University of Reading

Wildlife Rights and Human Obligations

A Thesis Submitted for the Degree of Doctor of Philosophy

Department of Philosophy

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DECLARATION

I confirm that this is my own work and the use of materials from other sources has been properly and fully acknowledged.

Julius Kapembwa _____

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ABSTRACT

Despite exponential growth of the field of animal ethics, wildlife ethics has continued to be a fringe discussion. My thesis seeks to make a theoretical contribution by focusing only on human-induced harms to wild animals. I use the rights approach to investigate demands of wildlife justice on human behaviour and wildlife policy. I take rights to be the best normative resource for determining and evaluating just and unjust relations. Given the fundamental position of moral rights that I espouse, moral rights must constitute the core of an ethically sound wildlife policy.

The analytical framework I deploy throughout the thesis consists of the Interest Theory of Rights couched in the Hohfeldian matrix of rights. This framework provides some insights for improving on the influential rights approach expounded by Tom Regan. I apply the adopted rights view to several important ethical conundrums. These include the institution of wildlife property; human interference in wildlife predation and wildlife population control; human-wildlife conflict; and state obligations to ensure wildlife justice.

From the rights view, I conclude that wild animals are morally not human property and that they are in fact owners of their habitats and the natural goods on which their wellbeing depends. Humans are morally prohibited from killing predators or lethally controlling wildlife populations except in the unlikely event of preventing an ecological catastrophe. Furthermore, humans are permitted in their acts of self- or other- defence in those circumstances where the humans are innocent and are not morally liable. Policies and cultures that allow the killing of wildlife as a resource are unjust and therefore prohibited.

Lastly, I contend that the responsibility for protecting wildlife lies with all states whose citizens, organisations, or corporations harm wildlife anywhere on earth. The diffuse and extraterritoriality of unjust harms to wild animals seems to require a cooperative international approach to securing wildlife rights.

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Chapter 1 Introduction

Most Western animal ethics is a series of footnotes to Peter Singer and Tom Regan. This is not the place for me to compare Singer and Regan's theories. Several general textbooks in animal ethics and environmental ethics have ably done this (Dombrowski, 1997; Hursthouse, 2007; Jamieson, 2008; Rowlands, 2009). Although it was Singer's work that ignited my interest in human morality in relation to animals[1], it is Regan whose argument I have found more persuasive and whose implications I find defensible. It is his work to which my thesis is a footnote. A footnote, but one that deviates from Regan on several important points leading sometimes to significantly divergent conclusions and practical recommendations. My task is to explore critically animal rights theory and tease out the implications for wildlife governance. I seek to offer a more coherent account of animal rights theory than Regan's and go a little further into drawing out implications that Regan's seminal *The Case for Animal Rights* sometimes does not draw or merely scratches on the surface.

Humans and animals have an ambivalent relationship that varies across time and space. The prevailing human attitudes and behaviours towards animals span, and are shaped by, a spectrum of perceptions ranging from romanticism to vilification of animals. These perceptions were at the core of the establishment of national parks, first in North America and Europe and later, via colonisation, on other continents including Asia and Africa. Everywhere, however, the phenomenon of wildlife-protected areas is fraught with perennial conceptual and practical problems into which my thesis will later delve. Natural and social scientists have all weighed in to try to explain and resolve the problems.

Moral philosophers have had little say about human-wildlife relations but have become increasingly audible in the debate on wildlife in the last few decades. This thesis is an attempt to apply ethical theory and reasoning to wildlife protection to help bring philosophy to the table of current debate in wildlife policy, conservation biology, political ecology, international wildlife crime, and institutional design for global intervention.

[1] The human-animal distinction risks depicting humans as non-animals which may lead to or entrench anthropocentric and speciesist beliefs, attitudes, and behaviours on the moral plane. However, rather than adopting the more accurate phrase 'nonhuman animal', I will stick with 'animal' as it is less awkward despite its possible speciesist connotation. It suffices, I think, to clarify from the onset that humans are animals and the human/animal terminology adopted here should not be construed as sanctioning any *a priori* moral superiority of humans.

In this chapter, I would like to highlight the dearth of 'wildlife ethics' in wildlife governance and the relative lack of focus on wildlife in scholarly animal ethics. Secondly, I will give a synopsis outlining major issues and arguments of the rest of the thesis.

1.1 Wildlife Conservation without Wildlife Ethics

Traditionally, experts involved in conservation and management of wildlife have a science education in biology, ecology, economics, or natural resource management. Orthodox scientific training emphasises the separation of fact and value. The value aspect is viewed as something that taints the integrity of the scientific process, and of the resultant scientific knowledge (see Chalmers, 2013). On the contrary, value is the mainstay of normative theory. Consequently, although wildlife ethicists and wildlife scientists may be focusing on the same subject namely, wildlife, they very much appear to be working in two nonoverlapping domains. To ecologists, talk of rights for wild animals is bound to be received with disdain, bafflement, or irritation.

Furthermore, the rationale that most governments and their intergovernmental partners offer for conservation of wild fauna is virtually entirely anthropocentric and instrumentalist. There is little or no acknowledgement of any deontic features of wildlife such as intrinsic value, or rights that may warrant ethical consideration of wildlife that goes beyond human interests. Where such recognition occurs, it is usually focused on species and biodiversity, not on individual wild animals.

Some wildlife scientists and practitioners see ethics as unessential or as redundant to wildlife conservation and management. As Carruthers (1989: 188) reports, "Fundamentally, the founding of a national park concerns the allocation of certain natural resources and for this reason it is a political, social and economic issue more than a moral one." The motivations for national parks then and now are primarily aesthetic, educational, scientific, ecological, and economic, and are largely amoral towards wild animals. Highlighting the financial intent, Alastair Gunn (2001: 76) points out that "Many national parks … maintain populations of trophy animals because this is the business that they are in …." And, if the regulation of lions "can be done for the economic benefits of impoverished local people by the issuing of game [killing] licences, why not?" (Gunn 2001: 89).

However, sentience—a key moral feature as we will see in the next two chapters—is acknowledged as seen from the criminalisation of cruelty to wild animals. This is evident in the requirement that hunters make efforts to kill wounded wild animals to put them out of prolonged suffering (see *The Zambia Wildlife Act 1998*). Furthermore, professional game

hunters claim high moral ground over poachers based on their purported mastery that ensures a swift death for their prey.

Ethical factions exist in environmental or wildlife organisations between those who see nature or wildlife as imbued with some moral value and those who see nature and wildlife only in instrumental terms, subservient to human interests. Conflict exists "between those who regard the preservationist[2] strategies as the only option for the survival of Africa's wildlife and those who believe that conservation should include the economic utilization of wildlife as one of its management strategies" (Makombe, 1994: 3). The International Union for Conservation of Nature (IUCN) —whose members include 217 states and government agencies, and non-governmental organisations—disagrees with the preservationists. The IUCN holds the view that, "People prevented from using their wildlife legally will tend to ignore it, eliminate it, or use it illegally, to the disadvantage of the resource and those who might develop it and use it legally" (Makombe, 1994: 4). Given the size and influence of IUCN, Lisa Mighetto (1991) is right in stating that the instrumentalists are predominant and therefore tend to have greater impact on conservation legislation and policy. It will not be surprising, therefore, that acknowledging moral standing or moral rights for individual wild animals is generally regarded as anathema in mainstream conservation thought and practice.

In sum, the *modus operandi* for wildlife protected area management is entrenched in the narrow economic cost-benefit analysis framework. Unsurprisingly, therefore, the literature in mainstream wildlife conservation and management refer to wild animals as 'resources', 'endowments' or as objects of human 'proprietorship' ultimately for the satisfaction of consumptive and non-consumptive human desires. Wild animals are relegated virtually to mere things without moral standing. Thus, wildlife governance falls under the ambit of economics—and related social sciences—with supportive empirical facts coming from the life sciences. Consequently, so far, under the current wildlife governance ethos, there seems to be little or no room for moral rights for wild animals.

1.2 Animal Ethics without Wildlife

Animal ethics is a relatively new development in moral philosophy. The field owes much of its late 19th and early 20th century roots not to philosophy but to 'sentimental' fiction writers who

[2] Preservationists, as the name indicates, argue that nature must be left as close as possible in its pristine state even if this means reduced value or perhaps even disvalue for humans. Conservationists, on the other hand, represent the position of actively managing nature and wild animals to produce certain states valuable to humans.

romanticised the humanness of animals or highlighted the animalsness of humans (Mighetto, 1991). The field has grown rapidly, however, drawing some considerable interest among philosophers in the past fifty years. This growth has however been skewed towards Western experiences of animals that has largely been with domesticated animals. Hence, most animal ethics authors conceive of how humans ought to behave in relation to animals on issues of biomedical animal experimentation, fashion that uses animal products, factory farming, whaling, sport and entertainment involving animals (e.g. bull fighting, animal circuses, zoos), and companion animals (Patterson, 2002; Regan, 2004b; Kemmerer, 2006).

As Mighetto (1991: 109) affirms, "human condemnation of suffering has been difficult to extend to wildlife." This is, however, not for want of philosophically intriguing and morally important issues pertaining to wildlife. I think that, that wild animals in their natural setting have thus far received only paltry attention from philosophers in the Western world is at least partly due to spatial, causal, and psychological remoteness. The last few years have however seen a surge in philosophical discussion of wildlife suffering. Oscar Horta (2010) and Catia Faria (2016) have especially thrown more light on this hitherto side-lined issue. The two philosophers' theoretical orientation appears to be utilitarianism. This is because they both move from the sheer badness and magnitude of wildlife suffering to strong human obligations to alleviate suffering whenever this is prudently practicable. As with Singers theory, I will therefore eschew in this thesis the important discussion Horta and Faria bring to animal ethics—wildlife suffering. My focus is only a relatively small subset of wildlife suffering—that which results from human exploitation and spill-over effects of human activities.

Yet, as Franklin (2005, xix) duly acknowledges, "competition between humans and animals for the use of a particular natural resource is an authentic conflict of otherwise legitimate [philosophical] interests." An increasing number of moral philosophers have begun to pay some attention, if only cursory, to the phenomenon of human-wildlife relations. However, even the attention devoted to wildlife ethics tends to be piecemeal, conceptual and touch on what appears to be philosophically more interesting matters than those of practical relevance and urgency. For instance, several philosophers have been preoccupied with the implications of animal rights theory on predator-prey relationship among animals (Sagoff, 1984; Regan, 2004a; Ebert and Machan, 2012; etc.). And Lori Gruen, while admitting that complexities of human-wildlife relations warrant philosophical attention, concedes that she "will only be able to scratch the surface" (Gruen 2011: 165).

Breaking away from the patchy approach, Donaldson and Kymlicka (2011) have offered one of the most extensive ethical treatments of human-wildlife relations. They allude to the dearth in wildlife ethics:

> What is lacking is a more systematic theory of the relations between human and wild animal communities, one which ties together the various ad hoc arguments presented to date, and goes further in addressing a range of issues and conflicts which [animal rights theory] has so far ignored (Donaldson and Kymlicka 2011: 167).

It is discussions in this new direction that give hope of solutions to the theoretical and practical problems that characterise dimensions of the human-wildlife interface in various contexts from peasants in African Tropics, semi-nomadic Inuit in Canada, to rich trophy hunters in Europe and North America, and ivory craft buyers in China.

This thesis is motivated by the need to fill the current virtual moral vacuum in wildlife conservation practice and disproportionately fewer wildlife discussions in animal ethics. As mentioned already, my approach follows Tom Regan's animal rights theory, which recognises a special moral status for every individual nonhuman animal, but I do add some qualifications and diversions, which will become evident in Chapters 2 and 3.

1.3 Outline of the Thesis

Many writers and activists tend to take moral rights as a given. As renowned rights philosopher James Griffin notes, "philosophers often give the impression of plucking … rights out of thin air" (Griffin, 1986: 224). They ignore to build or defend a theory of rights from scratch providing the logical structure of moral rights and substantive normative rationale for moral rights. This glossing over the philosophical foundations of moral rights can lead to muddled discussions, avoidable theoretical impasses, and even absurd practical implications. Chapter 2 of this thesis departs from the trend among applied ethicists of taking moral rights as a philosophic given. I explain the Hohfeldian logical structure of rights showing what distinct generic kinds of rights there are. Understanding of rights as not homogenous but as a heterogeneous four-fold group of moral advantages (claims, liberties, powers, immunities) enriches our view of the moral landscape and sharpens the language for analysing issues of justice to wild animals. Hohfeldian rights also help show as quasi problems some apparent conundrums that arise in the course of applying moral rights theory.

However, a typology of rights and logical relations between the rights and their correlative moral obligations is only part of the story of moral rights theory. Hence, Chapter 2 further discusses the normative function of moral rights. The Will Theory of Rights (WTR) competes with the Interest Theory of Rights (ITR) picking choice and interests respectively as the thing

of value that moral rights protect. I critically run through some examples and counterexamples that have been identified as supporting one or refuting the other. My verdict is that ITR is more internally coherent and sits well with some of our firmly held beliefs about morality without having to make *ad hoc* adjustments to escape potentially fatal objections. An important implication of this verdict is that beings who cannot make a higher-order rational choice or who cannot exercise some active moral rights still possess individual moral rights because of some important interests some of which may depend merely on behavioural preferences. These beings include infants, senile adults, and some animals.

With a theory of moral rights in place, Chapter 3 proceeds to discuss critically the foremost version of animal rights theory—Tom Regan's. Although successful in inspiring animal rights in philosophy departments, in street protests, or vegan leafletting, Regan's theory has some inconsistencies, questionable assumptions, theoretical excesses, and unpalatable implications. Among the concepts contested is the rhetorically important notion of a subject-of-a-right. This is Regan's famous several-in-one criterion for being a right-holder. I criticise the notion as conceptually fuzzy in not being able to spell out whether the criterion provides necessary or sufficient conditions, either of which, in my view, fails. I argue that mere sentience as espoused by Jeremy Bentham centuries ago suffices and avoids some inadvertent anthropocentric components in 'subject-of-a-life'.

Although, I agree with Regan's theory on many important points, in Chapter 3 I challenge or clarify his rights to just treatment, to respectful treatment, and to assistance. The first two, I argue, are redundant or turn out to be a tautology when we consider what justice or respect is. After we have mapped out a complete 'genome' of rights, there is nothing left to be called a right to justice or a right to respect as justice and respect—at least narrowly conceived—are values that supervene on moral rights or have moral rights as their explanans. Upholding moral rights yields justice and respect. Further, the right to assistance requires stringent qualification to curb the spectre of rights inflation. I therefore argue to limit the moral right to assistance only to those who owe us an emergent duty through birth, or some initial harms which may not necessarily constitute an injustice.

Lastly, I discuss some situations Regan presents as situations in which violating someone's right is morally permissible. The most important case is, for me, that of defence of the innocent, which I only scratch on the surface in Chapter 3 but discuss in greater detail in subsequent chapter sections. Through a discussion of Regan's theory, I emerge with a version of animal

rights theory that is nuanced and shaped by my understanding of the structure and purpose of moral rights that are a product of Chapter 2. The theory is now ready for application to some issues at the human-wildlife interface.

The first issue I apply the theory of animal moral rights theory to is that of some wild animals preying on others and wildlife behaviour or population increase endangering others through damage to the environment. This is the focus of Chapter 4. The problem of predation has become a regular topic in animal ethics for at least two philosophical reasons. Firstly, there is what David Benatar (2001) refers to as the 'naïve argument against moral vegetarianism'. The naïve argument raises the challenge against moral vegetarianism that since it is acceptable for predators to kill for food, there is nothing wrong in humans' killing for food. Conversely, this view holds that, if humans are not permitted to kill for food, predation must be stopped, which purveyors of the 'naïve argument' see as an absurd and, therefore, unacceptable implication. I will, however, not focus on this formulation of the problem of predation. My focus is, rather, on the challenge against the entire theory of moral rights for wild animals. This problem arises from the apparently absurd implication of animal rights theory that we must have a wildlife policy that eliminates or reduces the incidence of predation.

There have been already several solutions offered to the problem of wildlife predation I address. For some, there is no absurdity and we should follow through with the policy of ending predation in the wild. Some writers employ understandings of negative and positive duties to weave through some challenges against the laissez-faire approach to predation. I argue that the interventionist view is mistaken and that—in standard cases of predation involving wild prey and wild predators—not only are we not required to prevent predation but also, we are prohibited from intervening to stop predation. I rely on the Hohfeldian framework to disentangle moral rights of prey, predators, and putative rescuers. In so doing, I provide a solution which (a) is coherent and (b) repels the usual counterexamples and (c) avoids accepting the absurd implication of policing nature. My solution also avoids *ad hoc* detours and biting the bullet, which I think some of the solutions in the literature do. Through interplay of the Hohfeldian matrix and the purpose of moral rights, I point out why we are prohibited from saving a zebra from hyenas, why we may be permitted or required to save a child from a lion, and why we are required to save a cat from a child.

Chapter 4 deals with a further challenge to animal rights theory. This is the challenge that implementation of a rights-based wildlife policy would be disastrous for the environment,

ecosystems, and biological diversity. I argue that ascription of intrinsic value to the environment is misguided for the simple reason that intrinsic moral value is a property of those beings who have an interest in a state of affairs. The axiomatic thesis of moral rights theory—at least the one defended in Chapter 2—is that to be morally considerable, a being must be such that a state of affairs can improve or diminish that being's experience. Ecological collectives are entities that fail this sentience test and can therefore have only instrumental value. I argue, therefore, for a zoocentric wildlife policy that permits human interference only to correct past human wrongs against wildlife or to prevent some environmental catastrophe that would result in great suffering and deaths of wild animals. It is a policy that differs significantly with current practice in which wild animals are so easily expendable for the sake of sustaining or reshaping an ecosystem in order to serve anthropocentric goals.

In Chapter 5, I focus on the implications of animal rights theory on the institution of property. Currently, humans own wildlife legally under various property regimes. I challenge the status quo by arguing that, if wild animals have moral rights, then it is a logical confusion to treat them as property of humans. Essentially, this is because the moral rights that wild animals have preclude the wild animals' being somebody's property given what the concept of ownership entails. In my view, ownership of wildlife can only be purchased at the conceptual price of a diluting what it means to possess certain rights or what it means to own something. In other words, rights of control, use, and security in one's property are elements of ownership that appear not to be compatible with the rights of truly wild wildlife.

I present a further argument that rather than being property, wild animals are owners of their habitats and the natural goods found therein that are essential for their species-specific flourishing. The traditional justifications for ownership, namely 'labour-mixing' and 'first occupancy', though not satisfactory, provide the ingredients for my argument. I argue that wild animals are morally justified owners of their habitats and the natural goods they need to have their kind's wellbeing. My view is that if an animal—human or nonhuman—is the first to possess a resource or to create a resource from previously unowned resources, the thing in the animal's possession is its legitimate property provided the thing possessed is relevantly connected to some element of the animal's wellbeing. Lastly, in Chapter 5, I defend wildlife property theory against the challenge posed by sovereignty for wild animals that purports to supersede wildlife property theory. I argue that wildlife sovereignty is based on a rather weak analogy with colonialism and that, in the context of moral protection for wildlife, sovereignty is redundant.

The issues discussed in the chapters so far have very little to do with human-wildlife relations as such but rather merely with humans as wildlife managers. In Chapter 6, I turn to the direct human-wildlife interface. I frame the chapter in the umbrella concept of human-wildlife conflict. Human-wildlife conflict is a perennial feature of human-wildlife relations. Some authors (e.g. David Schmidtz, 2002) have referred to the two parties as 'natural enemies'. 'Natural enemies' does not do full justice to the complex relationship between humans and wild animals although it is a true characterisation of the relationship in many respects. But whereas Schmidtz seems to focus on wildlife as the enemy, my discussion points more to humans as the enemy. For example, Schmidtz narrates how scared he was when huge elephants came near a tent he was sleeping in. At this point, in my view, he had already morally trespassed into elephant property and would have done double wrongs had he tried to harm the elephant to defend himself.

The theory of self-defence maps out and thereby restricts instances when humans are permitted to defensively harm wild animals. I defend the controversial 'shoot-to-kill' policy as a legitimate form of other-defence of wildlife against poachers. Although here I only argue for moral permissibility of such interventions, in Chapter 7 I will argue more positively for protective intervention as a moral requirement of states.

Other issues I discuss in Chapter 6 include responding ethically to threats wildlife pose to humans. I point out that in many cases where wild animals are perceived as threats, it is humans who have provoked the wild animals in the form of intrusive tourism or human encroachment on wildlife property. This means that in many cases, a self- or other-defence justification for harming wild animals is voided. Self- and other-defence applies only in cases where the human victim of a wildlife threat is innocent. I argue that, in many cases, humans are arguably either morally culpable or morally liable.

Finally, Chapter 6 discusses the emotionally charged problem of human interests that are premised on exploitation of wildlife. I deal with the problem of bushmeat for subsistence of peasants living near protected areas and the more intense problem of tribal peoples who rely not only on wildlife as a source of nutrition but also on hunting as part of their cultural heritage.

A utilitarian approach might be compromising and perhaps advocate limiting the numbers of wild animals killed and restricting methods used. That option is unavailable for an adherent to the view of wildlife justice based on moral rights of individual wild animals. I argue that the only non-speciesist and rights-respecting policy is prohibition of any killing of wild animals to

satisfy human interests. I argue that both in the case of humans and in the case of wildlife, nothing in the Hohfeldian matrix changes because of a human's desperation for survival. That is, the deontic relations between the imperilled human and the individual whose meat would lead to that human's survival remain the same at the point of the human's starvation as they were when he was well-fed. The right of an innocent individual—a monkey or a human—not to be killed does not become weaker or vanish the nearer some human being gets to starvation. 'Survival of the fittest' is incompatible with a theory that acknowledges moral rights for individuals.

Chapter 7 addresses the question of human obligations to protect wild animals. I reject a narrow statist approach to wildlife protection. This is the approach that reflects current wildlife governance practice. Currently, wildlife is legal property of the states in which they happen to be located. Obviously—as with all property—it is the primary responsibility of the owner to protect her property. Even if we assumed wildlife was not property, the narrow statist view might continue to prevail as it does in the case of protection of human rights, which is regarded as the primary responsibility of the states where the humans reside or the states of which the humans are citizens. Some philosophers think that such a statist approach is fallacious because some states are tyrannical, weak, or porous, in which case they cannot be expected to protect citizens' or residents' rights. Such philosophers recommend some cosmopolitan framework for enforcing duties for ensuring human rights. Although such recommendations accurately identify the problem with the statist approach, my solution differs in at least two respects. I put stringent qualifications for one to be a subject or respondent of positive moral rights. My arguments are based on moral rights and not any conventional rights under which I see no problem regarding positive rights as such. I am further opposed to a speciesist cosmopolitanism as currently dominates the literature.

After arguing for a non-speciesist cosmopolitanism, I advance a new statist-cosmopolitanism for protecting wild animals. In the beginning, the only obligations of justice humans have towards wild animals are very much laissez-faire. However, many predicaments of wild animals now are a result of human direct exploitation of wildlife or wildlife property, or a result of spill-over effects of human activities such as pollution and climate change. This, I argue, creates an emergent positive duty—not to assist but—to intervene in ways that will help wildlife actual and would-be victims of human exploitation. An example is providing support to orphans of poached elephant parents or of chimpanzee parents kidnapped for biomedical experiments

I argue—using the cases of Safari Club International and Western-based transnational corporations—that states around the world are responsible for wildlife rights violations around the world. This implies an acquired or emergent compensatory duty of justice. Those who threaten wildlife come from far off states. Sometimes foreign states make laws that render such far off states complicit to wildlife crimes. I argue that since states where wild animals are found do not own the wild animals, foreign states treat these 'host' states which are usually poor states unfairly both by not themselves making and enforcing tougher laws against wildlife crime and by absconding from doing their share of the collective responsibility to protect wild animals threatened by the international human community. I end with some tentative recommendations on how states need to cooperate to protect wildlife from humans and to compensate for harms that are being committed as we speak.

