefore, the language of rights becomes something referential, without any attribution of universality. In this sense, recognizing that rights are language, the content and scope of these is determined by the very limits and signifiers of language itself (p. 127).

And in this sense, she continues affirming that, according to Derrida, a deconstruction can be made of the *human-rights* duo that problematizes the exclusivity of the human. This is because it is a structure of domination that seeks to justify itself with the use of a certain language, subjecting humanism to new forms of philosophical consideration and, in turn, collapsing the border of rights that divides the human and the non-human. The foregoing, in tune with the objective of this work, which addresses the philosophical and moral

foundations that accompany a tradition that favors the mistreatment of animals and consequently seeks to deconstruct (Derrida, 2008) those paradigms on concepts such as: *dignity, rights and person*, with the purpose of building a legal theory from a critical and expanded perspective that recognizes otherness, difference, and combats the arguments against the exclusion and oppression of the animal. In short, it is about raising an ontology of animality, since we are all animals.

Another important aspect is the language of rights. Although it is true that it is not intended to equate non-human animals as subjects of law under the same circumstances as humans, it is imperative to deconstruct the concepts of *rights and dignity*, as they are now known, for ones that are inclusive, take into account the ontological differences of both humans and non-humans and contribute to the deconstruction of legal language.

However, the author highlights the foundation on human rights of Carlos Santiago Nino, who states that moral rights rest on three principles: dignity, autonomy and inviolability; what could be a way to expand the recognition of rights to non-human animals. But, she prefers to adopt the position of Will Kymlicka and Sue Donaldson in relation to subjectivity as the adequate basis to support rights, since this is constituted as a more inclusive position with non-human animals; They even speak of those beings being worthy of possessing inviolable rights and expressing their own lives without obstacles. Therefore, it indicates that based on the theoretical and argumentative premises of authors such as Bentham, Salt, Singer, Regan, Nussbaum, Kymlicka and many others, a comprehensive proposal can be made that:

[...] allows the recognition of inviolable rights for non-humans and in this sense, build a category of rights for all sentient beings capable of experiencing life from their own unique perspective. Then the law will protect all those who are worthy because they are subjects of a life which they experience from their own unique subjectivity. (p. 137)

In the work *The Language of Rights* by Juan Antonio Cruz Parceró, the author points out that he starts from the idea that the concepts with which positive law operates are pragmatic. Therefore, these

allow us to understand that the language of rights is in permanent deconstruction; In addition, it shows that the extension of these to other species is possible. The same thing happens with the concept of person, which does not always allude to the human person; and it also happens with rights, which are not necessarily considered for human persons. That said, Rosa María de la Torre Torres reiterates, based on what Cruz Parceró mentioned, that the discourse of rights is expendable, because anything that can be legitimately expressed in terms of rights can be translated without any loss into language of good (p. 144). Therefore, to speak of rights is to refer to goods, needs or interests derived from a notion of what is good.

Next, and with the aim of advancing in the presentation of the arguments that Professor Rosa María de la Torre Torres has given in her work, Tom Regan's approach to rights and Martha Nussbaum's approach to capabilities are highlighted in this line.

In this order of ideas, Regan, as has already been said, is the main reference in terms of theories of direct duties and their consequent derivation in the recognition of rights for non-human animals. This theory is described in his book *Defending Animal Rights*, in which he differentiates between legal rights and moral rights. The first has to do with positivization and other legislative provisions; while the second points to a vocation of universality applicable to all individuals who meet certain characteristics. However, these rights are also equitable, because all those who have moral rights have them equally and, therefore, they do not arise from a creative act. In short, moral rights are, as Regan has argued, *valid and general claims*; and for these to be general, there must be someone to whom said claims are made enforceable to act in a certain way and have direct duties. Likewise, such treatment must be coupled with valid and appropriate moral principles.

Now, just as there are rights, there are also moral duties. To do this, Regan takes up Rawls's idea of natural duties, understood as non-acquired duties, since there is no act of will. Hence the basic statement: "the duty to treat others fairly is a non-vested duty" (p. 311). However, Regan questions to whom this duty of justice is owed and stresses that it is a non-acquired right, that is, a basic right. In short, the formal principle of justice focuses its attention on

inherent value, because in all patients and moral agents the criterion of being *the subject of a life* is satisfied, which allows them to be seen as inherently valuable and, therefore, does not admit degrees, since the same principle of respect and fair treatment corresponds to them. This, despite the criticism that has been leveled at him for his conservative way of delimiting said recognition to mentally normal mammals of one year of age or older, who even accuse him of being a speciesist.

Regarding Nussbaum's capabilities approach, the author highlights that it offers a reconciliation alternative to approach the animal issue and lead it to greater consensus. She also expresses that there are three unresolved issues of social justice: 1) regarding people with physical and mental disabilities; 2) the committed extension of justice to all citizens of the world; and 3) the treatment given to non-human animals.

The author recalls Sen, who discusses the capabilities-based approach. This implies what humans are capable of being and doing, and where capabilities are constituted as the political principles of a liberal and pluralistic society. Moreover, the dignity that derives from the capacities of individuals is satisfied when they lead a life in accordance with those potentialities, which allows them to fully exercise their capacities. Therefore, they constitute the philosophical foundation of the rights of individuals as they are considered inalienable.

Nussbaum, heir to Aristotelian thought, articulates with the idea of capacities to promote the premise that the common denominator among all living beings is that they all have a set of capacities that must be potentiated for the realization of each being. In addition to this, she distances herself from the Kantian notion of dignity and contractual positions that find the source of dignity in reason. Instead, she makes a turn that understands rationality as one of the characteristics that make up the question of the animal, and not possessing it does not imply exclusion.

Thus, from Nussbaum's perspective the panorama is completely different, since this author claims that:

[...] all beings are ends in themselves, their dignity derives from the idea of capacities, in which animals are capable of being and

doing, and therefore of flourishing their capacities and leading a full life according to those capacities, and therefore a life worth living. (p. 322)

This results in the idea of *interspecies global justice* that Nussbaum proposes through the *norm of the species*. This delimits the notion that each species corresponds to a set of capacities, which can be considered as the minimum of premises to determine the dignity of life of that species, of each individual within each species and the flourishing of these different forms of life.

In addition to all of the above, Professor de la Torre Torres affirms that it is possible to include non-humans in the legal community. She adds that a series of moral duties derives from the plurality of dignities —not acquired— of respecting, not hindering and empowering the capacities that make a dignified life. Then, these duties can be considered as fundamental rights without speciesism, in articulation with the deconstruction of the language of rights. The author concludes by stating that, if the human being is capable of looking at the *other animals* as their equals in dignity, then progress is made in the construction of a more just society, in which everyone enjoys the fundamental right to live free and happy.

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