

# Chapter 1

## Animals and Property

In her work *Moral Status*, Mary Anne Warren argues that animals have a lower moral status than humans.<sup>1</sup> Warren's argument relies on the intuition that we are willing to kill rats that invade our homes where we would not be willing to kill human children if they were in the same position.

Warren's argument has already been rejected<sup>2</sup>, but her hypothetical raises unanswered questions. Human and animal interests come into constant conflict over the Earth's land and resources. It seems as if any hard-line animal rights theory would be forced into an uncomfortable conclusion. To minimize killing animals over land or resource conflicts, humans would be forced to return to gatherer lifestyles.

In the previous section, I concluded that it is impermissible to use animals as mere resources for human ends. In this section, I will consider the duties we have to share the resources of the Earth with other animals.

Property, or something like it, is a pre-theoretical and pre-human notion. A beehive as the property of the bees who live in it. Marked territory seems like a kind of property that a wolf seeks to claim. And I am certainly unlikely to intrude on a bear in their hibernation den. TODO citations/explanations from Wildlife as Property Owners. If humans claim special protections and a right to defend their own property, then I don't think that it's unreasonable to think that animals might have similar, special rights to their own as well.

I will conclude that humans and animals both have subject-relative

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1. Warren is a little dated... should I be bringing her up here?

2. that one 2007 paper

prerogatives to defend their rightfully acquired property. This prerogative permits the use of lethal defensive force as a final resort to defend a person's closely held property against nonhuman and human invaders alike. However, there are circumstances under which humans may also be liable to defensive force or property intrusions.

Furthermore, I will argue that humans do not have a duty to re-wild long-held human spaces for the sake of other animals, but that all people have strong duties to reduce or eliminate the harm caused through continuing human expansion.

## 1.1 Defense of Property

Defense of property sometimes justifies actions that are otherwise impermissible. If a person is walking across the street in front of us, we may not demand that they leave. We certainly should not harm them or treat them as liable to harms. We can certainly demand that a person walking around our home leave. If they ignore the demand, they may be liable to harm.

These statements are relatively uncontroversial when referring to rational persons who willingly and knowingly trespass on private, individually owned or occupied property. This becomes less clear when discussing nonhuman animals. Few of them could be described as rational and even fewer might understand the concept of property. Even if they could, they might fall outside the covenant or agreement that protects property rights.

However, it seems clear that the concept of self-defense or defense of property can still be applied against animals. If there are insects living in my skin, I feel no qualms about killing them, even though they may not be aware they are invading my body.<sup>3</sup> I am also willing to believe that it is easier to justify capturing or even killing rats in the home rather than rats living in the woods.

In this section, I'll consider the nature of the right of property and the morality of defense of property. In the following section, I will expand on this baseline and apply the

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3. I will assume for the moment that these insects should be accorded moral status though it is unclear.

### 1.1.1 The Nature of Property

Property are the things that a being controls in order to secure their ends. To hold a resource as property is to have a rightful claim to use it for any purpose that does not interfere with the choice or similar right of another. To claim an unclaimed resource as property, one need only empirically control it and signal an intent to continue controlling it. The concept of property is not dependent on the existence of an agreement to enforce it.

Consider a pared down example. A table is laid out with a collection of books on it, along with a sign saying “Free to Take.” I see a book I like, and I intend to collect it after class. If another person takes the book before I do, then they have not wronged me.

On the other hand, imagine I actually did take the book. Another person sees it in my bag and chooses to take it from me. This person has wronged me because they used an object which I had marked as my property in a way that I did not authorize.

This example also demonstrates that an interest-based theory of property alone is insufficient. In both cases, my interests are set back by equal amounts. However, I am only wronged in the latter case.

I cannot merely claim that all the books on the table are mine because I do not control them. If I were to scoop them all up into a cart and claim them as my own, I would be acting wrongfully. However, the wrong would not be a violation of any individual person’s right to property. Rather, it would be a selfish act and wrong for that reason, or perhaps violate the implicit conditions on claiming attached to the books by the original owner.