Chapter 2 An Animal-friendly Theory of Moral Rights

'Moral right' is not a term that is commonly known or used in everyday ethical discussions. It is 'human right' that is the medium through which many everyday moral and political advantages are demanded and cashed out. Human rights are a topic for innumerable scholarly works in philosophy and in the social sciences. Social change movements will normally express their cause in terms of human rights. 'Civil', 'political', 'legal' are all common variants to 'human'. 'Human' can also be specified into other adjectives such as 'children's' or 'women's rights' that presuppose that the beneficiary of a right is a human being. Such is the ubiquity of *human* rights that, I think, the mere mention of some *animal* rights is likely to face automatic opposition. If moral rights are synonymous with human rights, then we can talk only about animal rights figuratively or mistakenly. My aim in this chapter is to argue that moral rights theory is not tied to humanness but to certain features such that whichever being has those features—regardless of species membership—is eligible for holding moral rights.

Before I embark on applying the animal rights perspective to human-wildlife relations I must attend to some meta-rights issues pertaining to the general theory of rights, namely the nature and function of moral rights. First, I seek to answer the question of what moral rights are. Rights theorists in moral philosophy and jurisprudence begin their analysis of rights with a conceptual framework drawn by the American jurist Wesley Newton Hohfeld. Hohfeld's matrix of rights is admirable for its elucidation of the logical relations that rights establish among members of the moral community, and the precision this matrix introduces.

The second aim of this chapter is to discuss critically the function of moral rights. Is the job of moral rights to protect holders' interests (benefits) or will (autonomy)? I present and respond to some objections raised against both the Will Theory of Rights (WTR) and the Interest Theory of Rights (ITR). I find the objections considered here to have only produced the illusion of weakening or refuting the interest theory of rights. On the contrary, WTR has some notorious difficulties that make it less viable *independently*. Most damning is WTR's identification of autonomy as the rights-qualifying feature.

I argue that, understood in a certain way, WTR can be subsumed under ITR without any morally relevant residue. This, I think, can be done by recognising and treating choice-making, self-determination, or autonomy as merely a different sort of interest—albeit a second-order kind of interest. Such a view tries to draw the different theories of rights together. And one

consequence of this view is that animals qualify as right holders with respect to certain interests that are vital for their wellbeing.

2.1 The Structure of Moral Rights

Showing the coherence of the concept of a moral right requires a philosophical toolkit. L. W. Sumner (1987)—like many other philosophers of rights be they Interest or Will theorists—settles for the Hohfeldian taxonomy of rights as his 'building blocks' for his analysis of rights. Below, I present a slight modification of Sumner's presentation of the Hohfeldian taxonomy of rights. Hohfeld referred to a liberty as a 'privilege', and he referred to a 'claim' as a 'right'. Here I simply adopt Sumner's term 'liberty', which is also used by Mathew Kramer. Kramer (1998) sticks with Hohfeld's 'right' for 'claim'. I however adopt the vocabulary of a 'claim' for the following reason. A claim is only one type of a right. The other types are liberty, power, and immunity. Though cumbersome, rights should be further specified as claim-rights, liberty-rights, power-rights, and immunity-rights. This is conceptually vital when taking stock of moral conundrums purportedly involving moral rights.

The structure of moral rights can be divided into first-order and second-order incidents. This division is crucial for rights analyses as will be demonstrated in wildlife rights issues discussed in ensuing chapters.

First-order incidents

(1) X has a liberty with respect to Y to φ. (2) Y has a no-claim against X that X not φ.

(3) X has a claim against Y that Y (not) φ. (4) Y has a duty to X to (not) φ.

A moral right has three essential elements. Sumner (1987) calls these elements *subject, object*—collectively known as the scope—and *content.*[3] For example, in (1), 'X' is the subject of a right, the right-holder. 'Y' is the object, the being against whom a right is held; he has a no-claim juxtaposed with X's liberty. Lastly, 'φ' is the content, that which puts 'X' morally at an advantage in relation to 'Y'. Gewirth (1981) employs the term '*respondent'* for 'object' and 'object' for 'content'. 'Object' is thus rendered ambiguous since Sumner uses the same term for something else. I will employ *subject* to refer to the right-holder, *respondent* to refer to the person or entity whom the right in question obligates, and *content* to refer to what the right is about.

[3] Other authors use 'substance' instead of 'content' (Shue, 1980; Griffin, 2008). I will, however, stick with Sumner's terminology.

The first-order positions denote deontic relations—stating what is required, forbidden, or permitted—that state obligations and moral advantages as shown in the summary above. Positions (1) and (3) are correlatives of (2) and (4) respectively. These positions are fixed. In other words, the first-order matrix "contains no mechanism for creating, altering, extinguishing, or otherwise manipulating these relations" (Sumner, 1987: 27). None of the normative positions can be changed by the right-holder or can be legitimately altered by a second party. The fixity of first-order relation does not reflect the real world and would render the rights theory explanatory weak. However, the second-order rules complete the Hohfeldian matrix and introduces flexibility that increases the explanatory and analytical potential of rights theory.

Second-order incidents

(5) X has power over Y to affect R (relation).	(6) Y has a liability to X's affecting R.
(7) X has an immunity against Y that Y does not alter R.	(8) Y has a disability with respect to X to affect R.

The second-order rules give alethic positions—stating the necessary, impossible, or possible—that afford leeway to manipulate the first-order normative relations or state when such manipulations are morally impossible. These say what can and cannot be done. The elements in (5) - (8) have the same correlative and opposite positions as those in the first-order matrix.

But how are the two sub-matrices related? There is a symmetry between corresponding deontic and alethic relations. For example, (1) and (5): "I have the liberty to do something just in case doing it is permissible for me.… I have the power to affect some relation just in case affecting it is possible for me" (Sumner 1987, 31). Both are active rights stating that the right-bearer must not be prevented from doing what the right permits or empowers them to do. Contrast with (3) and (7) which place restrictions on actions of obligors. The combined matrices now form a versatile system for explicating rights-relations.

Correlativity axiom

Scholars of rights differ on whether all claims correlate with duties and vice versa. Some who argue against the rights theory find rights nihilism—thesis that there are no moral rights—as an inevitable upshot of the view that not all duties have rights correlatives, and that in fact, duties need not have rights correlatives at all. Adina Preda reports H. L. A. Hart, as saying "if a right-holder is simply the beneficiary of a (legal) duty, then all talk of rights could be reduced to talk of duties" (Preda, 2012: 255). The language of rights—rights nihilists or sceptics

argue—is not only redundant but is also pernicious to moral discourse as it results in an uncontrollable inflation of claims to moral advantages.

Others, however, insist on the indispensability of rights ontologically and pragmatically. Samuel Stoljar, for example, says: “Rights … must exist prior to duties as there must be claims to before there can be claims against; obviously, it is truer to say that I have a duty not to interfere with you because you have a right, not that I have a right because you have a duty not to interfere” (Stoljar, 1984: 8). However, although Stoljar’s view sounds semantically appropriate, on closer scrutiny, there seems to be something wrong with the view that rights have ontological priority over duties.

The error of taking rights as ontologically preceding duties seems to arise from confusing interests with the protection of interests or, autonomy and the protection of autonomy (see Kramer 1998, n 18). For example, I have an interest in remaining alive. So far this does not institute any moral relations conferring rights on me and duties on others not to murder me. If my interests were never under threat, it would not make sense to talk about rights in as far as rights are moral protections. Only the possibility of murder necessitates my right to life. Hence, interests take precedence over rights. But as soon as I have a right, someone else simultaneously has a correlative obligation as well. A claim and its correlative duty emerge or disappear together. Mathew Kramer (1998) rightly defends this view, which he calls the 'correlativity axiom'.

The correlativity axiom states that claim-rights cannot exist without duties and vice versa; they mutually entail each other without any temporal hierarchy between them. Kramer’s analogy of the slope is, in my view, quite effective. “Just as a slope’s downward direction is not logically or existentially prior to its upward direction, a duty is not logically or existentially prior to the right with which it is correlated. The existence of each is a necessary and sufficient condition for the existence of the other” (Kramer 1998: 26). I think it is the same way a glass with a liquid reaching exactly its half mark is both half-empty and half-full. The two phrases describe the same reality and their truth-values will be the same always. If I am in the process of emptying the glass, it seems semantically more appropriate to talk about a half empty glass, and half full if I am in the process of filling the glass up. If the correlativity axiom thesis is true, then the attempt to write off rights from the moral discourse is not only dangerous but groundless. Rights analytically entail their correlatives. So far, so good. However, Kramer goes further to assert something I disagree with.

Kramer (1998: 25, n. 10) is confident that the so-called right-less duties can be shown to be either not genuinely obligatory or that their correlative rights can be somewhat located. In his view, rights-based theories and duty-based theories are merely emphasising different aspects of the same deontic relationship. I disagree.

There are, in my view, duty-based normative theories that have no correlative rights. If X has a claim, then someone, Y, must have a duty vis-à-vis the content of X's rights. It is however not the case that if Y has a duty, then there is someone, X, who has a correlative right. Virtue theory and consequentialism can, and do, recognise duties to which the beneficiaries may have no corresponding rights. Indeed, even commonsense morality holds that, in addition to specific, or personal, duties to do good for family and friends, I have a duty to do good for others *in general*. And in cases where I can help only one of many needing help, I have a duty to help but none of the many needing help has a right that I help him or her in particular.

Lastly, Mathew Kramer talks only about the claim/duty correlatives. However, the correlativity axiom is no less true for all the other Hohfeldian incidents. Thus, we can say of liberty and no-claim, power and liability, and immunity and disability, that they are each necessary and sufficient conditions for the other and that none has existential precedence over the other. A right where we have one without the other is a logical contradiction. Rights are temporally at par with duties and they do not fall victim to the reductionist attempt which seeks to cut out rights from the moral story.

A possible objection is that the correlativity axiom comes up short regarding power-rights. For example, it seems correct to say Tim has the power-right to make a promise to Sue, thereby giving Sue a claim-right (that he keeps the promise) and Tim a duty (to keep the promise). True, this power-right has implications for the rights and duties that could be created. But it appears true that, right now, having not yet made any promise to Sue, Tim has the power-right and no one else has any corresponding rights or duties. If this account is true, then clearly there can be a right (a power-right) to which there is no corresponding obligation.

I think an answer is available to the objection of a seeming power-right that is nevertheless without a correlative moral position. The correlativity axiom is discussed with claims and duties in mind. But I contend that the axiom holds even for the other three rights including the power-right. With regards to the power-right, the correlativity axiom claims that whenever subject X has a power-right against respondent Y in relation to content C, it is the case that Y has a liability to X with regards to the content in question. However, when it comes to promising, it

seems reasonable—as Thomson (1990) finds it—to say a promise has not occurred if the promisor's intentional statement does not receive uptake from the would-be promisee.

Prior to Sue's uptake, the moral relations between Sue and Tim remains unaltered. Sue is not at all liable to Tim's promise. This is true because Sue is under no obligation to accept the promise. *A fortiori*, no changes occur in Tim and Sue's deontic relations pertaining to claims and duties. The creditor has a power-right against the debtor. Under strict liability, the injured has a power-right over the person that has injured her. This kind of relationship does not arise in the case of a promisor and the intended promisee for the would-be promisee might very well turn down whatever it is they are being promised.

It is not true, therefore, that the power-right fails to satisfy the correlativity axiom between rights and correlative obligations. A power-right can only be held or rightfully exercised against a liable respondent, and a liable respondent cannot rightfully extricate herself from another's power-right against her. I will not try to offer an alternative account of promising. It suffices for me to simply show that a promising transaction does not seem to show a clear case in which a power-right exists and yet there is nobody that is liable to the exercise of that power.

2.2 The Function of Moral Rights

One way to conceptually analyse rights is to elucidate and apportion what L. W. Sumner calls the "normative function", and William Edmundson refers as the "*raison d'être*" of rights (Sumner, 1987: 98; Edmundson, 2012: 97). If successfully accomplished, this analysis can help delimit the proper use of rights. In principle, at least, the analysis draws a line between who can be a right-holder, and who can be a respondent. The response to the question of the function of moral rights has polarised those who view rights as choice protectors and those who view rights as interest protectors. It must be noted however that some writers regard the interest/choice distinction as presenting us a false dichotomy and have therefore proposed 'inclusive' or 'hybrid' theories that merge the two, or some other third alternative (Sreenivasan, 2005; Wenar, 2005; Cruft, 2004; Rainbolt, 1993). Others have depicted the polarisation as a proxy battle between welfarism and Kantianism (Wenar, 2005; 224).

A further preliminary note is that some thinkers regard the interest/choice theory debate as being over the question: "What is a Right?" (Rainbolt, 2006: 3). In my view, this is an error, one which Adina Preda also makes. She thinks the debate is about clarifying "what it means to have a right, not to provide a ground or justification for rights" (Preda: 2012: 253). On the contrary, the question of what a right is or what it is to have a right is separately addressed by

the Hohfeldian schema outlined above. Each of the normatively advantageous incidents constitutes a possible definiens of a right. If someone is asked what it means to have a claim, for example, they need only point to the relevant correlational relationship: "X has a claim against Y regarding performance or non-performance of a certain act if and only if Y has a duty towards X to perform or not to perform the act in question".

I follow Sumner (1987) and Kramer (1998) in thinking of this debate as an effort to designate the normative purpose that rights play in moral, jural and political contexts.[4]

2.2.1 Will Theory of Rights

The will theory of rights (WTR)—also known as the choice or agency theory of rights—identifies the *raison d'être* for rights as protecting the right-holder's autonomy. According to Hillel Steiner—the view's contemporary protagonist—WTR asserts "that something is a right if it is either a claim or an immunity to which are attached *powers of waiver and enforcement* over its correlative constraint" (Steiner, 1994: 61; emphasis added). As L. W. Sumner elaborates, on this view of rights, "a claim which cannot be alienated in any way, thus which is beyond its holder's normative control, cannot count as a right" (Sumner, 1987: 97). In short, on this view, it is not the case that anyone with some legitimate interest to protect or promote is an eligible right-holder. A claim is not a right if it does not accord the claimant control to maintain, waive, or extinguish the claim.

However, WTR is afflicted with a flaw which I believe is so serious as to render the theory untenable. To this flaw, I will now turn.

Narrowness of scope (subjects) and content of rights

The WTR's major problem seems to be that it unjustifiably excludes categories of beings many people find—both intuitively and argumentatively—to be legitimate right-holders. Some such groups include severely mentally challenged adults, infants, and some animals. According to Hillel Steiner, minors cannot be right-holders because "their presumed incapacity to make responsible decisions … makes them … inappropriate subjects of powers and liberties whose possession is precisely what having rights amount to" (Steiner, 1994: 245). The denial of rights to children is bound to be met by many with some justified incredulity. "Many people would shrink from a theory which defines 'right' in a way that commits the proponents of the theory

[4] It must be said from the onset that there is no logical equivalence between moral and non-moral rights (conventional) rights. For this reason, legal counterexamples may not always provide sufficient or appropriate objections to ITR or WTR. There are legal rights that are not moral rights or that are morally indefensible.

to the view that children and mentally infirm people have no rights at all" (Kramer, 1998: 69). However, no matter how great the number of people who recoil from WTR's exclusion of children from being right-holders, it does not count as a decisive reason for rejecting the theory. Rejecting WTR requires an argument.

Below I present an argument rejecting WTR on the ground of its omission of children and other rational incompetents.

(1) According to the WTR, all moral rights exist if but only if their purpose is to protect the exercise of agents' mature wills (autonomy).
(2) If all moral rights exist only if their purpose is to protect the exercise of agents' mature wills, then, according to the WTR, agents without mature wills cannot have any moral rights.
(3) Babies, young children, and the mentally infirm do not have mature wills.
(4) So, babies, young children, and the mentally infirm cannot have any moral rights, according to WTR.
(5) However, babies, young children, and the mentally infirm most definitely do have some moral rights.
(6) Hence, the WTR is a mistaken theory.

Some Will theorists such as Steiner will accept all premises (1) – (3) and the conclusion reached at (4). But they will reject premise (5) and, for that reason, reject the rejection of their theory expressed in the argument's conclusion (6). Hillel Steiner is happy to bite the bullet of denying the seemingly indubitable, (5), and only admit the usage of children's rights as merely a rhetorical device (Steiner, 1994: 245). However, in his view, children are owed only right-less duties, albeit strong duties, which dictate that children are protected and provided for by the state or by their parents.

I will argue that we must reject premise (2), which sets capacity to exercise one's will as a necessary condition for rights possession. First, I will criticise as *ad hoc* the attempt to sneak children into the domain of rights by fiat of proxy decision makers. This, however, leaves untouched those like Steiner who have no problem accepting premise (4). Therefore, second, I argue that there are harms that are cases of injustice to the victims and—on Steiner's own understanding of justice—those are cases of violations of children's real rights.

As David Archard (2014: 7) reports, according to some writers, the narrowness problem of WTR is soluble simply by introducing third party decision makers. At least in some of the

cases, the "seemingly absurd consequence [i.e. (4)] can be finessed by an adjustment that allows for infants and the incompetents to hold powers through proxies, such as parents and legal guardians" (Edmundson, 2012: 100). This attempt at repairing WTR fails, however. I will give two reasons why this effort to rescue WTR fails.

First, we can imagine two children found in the bush by Paedophile. Paedophile soon discovers Lucky is accompanied by his father while Orphan is all by himself. Paedophile may not sexually defile Lucky because Lucky has a claim-right not to be sexually abused in virtue of having a proxy choice-maker in his father. However, Paedophile may sexually abuse Orphan because he is not a mature will controller and has no mature will controller to represent him against Paedophile. Clearly, this conclusion is morally unpalatable. Nothing about the injustice of paedophilia should rest on the presence or absence of a third party. Orphans without adult guardians are not a child molester's paradise.

Fortunately for Orphan, some Will theorists (Steiner, 1994) have another way to protect him. They claim that there are some right-less duties that would prohibit the likes of Paedophile from proceeding to abuse him. Apparently, there are other grounds for children's moral considerability that have nothing to do with them being right-holders. For Steiner, adults have right-less duties not to harm children. But it is rather odd that two children facing the same threat need different justifications necessitated by the seemingly morally trivial presence of a father for one of the children. Moreover, for Lucky, should his father mysteriously vanish, Paedophile may not now pounce on him because the right-less defence automatically kicks in. It appears Lucky's right—through father's presence—against Paedophile is surplus to his moral needs as far as protection from Paedophile; it has been a third wheel all along.

However, Steiner is not caught up in the proxy decision-maker *ad hoc* move. He denies the existence of a claim-right for children. As per his definition of a right, the power to control one's own will is a necessary existence condition for a claim-right. The time has come to make a new charge against WTR, and against Steiner specifically. This is the charge that paedophilia is an act of injustice and not just a diabolical moral wrongdoing. I agree with Steiner that "the elementary particles of justice are rights. Rights are items which are … parcelled out by principles of justice" (Steiner, 1994: 2). Such is the commitment of Steiner to rights as analysans of justice that Wilshere (2013) refers to Steiner's theory as 'justice-as-rights'. This means that we cannot talk about justice proper without talking about rights.

In dismissing children's rights, Steiner says, "Only Plato and a few misguided others have imagined that the demands of rights or justice encompass all our duties, that our duties are all correlative ones"[5] (Steiner, 1994: 62). The disjunction 'rights or justice' seems to reiterate the rights/justice equivalence. However, the point is that Plato, in Steiner's view, makes the mistake of defining too broadly the concept of justice as to let in right-less duties. For Steiner, it is the right-less duties and not those correlative to rights which ground all wrongdoing to children and mentally infirm adults. On this view, we should recognise that children's interests are morally important and must be promoted or protected as such without falling for the temptation of postulating children's rights (Archard, 2014: 8).

Now I can expose what I see as Steiner's error. If we cannot conceptually speak of children's rights violations, then—given that rights are elementary particles of justice, in Steiner's own words—there can be no injustices against children. Thus, short-changing a child or an elderly person with dementia after they buy my ice cream is morally wrong though not an injustice, by Steiner's lights. Furthermore, if a terrorist forcefully detains a mature woman of sound mind, he commits an injustice against her but not so against the child the woman is kidnapped with. These implications do not only offend against the legal and common understanding of what justice means but must also draw a dubious conceptual line between two equally innocent people who suffer the same harm at the hands of the same villain for the same reason.[6]

For many people—including me—a sound and elegant theory of rights must affirm that a mentally sound suspect has a claim-right against torture to extract a confession from her just as a mentally incompetent elderly person being tortured for the torturer's sadistic pleasure. And since rights violations signal injustices, both victims of torture suffer an injustice. It does not matter that the person being tortured for information has the choice to waive the torturer's duty not to extinguish cigarette butts on her skin—whatever that choice or power might mean! In both cases, it is the interest of the victim in not being tortured that seems to be doing the explaining of the torturer's duty; reference to control or power in one of the cases to waive the duty not to be tortured seems to be superfluous.

[5] H. L. A. Hart seems to render support to Steiner's view as he thinks that "certainly there is no noun or noun phrase in Plato or Aristotle which is the equivalent of our expression 'a right' (Hart, 1982: 172). My point is that if Steiner sees Plato as erring in the said respect, then he sees rights or justice as occupying a much smaller, and perhaps, more special, place on the moral map. It is a view, I think, many moral philosophers will share.

[6] Someone could escape my argument—the argument that since children can be treated unjustly and justice is solely a matter of complying with rights, therefore children must have rights—by denying that justice is solely a matter of complying with rights. But Steiner, who is my interlocutor now, has no access to this escape route since, for him, justice is solely a matter of complying with rights.

Given what seems to be an insurmountable problem for WTR, its candidature as a coherent substantive theory of rights is in serious doubt, if not totally beyond redemption. However, there is a different substantive theory of rights that I describe and defend in the next section.

2.2.2 Interest Theory of Rights

The interest theory of rights (ITR) is also known as the benefit theory of rights. On this view, rights play the normative function of protecting some aspect of the subject's wellbeing. In other words, someone has "an obligation *to* the right-holder because it is the right-holder's interest which is protected by the right" (Rainbolt, 2006: 4). On ITR view of rights, someone has a right only when they have an interest to promote or protect, however interest is conceived.

However, ITR seems vulnerable to counterexamples of "rights which are not in the interest of the right-holder" (Rainbolt, 2006: 4). There are two distinct types of such cases: burdensome rights, and mandatory rights. The theory is also said to have a third handicap of conferring wrongly rights on third parties. I shall address these problems in turn.

Burdensome rights

Let us imagine a scenario in which Jeremy's uncle, Immanuel, who has been mean to him in his lifetime, desires to continue to haunt and taunt him even after Immanuel's death. So, Immanuel leaves in his will to Jeremy some possession he clearly knows will be a disvalue to Jeremy. Let us take this possession to be some property which bring traumatic childhood memories to Jeremy, is costly to maintain to the municipality's minimum requirements, and incurs a variety of property taxes. We should imagine further that the property in question is associated with past events that makes no one interested in buying it or receiving it as a donation from Jeremy. We have thus the paradoxical situation of a right to something of no interest—indeed a great disvalue—to the right-holder. Thus, it is argued, ITR is seriously flawed as it yields a contradiction.

