

# 1 Animals and 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>1</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.

Property, or something like it, is a pre-theoretical and pre-human notion. I would describe 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.

In this section, I'll consider the nature of the right of property, the extent to which a defense of property can be applied against non-human animals, proportionality in defending property, and whether animal territories can be described as their property.

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

## 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 Animal Claims**

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.

## **1.3 The Agent-Relative Prerogative**

In this subsection, I'll briefly sketch out Jonathan Quong's agent-relative prerogative and its application to the defense of property.

## **1.4 Defense of Property Against Non-Rational Nonhumans**

Through the agent-relative prerogative, the principles described above continue to apply to non-responsible beings, humans and nonhumans alike. A person's rightfully claimed property can use proportional defense to preserve their property.

## **1.5 Proportionality**

## **1.6 Animals as Property**