

# **1 Risk of Harm to Non-human Animals**

Risks of harm pervade our daily lives. Driving cars, operating oil refineries, and even flipping light switches impose risks on other beings. The moral boundaries of imposing risk are hardly settled even in the case of humans. However, the issue has yet to be directly addressed in the case of non-human animals, even though it has a tremendous significance in environmental and public policy.

In this chapter, I will briefly sketch a theory of risk imposition that is informed by the basic deontic views I have accepted in previous sections. I will then identify three elements of the ethics of risk imposition that are unique to nonhuman animals.

First, I'll address the intuition that it is worse to impose risk on wildlife than it is to impose risk on contact-zone or liminal animals. Second, I will discuss the relationship between human duties to avoid imposing risk and the expansion of animal population. Third, I will consider the problem of vultures, or the moral value of secondary benefits generated through potentially wrongful risk imposition.

## **2 A General View of Risk**

Discussions of the moral permissibility of risk can be divided into two different categories: the duties of an individual risk-imposer, or the duties of a regulator setting rules for individual risk imposition. For the purposes of this paper, I will collapse the two discussions by setting aside practical considerations about the implementation or enforcement of policy. What I am interested in is the values that regulators and individuals alike should seek to uphold.

### **2.1 Cost-Benefit Analysis**

The dominant view in modern U.S. regulation is cost-benefit analysis, a close relative of expected utility theory. Regulators use economic methods to estimate the cost that a person is willing to pay to avoid a particular amount of risk. This measure is used to 'price' a human life, providing a guidepost to determine the costs that must be paid in order to avoid risky

actions. This measure is often referred to as the Willingness To Pay (WTP) metric.

This view is defended by Cass Sunstein, who argues in favor of its efficacy and that this measure is consistent with consequential and deontological theories. It seeks to maximize expected consequences and also treats people in accordance with the rules they create for themselves, thus respecting their dignity.<sup>1</sup>

Apart from possible methodological shortcomings,<sup>2</sup> this view is most closely criticized by Lisa Heirtzerlinger, who argues that Sunstein essentially assumes that risk impositions are de facto permissible and that safety precautions are sometimes required. Sunstein does not ever consider that the risky activity as a whole might be impermissible, or consider what the justification for engaging in the activity might be.

In addition to Heirtzerlinger's criticism, Sunstein's argument is also vulnerable to the objection that the methodology of WTP does not capture what it is permissible for *other* people to do to me. I may rightfully choose to save \$50 of my dollars by accepting some small risk. However, this is not evidence that I would endorse the rule that some other person could benefit to the tune of \$50 while exposing *me* to the same risk.<sup>3</sup> While Sunstein argues that production costs will eventually be passed down to the consumer, Sunstein does not consider that the person at risk and the person benefiting could be different — a factory could impose risk of harm to people around area A, but produce products which are primarily sold in area B. In this situation, the residents of area B are benefiting from the loss of residents of A with no clear economic mechanism to correct this inequity.

A more fundamental concern with the WTP approach is that it violates some of the core commitments of deontological ethics; namely, that it assigns a price to that which is priceless — a life. Though Sunstein and advocates of WTP argue that their practice does not assign a price to life, and merely a cost for some statistical benefits. Despite this rhetorical shift, the WTP theorist would still be acting as though they had assigned a fixed price to dignity.<sup>4</sup>

The issue with the rhetorical shift is further revealed by Lisa Heirtzer-

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linger, who enumerates a number of uncomfortable consequences of the WTP metric that really seem like instances of valuing dignity itself, despite what the economists might respond.

Importantly, the cost-benefit analysis view reduces the value of animals and the environment to the instrumental costs that people are willing to pay to protect them. Non-human animals generally do not actively participate in the human economy, so we cannot determine a WTP metric for them, no matter what normative force it would carry. This use of the WTP metric treats the environment and other animals as merely instrumental and only worth the price that humans are willing to pay. The single strongest argument in favor of the WTP metric is that it describes self-authored preferences regarding risk, and in a way respects the agency of a person. However, this argument does not apply to the way that WTP is used to price other animals and the environment.

Even if cost-benefit analyses are the most efficient way to regulate and control our environmental impact in an increasingly complex economy (as Richard Posner argues)<sup>5</sup>, because of the preceding problems, cost-benefit analyses do not have great normative force and cannot serve as the guideposts of or moral values. Instead, it must be the other way around — we should appraise the moral values we hold and perhaps accept cost-benefit analyses as the lesser of many evil means to best uphold those values.