Interest theorists can relatively easily respond to this attack by denying that Immanuel's will confers a genuine moral right upon his loathed nephew, Jeremy. This brings into question the Hohfeldian relation that would regard Jeremy as a right-holder in this context. Uncle Immanuel has a power-right to φ in relation to Jeremy if and only if Jeremy has liability in relation to Immanuel's φ-ing. Immanuel's power thus confers on Jeremy the claim-right to the property in question. Jeremy's new claim implies that someone has a correlative duty not to use or take the said property without Jeremy's permission. But if it were common knowledge that the property was a psychological and pecuniary nuisance to Jeremy and that he would not care

what happened to it provided this did not increase the costs on him, surely no one would have a duty not to use it? In other words, Jeremy has no *substantive* moral claim.

Rowan Cruft is dismissive of burdensome rights as he rejects the idea of "value-independent" analysis of rights "because it is not possible for a person to be genuinely owed recompense for the non-performance of an action that would not have been of value to that person" (Cruft 2004, 365). Cruft correctly argues that rights require a further necessary condition, namely that their violation should be able to generate an apology or recompense for the omission or commission. In the above inheritance scenario, all things being equal, nobody would genuinely owe Jeremy an apology or recompense for using or destroying Jeremy's 'property'.

Judith Jarvis Thomson provides us with an explanation of exactly what is morally going on when property legitimately changes hands, which includes inheritance cases. The current owner makes this assertion: "Henceforth this banana is yours." *To complete the transfer*, the new owner must say, "Okay, fine" (Thomson, 1990: 322). The Immanuel-to-Jeremy transfer would only be complete and in force upon uptake of the uncle's offer by the nephew. The burdensome rights objection to ITR may be effective if we were talking about some conventional rights whereby in some jurisdictions, an heir willy-nilly becomes owner of the bequest. The objection clearly fails with regards to moral rights.

I must reiterate that the focus of this thesis is moral rights. *The truth-conditions for a legal right may not be necessary or sufficient for a moral right.* Thus, ITR concerned with moral rights does not necessarily suffer the same handicaps as an account focusing on legal rights. As Stoljar (1984: 9) observes, some objections to moral rights that argue from legal rights appear superficially plausible only because we fail to acknowledge that moral rights can and do conflict with the dictates of the legislature. Indeed, confounding the two kinds of rights can introduce pseudo problems in discussions on moral rights. As there can be all manner of silly legal rights, we can find real-life counterexamples to otherwise good theories of rights that have only moral rights in mind. As much as the theories have to be tested by practical cases, these must be the appropriate kind.

The problem of third parties

In an agreement between two people, there could be others, third parties, who stand to benefit—and conversely, to be harmed—by circumstances of the agreement. Do the third parties who stand to benefit from the agreement have rights against some or all parties to the agreement? The ITR seems to imply an affirmative response and yet that implication appears absurd.

The problem is two-fold. First, it appears that contractors are right-holders, and yet it might be the case that a contractor signs a contract not to benefit herself but somebody else, the third party. Second, since the third party is a beneficiary, it seems to follow on ITR that the third party has a right to the content of the contract. This, however, threatens to open a floodgate of claims and contradicts the principle that "parties cannot base their prayers for legal remedies on the rights of others, of third parties" (Edmundson, 2012: 99).

To use an example, take three individuals X, Y and Z. Y owes X 99p. Z owes Y £99. Y is unable to pay X because Z is unwilling or unable to pay Y. Employing Hohfeldian language, we end up with the following relations: X has a claim vis-à-vis Y's duty. Y has a claim correlative to Z's duty. In alethic terms, X has power over Y; Y has power over Z; but it is not the case that X has power over Z. The problem for ITR is that following its lights, Z has a duty to X because her repaying of the debt she owes Y is ultimately in X's interest. However, to say X has a claim or power against Z is counterintuitive and untenable.

Steiner (1994: 61-62) imagines a florist who receives an order from someone to deliver flowers to a third party—a couple, the bride and the groom. The crunch for ITR is supposed to be the fact that the bride and the groom have an undeniable interest in the flowers being delivered and yet presumably they have no claim-right against the florist. This is perfectly explicable under WTR as the bride and the groom do not possess any power to morally enforce or waive the delivery of the flowers. But the situation is allegedly fatal to ITR since, clearly, the marrying couple have no claim-right to the flowers in spite of their interest in the flowers.

The second problem for ITR from the florist case is that—it is argued—the person who makes the order is not the beneficiary of the contract with the florist and yet he is the right-holder. Critics say that ITR is faced with the problem of right-holders without interests and beneficiaries without rights. I think, however, that Steiner's florist counterexample to ITR can be successfully deflected.

Firstly, if I enter any contract to benefit some other persons, it is trivially true at least that I am a beneficiary. This cannot be denied as the critics of ITR do. This can be shown to be the case by an analysis of the rights in the contract. X enters a contract with Y for Y to φ. Φ-ing here is the interest ITR affirms. It does not matter that φ-ing refers to X or some other person or thing, it remains true that φ-ing necessarily serves X's interest, provided, among other things, X did not contract under duress or under an impaired mental state. Humans sometimes have an interest in having or seeing something done especially as a fulfilment of their will. If we ask X

what his interest is in any contract, it seems perfectly sensible for him to say his interest is in seeing Y fulfil her contractual obligations. It is beside the point whether Y's discharging her duties actually has neutral, positive, or negative value to X. As I will explain shortly, the interest here at stake is a higher-order one to do with autonomy rather than physical welfare.

The error in the accusation of a right-holder without benefit is exposed in H. L. A. Hart's report about Jeremy Bentham. For Bentham, according to Hart, to benefit is not equivalent to addition of pleasure or avoidance of pain. This means that even if it turns out the contractor gains no pleasure from the contract or he suffers pain as a result, discharge of the obligation might nevertheless be in his interest. Hart reports that for Bentham, "theft of £1 from a millionaire indifferent to the loss constitutes a detriment to him and an offence against him; while forbearance from such theft *constitutes a … benefit* to which he has a legal right" (Hart, 1982: 184; my emphasis). The interest at stake in this is similar to the contractor's interest. It is the interest of having and maintaining normative control on the claim to one's property. The defaulting contractor usurps this control by unilaterally deciding to forego her contractual obligations even if the breach materially benefits the claim-right holder.

My final take is that the critics are criticising an ITR caricature. They have distorted or misunderstood the ITR position. Steiner charges that, contrary to ITR, "there is no one-to-one correspondence between being a right-holder and being the beneficiary of a correlative duty" (Steiner, 1994: 62). ITR proponents rightly deny this attribution. Instead, they "maintain that every right-holder is a beneficiary of a duty, but they do not maintain that every beneficiary of a duty is a right-holder" (Kramer, 1998: 67). To respond effectively to the charges against ITR, one must argue that being a beneficiary is not a sufficient condition for being a right-holder and that the power to waive one's claim is in and of itself a kind of benefit.

That the power to exercise one's choice is a kind of interest points to a possible convergence between WTR and ITR. I will explore this in the next section. I will also offer a response to the view that ITR "does little conceptual filtering, and authorises a wide range of debate about interests and their importance" (Edmundson, 2012: 97). This will help in giving a fuller response to the problem of third party beneficiaries seemingly having a claim on the discharge of a contract they are not party to.

2.3 Moral Rights and Wellbeing

In this section, I will argue that moral rights are grounded in wellbeing. This will be done with the partial aim of showing the superiority of ITR over WTR. The underpinning concern for all

normative theory is wellbeing.[7] No doubt, moral philosophers will disagree on an abundance of questions and answers. But these questions and answers are in some way about what constitutes wellbeing and how we ought to live our lives or treat one another to promote or safeguard wellbeing. My view is that ITR best depicts justice as the first line of defence for wellbeing. Joel Feinberg's contrast between a world without rights and a world with rights captures well the primacy of rights for wellbeing. In a world without rights, persons

> would think of themselves as having no special claim to kindness or consideration from others, so that whenever even minimally decent treatment is forthcoming they would think of themselves as lucky rather than inherently deserving, and their benefactors extraordinarily virtuous and worthy of great gratitude. The harm to individual self-esteem and character development would be incalculable.… A world with [rights] is one in which all persons … are dignified objects of respect, both in their own eyes and in the view of others. No amount of love and compassion, or obedience to higher authority, or noble oblige, can substitute those values (Feinberg, 1973: 58-59).

Feinberg rightly regards rights as priceless and incomparable individual possessions. This goes to buttress the view that rights cannot be subsumed under right-less duties without huge normative loss. As Simon Caney rightly observes, rights "designate the most fundamental moral requirements that individuals can claim" (Caney, 2005: 165). Without moral rights a person's wellbeing is susceptible to tyranny and can be easily sacrificed at the altar of aggregate social good or indeed some other person's or group's whim. The ITR, as I have understood it, best captures the value of rights by knitting rights tightly with wellbeing.

Joseph Raz gives what is now a popular a definition of rights that explicitly picks out wellbeing as the undergirding value. I will present the definition as rephrased by Gopal Sreenivasan.

Razian ITR thesis: "Y has a claim-right against X that X φ just in case, other things being equal, an aspect of Y's well-being (his interest) is a sufficient reason for holding X under a duty" (Sreenivasan, 2005: 264).

Raz only talks about claim-rights. But as Rowan Cruft (2004: 370) rightly points out, "other Hohfeldian positions" can easily fit in Raz's definition. Rowan Cruft thinks, however, that Raz's definition is incorrect because "it implies that every right must serve its holder's interests" (Cruft, 2004: 373). This is a general criticism against ITR and a defensive response has been given above against this sort of criticism. I have defended the view that, at least in general, every bona fide moral right must serve the right-holder's interest.

[7] See Roger Crisp (2016: 18-19) for a brief explanation of the place of wellbeing in moral theory. And Allen Buchanan speaks of "one simple but powerful observation at the heart of morality: morality is fundamentally … concerned with avoiding states of affairs that are harmful for individuals" (Buchanan, 1986: 561).

Here I will make a positive case for ITR by elaborating on the relationship between moral rights and wellbeing. I will end by proposing a formulation of ITR that escapes the problem of rights inflation that the Razian formulation is susceptible to.

Raz's definition of a right has the advantage of making explicit the connection of rights to wellbeing. A fuller discussion of wellbeing is beyond the purpose of this thesis. But briefly, hedonism and desire-satisfaction theories of wellbeing seem implausible in part because of the possibility of delusive pleasures and because of wacky desires (Hooker, 2015: 17; see also Hooker, 2000: 37-43). A more credible theory of wellbeing is the Objective List Theory (OLT).

On OLT, one's wellbeing depends on one's enjoying from a list of elements that are constitutive of wellbeing. William Frankena (1973: 87-88) has provided what I think is a master list of which most writers' lists are duplicates or abbreviations. I pick out the following elements that seem relatively uncontroversial: Autonomy and liberty; Health; Pleasure; Truth and knowledge; Power and achievement; Security and peace; Esteem; Love; Friendship.

Individuals vary at least partly because of biological determinants and because individuals are to a great degree shaped by cultures which deem more valuable some elements of wellbeing than others. I assume no lexicality among the elements and I do not claim that all must be present jointly for one to have wellbeing. The crucial point for me is that the content of any right must track at least some of these elements. For example, the woman's claim that the terrorist does not kidnap her tracks—at least in part—the element of 'liberty'. The millionaire's right that someone does not help herself to his £1 is justified by the element of 'autonomy'. Orphan's right against Paedophile emanates from the element of 'security and peace'.

That ITR grounds rights in the protection or promotion of individual wellbeing is clearly something that speaks in ITR's favour. That autonomy makes it on the list of elements indicates that WTR does not have monopoly over the element. Autonomy is an important element for at least two reasons. It forestalls the charge of elitism against OLT. Every individual with autonomy will have a claim against anyone impeding the decision to live life as the individual sees it fit (Crisp, 2016; Hooker, 2000: 41-42). Since every individual is different in their physical attributes, character, and dispositions, the autonomy element enables individuals carve out their own destiny and ranking or even foregoing any other elements of wellbeing as they wish. At least one justification for autonomy rights is enabling one to freely choose from among possible options that are aligned to some elements of wellbeing. One may not be coerced against pursuing a lifestyle of pleasure for an ascetic spiritual or intellectual one, for example.

A potential downside to autonomy as an element of wellbeing is that "autonomy is blind to the quality of options chosen [and] autonomously choosing bad options makes one's life worse than a comparable non-autonomous life is" (Raz, 1986: 411-412). As Hooker (2015: 24) explains, it seems perfectly conceivable that a life with more autonomy is equal with respect to other elements of wellbeing (e.g. important knowledge) with another life with less autonomy. This is because autonomous decisions can yield outcomes with value and disvalue that may cancel each other out to bring the pleasure or significant achievement—for example—to the same amount in a life with more autonomy and one with less but wisely exercised autonomy. This creates a potential paradox that respecting autonomy might in fact produce the opposite of wellbeing if an individual's choices return a preponderance of disvalue over value. This problem is not insurmountable, however.

It seems we engage in autonomy fetishism if we respect autonomy at the expense of other personal goods. Autonomy "does not extend to the morally bad and repugnant. Since autonomy is valuable only if it is directed at the good it supplies no reason to provide, nor any reason to protect, worthless let alone bad options" (Raz, 1986: 411). This is an important qualification that forestalls rights claims that *clearly* harm the wellbeing of claimants.

Furthermore, an important presupposition of autonomy as a value is rationality. Although occasional mistakes are part of any story towards attaining important knowledge or significant achievement, consistent irrational exercise of autonomy is better understood as a malfunction or dysfunction of the faculty of autonomy.[8] It would be rather odd to suggest that consistently self-destructive behaviours have the protection of moral rights.

The Razian conception of a right risks causing rights inflation. When is an aspect of a being's wellbeing sufficient reason for holding some moral agent under a duty? In my view, merely being in dire need in the presence of a putative obligor does not provide sufficient reason to hold that person under a right-based duty. To be clear, there are other duties at stake such as duties of beneficence. But rights provide for a very special demand that can be claimed and enforced as a matter of justice. Some philosophers (e.g. Cochrane, 2010), however, find Raz's definition plausible and this leads them to confer rights to assistance to wild animals who are

[8] Ideological indoctrination or radicalisation is a good example of autonomy-damaging processes. I think states act morally rightly when they institute programmes for de-radicalisation even if—as expected—such programmes are resisted by the radicalised and the radicalisers. Further, young children, in virtue of having underdeveloped rationality, are justifiably placed under some paternalism that should decrease inversely with evidence of improving rationality.

victims of natural processes like the *r*-reproductive strategy.[9] Inflation is upon us if all imperilled excess offspring have a right against humans to intervene.

Those who think having an interest alone might be sufficient reason to confer a right upon someone face a further problem of demarcation. Interests vary in gravity and it is not clear how serious an interest must be to be a sufficient reason to generate a positive right. The Razian approach implies the unacceptable rule that every Jim with a serious enough interest has a right against some innocent agent to ensure Jim's interest is met. I propose a modified formulation:

Reformulated ITR thesis: "Y has a right against X regarding some φ just in case, other things being equal, φ tracks some element of Y's well-being and X is a moral agent relevantly positioned to bear the obligation correlative to Y's right".

To be 'relevantly positioned' means that X can be identified as legitimately *owing* Y the performance or non-performance of certain actions that have a bearing on Y's wellbeing. Each of the rights—claims, liberties, powers, immunities—has its own conditions for determining that an agent is relevantly positioned to be the obligor in relation to some right-holder. Some of these will be spelled out in Chapter 3 when I discuss Tom Regan's taxa of acquired and unacquired duties. My singular interest now is to show that merely having a particularly important interest does not make one a bearer of a moral right against some agent, and thus, that an influx of claims is not in the offing.

Moral rights protect innocents from others' imposing burdens upon them except burdens they have incurred through their own actions. Imposing burdens upon innocent individuals who have not incurred any responsibilities through their actions violates the rights of those individuals. If Y has an important interest but X is innocent and has not done anything to incur any burdens, demanding that X satisfies Y's interest threatens X's rights. Just as rights issue prohibitions against physical injury, rights issue prohibitions against harming someone in their exercise of their autonomy, which includes decisions on how owners dispense with their resources. To say starving Y has a right against innocent wealthy stranger X and to enforce that 'right'—in the absence of some morally justified conventions—is to commit an injustice against X by violating his autonomy right to decide whether to share some of his wealth with the needy. This

[9] The *r*-strategy is a reproductive strategy in which organisms produce excessive numbers of offspring with an extremely low survival rate to adulthood. Oscar Horta has popularised *r*-strategy as one natural process that poses a moral challenge to how humans relate with wild animals. I will make brief reference to this in the final chapter.

is not to deny that X has no strong moral obligations to help Y. It is simply to say X's failure to discharge such an obligation does not constitute a rights violation or an injustice.

Since for WTR proponents, autonomy is the sole value protected by rights, they surely cannot object to my account of autonomy as warding off the wave of claim-rights enforced against the unwilling but innocent haves. It is the owner's choice to waive her claim-right to even the tiniest of her wealth. Any unauthorised taking must be met with apology or recompense. Of the two theories of rights, ITR seems much more plausible. Unlike WTR, ITR accords rights to young people and senile elderly people, it rhymes with our considered moral beliefs, it has versatile explanatory power and does not resort to biting the bullet or making *ad hoc* adjustments to accommodate potential falsifiers.[10]

This chapter set out to provide theory of *moral* rights by both providing the structure of moral rights and putting forward a substantive account of the function of rights. The complaint by James Griffin that many rights theorists tend to take rights as a given is especially true for many animal rights theorists. There is a temptation to assume moral rights as a settled matter or at least to take comfort in the equation that *animal* rights theory will be flawed only to the extent that *human* rights theory is flawed. However, a closer study of moral rights has thus far been beneficial in a number of respects.

The Hohfeldian analytical framework unlocks the explanatory potential of moral rights beyond the commonly discussed claims and liberties. As I will try to show in subsequent chapters, immunities and powers play a crucial role in explicating conundrums of moral rights as they relate to predation and self- and other- defence, for example. Obviously, if WTR were true and ITR false, the project of animal rights would be doomed or at least radically different. However, this chapter has attempted to argue that WTR is irredeemable particularly on its denial of children's rights.

Furthermore, this chapter has attempted to rebut criticisms and counterexamples raised against ITR. By highlighting the ontological link between moral rights and wellbeing and elucidating the importance of autonomy for wellbeing, I avoid the absurdity of rights to self-harm while curbing an influx of claim-rights based on the mere existence of important interests. Since many animals can be said to have a wellbeing, it seems an anomaly to speak of certain rights such as the right to security (Tadros, 2015) as 'human' rights since wild animals have a wellbeing on

[10] See Hooker (2000: 4) for a list of criteria for assessing a moral theory. Based on those criteria, I think ITR comes off as the better theory than WTR.

which security is an important element. I think ‘human rights’ are a theological relic that has relegated animals as resources to satisfy ‘man’s’ needs and wants.

With this theoretical background in place, in the next chapter, I present and discuss what can easily be said to be the beginning of wisdom on animal rights. This is the theory of animal rights of Tom Regan, especially as expounded in his seminal work *The Case for Animal Rights.* I make a critical appraisal of Regan’s theory, ridding it of theoretical excesses and generally improving on it with clarifications borne out of the analytical framework and substantive account of rights discussed in this chapter.

Chapter 3 Tom Regan's Animal Rights Theory

"I doubt that we have any of the rights that we have in virtue of being human, and even if we do, being human is not the property that we have that is most fundamental in explaining why we have these rights" (Tadros, 2015: 447). In this chapter, my main aim is to defend the view that moral rights are not a preserve of humans. Following Regan, I contend that animals that meet certain minimum criteria have a moral status that warrants their possession of moral rights. Tom Regan's theory of animal rights will provide the point of reference for my discussion. The preceding chapter will provide the analytical lens through which I examine Regan's theory. It would be pointless to try and reinvent the wheel; but my view is that Regan's theory, as robust as it is, can benefit from some revision for theoretical coherence and parsimony as well as better and more extensive application to real life wildlife ethics problems. In short, I hope to make Regan's case leaner in adherence to Occam's razor. The end result, it is hoped, is a theory that has fewer metaphysical postulations and no *ad hoc* moves, and applies more sharply to ethical problems involving humans' relations with animals in general and with wild animals in particular.

Tom Regan's theory of animal rights is extensive. In this chapter, I will only discuss arguments and issues that have relevance to my discussion of wildlife rights.

3.1 Rejection of the Agency criterion

One of the foremost reasons for rejecting the idea of moral rights for animals is that animals lack moral agency, which is identified by some as the definitive criterion for possessing moral rights. In this section, I reject the agency criterion before proceeding to look at and defend interests as providing the basis for rights.

We seem to be on firm ground in thinking that young children, senile adults, the mentally disabled, the insane, and the like, all are members of the moral community. They are morally considerable in their own right. But the Kantian argument posits that nothing short of moral agency or autonomy allows one to enjoy the protection of moral rights. Moral agency is deemed the necessary and sufficient condition for holding rights. The implication of this is chilling. Denied the protection moral rights confer by imposing stringent moral burdens upon moral agents, members of the non-autonomous categories may be killed, tortured, or have their welfare diminished gratuitously.

However, Kant was apparently aware of this implication and he created a caveat to prevent cruelty to those without moral autonomy, and to animals in particular. This is the caveat of

indirect duties. I now attempt to show Kant's notion of indirect duties fails to sufficiently protect animals. In fact, indirect duties leave animals still vulnerable to many current human practices against which rights would otherwise offer them some real protection.

There are no indirect duties

By indirect duties is meant that V behaves morally towards X not because X matters morally but only in virtue of some relationship between X and Y who matters morally. In the current context, the indirect duty approach "holds that we should protect animals insofar as it serves a human interest to do so" (Garner, 2013: 62). Indirect duties manifest an anthropocentric approach that places value on animals only to the extent that treating animals in certain ways may aid or, as the case may be, injure human interests.

Appeal to indirect duties is incoherent. What we have here is a binary. A being can only be owed direct duties or they cannot. There is nothing in between. A duty is a kind of moral response or relation to some being with a moral status. Hence those who deny to animals moral status cannot coherently admit any sort of duties *to them*, not even disguised as indirect duties.

The so-called indirect duties approach to animal ethics postulated by philosophers such as Immanuel Kant and John Rawls are nothing—in the final analysis—but duties owed to humans. If John owns a bicycle, then it is morally wrong to wilfully damage it or to take it away without John's permission. No duty is owed to the bicycle; the only duty here is the one to John. In terms of legal status, the place of the bicycle may be taken by a chattel during days of slavery or it may be taken by John's parrot pet. John has a right to any of these things and that alone suffices to provide some protection to the bicycle, slave, or parrot. There is no need to invoke the language of indirect duties in prescribing how others may or may not treat any of these things. As Joel Feinberg pointed out, we can only have duties *regarding* and not *to* these (Feinberg, 1974: 45). The owner is the *subject* or *bearer* of the right and the parrot, bicycle, or slave would be merely the *content* of that right. Clearly, the content of a right is not the recipient of moral duties.

Kant shuts animals outside of moral considerability by insisting only those can enter who have the ticket of moral autonomy, the ability to decide what is morally right or wrong based on appeal to impartial reasons. By Kant's lights, however, animals are in some luck. They must not be treated malevolently. The reason they must not be treated malevolently is that doing so would induce humans to perpetrate similar acts on other humans. This account of the wrongness of treating animals malevolently, however, has the implausible implication that a lone man can

do whatever he pleases with the animals he lives with on an island completely separated from any other human populations.

