

Chapter 1

Animals and Property

In her work *Moral Status*, Mary Anne Warren argues that animals have a lower moral status than humans.¹ 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 rejected², 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

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 that might render humans liable to defensive force or intrusions by other beings.

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 like 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.³ I am also willing to believe that it is easier to justify capturing or even killing rats in one's 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

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

1.1.1 Claiming 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 or define it.⁴

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.

This description is rather simple and far from complete. I will readily admit that there are certain restrictions in claiming property — it would probably be wrong for a person to take all of the books, for example. Rights of property can be modified or clarified by political bodies. In addition, there is a distinction between property (specific pieces of real property, objects, and agreements) and wealth (the degree that the sum total of one’s property allows them to secure their ends). While there ought to be relatively stringent protections over individual pieces of property (something like eminent domain/takings requirements), enforceable obligations to transfer a certain amount of wealth need not be as strongly justified and compensated.

1.1.2 Property in a State of Nature

Even within a state of nature, prior to any unification of will or hypothetical agreements, intruding upon a person’s rightfully claimed personal

4. Perhaps I should make this section more explicitly Kantian? It’s based closely on foundations in Ripstein and descriptions in Quong

property renders the intruder liable to defensive harm unless the property owner is duty-bound to accept the intrusion. Establishing that property may be defended in a state of nature is important because we are (quite literally) in a state of nature with the other animals.

Consider an example given by Jonathon Quong. A shipwrecked sailor washes up to the shore of a deserted island. 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.⁵

To extend the example, let's say that the sailor needs to set the seaweed aside temporarily. If she demonstrates a need and intent to continue using it, then she has demarcated it as her property. The second person ought not take the seaweed from the first even though it is no longer directly connected to her person. If the second person does so, then they render themselves liable to proportional defensive harm from the first.

In a pre-political state, there is no assurance that a right to property will be respected.⁶ In a way, a person is still subject to the choices and good graces of others. Remaining in this state would be wrong for all rational beings. As Japa Pallakathiyil notes, a lack of assurance does not necessarily imply that a person's right loses all *moral* force. Pallakathiyil goes on to argue that the state of nature renders a person's right inconclusive, rendering their use of defensive force impermissible. I find this argument lacking.⁷ My intuition is that it remains permissible to use defensive force over clearly determined property even in the absence of a political body.

1.1.3 The Agent-Relative Prerogative

In the previous section, I stated that a person can become liable to proportional defensive harm when they intrude on another person's property. This is only applicable when a person is rational (can respond to moral

5. Quong

6. Ripstein

7. I could break out into a longer discussion of Pallakathiyil here but I don't want to but it seems like I really should.

reasons) and aware that the object they are interacting with is another's property.⁸

This position is insufficient to explain situations where the intruder is not rational or responsible for their intrusion — the innocent attacker. This situation describes most intrusions by non-human animals, all of whom are nonrational or unfamiliar with human conventions and signs that claim property.

I will adopt Jonathon Quong's explanation of the morality of defense against an innocent attacker. Quong's explanation relies on the agent-relative prerogative. The agent-relative prerogative is a principle which states that an agent is permitted to weigh their own ends more heavily than another's interests. The prerogative can also extend to other beings that an agent is responsible for or have strong relations with — for example, a person is also permitted to give greater weight to the interests of their child. I will not make an extensive argument for it here; see Quong for a more detailed discussion.⁹

In a situation when at least one being's rights will be violated (like an innocent attack), the agent-relative prerogative gives an agent the permission to prefer that another's rights are violated instead of their own. This permits proportional self-defense against innocent attackers.

1.1.4 Proportionality and Property

The proportionality constraint of self-defense requires acts of defense to not cause much more harm than they seek to prevent. In paradigm cases of defensive force against a liable attacker, the attacker's interests are weighed less heavily because they have made themselves liable. In addition, a defender (but not a third party) is permitted to weigh their own interests more heavily under the agent-relative prerogative.

In contrast, in a case of defense against an innocent attacker, the attacker's interests do not have a reduced strength. Instead, the defender's agent-relative prerogative and increased weight to their own interests is the only justification for their defense. A third-party would not have reason to prefer the defender's interests over the attacker's.

8. For example, a rational elephant may not become liable to defensive harm because they may not be aware of the kinds of signals used by humans to claim property.

9. maybe I should motivate it just a little more though

The fact that the defender's rightful property is endangered is a threshold condition for the use of defensive force. The proportionality of the defensive force is determined in part by the strength of the defender's interests that are at stake. This means that proportionality will look very different for different pieces of property. A piece of seaweed or a plot of farmland that is critical to one's life or livelihood represents a strong interest. On the other hand, other rightfully possessed things may be less important and permit a lesser amount of defensive force to be used to preserve them.

1.2 Non-Rational Animals and Non-Rational Humans

The previous section described a right of property and rightful defense of property against innocent, human attackers. In this section, I will describe some of the differences between innocent human attackers and non-rational animal attackers and why they are relevant to ethics.

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.¹⁰

10. 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-special communities with them,¹¹ 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-

11. 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-

1.2. NON-RATIONAL ANIMALS AND NON-RATIONAL HUMANS 9

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 duties¹² 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.¹³

12. 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.

13. 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 Size, Number, and Future Expectations

There are a few pragmatic concerns that makes violence against non-human invaders necessary more often than violence against human invaders. Non-human animal invaders are often smaller than humans. There are also more of them. In common cases, they also multiply — a few rats in a home today may mean a dozen in a few months.

The first two points have to do with the necessity constraint of self-defense. In cases of self defense, no person deserves to be harmed. Instead, costs are distributed in the fairest way possible. However, overall costs should still be minimized. If a defender can take choose between a less harmful defense and a more harmful defense (both of which fully address the threat), they have an obligation to choose the former. That obligation has nothing to do with the degree of status or consideration given to the attacker.

Because humans often occupy spaces designed for humans, it is often possible to address innocent human invaders using non-lethal means. However, non-human invaders occupy spaces in our walls and crevices in such a way that it is more difficult to find them and more difficult to remove them non-lethally. This doesn't mean that they have fewer moral rights — if it were possible to do so, there would still be an obligation to take the least harmful means. Instead, it just means that in some cases, it might be permissible to kill a nonhuman animal where a human threat could be addressed without violence.

The final point — the fact that contramensal animals often multiply — has to do with the magnitude of the threat. The presence of several termites in the walls does not necessarily weigh greatly on the interests of the humans who live there. However, a few termites will likely become a few thousand. So, the anticipated threat that the termites present is not just their presence in the wall, but in the likely future harm that they might impose.

The likely possibility of escalating harm permits a wider scope of defensive actions now in order to avoid future harms in addition to imminent harms.

1.2.4 The Role of Moral Status

The three non-capacity characteristics that humans often have (stronger duties of beneficence, proxy rationality, and pragmatic differences) explains most of the difference between defense against, say, rats and defense against, say, children. Companion animals and domestic animals have all three of these qualities. Defenders have stronger duties of beneficence, the animals are in the care and control of a guardian, and they are few in number, large in size, and slow in reproduction. When we compare dogs and children, I think the gap in our intuitions about the morality of self defense certainly shrinks.

There is still a gap — and maybe that gap is attributable to a difference in relative moral status. But that does relatively light lifting compared to these other features. It also only ‘kicks in’ in situations when we must compare the interests of humans and animals anyway (like innocent self-defense or lifeboat scenarios). It does not permit the treatment of animals as if they have no ends at all.

It certainly doesn’t do to what Warren, DeGrazia, and others want it to do in permitting animal research or hunting.

1.3 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.