Let’s pare the example back further and assume that the only resources in the world were these books. If this were the case, a person who claimed all of the books would give other people no reason to respect a putative right to property. They cannot expect their right to pursue their ends to be respected when they cannot accord the same respect to others — after all, there are no property lines that can be respected.

Even within a state of nature, prior to any unification of will or hypothetical agreements, intruding upon a person’s rightfully claimed personal property renders the intruder liable to defensive harm unless the property owner is duty-bound to accept the intrusion.

Consider a desert island with no human or nonhuman animal inhabitants. A shipwrecked sailor washes up to shore. Her leg is wounded.

In order to save a limb, she can use a special piece of seaweed that has washed up on shore with her. She uses the seaweed to cover the wound. Soon after, another person washes up alongside. The second person also requires the seaweed to staunch a wound. The second person has an interest in the seaweed that is equal to the interest of the first person. It seems clear here that the second person could not take the seaweed from the first.

Even if the first person temporarily sets the seaweed aside, a signal and an intent to continue using it seems to demarcate her property. The second person ought not take the seaweed from the first. If the second person does so, then they render themselves liable to proportional defensive harm from the first.

## 1.2 Non-Rational Animals and Non-Rational Humans

Mary Anne Warren's comparison of our duties to animals with our duties to non-rational humans is common in animal ethics. These comparisons have been criticized from both sides of the issue, but there are specific reasons why these comparisons muddle intuitions about the defense of property.

There are important differences between non-human and human animals. These differences are unrelated to the mental capacities of different beings. Instead, these differences have to do with the special relational duties we have to most non-rational humans and the differences in size and number that necessitate violent response against nonhumans in more cases than for humans.

The intuitions highlighted by Mary Anne Warren pick out these differences rather than differences in the underlying duties we owe to humans and animals because of their basic capacities. I am not arguing that there are no differences in capacity-based duties towards humans and nonhumans. Instead, I am arguing that these differences are not necessary to explain differing intuitions about the permissibility of defensive force.<sup>4</sup>

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4. The argument structure here is similar to the section in Palmer that references Pogge's work. The idea is to show that different intuitions about humans and animals can be explained without reference to moral status by pointing to all of the other different factors.

### 1.2.1 Beneficence

In Clare Palmer's *Animal Ethics in Context*, Palmer argues for a limited version of the Laissez-Faire Intuition (LFI). Palmer's version of the LFI holds that we have few, if any duties of beneficence to wild animals that are unaffected by human actions. However, we owe wild animals duties of beneficence when we benefit from institutions that harm them, when we form inter-species communities with them,<sup>5</sup> or when we are causally responsible for unwarranted harm to them.

In most circumstances, we have few obligations of beneficence to the rats, raccoons, and other liminal animals that largely benefit from human expansion and human spaces.

The obligation of beneficence is related to self defense because it sets an upper bound on the proportionality of self-defense through the agent-relative prerogative. In paradigm cases of self-defense, the offending party has made themselves liable in some way when they choose to take a violent action.

But the logic of self-defense through the agent-relative prerogative is different. When defending oneself against a non-culpable attacker, we do not assume that the attacker has forfeited or decreased the strength of their rights against being harmed. Instead, the defender is permitted to take harmful defensive action because they are permitted to weigh their own interests, goals, and projects more highly than that of the attacker. If they may prevent harm to themselves by redirecting it towards a third party (without *using* that third party's body or property in the process), then they are permitted to do so.

Their obligation of beneficence to that third party sets an upper bound on the amount of harm they may redirect relative to the amount of harm they would accept. Let's say that a defender must kill an innocent attacker in order to prevent the loss of a leg. This might very well be permissible under the agent-relative prerogative.

If a defender would be duty-bound to accept the loss of a leg to (for example) save 5 innocent attackers, then they may not defend themselves against those innocent attackers for the sake of their leg. This does not imply that they may defend themselves against 3 attackers — it is worse to cause harm than to fail to rescue a person from harm. However, the benef-

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5. Garibaldi

icence continues to serve as an upper limit, a maximum on the amount of harm that can be imposed to protect oneself.