Kant's empirical assumption is also questionable. His argument works only if there is statistically significant evidence that those humans who are cruel to animals *as a result* go on to be cruel to fellow humans. It will not do to simply establish correlation between cruelty to animals and cruelty to humans. This could be explained the other way around, that humans who are cruel to humans become cruel to animals also, perhaps as a way of rehearsing their cruelty to humans or because human targets are not readily available. Correlation can also be explained by a third underlying event or phenomenon causing cruelty to both humans and to animals.

In fact, it is not implausible to argue that people who use animals in the way we judge morally wrong are not necessarily being cruel to the animals. Bernard Rollin is likely right when he says most researchers, farmers, rodeo people, and trappers are not intentionally cruel. "They are not trying to hurt animals and are not deriving pleasure from animal suffering; they are trying to advance knowledge, cure diseases, make a profit, keep food prices down, supply fur coats, and so on" (Rollin, 2006: 158). If this is the case, the cruelty argument leaves intact many practices moral rights theorists find morally objectionable.

But let me concede *arguendo* that mistreating animals leads *some* humans who do that to mistreat humans as well. This leads us to the odd conclusion that it is wrong for some humans to mistreat animals and it is not wrong for some humans to mistreat animals. If *my* X-ing inevitably causes my Y-ing and Y-ing is morally wrong, then my X-ing is morally wrong; I ought not X. But it does not follow that X-ing is morally wrong for *other* moral agents who have a different psychological constitution that provides them with a safety valve to prevent Y-ing following from their X-ing. In other words, if it is the case that X-ing is morally wrong, it cannot be that X-ing is not morally wrong. The gist of my argument here is that the moral wrongness of cruelty to animals cannot be consistently premised on the contingent facts that it could result in harm to humans. What the purveyors of the cruelty argument might say, however, is that it is imprudent to mistreat animals because doing so probabilistically results in the immorality of mistreating humans.

The Argument from Potential Moral Agency

Another caveat devised to prevent the implications of restricting moral rights to those who possess moral autonomy is that of the potential to possess moral autonomy. This way, we can bring back in young children at least as holders of rights. So, we may now accept talk of the

rights of children, or even of unborn human beings. Since young children have the inherent capacity to provide moral reasons for their actions and omissions, they have moral rights. This is in contradistinction with animals—whether young or adult—that supposedly do not and cannot have their behaviour guided by moral reasons and are not able to make any moral judgements. But this inclusion of babies and exclusion of animals seems nothing but speciesist arbitrariness. It commits a logical misstep.

The potentiality argument can be schematically presented as follows.

(1) Y has the right to φ.
(2) X has the potential to become Y.
(3) Therefore, X has the right to φ.

Employing the counterexample method, the potentiality argument allows the following.

(4) Eighteen-year-olds have a right to vote.
(5) Babies have the potential to develop into Eighteen-year-olds.
(6) Therefore, babies have a right to vote.

The potentiality argument is clearly invalid because the two true premises (4 and 5) are true and yet they yield a false conclusion. The argument from potentiality only entails one correct conclusion: 'Babies have the potential to develop into beings with the right to vote'. As Eric Rakowski rightly puts it, "the fact that we will all die some day is no excuse for someone's acting as though our bodies were already lifeless shells" (Rakowski, 1991: 359).

Even more importantly, the argument from potentiality fails to deliver the desired outcome that babies have a right to life, to parental care, to state protection from parental abuse, and so on. Thus, those who try to exclude animals from, and include babies in, the real of rights through the potentiality detour seem to have failed since babies are undeniably holders of rights despite lacking moral autonomy.

We can therefore now turn to the less demanding criterion—interests. We will do so through a discussion of Tom Regan's subject-of-a-life standard.

3.2 Subject-of-a-life Criterion

In the first two chapters of *The Case for Animal Rights,* Tom Regan weighs and dismisses scientific, theological, and philosophical arguments that deny that animals are not morally considerable in themselves because they lack certain essential characteristics for moral considerability. Some of the characteristics animals are purported to lack include

consciousness, beliefs, linguistic ability, conative capacities, a soul, and moral autonomy. Regan argues that some animals—which he strategically limits to mammalian yearlings and older—possess some of these features.

Although Regan rightly accords animals what he terms preference autonomy, he finds it "highly unlikely" that animals have moral autonomy (Regan, 2004a: 84). Because animals lack moral autonomy, he groups them under moral patients together with human babies, the senile, the insane, and others with a seriously compromised mental faculty. The patient/agent distinction is an important one that shall resurface in several places especially in Chapter 6. Mark Rowlands makes the distinction as follows:

> X is a moral *patient* if and only if X is a legitimate object of moral concern …. X is a moral *agent* if and only if X is (a) morally responsible for, and so can be (b) morally evaluated (praised or blamed, broadly understood) for its motives and actions (Rowlands, 2012: 72, 74).

Regan identifies the hallmark of a moral agent as (a) having the capacity to bring impartial moral principles to determine the rightness or wrongness of a course of action and, (b) being able to freely act or not to act as dictated by those principles (Regan, 2004a: 151). This seems fairly uncontroversial. A moral agent, for example, must be able to grasp the Golden Rule and freely choose to abide by it or not. Moral patients fail to meet this benchmark although they do meet what is necessary to count morally.

The previous section has tried to argue that the view that moral agency is not a necessary condition for being morally considerable. This leaves us with those features which animals just like human moral patients might after all possess.

Regan (2004a: 243) summarises the relevant features in the now famous *subject-of-a-life 'criterion'* stated below. A subject-of-a-life has:

(a) Beliefs and desires;
(b) perception, memory, and a sense of the future, including their own future;
(c) An emotional life with feelings of pleasure and pain;
(d) Preference- and welfare– interests;
(e) The ability to initiate actions in pursuit of their desires and goals;
(f) A psychophysical identity over time; and
(g) An individual welfare in the sense that their experiential life fares well or ill for them, logically independent of their utility for others and logically independent of their being objects of anyone else's interests.

Regan's criterion is a vitally important one that Jeffrey Moussaieff Masson describes as "one of those potentially life-altering insights" (in Regan, 2004b; ix-x). It omits most, if not all, conditions that are normally given for acknowledgment of human rights and denial of animal rights. It provides characteristics that are widely shared by both moral patients and moral agents and thus leaves the door to the moral community open to individuals from either category.

However, as potentially life-changing as it may be, the subject-of-a-life criterion also invites some questions. Firstly, are these—(a) to (g)—criteria or it is a criterion? To call all elements in this list a criterion seems to point to all the seven as being considered collectively as providing a sufficient condition for being a subject-of-a-life. Then each of them would only count as a necessary condition. If they are criteria, they could individually, or a combination of *some* of them, form sufficient conditions for being a subject-of-a-life.

Rowlands (2009) calls the two interpretations as the strong and the weak respectively. But he does not fully mitigate the vagueness of the 'criterion' by depicting the weak interpretation as requiring that '*most'* of the conditions be met for a being to be a subject-of-a-life (Rowlands, 2009: 60). 'Most' translates to at least four of the conditions. No reason is given why any number of components less than four—say three—cannot suffice for a subject-of-a-life.

Rowlands' view is that Regan means the stronger sense (Rowlands, 2009: 61). Rowland's interpretation seems correct as Regan talks of "a set of psychological capacities" that are "jointly sufficient" (Regan, 2006: 17). I disagree with both the strong (Regan's position) and the weak views of the subject-of-a-life criterion as characterised by Rowlands.

Firstly, according to Regan, understood in the strong sense of the criterion, an individual who is a subject-of-a-life must be able to have their life faring well or worse independently of whether they somehow augment or detract from others' interests (g). This condition does not add anything new. If an entity possesses (c) and (d), how can that being possibly not also have (g) as well? If a being has an emotional life with feelings of pleasure and pain, it seems logically true that its life is not faring well if it is characterised by more pain than pleasure. Indeed, any instance of pleasure or pain is *prima facie* an instance of its life going well or ill respectively.[11]

Similarly, it is a tautology to claim that a being has preference and welfare interests (d) *and* that it has an individual welfare in the sense that its experiences can be positive or negative

[11] Here I speak only of normal pleasures. Some pleasures can come from a diseased mind resulting in sadism or sadomasochism. These are symptomatic of a malfunctioned or dysfunctional psyche and, I think, cannot be said to be adding anything positive to a good life.

irrespective of the value such experiences have for others. If a being has preference *or* welfare interests, holding some things constant (for example, the preferences are authentic and do not have evil ends), it follows necessarily that the frustration of such interests bodes ill for that being quite independently of how interests of third parties are affected. Since (g) is redundant as it is entailed by some of the other conditions such as (c) and (d), it need not be listed as a necessary condition.

What about the rest of the conditions? Are (a) – (f) individually necessary and jointly sufficient for a being to be a subject-of-a-life? I cannot answer in the affirmative. If something has perception, memory, and a sense of the future in general (b), it seems repetitive to demand that it should also have a psychophysical identity over time (f). And physical identity is not necessary at all. We already visualise contrary cases from religions and fairy tales of the existence of spiritual entities or those whose bodies are metamorphosing from time to time whose experiences and lives nevertheless matter to them. We can also easily imagine a person suffering from something worse than transient global amnesia. One example is a person who cannot remember her past. She is full of life but lives only in the moment. Today she is reading Shakespeare. The next day, she has forgotten all about *Othello* and is totally engulfed in Nietzsche's *Thus Spoke Zarathustra*, and so on. Every day is completely erased on the next day and with no anticipation for tomorrow. She cannot recognise herself in the mirror the next day as the person she was yesterday. I think she is eligible for rights despite lacking self-identity over time.

It seems Regan's 'insightful' phrase has not travelled too far, if at all, ahead of Bentham's parsimonious "Can they suffer?" It turns out that beings can suffer if and only if they are an experiencing subject-of-a-life. Having preference and welfare interests seems necessary and sufficient for suffering, and consequently, for being a subject-of-a-life as well. We are back to welfarism, which is less obscure and more widely recognised as the fulcrum for normative theory, as noted in the brief discussion on wellbeing in Chapter 2.

3.3 Sentience, Interests, and Rights

Sentience is a concept that is widely used in ethical discourse, especially in animal ethics. For most philosophers, however, sentience serves as the all-important dividing line for moral status. Sentience is seen by many as a sufficient condition for admission into the realm of right-holders. But is it also a necessary condition for moral status? Regan categorically states, "provides a logically necessary and sufficient condition for a being's possession of the right not to be made to suffer non-trivial pain" (Regan, 1979: 80). Sentience is necessary to have

interests at all. If a being is not sentient, then the being may be alive, but there is nothing that the being prefers, wants, or desires (Francione and Garner, 2010: 15).

How is the bridge to be made between interests and moral rights? "A *sufficient* condition for being owed such duties [of justice] is that one have a welfare—that one be the experiencing subject of a life that fares well or ill for one as an individual" (Regan, 2004a: 171). Why do we, and not sticks or stones, have rights? Regan (2004b, 50) says it is because "what happens to us—whether our bodies, our freedoms, or our lives themselves—matters to us because it makes a difference to the quality and duration of our lives, as experienced by *us* whether anybody else cares about this or not." Here Regan answers the question without any reference to the notion of inherent value that he says is integral to his account of rights. He resists any appeals to parsimony to dispense with the idea of inherent value saying, "simplicity is not everything" (Regan, 2006: 48).

The concept of inherent value has puzzled, and has been rejected by, some philosophers including Cochrane (2012) and Rowlands (2009). Claire Palmer deems unnecessary to an account of animal rights the "high level views" and complexity that Regan's theory manifests (Palmer, 2010: 33). Rowlands (2009, 86-97) offers an extensive rejection of inherent value on grounds that it is mysterious, *ad hoc,* and unnecessary. Dombrowski (1997: 29) questions the relevance of inherent value because its criteria "are remarkably similar to those for basic rights, indicating, perhaps, that a being has basic rights to the extent that it has inherent value." If the two notions—basic rights and inherent value—were equivalent, as Dombrowski seems to hint, then there would be no need to postulate one, inherent value, as forming the basis for the other, rights.

I will not delve into the discussion of what inherent value is and its role, or lack thereof, in animal rights theory. It suffices here to say standard interest theory of rights holds simply that having an interest "leads to a duty on others to ensure that this right—following directly from the possession of an interest—is upheld" (Garner, 2013: 95). I would however insist on the qualifications I have made in Chapter 2 and in this chapter that prevent all or too many interests begetting moral rights.

I am, however, persuaded by a rather narrow conception of inherent value. This is the sense in which it plays the role akin to "Kant's idea of something's existing as an 'end in itself'" (Regan 2006, 48). Because subjects-of-a-life are negatively and positively affected by various experiences, they have inherent value in that those experiences *matter to them*. Some of the

experiences come with value and others with disvalue to them. They have an interest in how things go for them irrespective of how this pans out for others. Joel Feinberg alludes to this simpler view of inherent value when he says beings are loci of value in their own right if they have certain interests "the integrated satisfaction of which constitutes their welfare or good" (Feinberg, 1974: 50). It is this value that proceeds from a being's interests which cries out to moral agents for recognition and consideration. Conceived as such, interests are value-impregnated; they come axiologically pre-packed.

As Alasdair Cochrane points out, there would be no need to assume inherent value under Regan's fashion since "possession of interests is the necessary … condition for holding rights" (Cochrane, 2012: 17).[12] If X has some preference or welfare interests, or moral autonomy, then X is eligible for moral rights. If X has moral rights, then X has some preference, or welfare interests, or moral autonomy. Principally, moral rights are there to prevent harm by requiring that certain things (not) be done. If a being cannot be harmed or benefited, then it has no interests and no rights.

Besides the concept of inherent value, Regan puts forward several kinds of rights and duties that, in my view, stray from their correct use in a theory of rights. His loose usage of the technical notion of rights can result in theoretical confusions that will hinder a clear analysis and resolution of practical problems involving wildlife and humans.

3.4 Some Dubious Rights

Inasmuch as Tom Regan's animal rights theory is famous for its being ground-breaking, it is also infamous for its lack of economy. Regan's theory contains several principles whose meaning, relevance, or logical relationships are not readily clear. This has opened up his theory to criticisms from within the animal rights camp and from proponents of rival approaches to animal ethics. Here I discuss briefly two such opaque or unnecessary principles: the right to respectful treatment, and the right to just treatment. My method here is to use the Hohfeldian framework set out in Chapter 2 to trim what I see as excesses and duplications in Regan's account of moral rights.

[12] As noted already, above, for Cochrane, having strong interests is not only necessary but also sufficient for being a rights-holder. My view, however, is that, at least in the case moral rights, possessing interests is necessary but may not be sufficient for having a right against some moral agent.

3.4.1 The Right to Just Treatment

According to Regan, there is a basic right to just treatment that is correlative with the unacquired duty of justice (2004a: 274, 278). The duty to justice, he defines as "the duty not treat individuals differently in the absence of a relevant dissimilarity [between them]" (2004a: 274). This definition is problematic for reasons I shall soon make clear.

In the preceding chapter, I discussed how the concept of justice relates to moral rights. I arrived at the conclusion that injustice is done if, and only if, and because some right is violated. I must stress, at this point, that a theory of rights *is* a theory of justice. As Cochrane (2012: 13) correctly points out, "the language of rights immediately implies that [our] treatment of animals is a matter of *justice*." I, however, make the stronger claim that all cases of injustice are exhaustively covered under the language of rights elucidated in Chapter 2. Since justice is completely reducible to rights relations, a right to justice would be, at the end of the day, tantamount to a right to moral rights. In view of this, Regan's duty to justice is unhelpful for at least two reasons.

Firstly, once we have arrived at the notion of moral rights and fully understood the structure of rights and their correlative obligations, there is no place left to posit an overarching right to just treatment. A claim, liberty, power, or immunity constitutes an instance of injustice once it is violated. Justice is not a right but rather a property of a certain kind of moral phenomenon namely, an instance of upholding some moral right.

Secondly, Regan's view that the duty to justice consists in not treating differently individuals who lack a relevant dissimilarity results in unacceptable implications. A woman meets two hungry strangers who are identical in every relevant respect including both having gambled away their food. Therefore, from her perspective, at least, there is no relevant dissimilarity. But she arbitrarily feeds one of them and not the other even when she has enough food that she does not really need. Her action is morally deplorable but not on account of injustice. There is no relevant dissimilarity between the two hungry individuals, but the woman treats them differently as she pleases. Yet, she commits no injustice. It would be odd to charge the woman with failing in her 'duty to justice'. But this is what Regan would like us to find her guilty of.

No one has a right not to be treated differently from another individual even in the absence of some relevant dissimilarity. The individual X must have her own claim against Z irrespective of whether Y has a claim with the same content against Z. If any number of individuals has no claim-right against me to something I have in abundance, I have a liberty-right how to dispense

with that something. The one and only relevant similarity that warrants the same treatment is that both X and Y have a claim-right of the same content against the same respondent. I conclude, therefore, that both Regan's right to justice and the correlative duty must be vacuous.

3.4.2 The Right to Respectful Treatment

Another right Regan puts forward is that to respectful treatment. All subjects of a life have a basic moral right to respectful treatment: "*We are to treat those individuals who have inherent value in ways that respect their inherent value*" (Regan, 2004a: 248). He elaborates: "Individuals who possess this right are never to be treated as mere resources for others; in particular, harms intentionally done to any one subject cannot be justified by aggregating benefits derived by others" (Regan, 2006: 43). One cannot help but notice that the right to respectful treatment serves the same role as Kant's notion of an end in itself that Regan has already equated to the notion of inherent value.

This observation aside, the right to respectful treatment is surplus to the requirements of a moral rights theory. This is because if I can catalogue all my rights and another person does not violate a single one of them, then that person has treated me with respect. Rights protect an individual's welfare and conative interests. If all of an individual's rights are not violated, then no room is left for treating him merely as a resource. In other words, moral rights classified as claims, liberties, powers, and immunities have done all the work Regan wants the 'right' to respectful treatment to perform. The structure of every right is such that it in itself dictates how others ought (not) to behave towards the right-holder. Power-rights for example, require that the person with the correlative liability permits the burdens—or advantages for that matter—being imposed upon him. In everyday usage, when we say we ought to respect other people's rights, this serves only as a reminder. This reminder is no more a right than the rule that you must follow road signs is itself a road sign. It certainly does not play the foundational role for rights that Regan attributes to it.

3.5 Kinds of Rights-Correlative Obligations

In his analysis of moral rights, Regan distinguishes between *unacquired* and *acquired* duties. Unacquired duties are those that do not result from volitional acts of moral agents or result from some institutional arrangements. The opposite of these, he calls acquired duties (Regan, 2004a: 273). I think a good example of acquired duties would be those of an adoptive parent.

There are at least two objections to Regan's dichotomous taxonomy of duties. The objections are that the taxonomy is inadequate and that the duty to treat others justly is a tautology. So, I will address now why the unacquired/acquired distinction is inadequate.

Acquired duties as seen by Regan are straightforward to envision. As Tom Beauchamp aptly observes, "[w]hen we deliberately create both dependence and vulnerability in [domesticated] animals, and take caring and supervisory charge of them, we acquire moral obligations of care" (Beauchamp, 2011: 215). But we would be wrong if we ended here, as Regan does, because the division between unacquired duties and acquired ones is not watertight and the second taxon is not properly described. The class of unacquired duties consists of those duties that are not due to voluntary acts of the bearers and are independent of positions in social institutions.

However, this is also true of some so-called acquired duties that they do not arise from institutional setups or voluntary acts of obligors. I will refer to such duties as 'emergent duties'. 'Emergent duties' is a more appropriate label for such duties because 'acquired' connotes wrongly that such duties arise only from voluntary acts or institutional arrangements. Some emergent duties are not from such situations although they are unacquired. They are necessary by-products of the unintended consequences of the actions of moral agents. If I unintentionally spill my drink on someone's book, at the very least, I *owe* them an apology, and at the most, I would be obliged to replace their damaged book. In short, there is a kind of duty that emerges as a result of my actions although unwilled by me and therefore not voluntary, and whether or not social arrangements put me in that morally burdensome position.

A man possesses a *prima facie* emergent duty to his child from a pregnancy he did not will. Same for the woman, unless, of course, in the highly unlikely event that semen was forcibly or fraudulently extracted or inseminated. John Locke aptly expresses the idea I espouse: "For children being … born weak and unable to provide for themselves, they have … a Right to be nourished and maintained by *their Parents,* nay a right not only to bare Subsistence but to the conveniences and comforts of Life, as far as the conditions of their Parents can afford it*"* (1967: I, 89; emphasis added). Regan's division of duties has no provision for this kind of emergent duty. And it is not an unimportant duty. For example, it may be the basis for demanding compensatory goods from an agent's actions even though the harm the agent caused was unintended. It is not the case that one is morally liable only if one is morally culpable.

Furthermore, if I keep male and female companion dogs and in spite of precautionary measures, the two have puppies, I become burdened with the duty to provide for and protect the puppies.

Then, of course, there are those duties arising from wilful promising and contracting which Regan had in mind as being the only sort of duties outside the unacquired sort. The unacquired/emergent duties distinction has led to an important illumination between negative duties such as the duty not to harm others, and positive duties such as the duty to provide for or protect others.

3.6 The Right to Assistance

Is there a moral right and its correlative duty to assistance? Regan (2004a: 249) answers in the affirmative. He stresses that the duty to assistance is not a matter of kindness:

> When the vulnerable are used as means to such ends, people who understand the wrong done have a duty to intervene, to stand up and speak out in defense of the victim. Moreover, *the duty here is itself a demand for justice, not a plea for generosity*. These victims are owed assistance from us; help is something they are due, not something it would be 'awfully' nice for us to render (Regan, 2004b: 43-44; emphasis added).

A right to assistance is a positive right. It places a moral burden, a duty, on someone that, with respect to some content, they are obligated to provide for the right-bearer. I also answer in the affirmative but for a different and, I believe, more plausible reason.

In my view, unacquired duties will correlate only with negative rights. Emergent duties will correlate with some negative rights as well as with all positive rights. In virtue of being a being with interests befitting of moral protection, Jane demands moral respect from any and all moral agents. She has *pro tanto* moral protection against anyone's killing her.

The right to assistance is a claim-right. It imposes a duty on another or others to come to the right-holder's aid when certain conditions are fulfilled such as when they need food, shelter, protection, rescue, and so on. But this right, though it has the same structure as the right to life, has a different genesis than the right to life. Unacquired duties do not correlate with positive rights such as would compel others to assist someone. The right to be assisted comes only from emergent duties. All adoptive parents, like everybody else, have the unacquired duties not to harm their children. But, unlike everybody else, they become saddled with the duties of assistance—protecting and providing for the children.

With regards to the children's negative rights, there is symmetry in the responsibility for parents and strangers. In the event of failure in this responsibility on the part of both stranger and the parent not to harm the children, blame is an appropriate moral response.

However, with respect to positive rights, there is asymmetry in blame for stranger and parent in failing to protect or assist the children. The parent is blamed more compared to the stranger.

Common sense morality favours my view on the duty to assistance against Regan's. Regan regards the duty to assistance as owed by all moral agents vis-à-vis any holders of positive rights.

This said, there are many cases where we can use emergent duties as grounds for compensation rather than plain up-to-the-agent goodwill assistance. Emergent duties may, for example, provide grounds for animal rights to some human intervention when animals are made to suffer or vulnerable to suffering from unintended anthropogenic habitat destruction. This will be discussed at length in Chapter 7.