## 2.2 Risks as Reciprocal, Connected Practices

Sven Ove Hanson's view of risk as a set of connected social practices could provide a moral foundation for our imposition of risk on our fellow creatures. Hanson argues for a 'fair exchange of risk' model, concluding with the principle that:

Exposure of a person to risk is acceptable if (i) this exposure is part of a persistently justice-seeking social practice of risk-taking that works to her advantage and which she de facto accepts by making use of its advantages, and (ii) she has as much influence over her risk-exposure as every similarly exposed person can have without the loss of the benefits that justify that exposure.<sup>6</sup>

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This principle is agreeable, and Hanson argues for it capably. It provides an ethical basis for many day-to-day practices that essentially everyone would like to accept as permissible. It also outlines the reasons that we can call another to account for their risk taking. We might argue that imposed risk is unreasonable (it goes beyond common social practice); that it is unjust (it is unevenly concentrated); or that it is unaccepted (the relevant class of people exposed to risk have not had the opportunity to accept it, or have explicitly rejected it).

Hanson's view is also consistent with the intuition that, all things being equal, it is worse to impose risk on people outside of community that benefits from the risk imposition than it is to impose risk on people inside of that community. In other words, it would be worse to divert a U.S. factory's pollution to a town in Canada than towards a town on this side of the border. This acknowledges the political dimension of risk and the role that consent and appropriate procedure play in risk imposition.

One point that Hanson does not make about reciprocal risk exchange but ultimately bolsters his stance is that it may not actually be necessary for a person to exercise their liberty to take risks under a social agreement for them to be benefited by that liberty. In other words, if my neighbor and I both have equal say in a rule that permits everyone to use a driving lawnmower, it is not necessarily unfair or unequal to me if I do not use a driving lawnmower. I retain the option to use one if I choose; I am held to the same rules as my neighbor even if I do not seek to exercise them to the fullest extent.

Of course, if the rules are structured to permit all of my neighbor's desires and none of mine, I might claim that the rules are unjust. In practice, there is a preference to permit risky activities of the upper classes when equally risky behaviors of the impoverished are condemned.<sup>7</sup>

## 2.3 "Social Practice"

One ambiguity in Hanson's view is how widely to draw the net of 'social practice.' Does social practice include any and all socially-acceptable risky acts? We might accept that driving is a social practice, whereas archery is not, as Jonathan Quong argues.<sup>8</sup> Or, we might choose a broader view that

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collects and considers essentially all permitted social practices as one big social exchange.

I don't think that there are moral reasons to distinguish between activity types in this way. As Helen Frowe argues, if a risky action earns the actor some benefit at the cost of some risk of harm to others, the class of the action does not seem to affect its morality.

It may be legal to drive around for enjoyment but not shoot guns up in the air for enjoyment, even if both impose the same risk to others. But I think that this is a convenience of legislation and not a moral implication. We all agree to some level of risk that we tolerate in order to benefit from those impositions and impose risks of our own, but this exchange doesn't speak to the class or type of token actions of risk so long as they have acceptable costs and sufficient benefits.

So, when Hanson discusses the social practice of risk-taking, he must refer to it in the broadest sense; all risky acts which, taken together, leave us better off than the absence of all these acts.

## **2.4 Deep Detour into Hanson and Sunstein [Optional section for expansion]**

While Hanson's principles may be useful to regulators, it does not provide substantial guidance regarding individual tokens of risk imposition.

In brief, the problem of precautions remains unsolved, generating several puzzles about how actual tokens should be evaluated and when precautions are required.

I think that the way to do this is a baseline maximum of risk that a person may be willing to accept. This line can be crossed if it is necessary to preserve dignity elsewhere, but never merely for material gain. There is no difference between a dollar of material gain and a million; material gain is material gain. The only thing that matters is the rules we articulate for ourselves and each other, thus preserving dignity. This would lead to some kind of regulation like best-in-class requirements for safety. More to think about this, might not be necessary to include.

### 3 Animals and Reciprocal Risks

Hanson does not consider risks imposed to non-human animals. However, I believe that non-human animals fit well into this framework.

In this section, I am most interested in non-domesticated liminal and wild animals. Domesticated animals fit clearly into Hanson's framework as wards of people that do buy into systems of risk and have representation in the way that risks are permitted.

Hanson's view requires that (1) beings accept benefits from risky practices, (2) beings have influence over the risky practices that are conducted, and (3) that the risky practices are justice-seeking, aiming to equalize costs and benefits. On first glance, it seems as if non-human animals cannot possibly fit this framework because non-human animals do not themselves engage in significantly risky practices towards human life.