Beneficence can be more than just an upper limit. The degree of beneficence that we owe to a person is directly related to the strength of their interests compared to ours. If we have a strong duty of beneficence to a person (or animal), then we ought to meet their ends even at considerable personal cost. Their interests weigh heavily on the scale compared to our own.

It is a similar weighing of interests that determines proportionality for defense against innocent attackers. We are permitted to weigh our own interests more heavily than the equal interests of another. The weight we give the other being's interests is directly related to the comparison underlying the obligation of beneficence. The main difference between defense against innocent attackers and the duty of beneficence is that the former case is concerned with doing harm and the latter with giving aid. In general, it is worse to do harm than to fail to give aid, so the scales are adjusted slightly differently in the case of innocent self defense. But the quantity measured (the difference in weight between the defender and the attacker's interests) is the same in both cases.

So, when we have a greater relational obligation of beneficence to someone, we also have greater duties to accept the harm they innocently impose in order to avoid harming them.

Note that the general duty of beneficence is different from specific compensatory duties. My obligation to repair the damage that I caused to another person's car doesn't make me more liable to the innocent threats that they may impose. However, my general relational duties of beneficence towards a person (say, because they are my family member or coworker) give me a reason to weigh their interests more heavily both in my duties of beneficence and my prerogative of defense against innocent attackers.

### 1.2.2 Proxy Rationality

As Christine Korsgaard puts it, animal + rational  $\neq$  human. A non-rational human is (almost always) dependent on other humans to survive. Many non-rational animals are capable of securing their own ends without human help.

Non-rational humans are generally in the care of other, rational hu-

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mans. Human communities and sometimes individual humans usually have strong duties of beneficence to care for non-rational humans. When non-rational humans are in the care of rational humans, that human can take on some of the duties of ensuring that a non-rational human secures their ends in accordance with the relevant duties and laws that would apply if the non-rational human were rational.

Rational humans are responsible for the actions of non-rational humans in their care. I don't mean this in the retrospective sense of culpability or moral responsibility. Rather, I mean it in the prospective sense. If a child steals a candy bar from a store, their parent is not morally responsible for the theft. However, the parent is responsible for making the store whole and educating their child, if appropriate.

Parents or other guardians can also be responsible in the retrospective sense. A parent may be negligent, permitting their child to intrude on others' personal space. If so, that parent would be culpable for their negligence and responsible for apologizing to others and making them whole. It is not always the case that the guardians of non-rational humans actually act in accordance with their duties. But the important thing is that those duties actually exist and have a person that ought to fulfill them.

This is not true of many non-rational animals. These animals cannot fulfill duties<sup>6</sup> and do not have a 'proxy' rational agent that can take responsibility for their actions.

The upshot of all this is that when there is some assurance that property rights will be respected or duly compensated, the importance of defending the right decreases. In addition, a guardian's responsibility can provide some assurance that future trespasses do not occur. We can infer that a rat who is expelled may intrude again if they are not left far away, but we cannot infer the same when we return a non-rational human (or animal) to their guardian.<sup>7</sup>

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6. I think they can have duties though. Most humans aren't rational most of the time, but we can enforce duties against them while they're asleep. Similarly, I can enforce a duty against an animal who would have had such a duty were they rational.

7. I don't think I'm being incredibly clear in this passage whether the existence of the duty is important or whether the pragmatic assurance is important. I'm not too clear on that myself.

### 1.2.3 Animals as Property Holders

I think that animals clearly mark and claim property as well. Cheryl Abbate Liability to defensive harm. Humans become liable to defensive harm when they intrude on animal property. If I poke a beehive, I am perfectly liable for the stings that I receive afterwards, and I shouldn't use defensive force against the bees. Same goes for poking around in bare caves and sticking a hand down a snakehole.