Moral agents have the moral right—the power-right—to trade their moral claims, liberties, immunities, and powers. People trade some rights when they make promises and agreements that meet certain moral preconditions. Such preconditions include at least that the participants are of sound mind, no participant engages in deceit such as concealing important information, no participant threatens another's rights, and the content of the agreement does not involve violation of others' moral rights (Hooker, 2000: 53). To the extent that trading rights is morally and legally reasonable and accepted in the case of small children or other people who for some reason are unable do so in their own behalf, no problem should arise for agreements in animals' behalf. If, for example, Sue leaves a certain amount of her estate to her pony, others may morally enter into contracts in the pony's behalf. For example, with vets to conduct health checks on her and medically treat her, someone to supply her with food as needed, someone to ensure her home is clean, warm and safe, and so on.

Beauchamp (2011: 218-219) makes a good case for rights of animals as beneficiaries of human agreements. Rainer Ebert and Tibor Machan also highlight this benign trait of humans. Autonomous humans, they point out, "might freely choose to make commitments to each other to secure each other's' moral rights and the rights of moral patients" (Ebert and Machan, 2012: 155). However, I take rights which emerge from such commitments as conventional rights and not moral rights.

Wisdom in animal rights arguably begins with Tom Regan's theory. In this chapter, I have tried to give an exposition of the essence of Regan's theory of rights. If it were a perfect theory, I would only need to draw its implications regarding various aspects of wildlife governance that Regan and other animal rights theorists have not done. However, despite its overall persuasiveness, I argue against some specific assumptions, principles, and inferences.

Regan has persuasively argued that many animals have a moral status that guarantees them rights. He argues that some animals have a cognitive capacity that enables them experience certain states of consciousness as good and others as bad. The world can be worse or better for them. This capacity to have experiences that makes one's life go better or worse is vital for possession of rights. However, Regan's exposition of his catchy subject-of-a-life criterion for rights possession is overly sophisticated and vague. Sentience, I point out, is a more parsimonious criterion for possessing rights.

Further, I argue that Regan's theory exhibits some metaphysical excesses especially with his discussion of inherent value. It seems unnecessary to posit inherent value over and above identification of sentience as the primary value tracker. Harmful experiences are a disvalue and experiences that enhance wellbeing are valuable. Those interests relevantly connected to an animal's wellbeing represent what is valuable. Moral rights represent a normative system that protects an individual from being harmed through violations or deprivation. I also argue that some of Regan's rights are tautologies that only add surplus weight to the theory. These rights include the right to just treatment and the right to respectful treatment. In my view, Regan's right to assistance is also mistaken and accompanied with some inconsistencies. I argue that Regan's view that there is a right to assistance for victims of injustice but none for victims of natural processes or events is indefensible. I elucidate and elaborate Regan's dichotomy of acquired and unacquired by introducing the notion of emergent rights.

My discussion of Regan clarifies and makes slight modifications that will sometimes lead us in different ways when dealing with some moral problem in human-wildlife relations. I am now at the point where I can pose the question: If wild animals are bona fide right-holders, what are the implications for wildlife legislation, policy, and practice or, in short, wildlife governance? The rest of the thesis will be trying to answer this question.

Chapter 4 Predation and Wildlife Population Control

I have thus far avoided bringing any practical animal issues into the theoretic discussions of the last two chapters. This and the next two chapters will deal with what should—and what should not—go into an ethically sound wildlife policy. This chapter addresses two problems regarding implementation of a rights-based wildlife policy.

This chapter is divided into two main parts. In the first part, I discuss the challenge the problem of predation poses to animal rights theory. In particular, I examine the potentially lethal charge by J. Baird Callicott that "Reganic animal rights imply the ecological nightmare of a policy of predator extermination" (Callicott, 1992b: 258, n. 15). Some animal ethicists surprisingly embrace this apparently repugnant policy recommendation. Although, I disagree with Regan's manner of responding to the problem of predation, I agree with him that the rights view does not entail the policy of humans policing nature to protect prey from predators or extirpating predators altogether. I argue that there are both theoretical and practical problems with that policy. These problems make ridding nature of predators morally wrong and haughty.

In the second part of this chapter, I defend animal rights theory from the view that it is not an environmental ethic and, therefore, would not carter for environmental goals aimed at environmental sustainability and preservation of biodiversity. I argue that an animal rights ethic need not be catastrophic to environmental collectives like species and ecosystems. I end by presenting a non-dogmatist animal rights view that, though acknowledging the axiological monopoly of sentient wildlife in the natural environment, stresses that wildlife policies may permit strategies that override the rights of some individuals in order that, generally, the rights of all other wild animals may be safeguarded. Although a code of rules to guide wildlife policy has rights-based rules at its core, it must contain other ancillary rules. This is not unique to the animal kingdom but is also manifest and is justified in some public policies. John Broome (2012), for example, usefully demarcates between the duty of justice and the duty of goodness, which respectively correlate with individual rights and the public good. Public policy generally must tread carefully between pressure both from individual rights and the public good.

4.1 What is Predation?

Sinclair et al (2006) describe predation as covering a range of behaviours that include herbivory, parasitism, carnivory, and cannibalism. According to Begon et al (2006), the taxonomy of predators consists of herbivores which consume plants, carnivores which consume animals, and omnivores which consume both plants and animals. For my purposes, predation

will mean exclusively carnivory, "the classical concept of predation where the predator kills and eats the animal prey" (Sinclair, et al, 2006: 165). Predators will mean carnivores and omnivores (partial carnivores). Examples of such animals include all species of the cat family, hyenas, wild dogs, chimpanzees, sharks, bears, and falcons.

A complete predator-prey typology would include wild animals, humans, companion animals, and farm animals. Predators and prey can come from any of these groups. Normally carnivorous animals are portrayed as predators and herbivores as prey but reality is not so black and white. For example, lions, when infirm, from old age, injury, or disease, are sometimes preyed on by hyenas. However, I will generally follow the popular way of seeing carnivores as predators and herbivores as prey. Though not categorically true, this seems statistically to be the case and, at least for pedagogical reasons, does simplify the picture.[13]

Further, the predation that interests me, in the main, is that occurring between carnivores and herbivores that are in the wild such as protected areas. Clare Palmer's (2011: 702) categories of wildness of animals as being locational, dispositional, or constitutive do not provide a clear fit for these protected animals. I am therefore tempted to stipulate. I will be referring only to those wild animals in protected areas such as the national parks. This leaves out those wild animals that are in captivity in zoos or science laboratories even though they may be of the same species as those in the protected areas. The reason for this is that the issues I concern myself with here are those that pertain to *in situ* as opposed to *ex situ* wildlife conservation. There are also some free-roaming wild animals that are not in designated protected areas. Some of my arguments have implications for such animals.

The fact that predators cause untold harm to prey animals as such does not raise any moral concerns for wildlife managers. In fact, predators are ecologically seen as essential for the natural control of ungulate's behaviour and populations (Wagner, 1995). Predator control is merely a wildlife management issue to keep populations in balance and forestall disturbances to environmental balance. This is not different, in principle, from human control of herbivore populations for the same reasons. In fact, in some cases ecologists have deemed it necessary to (re)introduce carnivores into an ecosystem to achieve some desired ecological balance. Hence, the problem of predation arises mainly in moral philosophy. Different perspectives offer

[13] One study (Kruuk, 2014: 137) revealed that the diet of lions in Serengeti National Park constituted over 90% ungulates (8% buffalo, 10% gazelle, 26% zebra, and 49% wildebeest).

different prescriptions on what must/may be done to predators in view of their predatory behaviour.

Like all ethicists, animal ethicists take suffering as axiomatically morally bad and, whenever possible and permissible, something to be reduced or eliminated. The results of philosophising about predation have potential to alter how wildlife management views and responds to the predator-prey relationship. Indeed, the goal of applied ethics is to improve the world through, say, recommendation of ethically sound policy. In what immediately follows, I present the philosophical problem of predation, debate some proposed solutions, and put forth my own analysis and solution.

4.2 The Problem of Predation

The problem of predation has at least two possible formulations. The first one—not relevant here—is advanced to justify human meat-eating by claiming that no significant difference exists between human predation and that of wild carnivores. This is the so-called naïve argument against moral vegetarianism. The thrust of this argument, as Benatar (2001: 103) explains, is that "because it is not wrong for carnivorous animals like lions and tigers to kill other animals for food, it cannot be wrong for humans to do so." The version of the problem relevant now is not the one defending human carnivory but something more radical.

The second formulation of the philosophical problem of predation is simply that ascription of rights to wild animals has the absurd implication that either humans must interfere to reduce or end predation. Some philosophers (e.g. Sapontzis, 1987) deny that there is any absurdity in the interference position. But critics say those who find unpalatable the prescription to interfere in predation must forthwith abandon animal rights theory. This is because, taking rights seriously requires preventing rights violations. Baird Callicott clearly spells out the predation problem: "Among the most disturbing implications drawn from … rights theory is that, were it is possible for us to do so, we ought to protect innocent vegetarian animals from their carnivorous predators" (Callicott, 1992b: 258). The gist of Callicott's view is that, since Regan's view directs us to the ridiculous policy of acting as policemen between lions and zebras, the theory that animals possess moral rights must be wholly abandoned. I will endeavour to show that the predation problem poses no real threat to animal rights theory. I will first explain and critique Regan's proposed solution.

4.3 Regan's Laissez-faire View

Tom Regan does not think animal rights theory leads to the absurd implication his opponents imagine it to. He is unequivocal on what animal rights theory implies we do about wild animals. He argues for a hands-off approach; we should leave wild animals alone. He elaborates:

> The total amount of suffering animals cause one another in the wild is not the concern of morally enlightened wildlife management. Being neither accountants nor managers of felicity in nature, wildlife managers should be principally concerned with *letting animals be*, keeping human predators out of their affairs, allowing these 'other nations' to carve out their own destiny (Regan, 2004: 357).

Elisa Aaltola lends further support to Regan's position. In her view, if we are to "respect animals as they are, predators are to be left to flourish" despite the obvious suffering they cause to prey animals (Aaltola, 2010: 86). But this approach immediately rings alarms and Mark Sagoff acutely alerts us to what appears to be a blatant case of wanting to eat the cake and having it simultaneously. "To speak of the rights of animals … and at the same time to let nearly all of them perish unnecessarily in the most brutal and horrible ways is not to display humanity but hypocrisy in the extreme" (Sagoff, 2002: 41). So, having stated his laissez-faire view, as Clare Palmer (2010) calls it, how does Regan defend it against the alleged absurdity and how does he escape Sagoff's charge of hypocrisy?

By reference to accounting and felicity, Regan reminds us of his resistance to a utilitarian-based wildlife management ethic that treats animals as receptacles of comparable value. For him, the aim of wildlife management is not to produce the highest aggregate wellbeing among animals in the wild or including the wellbeing of humans. Regan is thus against wildlife management as conceived in the current practice and theory of ecology. In his view, wildlife managers are morally obligated to discharge their negative and their emergent positive duties. They should let wild animals be, and they should ensure that other humans let wild animals be. This is a contentious point from within and from without animal rights theory.

Why do we have to refrain from interfering in wildlife predation? Regan replies: "Justice … not only imposes duties of nonharm; it also imposes the duty of assistance, understood as the duty to aid those who suffer from injustice" (2004a: 249). But, prey animals suffer no injustice since a carnivore "neither can nor does violate anyone's rights" (Regan, 2004a: 285). Carnivores lack moral agency, which is a necessary condition for rights violation. Hence, the morally right policy for humans in the case of predation is simply 'hands-off'.

Although helpful in offering a rights-based policy prescription for wildlife management, Regan's analysis suffers from some flaws. I will now discuss these errors and offer what I see as an improved, more consistent position.

4.3.1 A Critique of Regan's Approach

There are some things that can be said in praise of Regan's effort to argue for anti-paternalism in human management of wildlife. However, some of his assumptions and some implications of his argument must be resisted. According to Regan, justice imposes both duties not to harm *and* duties to aid those whose rights are or would be violated. This view of entitlement to aid is, however, problematic for at least two reasons. First, the right to aid is not automatic. Second, in those cases the right to aid does arise, its bearers need not be victims of injustice.

The negative duty to not harm wild animals wrongfully is uncontroversial. Every right-holder demands that all moral agents individually or collectively refrain from harming her. However, merely being a victim of rights violations does not necessarily give one the right to aid against every moral agent. There are *some* circumstances in which the (putative) victim has a claim that moral agents come to her aid. For example, such a right can be held against those who have made the victim vulnerable. However, this is not symmetrical to the universal negative right to not be harmed, which has its respondents all moral agents.

I will assume, for the sake of argument, that we have a general positive duty to help victims of injustice. Regan finds the nature of the *cause* of harm to be morally decisive regarding whether a right to aid exist. On this ground, Regan allows for a claim against us for one whose harm is a result of injustice while denying the same right to one whose harm is not a result of injustice. If I am a doctor and I find a child bleeding profusely from a wound, by Regan's lights, I must ask who or what caused the wound before making up my mind whether the child has a claim that I treat her wound. If the cause is a malicious normal adult, I have a duty to help; if it is a rabid dog, I might as well walk on and leave the child bleeding and in pain.

The role Regan wants causality to play in the triggering of duties is clearly an odd one. I agree with Dale Jamieson's verdict that Regan comes up short of providing "a satisfactory ground for distinguishing cases in which we are required to provide assistance from those in which we are not required to provide assistance" (Jamieson, 1990: 352). At best, Regan's line-drawing is arbitrary; at worst, it is an illicit *ad hoc* move to pre-empt the argument from predation because prey are not necessarily victims of injustice. Regan's handling of the following case shows why his manoeuvre is arbitrary or *ad hoc*.

An implication Regan would have to accept as resulting from his view of duty allocation on grounds of nature of cause is that we have no duty to rescue a child who is about to be snatched by a lion. Instead of biting the bullet Regan backtracks, saying "we have a *prima facie* duty of

assistance in this case" (Regan, 2004a: xxxvi). Admittedly, since there is no rights violation in the offing, this is not a justice-based duty. But it seems suspiciously the only reason Regan is introducing this 'duty' is to keep humans in and animals out. He makes an *ad hoc* adjustment in order to maintain a speciesist bias for he does not extend his generosity regarding this 'duty' to nonhuman animal prey.

Regan, however, offers yet another reason to justify the unequal treatment of two seemingly equally vulnerable beings. He thinks that we have no duty to assist those who are victims of non-agential harm. But for the child about to be devoured by a predator, he makes an exception. For a wildebeest in a child's situation, Regan says the wildebeest has no right to assistance. The special duty to assist the child threatened by the lion arises from the child's dependence on the protection of adult humans for its survival. But this duty does not arise in the case of members of wild prey species, adult or young, because they do not need our help to survive. "As a general rule, they do not need help from us in their struggle for survival, and we do not fail to discharge our duty when we choose not to lend our assistance" (Regan, 2004a: xxxvii).

Regan has needlessly tried to allow for differential treatment of humans and animals faced with predation. In his view, the idea that there is a duty that protects the child but not the wildebeest is based on the child's vulnerability and the wildebeest's capability to survive. But the wildebeest is being devoured as we speak. *This* child and *this* wildebeest are equally vulnerable. Empirically, Regan's conception of vulnerability is questionable. The wildebeest is not necessarily more competent than the human in *this* case and perhaps even in general. Human beings tend to have some form of child protection even against the child's parents.

There is in fact the special case of insular prey species facing a new 'invasive' predator species on the island. Let us assume the predators are on the island due to non-anthropogenic environmental circumstances. They have not been introduced or reintroduced by conservationists. The prey will be ill-equipped to deal with this threat and Regan—on the pain of inconsistency—must accept interference in this case. It seems to me that if Regan is to be consistent, the cases to save the child or the wildebeest fall or stand together. My view is that vulnerability is not a sufficient condition to warrant aid to either species member—that is, human or wildebeest.

Furthermore, Tom Regan defends his discriminatory duty by saying "if members of prey species, including the young, were unable to survive without our assistance, there would be no prey species" (Regan, 2004a: xxxvii). This is a transgression against rights theory which

identify the locus of moral value as the individual rather than some features of the species or group to which the individual belongs. As rights, it is anathema to discount the harm to an individual wildebeest on the basis of the survival of the wildebeest species. The survival of species of wild fauna might be best served through utilitarian aggregation or unjust means. The survival of a group does not reflect a just system and so, by referring to the survival of species, Regan does not avert the problem of what we ought to do when an individual wild animal is threatened with serious harm from predation.

Further, we can imagine the vulnerable prey wild animal in question being one of the last reproductive male of an endangered species. The animal is definitely going to be killed if we do nothing, and the vulnerability or incompetence of this species is exactly what has led to its decimation by predators. But except in the case of compensatory justice, Regan (2004a: xxxix-xl) does not think we owe the duty to assistance to endangered species.

My point is that Regan's use of species competence based on their hitherto evolutionary success is inconsistent with his denial that endangered species (species who may lack evolutionary competencies by no fault or actions of humans) have a right that we assist them, a right that members of more populous species would lack by dint of their abundance. I am not arguing that endangered species have a right to human assistance but simply that invoking wild animals' competencies is a suspiciously speciesist *ad hoc* move by Regan.

It seems clear at this point that Regan has failed to give a coherent answer to the problem of predation. He sets off well by denying that animals have a right to life against other animals since carnivores lack moral agency. But he is forced to make *ad hoc* adjustments when he is faced with the conundrum of saving a child and a wildebeest when both are faced with pain and ultimate death via canine asphyxiation. He comes up with a duty to save the child but not the wildebeest. Regan's attempt to distinguish the baby from the prey animals on grounds of competence fails as facts may easily change to render the wildebeest more vulnerable than, or as vulnerable as, the baby. The attempts to explain away the particular wildebeest's vulnerability by appeal to the wildebeest evolutionary adaptability to predation or by pointing to wildebeest stable species populations fail. It is now my turn to offer a solution to the problem of predation, one that avoids Regan's pitfalls.

4.4 A Revised Rights-Based Response to the Problem of Predation

Since Regan's argument that wild animals have moral rights is generally persuasive, how can we now remedy his inconsistency on the predator-prey question? My starting point is first to

agree with Regan in denying that it is an implication of animal rights theory that prey animals are protected from predators. I disagree with Regan on his understanding of the right to assistance and on how he draws the line that burdens us with the duty to assist humans but not animals when the threat is a moral patient. The result is a position that I think is consistent with moral rights as a theory of justice.

According to the theory of moral rights defended in this thesis, *all* beings with subjective interests have a *pro tanto* right against *all* moral agents from harming them through violations or deprivations. This is a negative right. Because of the universal quantifier for both the subjects and the respondents of a right, such a right is truly universal. The honeymoon ends here, however. Positive rights are not free for all and a clear case has to be made regarding the subject, content, and respondent of a right before we can have a valid moral right.

All wild animals have a negative claim-right against all normal adult humans that such humans do not harm the wild animals in any of their interests constitutive of their own wellbeing. The right ceases to exist if we substitute normal adult humans with carnivores. What we have is a negation of the universal right: No being has a right against any carnivores that the carnivores do not harm them. Therefore, no injustice results from predation regardless of who the victim is. "On the basis of rights, at least, humans have *no* duties to act in the wild in the context of predation, flood, or drought, for instance" (Palmer, 2011: 707). Clare Palmer is right but with this strong denial of the right to assistance for imperilled humans, we open a Pandora's Box.

The denial of the right to assist those who are victims of non-agential causes seems to contradict some of our widely accepted, promulgated, and morally justified human behaviour. Steve F. Sapontzis (1987:30) points to our everyday morality that when a "premoral" child is tormenting a cat, we are not only permitted to intervene to stop the tormenting but, in fact, we are required to do so. Sapontzis is right to point out that we justifiably intervene in stopping a child from harming the cat. But he errs in saying it follows "that humans are morally obligated to prevent predation" (1987: 229). There are at least two reasons why intervention in wildlife predation does not follow from the requirement that we intervene to stop a child tormenting a cat.

Firstly, from the rights point of view, there are reasons to intervene both for the child's and the cat's interests. Many lay people and philosophers would agree that parents have an emergent duty to raise morally upright children with a character that exhibits respect or even compassion for others. The child does no moral wrong in breaking another's toy on purpose. Nevertheless, the parent has a duty to cultivate a good character in her child from the earliest age. She must

guide the child against such behaviour toward other people's property, and in general, against any behaviour with bad consequences. We act appropriately when we blame or punish parents who fail to rein in their children to stop them causing others gratuitous harm. Parents assume an array of emergent parental duties that overall should ensure a good upbringing for their children. Hence, given that the child has no right to harm the cat, it is proper and morally required that parents or guardians intervene to prevent the child from harming the cat.

Secondly, the cat in question appears to be a pet. If this is the case, then we likely have a situation of human-induced dependence. "Does this created dependence mean that humans owe assistance to domesticated animals that they do not owe to animals in general? Yes" (Palmer, 2011: 715). Sapontzis thus missteps in arguing, by analogy, from the permissibility of interference to prevent the child from harming the cat to recommending human interference for prey against predators in the wild. Palmer's analysis of vulnerability-creation and moral responsibility is helpful to our understanding of what is going on.

When humans create more vulnerability in wild animals than already exists in the wild, humans become duty-bound to prevent harm that may come to the wild animals as a consequence of the exacerbated vulnerability. This may include interference to prevent predation. However, there are some caveats to intervention that are discussed under the alter ego defence in Chapter 6. The point I make here is simply that permissible intervention in the cat-child case does not imply permissible intervention in wildlife predation.

I have thus far restricted my discussion to what is or is not implied by moral rights theory with respect to predation. This is not to say there are no other moral grounds for acting to prevent harmful actions provided no individual rights stand in the way. But the second reason for interference advanced in the cat-child case applies, *mutatis mutandis*, to the case of rescuing the child but neglecting to rescue the wildebeest against the prowling lion. In both cases, whosoever has the emergent duty to justifiably protect the vulnerable, other things considered, owes the would-be victim the duty to rescue. My argument thus escapes the charge of speciesism that I think Regan's argument falls prey to.

However, the case for the asymmetrical response in saving the child but not the wildebeest has some nuances of its own. The child and the wildebeest start from the point of moral parity with respect to negative rights. I agree with Ebert and Machan (2012: 155) that "it is *prima facie* not morally wrong not to do what will harm the lion in scenarios … in which a lion is preying on a small child and on a wildebeest, respectively." The human and the animal should fight for their

own survival or "die in the attempt" (Callicott, 1992a: 50). A separate case must be made for interference based on some emergent positive rights or some other moral considerations.

The choice between interfering for the child or for the wildebeest is not predetermined on account of species. According to the rights view, the species one belongs to *per se* carries no moral weight to predetermine the answer to the questions 'to intervene or not to intervene'. This non-speciesist attitude shows the wrongness of non-interference in the cases of human or animal prey is something to be determined only after consideration of the rights relations involving negative rights and emergent positive duties in any given instance of predation.

This seems an improvement over Regan's proposed—arguably speciesist—explanation that we honour the wildebeest's *competences* when we let it be killed while we have a duty to defend the *vulnerable* child. In other words, in my view, we cannot say beforehand that X has any positive rights against us or not. If the prey is human, nothing changes regarding the absence of an *a priori* duty to assist.

4.5 Innocent Carnivores and the Defence of Prey

I have so far reached the conclusion that preventing predation is not *morally required*. This leaves still largely unanswered the question of whether human intervention to prevent predation are *morally permissible.* The rights of the carnivore have been ignored—until now.