Though nonhumans do not themselves generate significant risks, many of them do benefit greatly from the risky practices that constitute urban life. The cars that rumble by bring home an important source of food for raccoons. The factory that produces french fries will benefit the pigeons that feast on leftovers in a parking lot.<sup>9</sup> Many liminal animals thrive among the risks of urban life and derive benefits from the processes that generate that risk. Not least among the benefits is the exclusion of less-adapted competitors that would otherwise fight for the same resources.

I want to be careful here in not referencing the abstract idea of 'animals' or 'the animal.' I am not saying that the class of liminal animals benefits, or that the class of raccoons benefit. Classes of beings do not 'benefit,' at least not in the way that biotic ethicists mean. I do not mean that urban life allows more pigeons to exist than the absence of urban life, or that 'the pigeon' flourishes more in urban life. If I were to make these claims, I would but up against a non-identity problem because different species and kinds of animals would exist without an urban landscape. Instead, what I mean is that most *individual* pigeons eat food that would not be available but for a complex web of exchanged risks and make nests in buildings that would not be there but for social practices of risking.

An important benefit of this view is that it explains the intuition that it is worse to expose non-contact zone animals to risks than it is to expose liminal or contact-zone animals to risk. This is because those individual

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animals are much more likely to benefit from human social practices of risking. This intuition is seen in, for example, Donaldson & Kymlicka's discussion of wildlife bridges over remote roads, but neglect of the possibility of 'squirrel bridges' over town streets.<sup>10</sup> This is not to say that squirrel bridges should not be built, or even that they are not obligatory. Instead, my conclusion is that harm to creatures that do not benefit from human practices of risking is more morally bad than harm to creatures that do benefit.

### 3.1 Objections

There are two primary objections that can be made against including animals within reciprocal risk relationships in this way. The first is that human social practices of risking are made *for* humans; the benefits they generate for the other animals is merely incidental. This undercuts the idea that animals can be said to be coequal beneficiaries of a risky system. The second is that there is no necessary condition between the imposition of risk on these animals and the benefits they garner. It would be possible for people to provide the same benefits to other animals with far fewer risks.

The primary problem with both of these objections is that they are both equally applicable to the case of humans. Social practices of risking are not made to benefit any specific person; in a way, any benefit they generate for an individual are merely side effects of the churning of a much larger system. In addition, it is not clear that the *intention* underlying the benefit is morally significant (even if an intention can be ascribed to the social practice of risk, which no single agent authorizes or enacts). It is not by the benevolence of the butcher or the baker that a person is able to enjoy their seitan and bread, but they are certainly still deriving a benefit.<sup>11</sup>

The second objection could also apply to humans — no person actually accepts or desires to take on a specific risk. In many circumstances, it would be possible for a society to choose to protect a person from all risks while still providing them with all of the benefits of society. However, this is just an elevation of one person above all others; the system of risk-taking

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11. You could say at least that the butcher and baker intend to serve the person even if not benevolently... the rats that eat the baker's scraps may not owe her anything. Something to consider.

as a whole is necessary to enjoy the benefits in general whether we choose to insulate one person or not. In this case, we insult the dignity of most people by holding that one otherwise co-equal beneficiary should bear no costs at all.

Similarly, we could theoretically limit all of the risk that we impose upon an animal while still working to provide them the same benefits. But this would be elevating that animal above all others and above humans. Limiting all risk would result in dramatic changes to the urban and suburban landscape that they benefit from.

### **3.2 Representation**

The one piece of the puzzle that is currently missing are the justice-seeking and co-representation elements of the reciprocal risk principle. Currently, individual, non-endangered or migratory animals are essentially excluded from direct consideration by regulatory agencies and legislatures that determine acceptable exposures of risk.

This is wrong for two reasons. First, lack of representation of interests of beings that have a real stake in rulemaking is wrong and causes impositions of risk under those rules to be wrong. Second, pragmatically, the scales are tipped against just distribution of costs and benefits because of this lack of representation.

This may be remedied by appointing representatives of non-human animals on road, emissions, and other environmental safety organizations. This may seem to contradict the role of these animals (as Donaldson and Kymlicka would put it) as denizens, not co-equal citizens. However, there are circumstances when it is clear that denizens should be given input — maybe not on the political community's core values and aims, but certainly on specific items that are particularly relevant to their well being and reflect the basic duties of the political community towards them. For example, migrant workers who are most at risk of illness due to pesticide use should have a say (if not a near-dis positive say) in the way that pesticides are applied and regulated.

## **4 Restitution**