Some preliminary labelling first. Prey animals are (putative) victims since they are the ones at risk of injury or death. Predators are innocent threats since they will injure or kill prey but are innocent by dint of being moral patients. Humans are bystanders or onlookers. If we adopt Regan's laissez-faire recommendation, human beings are the equivalent to onlookers as they can only 'helplessly' look on as the struggle for survival goes on in nature. However, humans will find themselves as bystanders and even as threats themselves. These are, however, cases for later full exploration in Chapter 6. There is only one sense of bystander to be considered here. Bystanders, in my view—in addition to Helen Frowe's (2014) view—are not only possible indirect threats. They are also possible rescuers in alter ego cases. I argue below they are morally prohibited from aiding prey as rights bearers *per se.* This does not translate to prohibition of rescue for other reasons such as saving the life of one of the few males of an endangered keystone species that I shall return to in the second part of this chapter.

Elisa Aaltola (2010) has attempted a solution along similar lines I want to take. She points to a difference between negative rights and positive rights. On Aaltola's understanding, on balance, negative rights generally have precedence over positive rights. To be clear, Jack's negative

right not to be killed trumps Jill's right to be saved, unless Jack is the one threatening Jill's life. It is, however, not true that all negative rights take precedence over all positive rights.

Imagine your daughter is lying in pain in a pool of blood and will die if her bleeding is not stopped soon enough. You spot and run to a camper van for help but the owner has gone off sightseeing. However, you see a first aid box, break the van's window, and take out some bandages and painkillers you use to save the girl's life and relieve her pain. You have violated the camper's right not to have his van damaged and not to steal his first aid supplies. Your daughter has a positive right that you assist her when she faces serious harm. It seems that this is a case in which your daughter's positive right might trump the camper's negative right.

Aaltola makes her case on the premise that a negative right has priority over the positive one. For her, we have a negative duty not to prevent a fox from hunting a rabbit but we have only a positive duty to come to the rabbit's aid. "This means the right of the fox takes priority. We have a stronger duty to not intervene with the fox than not to aid the rabbit." (Aaltola, 2010: 86). So, according to Aaltola, we recognise that the predator has a right to survival. And, of course, a necessary consequence is the stress, pain, and death of a prey animal.

Aaltola's effort is a path in the right direction but it does not take us far enough out of the thicket. First, negative rights do not have *a priori* lexical precedence over positive rights. Which ones are stronger and take priority is something to be determined *a posteriori*, case by case. But more importantly, as argued above, we are simply not morally required to aid the rabbit as a matter of justice. The rabbit lacks the positive right Aaltola purports it possesses. What remains is the fox's negative liberty-right that we do not stop it from hunting, eating, and feeding itself and its pups. It is the fox's right against us and we are obligated to not intervene. The argument for impermissibility of intervening against the fox can be outlined as follows:

(1) The rabbit has a no-claim that the fox does not kill him—as the fox cannot discharge any duties;
(2) The fox has a negative liberty-right against us not to prevent her from securing her subsistence—which, naturally, entails killing the rabbit.
(3) The rabbit has no positive claim-right that we rescue her from the fox—the wild rabbit has neither an unacquired nor an emergent positive right to rescue against humans.
(4) We have no power-right—that is, we are disabled morally—to alter any deontic relations between ourselves and the foxes in a way that disadvantages the foxes.
(5) Therefore, we have no liberty-right to intervene to stop the fox from killing the rabbit.

Premises (1), (2), and (4) are all concretisations of the Hohfeldian framework of rights with respective obligations. Defence for premise (3), has been made above against Regan's duty to assistance.

Other philosophers besides Elisa Aaltola have been led astray by phantom positive duties to wild animals. Sagoff's rhetorical question is a case in point: "If the suffering of animals creates a human obligation to mitigate it, is there not as much an obligation to prevent the cat from killing a mouse as to prevent a hunter from killing a deer?" (Sagoff, 2002: 41). For utilitarians, the mere existence of suffering or vulnerability might trigger an obligation to mitigate it (see, for example, Goodin, 1985). However, by my lights, it is the existence of a right is a necessary condition for the existence of a correlative obligation. Neither the mouse nor the deer's situation has the protection of a moral right that induces a duty of rescue in humans.

However, the cat-mouse and the hunter-deer cases are not quite the same. The first asymmetry is on the victim side. The mouse has no rights whatsoever against the cat whereas the deer has a claim-right that the hunter does not kill her. This takes us to the second difference which is on the harmer's side. The cat's liberty-right not to be deprived of her lunch or not to be killed stops us from saving the mouse. The hunter has no liberty- or claim- right against us stopping the kill. Quite the contrary—as I argue in Chapter 6—we may have an alter ego defence permission to kill the hunter to stop his killing the deer.

The prey does not have a right against us to rescue *but* the predator has a right against us not to prevent his obtaining his food the only way he knows. In ordinary cases of defense against the innocent threats, the threat has no such a right against us. In the prey-predator scenario, the prey has a right to defend itself against the predator and may do so lethally. But this right of self-defense is non-transferable; it is strictly agent-relative. A permission is "agent-relative … if it includes an essential reference to the agent in the description of the state of affairs the agent has to promote" (Hooker, 2000: 108). If it has no such reference, it is agent-neutral. Michael Ridge elucidates: "An agent-relative reason to promote A's [wellbeing] will give me a reason only if I am A or suitably related to A" (Ridge, 2011). A might be suitably related to the agent in that A is one of the agent's family or friends. Or there might be a pre-existing agreement between A and the agent. Or there might be other special relations between A and the agent. But humans are not prey wild animals and they are *prima facie* not suitably related to prey wild animals. Hence, they cannot engage in other-defence of the mouse.

However, agent-relativity should not be construed to include relativity to what the agent happens to like, such as the fact that the prey is deemed beautiful and the predator deemed pestilential. The elephant may defend itself and its baby from a pack of hyenas but this moral privilege eludes humans who may wish to prevent hyenas from killing the baby elephant.

The innocent predator's claim-right against us blocks the otherwise agent-neutral situation that permits humans—though not necessarily obligates humans—to assist those who are under threat from objects or from culpable threats. Humans lack the power-right that would permit them to alter the rights of the predator. In other words, humans have a *disability* and the predator is not *liable* to human actions. Thus, saving prey from predators is not morally required; on the contrary, it is morally prohibited.

4.6 Animal Rights Theory versus Environmental Ethics

Besides the predation conundrum, the animal rights theory potentially falls prey to yet another challenge. The theory does not seem, at least on face value, to augur well for environmental management. Animal rights theory is *prima facie* at variance with a conservation ethic that is holistic and places emphasis on sustainability of collectives such as species or ecosystems. Interpreting J. Baird Callicott, Tom Regan (2004a: xxxviii) has fairly represented this threat as follows.

(1) If the rights view fails to provide a credible basis for addressing our obligation to preserve endangered species and the environment, the rights view is not the best theory, all things considered.
(2) The rights view fails to provide a credible basis for addressing our obligation to preserve endangered species or the environment.
(3) Therefore, the rights view is not the best theory for morally protecting wild animals, all things considered.

This *modus ponens* supports the widespread human practice of killing those animals that through their behaviour or numbers threaten members of other species of flora and fauna or poses a threat to biodiversity in a given ecosystem.

It is hard to disagree with premise (1). But we can nevertheless, and perhaps we need to, remove the requirement that it provides 'a credible *basis*….' It seems to suffice that the rights view does not contradict an environmental ethic whatever its basis might be.

Premise (2) is contentious. Regan thinks the rights view is "a live option" that warrants exploring (Regan, 2004a: 363). Even Callicott who initially epitomised environmentalist

hostility towards animal rights concedes that animal rights and environmental ethics could "be united under a common theoretical umbrella" though he sees potential conflicts that accompany "all laminated layers of our social-ethical accretions" (Callicott, 1992b: 259). Mark Sagoff is unequivocal in affirming premise (2). "The environmentalist would sacrifice the lives of individual creatures to preserve the authenticity, integrity, and complexity of ecological systems" (Sagoff, 2002: 42). But animal rights theorists would do the exact opposite. I will contest the second premise to pave way for an argument that a zoocentric environmental ethic, as Callicott (1998) calls it, is a more tenable approach towards protecting the biotic community in its entirety. It is because of the *intrinsic value* of humans and other sentient beings that the environment must be protected to sustain its *instrumental value*.

Management of wildlife is but one aspect of environmental management. Ecology is the overarching discipline for conservation in general and wildlife management in particular. Ecology is a science but one that is inescapably value-oriented as the goals of wildlife management are generally speaking normative ones. The ecological/environmental approach encourages human intervention into the environment with the goal to maintain or protect whole natural systems. This puts the environmental approach on a collision course with animal rights theory that predicates ethical descriptors to individual wild animals rather than to any macro phenomena such as species or ecosystems.

4.6.1 Holism or Individualism?

Callicott (1992a) has depicted the conflict between the rights view and the ecological view as being underpinned by different values which yield different concerns. On one hand, on the animal rights view, the psycho-physical wellbeing of individual wild animals is primary concern. On the other hand, the ecologists and environmental ethicists have concern for "the disappearance of *species* of plants as well as animals, and for soil erosion and stream pollution" (Callicott, 1992a: 40). According to Callicott, for animal rights proponents, the wrongness of acts, policies or practices is a function of how individual wild animals fare. However, environmentalists advance the thesis "that the good of the biotic *community* is the ultimate measure of moral value, the rightness or wrongness, of actions" (Callicott, 1992a: 43). The approaches are thus appropriately labelled 'individualistic' and 'holistic' respectively. Holism would recommend killing of individual members of certain species, introduction of alien predator species, and so on, if this was deemed necessary for attaining or maintaining an optimal ecosystem.

Callicott believes the animal rights proponents are mistaken in identifying individual animals as loci of value. He sees the pursuit of, and respect for, atomistic interests as being potentially catastrophic for the environment. To drive his point home, he makes a comparison using the example of society.

In society, it is imprudent, according to Callicott, to allow for unfettered pursuit of individual interests. Doing so would render "the community as a whole become noticeably more and more infirm economically, environmentally, and politically" (Callicott, 1992a: 47). We have thus "a duty to behave in ways that do not harm the fabric of society per se". This shows that society as such, by Callicott's lights, is an appropriate recipient of human duties. And by analogy, the biotic community imposes "duties binding upon moral agents in relation to that whole." (Callicott, 1992a: 45). For Callicott, it is the whole and not the constituent parts that is the proper holder of value that generates obligations in us. Our body cells, tissues, and parts have no moral value in themselves and they may be dispensed with for the good of our bodies. The suffering and death of individuals do not matter morally provided this serves the stability of the whole society or biotic community.

Callicott's ecological point of view is therefore theoretically incompatible with animal rights theory. On his view, the environment in itself has intrinsic value. We transgress against this value if our behaviour tends to compromise the stability, integrity, and beauty of the environment. But do these three aspects generate such powerful duties towards the environment? It will be question-begging to suggest that this is because in so doing we respect the value in the environment. There are two possible non-circular replies.

First, we might say stability, beauty, and integrity of the environment are instrumentally good for humans. This, however, takes us back to anthropocentrism, which many environmental ethicists including Callicott oppose. Or, second, we might say the stability, integrity, and beauty of the environment are not valuable in themselves but they are ultimately valuable for sentient life forms. On such a view, a good ecosystem is not good in itself but only instrumentally to the extent that it enables its sentient inhabitants to flourish in their various individual natures and ecological niches.

I turn now to try and refute Callicott's argument from analogy for nature's intrinsic value.

The analogy Callicott makes from our duties not to harm the fabric of our societies to duties not to harm ecosystems as wholes seems cogent, up to a point. The duties to society or to the

environment fall under what, for the lack of a better term, are referred to as ‘indirect’ duties. I have in Chapter 3 rejected the notion of ‘indirect’ duties. The term is redundant and conveys the wrong idea that we have a kind of duty to society or to ecosystems.

We care for the environment at least partly as a matter of prudence, out of reasons that emanate from self-interest. Because society and the environment are so important, if not prerequisite, to enjoying anything else in life, humans create rules imposing mutual duties and claims with respect to society or the environment. Duties to not pollute rivers are not owed to rivers or ecosystems to which rivers belong but to other sentient beings who would be harmed by the pollution, for example, through poor health and death after intake or through incurring the cost of sourcing safer water elsewhere.

Anthropology tells us how people create totems, taboos, myths, legends, and so on in order to protect or promote certain interests. Positing intrinsic value for the environment seems a continuation of that human gimmick. Such axiological gilding of nature might prove pragmatically successful, but scepticism regarding its philosophical grounds is well-placed. The position taken here is that such social construction of value is at best unnecessary, and at worst retrogressive, for an ethically sound wildlife or environmental policy.

Regan (1992) explores *mental-state* (e.g. hedonism), *states of affairs* (e.g. beauty), and *end-in-itself* (e.g. subject of a life) theories as grounds for intrinsic value in the environment. He finds all three wanting and concludes that environmental ethics rests on an axiological mistake. Mental-state and end-in-itself, for example, both require that at least X possesses sentience for X to have intrinsic value. Of course, the environment as a whole is not a sentient entity. Callicott’s environmental ethic rests on the ‘state of affairs’ of beauty of the environment. This means that a being can have intrinsic value simply because of the state in which it is independently of any observer’s valuation. Hence, nature can be said to have intrinsic value because of its state of being beautiful or stable even when there is nobody to appreciate the beauty or stability.

However, Regan thinks that inasmuch as “one can admire what is beautiful” it is quite another thing to say “that one should respect the beauty in an object” (Regan, 1992: 169). That an entity has beauty or stability does not seem to generate any (strong) obligations upon humans on how that entity is treated for its own sake. If nature had any intrinsic value grounded in beauty and stability, it is most definitely a value that pales into insignificance when juxtaposed with the

moral worth of humans. Hence, in the name of consistency, a non-speciesist wildlife ethic ought not to prioritise nature over the intrinsic value of wild animals. Humans are not culled to protect the environment. Wild animals should not be culled at the altar of nature's 'intrinsic value'.

Regan aptly puts forth his bottom-up approach to wildlife management thus: "Where we to show proper respect for the rights of the individuals who make up the biotic community, would not the community be preserved?" (Regan, 2004a: 363). This may appear to commit the fallacy of composition. But Regan does not argue that since individuals require respect, the community as a whole must be respected as well. Instead, Regan should be understood as making a probabilistic descriptive statement that when humans do not exploit animals, the land they dwell on, and their plant and other resources, the environment is much more likely to remain more stable than when humans do the opposite.

The crux of the argument is that a societal code including rules allocating rights and correlative obligations would be generally more optimific for the environment than alternative codes. For Regan, discharging obligations to wild animals would have the desired outcomes for a sustainable biodiversity yielding all those benefits that humans seek in the environment, provided that this does not involve treating wild animals as mere receptacles of value. Recognition and enforcement of wildlife rights would end many anthropogenic activities that are largely responsible for the environmental crisis. Such activities include logging, fracking, and mining in wildlife habitats. In Chapter 5, I make a case for wildlife rights in natural goods including their habitats that, in my view, effectively would generally result in environmental protection.

Animal rights and concern for extinction do have an intersection, albeit a contingent one. Imagine a population, *N*, of an ungulate species with individuals, *u*. The ungulate population is the sum of each and every individual ungulate, *u* ($N=\sum u_1, u_2, u_3 \ldots u_n$). Extinction is when every *individual* member of a species has ceased to exist. All that extinction requires is failures of reproduction. If that failure is non-anthropogenic, then biodiversity is lost without rights violations.

Admittedly, though, most cases of extinction with which we are familiar involve pain, suffering, and early death. When we look at how every individual has ceased to exist, we are likely to find pain and suffering. If natural phenomena have caused the pain, suffering, and death of individuals, then there are no rights violations in the offing. Humans, however, have *pro tanto* duties not to cause pain, suffering, and death to animals. A lot of extinctions are

anthropogenic. “There is agreement that the greatest threat to both animal and plant species is the loss of habitat” (Plessis, 2000: 16). Other causes of extinctions include over-exploitation, introduced species, pollution, and pesticides, and decreasing range size (Plessis, 2000). These causes involve deprivations and violations against wild animals. Ending the deprivations and violations is likely to significantly lower extinction rates of wild animals.

Respecting rights of wild animals means, for the most part, leaving them alone. That includes prohibitions against tampering with their habitat through encroachments, pollution, and introducing rival or predatory alien species. Regan’s point is particularly forceful given that many extinctions and decimations are widely attributed to human activity despite the causal links not being always so direct. The failure of humans to abide by the laissez-faire policy generates duties based on what Regan calls ‘compensatory justice’.

The idea of compensatory justice for wildlife is analogous to what is owed to people who have been victims of injustice in the past and are, as a consequence of those injustices, worse off. This notion, Regan believes, can account for people’s bias in favour of endangered species when they are making wildlife policy or management decisions. If we have plentiful rabbits and a handful of rhinos, this alone does not, according to Regan, warrant any preferential treatment to the rhinos. Further inquiry is needed to show, for example, whether habitat destruction by humans has played a part in the present vulnerability of the rhinos. Only this would warrant prioritisation of rhinos over rabbits.

But this answer is not convincing for cases where the rabbits will be harmed or disadvantaged by the compensatory policy or measures for rhinos. In some situations, it is the behaviour or numbers of the populous wild animals that causes or exacerbates the predicament of the few. Yet the rabbits are innocent and it will be an injustice to them if the compensatory intervention involves doing harm to them. Compensatory interventions will work where any costs resulting from the intervention are borne by the party that was morally or at the very least, causally responsible for the initial harm. In this case, it is humans who should bear the cost on account of their culpability or liability.

Here it suffices to point out that the two solutions Regan offers seem to fall short of providing answers to resolving problems involving animals and mediated by the environment. Human interference may cause changes in the behavioural and population dynamics of some fauna species. This in turn may cause harm to members of another species, to the point where the species may become endangered. Remedial intervention may require changing the behaviour

or reducing numbers of, say, the invasive or irruptive species. This may not be easily feasible without harming members of the invasive or irruptive species. To this problem, Regan does not give us any rights-based guidance. I explore this problem in the next section.

4.7 Towards a Zoocentric Environmental Ethic

Nature is red in tooth and claw; it was long before humans evolved to add to its already bloody past and processes. When theory meets practice, it is time to ditch our rosy picture of painless wildlife relations in a sustainable idyllic environment. Some tough decisions must be made. Most elements in ecosystems have evolved over aeons of time into relationships of interdependence, and pain is normally an integral part of the game.

Assuming the rights view defended in previous chapters is correct, how should we manage wildlife and the environment? *Contra* Callicott, the goal of ethical wildlife management should not be sustaining ecological collectives. The aim of wildlife management should be protecting the right-holders who inhabit and subsist upon these ecological systems. However, as with all commons, the environment has to be saved not only from human exploitation but also from the very beings who depend upon it, those for whom it is being managed. This is where Callicott's society-ecosystem analogy could be useful.

Many individuals acting freely without coordination may produce perverse unintended consequences. That is the likely fate of unregulated enjoyment of individual rights. In the context of human communities, such consequences might range from inflation to global warming. It becomes imperative for citizens acting collectively—through the state, for example—to curtail the enjoyment of some of their rights to ensure some macro fundamentals are in place. This means the code of rules for society will not only be rights-based. At least there must be additional rules to prevent those consequences of rights that, though unintended, may be self-destructive. These rules must ensure that people will be more likely to enjoy the moral protection their rights give than under any other alternative set of additional rules.

Auxiliary rules may establish conventional rights supplementary to the unacquired and emergent moral rights. They will establish, for example, rights of assistance from any members of a defined community, especially the most vulnerable such as children or the elderly, when the cost is not so huge upon the helpers. These are rules putting in place conventional rights whether enforceable by force or merely by non-coercive social sanctions. There will be rules about access to the commons, which, in the absence of the regulatory rules, would be depleted or degraded to everybody's detriment. There will be rules compelling members to make

contributions towards common goals that safeguard everybody's rights. And rules are also necessary to attain efficiency. Lastly, rules are needed regarding the prevention and resolution of conflict of moral rights.

Devising the extra-rights rules is properly the subject matter of political philosophy in conjunction with some science disciplines including anthropology, economics, and ecology. Ideally, the making of the supplementary rules must be participatory. But rules protecting children and animals can be arrived at only through some fiduciary responsibilities placed upon those who would reasonably be expected to have the understanding and benevolence to decide in the recipients' best interest. Ultimately, we end up with a set of rules—whose core specify moral rights augmented by conventional rules—that, if internalised by the vast majority of people, would yield greater expected aggregate wellbeing than any other competing set of rules. If this is a plausible account, we seem to have a theoretical baseline with which to approach the governance of wildlife—wild animals and their habitats, and the human-wildlife interface.

A lot of wild animals have moral rights. If left alone as Regan recommends, some ecosystems may deteriorate, resulting in more suffering of wild animals. An example of such a scenario presents itself from Kenya where in Amboseli National Park a high density of elephants of one elephant per 0.42 km^2 has led to a decline in the woodland in the park resulting in the local extinction of both lesser kudu and bushbuck. In addition, woodland depletion has led to decline in species that flourish in woodland, such as giraffe, baboons, monkeys, and gerenuk (Whyte, 2002: 300). In such cases, should humans simply watch like helpless onlookers while the ecosystem degenerates to a no-winner situation, where Amboseli cannot even sustain the elephants that set the degeneration in motion?[14] To let that happen would be futile rights dogmatism. Benign, informed interventions can have the most astounding impacts on the health of an ecosystem and flourishing of all who dwell therein. George Monbiot—a renowned wildlife documentarist—for example, narrates the positive impact on the ecosystem, and, corollary, on the lives of wild animals following the reintroduction of wolves in Yellowstone National Park.[15]

[14] I am assuming for the sake of argument that, in the Amboseli case, the predicament was not set in motion anthropogenically. It is, however, probable that human activity triggered the factors resulting in a population explosion for elephants and population decline of some wild animals. If this were the case, then human intervention would be a matter of justice. There would also be a strong reason to support Regan's laissez-faire recommendation.

[15] https://www.youtube.com/watch?v=ysa5OBhXz-Q

The laissez-faire of Regan on its own appears insufficient as a moral compass for wildlife policy. Regan's clause that we intervene if the undesirable state of affairs is anthropogenic is insufficient as some truly non-anthropogenic catastrophe can suffice to morally permit—if not morally require, albeit not as a matter of justice—that, other things being equal, humans intervene. Sue Donaldson and Will Kymlicka have imagined blasting a meteor out of space, or halting a virus epidemic before it wreaks havoc on a fragile ecosystem (Donaldson and Kymlicka, 2011: 182). Of course, we do not need to look for science fiction scenarios for cases that would morally warrant intervention.

I think the case above of elephants in Amboseli would suffice as a case for non-lethal intervention. The problem for Regan's position is that before we intervene in a wildlife epidemic, we need first a study to establish that the epidemic is a case of anthroponosis or one in which humans have had a hand in causing or spreading. Although such a study would be necessary in order to rightfully coerce culpable or morally liable humans to bear the cost of halting the virus or mitigating effects of the epidemic, the study is irrelevant for moral permission to promote goodness as such.

Instead, I propose, we need a code of rules that at least permits intervening to mitigate a morally bad situation provided the means are just. If a certain keystone species is under threat in a particularly fragile ecological niche, it does not matter that the threat is from poachers or some non-anthropogenic pathogens. In the absence of human causality, we cannot take comfort in the moral paralysis of letting nature take its course. For human beings and human morality are in the business of thwarting bad consequences of natural events provided no right are violated as means or provided, whenever the overriding of rights occurs, there is very a strong moral justification for doing so.

Animals may not have rights that generate *a priori* duties of assistance. But as in the case of humans, morality goes beyond core rights relations and requires additional rules. The additional rules would protect species and ecosystems despite species and ecosystems not being appropriate recipients of human obligations. Protecting (some) species and ensuring a sustainable life support system *is* a way of protecting wild animals as individuals. What is important to keep in mind is that the 'lottery' by which those whose rights are overridden are picked stands up, at the very least, to requirements of procedural fairness that precludes individual wild animals being used merely as means.

For a start, the rights view goes a long way in ensuring procedural fairness by levelling legitimate human interests with those of wild animals. This levelling will exclude or reduce human scientific, economic, aesthetic, and sacramental considerations from playing any role in deciding which individual wild animals' rights are overridden. Furthermore, human bias will be largely excluded so that the so-called charismatic species are not given undue preferential treatment at the expense of the rights of those less aesthetically appealing or those wild animals perceived as vermin or pestilence. Rights are moral levellers regardless of what emotions the different animals evoke in human beings.

The rights approach I take to environmental concerns is, like Regan's, zoocentric. I, however, reject the laissez-faire rights dogmatist approach. That approach turns a moral blind eye to any catastrophe that might result from not intervening by overriding rights of some wild animals for a sustainable environment that has instrumental value for all inhabitants. Biodiversity is not worth preserving in itself *per se* but only because it is vitally important for a functional ecosystem that provides goods and services for individual animals' interests.

Thus, I see Callicott's 'environmental fascism' as putting the cart before the horse. Callicott's view accords intrinsic value to ecological collectives while individuals may be sacrificed as mere means. By my lights, non-sentient beings cannot have intrinsic value. Instead, I see species protection first as protection of constituent members of the species, and secondly, as a requirement for ecosystem sustainability. The ecosystem is the life boat. Without human interference in the environment, we may all be imperilled, humans and wildlife together.

Current wildlife management policy and practice is not zoocentric. Obstacles stand in the way of a truly wildlife-centred policy for wildlife governance. One major obstacle is the institution of property. Legally, wildlife are property of humans and wildlife have no rights to property in the form of land or the natural goods within their habitat that is essential for their survival and flourishing. In the next chapter, I will argue that wild animals are not property and, instead, are owners of property, morally speaking. This argument augments the position reached in this chapter, that is, the environment has zoocentric and not intrinsic value. The rights of wild animals take precedence over environmental protection because the environment is morally valuable merely as a life support system for wildlife.

In this chapter, I have addressed the problem of wildlife predation that poses a serious challenge to animal rights theory. Many would doubt the soundness of a theory that requires or permits policing prey-predator relations. I have argued that, animal rights theory does not imply an

obligation to rescue prey from predator animals. On a proper understanding of moral rights, humans are neither permitted nor required to aid prey wild animals even though humans may intervene in cases of predation involving their pets and children.

Animal rights theory faces a further challenge that it is incompatible with an environmental ethic that recognises intrinsic value of the environmental. I argue, however, that Callicott's view is premised on a mistaken axiological grounding for ecological collectives. I argue, however, that the environment is the life support system for all animals and, under very special circumstances, may require human interventions that may potentially require or result in overriding some individuals' rights.

What animal rights theory brings to wildlife governance transforms the framework from anthropocentrism to zoocentrism. Educational, scientific, economic, sacramental, and aesthetic human interests are expunged from the goals of environmental or wildlife management. And when it is necessary to override some rights in the interest of preserving the ecological life support system, all wild animals are treated as equal. However, a zoocentric environmental ethic is incomplete without deciding the question who owns wildlife or the environment in which the wild animals reside. To this question, I will now turn.

Chapter 5 Wildlife Property Rights and Sovereignty

All over the world, wildlife management has very similar goals. These goals include sustaining wildlife's economic, ecological, educational, scientific, and aesthetic values. It comes as no surprise, therefore, that in most if not all state jurisdictions, animals are objects of property rules. According to *The Zambia Wildlife Act 1998* (Section 82 (3)), "the absolute ownership of every wild animal within Zambia, is hereby vested in the President on behalf of the Republic". The Act further describes how *absolute* ownership may be transferred to a licensed hunter. Furthermore, "where any animal is found resident on any land, the right to harvest such animal, shall … vest absolutely in the owner of such land" (*The Zambia Wildlife Act 1998,* Section 82 (3)). The language leaves no doubt regarding the property status of animals. Ownership is 'absolute' and animals may be 'harvested' by agents of the state, hunters, or land owners. Such legislation is commonplace around the world and endorsed by many intergovernmental bodies and international conservation NGOs.

As is expected of most property, there is normally free exportation and importation of wildlife goods—dead or alive. There are some exceptions such as those wild animals listed in Appendix I of the Convention on International Trade in Endangered Species of Fauna and Flora (CITES).[16] The catchword is 'trade'. For the international community consisting of at least the 182 parties to CITES, wild animals are a commodity, a resource whose chief concern for the humans is sustainable utilisation. Only scarcity gives members of a species protection from economic exploitation. Thus, the Zambian Ministry of Tourism and Arts treats lions just as a natural resource such as trees that may be cut down and sold at a sustainable rate. Clearly the conception of wildlife as property is morally problematic if we accept the position of wildlife rights. It deserves to be philosophically dealt with.

In this chapter, I will question the status of wild animals as property of humans and the corollary view that wild animals cannot themselves be owners of property. I aim at showing that, given some conclusions reached in Chapters 2 and 3, wild animals cannot be property, morally speaking. I argue, further, that, to the contrary, wild animals have ownership over certain things. Lastly, I respond to the challenge posed by the notion of wildlife sovereignty to my account of property rights for wild animals.

[16] Appendix I of CITES is a list of endangered wild animals and plants trade in whom is prohibited. Those listed under Appendix II are subjected to regulated trade while Appendix III contains those organisms that may freely be traded.

5.1 The Concept of Property[17]

A discussion of wildlife as property of humans or of wild animals as owners of property naturally begins with the concept of property itself. In this section, I try to explicate what ownership is. Anthony Honoré's *Ownership* (1961) "is a classic statement on the concept of ownership" (Hodgson, 2012: 223). Honoré's exposition of the incidents of ownership has been very influential in property-related discussions (Waldron, 1988; Quigley, 2007; Cochrane, 2009). Honore's conception of property therefore provides an apt starting point.

For Honoré, ownership is characterised by the following incidents: right to possess, right to use, right to manage, right to capital, right to income, right to security, transmissibility, absence of term, residual character, prohibition of harmful use, and liability to execution. In Honoré's view, the concept of property manifests a Wittgensteinian family resemblance as ownership "extend[s] to cases in which not all the listed incidents are present" (Honoré, 1961: 113). The family resemblance analogy is instructive because some family members will resemble one another without there being any one feature they all have in common. Similarly, the incidents in one instance of ownership disappear in the next and reappear yet again in another instance of ownership. According to Muireann Quigley (2007: 632), the family resemblance approach "addresses a major problem that is associated with theories of property and ownership—namely, that not all things generally considered to be property share all the same characteristics or sets of characteristics."

I think this advantage Quigley notes is purchased at a great cost. Honoré's conception of property comes with an undesirable indeterminacy. This is because it requires that if a being has *most* of the elements he provides, then that being has ownership (Quigley, 2007: 631). It is not clear what number marks the 'most' threshold, whether the 'most' can be made up randomly of any of the elements, and whether the incidents have any lexical order.[18] Although Honoré (1961: 114) identifies the right to possess as "the foundation on which the whole superstructure of ownership rests", he is silent about the ordering or expediency of the other incidents. [19]

[17] My concern is pre-legal property. By this I mean that I am concerned about property in the moral, ideal sense and not the conventional non-ideal sense. This pre-emptively nullifies some objections based on practices of property from society to society or time to time that depart from the moral sense. For example, a prohibition on one redesigning or maintaining their property in a certain way effectively renders that case of ownership non-ideal. In fact, such property, in my view, is de facto, quasi-public rather than private property *stricto sensu.*

[18] Sreenivasan (1995, 11 n18) expresses a similar worry concerning what subset(s) of incidents would be jointly sufficient for ownership.

[19] Several commentators on Honoré's property incidents seem to endorse the family resemblance nature of Honoré's conception of property. I think that the text here suggests Honoré identified at least the right to possess as a necessary condition by labelling it as foundational to the superstructure of ownership.

In my view, Honoré's incidents can be reduced to three 'genotypic' incidents of which the other 'phenotypical' incidents are mere derivatives that may vary from one jurisdiction to another. The three core incidents include the right to possess—identified as core by Honoré himself—the right to use, and the right to security. Jointly, the three incidents are also sufficient conditions for property ownership.[20] These three constitute the hard-core of the concept of ownership while six elements make up auxiliary elements which may vary across space and time. Whereas each of the three are necessary, and together they are jointly sufficient, for ownership, the other incidents are but elaborations of these three depending on the jurisdiction, while two, liability to execution and prohibition of harmful use, appear to be general moral rules. I shall therefore focus only on the three core elements which I shall later use to argue for my two theses that wild animals cannot be property, morally speaking, and that wild animals are owners of some property, morally speaking.

5.1.1 Right to possess

Honoré makes a useful distinction between 'possessing' and 'having a right to possess'. One can be in possession of something without that thing being his property. But to have a right to possess means having "the claim that others should not, without permission, interfere" (Honoré, 1961: 114). This element may be expressed by the more self-explanatory notion of the claim-right to exclude. It creates a negative hands-off duty in others who are not permitted access or are not joint owners.

The right to exclude not only gives sovereignty over property but also warrants defensive actions in the protection of one's property. Provided this right—like all other rights—is taken as *pro tanto,* the bearer of the right to exclude may use force if necessary to exclude or eject intruders. The owner-intruder relationship is that of power-liability. Where the owners such as infants, the disabled, or wildlife are not physically or intellectually able to evict violators of their right to exclude, *alter ego* defence permits capable non- duty-bearers[21]—and requires duty-bearers—to defend the owner against the violators.

Additionally, any violations of the right to possess gives the owner "characteristically a battery of remedies, [including] if necessary, get back the thing owned" (Honoré, 1961: 115). It is

[20] I am not the first to offer a tripartite concept of property. John Hadley (2015: 9) reports: "Three incidents are singled out by property theorists as most indicative of what it means to own something: a right to exclude, a right to transfer, and a right to use." Note however that by my lights, the 'right to transfer' is cannibalised by the right to security, and arguably, the right to use. My reduction preserves eligibility of animals to ownership even in the absence of fiduciary human duties to carry out transferring transactions in behalf of animals.

[21] Nozick (1974: 109) rightly states that we all "have the right … to intervene to aid an unwilling victim whose rights are threatened".

uncontroversial that justice requires remedial actions whenever rights violations occur. This is certainly an established principle in positive law and should not be problematic with the case of wildlife. As will be argued below, there is reason to recognise wild animals as owners of their habitats who are usually blatantly disenfranchised with respect to their ownership rights.

Lastly, the right to exclude can occur under all the three widely recognised property regimes viz. private property, collective property, and common-pool resource.[22] Questions and mistakes can arise by making a category mistake over these regimes. The most important mistake is *terra nullius* or *res nullius.* Aware of these possible mistakes, Oran Young cautions that we need to "develop some fictions about latent or tacit [property] regimes to avoid the conclusion that there are situations in which no regime is present" (Young, 1982: 42). This heuristic is particularly relevant for wildlife property rights since many wild animals' territorial markers may not be easily discernible by humans.

5.1.2 Right to use

This incident seems so familiar as not to require much further elucidation. If I own something, then I must have the liberty-right to utilise it in any way I deem fit within the provisions of some general social rules. It seems contradictory or at least very odd that I own something that at the same time it is impermissible for me to use in any way at all.[23] Although there may be legitimate social reasons restricting one's use of their property, ultimately the owner has a right to use it, albeit in a restricted sense as in the case of listed buildings in the United Kingdom.

In my view, Honoré's rights to manage, to capital, and to income are all surrogates of the right to use and manifest differently in different social settings and legislations. Although they may be required to give a full account of some concept*ion* of property such as a liberal, communist, or whatever, I think these incidents are inessential to the concept of property itself. They may come and go or change form as we move across jurisdictions.

5.1.3 Right to security

Simply put, this is the right that one is secure in their possession and use of what is theirs. It is the right against intrusion, trespass, or expropriation. Many beings cannot protect themselves or their possessions. Hence it becomes important that somebody else has the duty to protect them. Usually, in contemporary societies, this duty falls upon the state, which has a monopoly

[22] For authoritative discussions of property regimes, see Young (1982) and Ostrom (2015).
[23] Even such things as nuclear weapons may have circumstances when their use is justified even if only as deterrence. In any case, if something is 'property' but it is impermissible ever to use it, then someone does not really own it, or people ought not to really create or own such a thing in the first place.

on the legitimate use of force and derives some of its legitimacy from the promise of security to people or beings within its jurisdiction.[24]

In my view, Honoré's incident of transmissibility, incident of absence of term, and incident of residual character of ownership are all surrogates of the right to security and manifest differently in different social settings and legislations. As with the surrogates of the right to use, these incidents are inessential to the basic pre-legal idea of ownership.

5.2 Can Humans Own Wildlife?

I have highlighted how wildlife legislation treats wild animals as property owned collectively or privately by humans. In this section, I want to present an argument that, given the moral rights I have earlier argued animals possess, it is logically incoherent and practically problematic to regard them as property and a resource for advancing human interests. My position is similar to that of Gary Francione, who writes,

> The status of animals as property renders meaningless our claim that we reject the status of animals as things. We treat animals as the moral equivalent of objects with no morally significant interests…. Any interest that an animal has represents an economic cost that may be ignored to maximise overall social wealth and has no intrinsic value in our assessments. That is what is meant to be property (Francione, 2005: 120).

Francione makes a noteworthy point. However, it is clear anticruelty laws that exist in many countries to protect animals somewhat attest that animals are not regarded as being on the same rung on the moral ladder as inanimate objects. A perfectionist moral theory, for example, does give conceptual room for calibrated moral status. However, in Chapter 3 I have already found wanting at least the Kantian justification of anticruelty rules. Even though anticruelty theory is not sound in relation to animals, it is not committed to the view that relegates animals to inanimate *things*.

Furthermore, Francione's claim that treating animals as property means all animals' interests 'represent an economic cost' is untrue. Sometimes the animals' interests are aligned with the owner's economic interests. When this obtains, the animal's interests do not represent a cost. For example, it is presumably always in an animal's interest to be in good health. It is almost always in the owner's economic interest that their animal is in good health.

[24] In a human-centred framing, John Broome (2012: 65) stresses that it is the state's "serious duty to make life good, or at least to provide people with conditions that allow them to make life good for themselves." No argument is required to identify security as one of the requisite conditions for people, and of course wildlife, to make life good for themselves. However, as Nozick (1974: 108-113) points out, in some cases non-state protective agents can and do provide security, albeit to a more limited clientele.

However, if we itemise all the interests that an animal has, some of them may represent an economic cost. One example is feeding farm animals a hormone-free diet that would take the animal longer to reach the market weight. A second example is letting calves of dairy cows suckle for the natural lactation duration. But this is a contingent matter rather than a necessary feature of every interest an animal has. It is the expediency of animal interests each time they clash with the owner's economic interests that is worrisome.

5.2.1 Against Owning Wildlife

My argument against humans owning wild animals is based on the understanding that wildlife ownership rests on a conceptual mistake as the rights of wild animals and the wildlife legal owner's rights are logically immiscible. Water and oil, when poured into the same container, produce a liquid that cannot be used as water or as oil. Morally speaking, ownership of wild animals dilutes the 'owned' wild animals' rights or those rights that are definitive of ownership. Below, I present my argument schematically:

(1) Wild animals have a negative claim-right: moral agents are prohibited to exploit, recklessly harm, or gratuitously harm[25] animals (i.e., animals having a claim/duty deontic relation with humans).

(2) Wild animals have a liberty-right: moral agents are prohibited to constrain animals in their species-like behaviour (i.e., animals have a liberty/no-claim deontic relation with humans).

(3) Wild animals have an immunity-right: moral agents are morally incapable of altering the deontic relations in (1) and (2) on grounds of the immunity/disability alethic relationship they have with animals.

(4) The human owner's rights to possess or use wild animal 'property' is incoherent with (1) and (2).

(5) Therefore, rules that treat wildlife as property are conceptually untenable.

The argument supporting premises (1) to (3) has been made in Chapter 3 and the rights are formulated on the basis of the Hohfeldian structure of rights presented in Chapter 2. Premise (3) simply assures that there is morally no room for humans to change wild animals' rights in

[25] Some examples will help show what I mean: X is harmed gratuitously when Y spears her for Y's sheer fun. X is harmed exploitatively when Y makes her carry Y's goods for Y's benefit only or without X's actual or, at the very least, presumed, consent. X is harmed recklessly when her leg is broken through Y's easily preventable action or omission.

(1) and (2) in the context of ownership even though this is possible under certain circumstances such as innocent humans' self-defence against a wild animal.

Antony Honoré disjunctively defines the right to possess as meaning "to have exclusive *physical control* of a thing, or to have such *control* as the nature of the nature of the thing admits" (Honoré, 1961: 114; emphasis added). However, as Regan (2004a) and Donaldson and Kymlicka (2011) rightly observe, wildlife rights—other things being equal—preclude at least non-benevolent human interference. Presumably, physical control entails some interference. Hence, wildlife rights preclude human rights to possession of the kind spelled out by the first disjunct.

Honoré's second disjunct appears to leave some wiggle room. What kind of control would the *nature* of wild animals admit? "Wild animals … are precisely those animals who avoid human contact" (Donaldson and Kymlicka, 2011: 177). True, over thousands of years, wild animals have 'resisted' habituation or taming.[26] Where habituation has occurred—such as the case of some gorilla families subjected to tourism in Uganda and Rwanda—it seems to have been imposed by humans. *If* remaining wild and avoiding contact with humans is the nature of wild animals, it is highly implausible that there is any acceptable form of owner-like control over wildlife, that is, wildlife conceptualised under Clare Palmer's *locational* wildness.

More importantly, because wild animals themselves have a right against humans having access to the wild animals' bodies—and as I will argue soon, to the wild animals' habitats as well—the wiggle room seems to vanish. The only interference or control permitted is protective or remedial. If, for example, anthropogenic climate change causes suffering among wild animals and humans could enable wild animals to adapt to the effects of climate change, then human beings have a duty to intervene.[27]

The argument I have presented rests on the idea that an appreciation of what having claim-rights and liberty-rights entails, plus an appreciation of what ownership entails, plus accepting that animals have claim-rights and liberty rights, logically rules out wild animals' being property. In other words, wild animals can only be regarded as property on pain of conceptual dilution of what possessing rights means or what owning something means, or on pain of denying that animals have claim-rights and liberty-rights.

[26] See, for example, Hribal (2010) for detailed reports and anecdotes of animal resistance against human attempts to control them.
[27] See Kapembwa and Wells (2016) for an argument for wildlife rights to climate change adaptation.

In my view, if we have two classes of things, one of things that can be owned and another of things that cannot be owned, in virtue of the rights wild animals possess, they belong to the class of things that cannot be owned.

In the spirit of accommodation, I should point out that there is a middle ground category. This is one of fiduciary relationship akin to those that obtain between parents and their children. The trustee has responsibilities of no harm and of care but not of ownership over the children. Although the parent can enjoy a relationship with her child, the child is not her property. Treating wild animals as property comes at a huge conceptual cost. The cost is that the rights of the wild animal or the property rights of the wildlife 'owner' must be so stretched as to blur or distort the meaning of the rights of the wild animals or of having right in property rights. For example, owning wild animals will come with so many clauses that owning will ultimately be akin to the 'ownership' of one spouse by the other or of children by their guardians. This *reductio ad absurdum* works against human ownership of wildlife.

What happens when humans, wives or children are (legally) owned? The connotation and psychology of ownership is that of superior and subordinate. It is a power relationship in which the owned is usually at the mercy of the owner. The claim: "X is my property" has significant illocutionary and perlocutionary significance. The historic and psychological baggage of 'property' is that third parties have no say in how one relates with one's property. It is only when the owner's relationship with their property unjustifiably harms the third parties that the third parties can complain. This would leave wild animals and their rights vulnerable to wanton violations as wildlife ranch owners can do pretty much as they please with their wild animals without harming any other persons as only happy hunters will likely visit the enclosed ranch.

5.3 Justification for Ownership

A lot of things we own, we have come to own because we bought them or the things were given to us as gifts or bequest. These means of acquiring property shall not concern me here. Rather, I will be discussing how anybody morally acquires anything at all before they can give or sell it to others. This pushes us to imagine a time when everything was unowned. Let us call this state null property. According to Oran Young, null property "involves extreme laissez-faire arrangements under which individual participants are free to do exactly as they please without even the constraints imposed by some system of property or use rights" (Young, 1982: 51-52). The land of null property is one of liberty and no claims regarding access to resources. Null

property entails Judith Thompson's Ownership-Has-Origins Thesis[28] according to which, "X owns a thing if and only if something happened that made X own it" (Thompson, 1990: 323). The idea of *initial* acquisition implicitly communicates the idea of no prior ownership. Initial acquisition need not be private property; it could be by a whole tribe that moves into a previously unowned territory. The task ahead—as Thomson's bi-conditional thesis suggests—is to find the necessary and sufficient condition or set of conditions that captures the 'something' that begets initial ownership of a previously unowned thing.

5.3.1 First Occupancy Theory

A familiar proposal is that the 'something' that moves us from property *tabula rasa* to some property regime is simply being the first to access the resource. 'First occupancy' is somewhat a misnomer since not all resources have to do with occupation. 'First taking' or the more common expressions of 'the law of first capture' or 'finders keepers' are more accurate labels. In general, 'first occupancy' means that if X arrives at an unowned resource before Y does, X is legitimately permitted to make the resource hers and rightfully exclude Y from it.

In relation to wildlife, the first occupancy criterion faces what John Hadley (2015) calls the 'identification problem'. The identification problem is the problem of determining accurately which animal species or individual wild animals where the first in any ecosystem or habitat. The first occupancy thesis is, according to Hadley, unpersuasive because it is unable to provide an accurate answer to this question. When we look carefully, however, this is only a pseudo-problem to first occupancy as a justification for excluding others from a resource.

The first reason the problem of identification is unimportant regarding the first occupancy thesis is that wild animals are moral patients that owe each other no duties. This is because, as the ought-implies-can cliché tells us, those without the ability to recognize and be guided by duties cannot have duties. It is therefore immaterial whether Species 1 was in the territory a hundred years before Species 2. Nor is it of any moral significance that an individual wild animal arrived prior to another regardless of species membership. First, as has been argued in Chapter 4, species are not bearers of any moral rights, that is, property rights or otherwise. Only individual wild animals matter morally, at least on the rights account.

Second, when he talks of individuals arriving at different times, Hadley seems to have in mind private property rights. However, the correct property regime for wildlife is *common* property

[28] I shall give no space to a discussion of the rival Jointly-Owned-from-the Outset Thesis. I believe Feser (2005: 59-63) has satisfactorily dismissed the thesis as unjustified, counterintuitive, mysterious, and indeterminate.

or a *common-pool* resource regime. A common-pool resource regime "occurs where the rights reside jointly in some group of actors who own undivided shares of property in question…. [E]ach owner possesses the right to use the property, and they jointly possess the right to exclude others from using it (Young, 1982: 22). All individual wild animals from all species will individually own a given parcel of land—say a national park—and jointly exclude all human beings. All types of regimes do *exclude,* at least to the extent that the goods in question are excludable goods.

All individuals have a liberty-right to the natural goods found in a given habitat. Within the animal kingdom, there will be conflicts about access to natural goods. Dispute prevention and resolution among wild animals regarding access have similar characteristics as those involving human beings. They are characterised by *avoidance* as when a male lion circumvents another's marked territory; *compromise* as when two rival males co-exist within the same pride; *conquest* as when avoidance and compromise do not work and a fight leads to the surrender (fleeing) or death of one individual or group of individuals.

All these phenomena among wild animals are none of humans' business. The bush, so to say, is free for all wild animals, subject to the law of survival of the fittest. Wildlife ecology can tell us individuals of which species reside in an area and what relationships they form whether symbiotic, parasitic, predatory, and so on. Moral agents, that is, humans, have no say morally speaking. First occupancy justification only applies to wildlife against humans or vice versa. This thread will be expanded on in the next chapter when I discuss human-wildlife territorial conflict. Here it suffices to point out that Hadley's worry over identification of arrivals is not a problem for first occupancy.

First occupancy does help point us in the right direction in our search for justification of initial appropriation. 'First come, first served' is a useful allocative device. But in and of itself, it does not provide justification of initial ownership. It does not seem to be the 'something' Thomson asked for as it is neither a necessary nor a sufficient condition for owning something. However, if we assume scarcity and individuals having equal liberty or equal claims to a resource, then the first come first served principle may be employed as a tiebreaker.

5.3.2 The Labour-mixing Theory

Perhaps the most widely discussed theory of property is John Locke's labour-mixing theory. According to this theory if R is unowned and X labours on it, X thereby owns R and may rightfully exclude another person or being Y, from the resource. In John Locke's own words,

> Whatsoever then he removes out of the state that nature hath provided, and left in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property.…. [I]t hath by this labour something annexed to it, that excludes the common right of other men: for this labour being the unquestionable property of the labourer, no man but he can hath a right to what that is once joined to, at least where there is enough, and as good, for others (Locke, 1967: II, 27).

If someone uses their intellectual or physical capacities to remove from nature or transform a resource to make usable what was not (so) usable prior to the labour, then they have a right to exclude others from the resource. Locke's labour-mixing justification for initial acquisition has received support from contemporary writers. One such a supporter is Edward Feser.

Edward Feser (2005) presents the labouring condition as being Sorites-like. Below a certain level of mixing or control, one does not own a resource, but one does own a resource if one has mixed one's labour with it, or exerted control over it, beyond a certain threshold. To begin to own something requires "*significantly altering* a resource, at least by coming to *control* that resource" (Feser, 2005: 65). To stake a legitimate claim to a resource to warrant excluding others, according to Feser, one must *either* "drastically" do something to it *or* take adequate control of the thing. For example, if a man finds an unowned water hole and only uses it occasionally, he does not own it. However, "if instead, he builds a fence around it, posts guard dogs, and so forth, he has acquired full ownership" (Feser, 2005: 69). Hence, for Feser, mixing one's labour to an unowned resource through significantly altering it or controlling it is a sufficient condition to begin legitimately to exclude others from the resource.

The labour-mixing condition as a condition for first legitimate acquisition has an intuitive appeal and everywhere around us we see instances of it legally upheld. But not everything that glitters is gold. On closer inspection, labour-mixing seems flawed; it is not a necessary or sufficient condition for excluding others from a resource.

The labour-mixing condition is too narrow. It is too narrow because it does not provide justification for untransformed property, one that no one has added any labour to. Imagine an unfenced, unguarded clear piece of land that some families' children go to play in at the weekend. It is morally *their* play field although none of them or their parents altered it in any way or have dogs guarding it. If we follow Locke and Feser, the field is unowned—it is still, in principle, appropriable—and hence the families have no claim-right to prevent an individual who wishes to mix her labour with it in a way that will make it unusable as a playfield, say, through cultivation.

The narrowness of ownership by labour-mixing has serious ramifications for humans and wild animals alike. There are many people or animals that do not labour in the conventional transformative sense as such but, by all intents and purposes, are morally eligible to own some 'unmixed' goods. For example, some wait only for fruits to ripen, pick them, and put them in their mouths or in the mouths of their young ones. Migratory wild animals travel seasonally for hundreds of miles simply to go and eat seasonal foods which are available for a few weeks in this place before moving to another location conducive for breeding purposes.

The same for nomadic hunter-gatherer tribal peoples. Under labour-mixing, they would not be owners of the fruit-bearing plants they depend on for their subsistence. Some tribal peoples and some wildlife would be doomed if the very thing which grounds their right to self-preservation could be morally appropriated by someone else. Feser is particularly misguided in requiring that one is *able* to protect some resource. His condition has the implication that those without the ability to build a fence, to stand with a spear by the water hole, or do not have guard dogs to protect it can *never* own the naturally occurring source of water upon which their very lives depend. Why should a fence or a guard dog make such a huge difference?

We must resist this repugnant implication of the restricted labour-mixing requirement. A plausible theory of ownership should give the children the right to exclude others from their playfield; grant the disabled dog-less man ownership of the water hole; and recognise the nomads and wildlife rights to fruit-bearing forests that excludes transformative users such as loggers or miners from exploiting, degrading, or damaging the resources. In short, a sound theory of initial acquisition should allow for ownership of untransformed resources by individuals or collectives.

Another problem with the labour-mixing condition is that of ritualistic or pointless labour-mixing.

> Consider the case of Eddie, digging a hole on an unowned parcel of land. Eddie digs and digs. Before long, he is in the hole over his head, doggedly determined to keep digging down. He is not laying pipes or putting in a pool, but simply digging for the enjoyment of it, say, the exertion releases a neurochemical that gives rise to a pleasant feeling (Hadley, 2015: 43).

Let us assume Eddie's pleasure-giving exertion instantiates a case of labour-mixing. The case seems to render the right to exclude unintelligible or redundant since, although Eddie has transformed an unowned resource, he has no use whatsoever for it. Perhaps Locke's 'spoilage' proviso already prevents Eddie from owning the hole since—having already attained the sort after pleasure of digging—he no longer wants or needs it.

Hadley, however, has a different problem with the case. He thinks that Eddie's labour would count as an appropriation-legitimating condition only if he were sacrificing some other activity he could be doing instead of digging the hole. Extrapolating to wild animals Hadley asks: "More pertinently, when animals expend energy in the process of labouring, are they making a sacrifice in the sense of bearing some cost to themselves?" (Hadley, 2015: 43). By Hadley's lights, if our answer is negative, then labour-mixing does not qualify Eddie or wild animals to own the products of their labour.

Hadley's conclusion, however, has no bearing on whether labour-mixing is a sufficient condition for ownership. Consider the following: On Monday Jim cultivates a portion of unowned land and in so doing, foregoes collecting compost for his vegetables. On Tuesday Jim cultivates the same amount of land as yesterday *but* he had nothing else to do. By Hadley's logic, Jim appropriates the piece he cultivated on Monday but not the one he cultivated on Tuesday. In my view, having an opportunity cost or not does nothing to change our intuition that Jim, *prima facie,* owns what he cultivated on both days. If Jim loved gardening and had virtually nothing to forego, according to Hadley, he would have no right against his neighbour helping herself to the vegetables on Jim's garden. This is an absurd implication of making sacrifice matter for legitimate appropriation.

Let me end with a potential eliminator of wild animals from being possible owners. This is the argument that one needs to engage in labour as a result of one's rational choice for him or her to be eligible to owning the product of their labour. The argument, reports Hadley (2015: 41), posits that "would-be property owners are autonomous enough to be industrious and creative, and responsible for their own choices in life." This requirement reflects more the moral narcissism of humans than it offers a real condition to qualify labouring as ownership-producing. One problem is how the autonomy condition comports with our ontogenic and phylogenetic development. In both our development from infancy and our evolutionary development, it does not seem unreasonable to assume the notion of ownership precedes the emergence of full-blown rational autonomy.

Moreover, it seems human labouring is rooted in the survival instinct. True, humans have widened their labouring options and their superior intellect allows them to carry out more deliberative, creative labouring. Granted the beavers cannot choose to not build their labour-intensive complex dams, human beings cannot choose not to labour in the generic sense of the term either. That we can labour in a wider variety of ways is not sufficient to put a moral wedge

between our labouring and beavers' labouring. Moreover, there are some human beings whose labouring is an uninterrupted routine that the beaver-human line becomes very blurred. Supposing hunter-gatherer tribal peoples could not choose not to do what they do, we have nevertheless no reason not to affirm that they own what they collect and whatever temporary shelters they build.

In conclusion, with or without the Lockean proviso, labour-mixing is not a sufficient or necessary condition for the moral right to exclude others from a resource. It is potentially part of the story, but not the whole story to ownership. It is conceivable that one labours on a resource and leaves enough and as good of it for others, and yet he does not *need* it (anymore, for example). Perhaps, then, a needs-base account will yield a sound justification for appropriation. I will now therefore turn to a need-based account of ownership.

5.4 John Hadley's Basic Needs Argument

John Hadley (2015) has attempted to give a full non-Lockean justification of animal property ownership. His argument (Hadley, 2015: 54) can be schematically framed as follows:

(1) If an individual has an interest that crosses a threshold level of moral importance, then she has a right to use the goods in question.
(2) Wild animals have an interest in using natural goods (land, vegetation, waters, rocks, soils, etc.) to meet their basic needs.
(3) Wild animals' interest in using natural goods to meet their basic needs crosses the threshold of moral importance for them to have the right to use the natural goods.
(4) If wild animals have a right to use natural goods, then they have a property right in the natural goods.
(5) Therefore—since they have a right to use natural goods—wild animals have a property right in natural goods.[29]

If we accept the truth or reasonableness of premises 1–4, the truth or reasonableness of 5, the conclusion, is undeniable. In other words, Hadley's argument is logically valid. But we need not accept it as a sound argument yet as it is possible that at least one of the premises is false or unreasonable. As it turns out, by my lights, only one premise is true—premise 2. As Hadley (2015: 54-55) rightly puts it, "that animals use natural goods in order to meet their basic needs … is a truism of ecology".

[29] The statements 1–5 are paraphrased very closely to the original statements. Some are almost verbatim but the number of square brackets and ellipses required would make this recasting of the argument rather unaesthetic.

The first premise is untrue. I have argued in Chapters 2 and 3 that having an important interest is not a sufficient condition to having a right to the content of that which one has an interest in. Hadley's error is common among rights theorists. James Griffin (2008) for example, thinks individuals in Africa with AIDS have a right against rich pharmaceuticals in Western countries who could provide them with anti-retroviral drugs.[30] However, rights-based duties are too strong to support such a view. If I am hungry and thirsty because my money was stolen, this does not give me a right to the resources of the next rich person I find. I could beg, but not demand that he gives me some food and water. Important interests such as basic needs are necessary conditions for having moral rights, but they are not sufficient conditions. If premise 1 is false, so is premise (3).

The fourth premise is false. It is not the case that if wild animals have a right to use natural goods, then they have a property right in the natural good. An example can help elucidate why the conditional of premise (4) is false. Imagine wild animals in a national park. Some phytopathogens attack a plant which is essential to their diet leaving them threatened with malnutrition and starvation. However, not too far away, a human landowner has these plants on his land in a healthy state and in abundance.

First, it is not the case that the wild animals have a right to use the natural goods on the human's parcel of land. This is because, the landowner, having ownership, has the right to exclude the wild animals from his land. Analytically, he has no duty to the threatened wild animals to provide them with his *own* resource. This, however, is trivial. It only says the antecedent is false and, therefore, does not show the falsity of (4).

Secondly, and more importantly, let us suppose the landowner lets the wild animals use his land for feeding for a certain period while experts try to control the plant disease. The wild animals are *using* the natural goods but, *pace* Hadley (premise 4), it does not follow from this that they own the said piece of land. The land still belongs to the human Good Samaritan. Hence, the fourth premise is false. A property owner can let any number of users have access to her property without relinquishing her ownership or her right to exclude.

[30] I only deny that the positive rights to anti-retroviral drugs are *moral* rights. Other ethical grounds could easily be used to justify some *conventional* rights for pharmaceuticals to offer free or cheaper drugs to those who cannot afford them. In the wildlife domain, loosely speaking, according to the Endangered Species Act 1973 of the U.S., landowners have no right to exclude from their land individual wild animals belonging to endangered species. This is an example of a conventional and not a moral right, at least in my view.

Although Hadley makes a valid inference from his premises, we cannot accept his argument as sound. This is because premises (1), (3), and (4) are false. Need, as such, is a strong ground for conventional rights. But it falls short of grounding moral rights in general and the right to property in particular.[31]

5.5 From Animal Rights to Wildlife Property Rights

The discussions in the foregoing sections have led me to this point where I must present what I believe to be a plausible view of wildlife property. My strategy will be to construct a justification for wild animals' owning property by improving on existing ones that I have discussed. With the hindsight of the strengths and weaknesses of positions discussed, I offer what is hoped to be a coherent convergence of strands from the various views which is essentially an extension of animal rights theory. John Hadley has rightly admitted that "animal property rights theory … deserves to be regarded as implicit in traditional animal rights theory" (Hadley, 2015: 76). What follows, may therefore, not be so surprising.

We have seen that when we abstract from the liberal conception, the bare concept of property, it is highly plausible that that wild animals do meet the necessary conditions to be the sort of thing that could own resources. There is no reason to believe wild animals cannot have the right to *exclude* humans from resources that serve as wild animals' means of survival and subsistence; the right to *use* the natural goods found in their habitats; and the right to *security* in their enjoyment and possession of the rights to exclude and use.

The question that remains unanswered is what kind of justification can be offered for wild animals'—and indeed human beings'—right to exclude others from that which is owned, land for example. It is this sort of justification that I will now try to offer.

My starting point is null property. I will limit my discussion only to natural goods. All things found in the natural world that are not themselves right holders are appropriate objects of appropriation.

The Lockean theory goes some way in justifying possession of property rights. However, Lockean property theory was tailored for humans. Even in the case of humans, the theory is still faced with some important difficulties. I argue that the Lockean grounds of ownership are strengthened when we keep them on the wellbeing leash. In other words, the first occupancy

[31] Some rights theorists ground their argument for *positive* basic human rights on the seriousness of needs for subsistence, security, and liberty. See for example, Henry Shue (1980). To the extent that these rights are argued for in a political context, they should be construed as conventional social contract rights rather than moral rights. On my understanding the rights to subsistence, security, and liberty are generally *negative* moral rights.

and the labour-mixing criteria must be expressed in the language of rights. Below is my formulation of the necessary and sufficient conditions for initial acquisition by either humans or wild animals:

Let us imagine X and Y—both sentient eligible right-bearers—as early and late arrivals respectively with respect to some unowned natural resource, R.

Initial Acquisition Thesis: X owns R if and only if, and because, (a) X is the first to capture R or create R from some previously unowned resources and (b) R potentially or actually protects or promotes some element of X's wellbeing.

The first condition, (a), represents the First Occupancy and the Labour-Mixing criteria for initial acquisition. The maladies afflicting First Occupancy and Labour-Mixing are all, at least in part, due to the absence of the second part (b). The Lockean account ends up with the narrowness problem because the labour-mixing account does not take first occupancy *plus* my second requirement seriously. In my acquisition thesis, this flaw has been corrected. If X coming in from the South finds a tree that bears sweet nutritious fruits to meet his needs, he has the right to exclude Y, who comes in later from the North[32] and finds left unowned only trees bearing less sweet and less nutritious fruits. The trees are in their natural state, unaltered by either X or Y. My thesis has the advantage that should Z come later—and unbeknown to X or Y—grafts, mulches, and waters the trees to improve the quality and quantity of fruits, this does not change X's and Y's ownership of the trees despite the duo having not mixed their labour with the trees. A compromise or reward may be agreed for Z's troubles. But Z has no right to exclude X or Y from the resource.

The problem of ritualistic labour-mixers has also vanished. Under the Lockean account, this problem would be curtailed by the spoilage proviso. But the spoilage proviso has now become redundant since X can only own R if R is essentially linked to his wellbeing. If we find X has so much of R that it is surplus for his wellbeing, he has no right to exclude Y from it.[33] It is also clear under my account why Hadley's Eddie does not own the hole he has dug merely for digging pleasure.

[32] The South/North bit is meant to rule out that, before their encounter at R, the two had some relationship creating room for prior expectations, agreements, or traditions.

[33] We must not confuse legal with moral rights. X may still have legal rights to exclude even without moral rights. This is because legal rights may take into account other moral and prudential considerations.

But surely, by appropriating the sweetest and most nutritious tree—and thereby not leaving enough and as sweet and nutritious for others—X commits an injustice against Y? The answer is no. On my account, and Feser's (2005), X commits an injustice against Y only if X violates some right of Y's. Prior to appropriation by X, R was unowned, and, by definition, Y had no claim to R. There are virtuous or even selfish reasons for X favourably altering Y's restriction in accessing R as an exercise of his power-right. But as far as the account of justice given here is concerned, X's initial acquisition cannot result in any injustice against any late-comers.

The new initial acquisition account has clear implications for wildlife owning natural goods. The list of elements of wellbeing for wild animals is expectedly shorter than that of human beings. The list will largely constitute physical and psycho-social wellbeing. These elements are naturally realisable chiefly in an environment where humans have only limited access, if at all. Wild animals live in their natural habitat. Wildlife look for and find food in their natural habitat; wild animals protect themselves from danger in their natural habitat; wild animals create social bonds, and play in their natural habitats. These are but four examples that illustrate some of the interests that underpin the justification for the wildlife right to possess natural goods. These examples show that wild animals do meet condition (b) of the initial acquisition thesis.

Since wildlife rights apply only against human beings, X represents wild animals or humans and Y humans only, and R some natural goods such as forests. By dint of being early evolutionary arrivals, wild animals are generally the first occupants of their habitats. Non-zero sum (win-win) interspecific relationships are feasible between humans and at least some wild animal species. In principle, there is no necessity to having a moral prohibition on humans' accessing natural goods to which the wild animals had initial access. But it is a contingent fact we learn from ecology and experience that human settlements and activities—as we will see in the next chapter—are usually inimical or even mutually exclusive to the interests of wildlife.

The idea of first occupancy faces the problem of allowing for the right to possess and wellbeing to come apart. However, my proposed initial acquisition thesis solves the problem by making the law of first capture effective only if the appropriator's antecedent moral rights—that are, by definition, always, generally speaking, protecting some element of wellbeing—are at stake.[34] It is worth noting that Locke himself predicated his justification of ownership on

[34] Regarding *human* appropriation, first occupancy remains a problem. This is because autonomy and important achievement—important elements of human wellbeing—are rather slippery elements of wellbeing that I think let humans appropriate more than is necessary, or even good, for their physical and psycho-social wellbeing. Some

preservation or subsistence, albeit sometimes couched in theological terms. My view is an improvement on this because preservation is too narrow. Wellbeing is more robust as it caters for those rights that track non-consumptive or non- life-threatening psycho-social elements of wellbeing. For humans, especially, autonomy is a good example of such elements since someone can enjoy physical wellbeing but still suffer from violation of their autonomy. Humans may also own something for aesthetic, sentimental, or sacramental reasons that are beyond sheer preservation.

5.6 Wildlife Property Rights or Wild Animal Sovereignty?

Sue Donaldson and Will Kymlicka (2011) criticise animal rights theory and property rights theory as insufficient or underdeveloped for protecting wild animals. For Donaldson and Kymlicka the failure of animal rights theory to protect wild animals from certain harms including forcible dislocation signals not an "accidental oversight" but rather, "the limits of any theory that defines animals' rights solely on the basis of their intrinsic moral status" (Donaldson and Kymlicka, 2011: 156). Instead, by their lights, what is needed is an account that "articulates the sort of relations between human communities and wild animal communities that are both feasible and morally defensible" (Donaldson and Kymlicka, 2011: 157).

In this section, I contend that Donaldson and Kymlicka fall short on the principle of charity in their criticism of animal rights theory in general and, in particular, to the theory's application to wildlife ownership. I will demonstrate that the cases they think expose theoretic limitations are in fact pseudo problems—they are scenarios that animal rights theory, and of course, by extension, wildlife property theory, adequately deals with. I will then argue that the "wild animal sovereignty" solution Donaldson and Kymlicka is theoretically redundant even if it may be of rhetorical value by couching wildlife rights in the parlance of international politics.

Firstly, Donaldson and Kymlicka's find animal rights theory and wildlife property theory underdeveloped as the theories are purportedly unable to provide satisfactory explanations of some important questions. One such is the question of stating clearly the content of wildlife property rights, whether it is an individual wild animals' niche for itself and its family or the entire habitat shared with other wild animals. Other unanswered important issues, in Donaldson and Kymlicka's view, are the limits on human activity imposed by wildlife property rights,

humans, for example, simply want to become millionaires or billionaires to feel accomplished. This is however, not my problem here.

monitoring boundaries and regulating mobility, and protecting wild animals from dislocation by human activity or by other wild animals (Donaldson and Kymlicka, 2011: 160).

The inability to respond to the above issues, Donaldson and Kymlicka suggest, is the inevitable consequence of animal rights theory being "a framework that focuses solely on the intrinsic moral standing of animals" (Donaldson and Kymlicka, 2011: 160). Wildlife property theory is in their view an improvement over animal rights theory because it recognises "that our relations with wild animals must be understood in more relational and political terms. However, … focusing exclusively on property rights is incomplete and misleading as an account of these political relationships" (Donaldson and Kymlicka, 2011: 161). Hence, we have an alleged or implicit transitive progression from animal rights theory, wildlife property rights theory, and ultimately to wild animals' sovereignty. I will try to respond to this problem before presenting and responding to the second criticism made against property rights by Donaldson and Kymlicka.

Being based 'solely on the intrinsic moral status of animals' is Donaldson and Kymlicka's identified source of limitation for animal rights theory. The theory should, in their view, offer a 'relational and political' story too. By Donaldson and Kymlicka's lights, animal rights theory is weaker than wildlife property theory which in turn is weaker than wild animals' sovereignty theory (Donaldson and Kymlicka, 2011: 169). It is, however, not clear why Donaldson and Kymlicka think this. I find this transitivity bizarre as the three frameworks are not mutually exclusive. Wildlife property and wild animals' sovereignty—if there is such a thing—are but manifestations or derivatives of animal rights theory rather than rival approaches. Donaldson and Kymlicka's confusion arises from their too narrow view of animal rights theory as being restricted to only prohibitions against direct physical harm. However, this is not a view Tom Regan[35] would identify with and certainly not the view put forth or implied in this thesis in Chapter 2 and Chapter 3.

Animal rights theory simply identifies being a subject-of-a-life or possessing sentience as the value-identifier for eligibility to warrant the protection of moral rights. It is misleading to treat a criterion for holding rights as the sole focus of a theory. In fact, according to animal rights theory, sentience is merely the beginning, opening up the possibility for many rights depending

[35] Regan clearly sees his rights view as prohibiting depriving of wild animals their habitats. He says, "individual animals have valid claims and thus rights against those who would destroy their natural habitat … [one of the] practices that unjustifiably override the rights of those animals" (Regan, 2004a: 360). In fact, this implication of the rights view is, for Regan, crucial as it forms a convergence point for rights theory and environmental ethics.

on what elements constitutes an individuals' wellbeing. If some interests are political in nature, that will naturally lead to rights with the associated political dimension. In a way, moral rights are inevitably about the relational and political. A proposition denoting a moral right states a relation between the subject and the respondent of a right. And to the extent that moral rights denote just or unjust state of affairs, they belong to the realm of the political ensuring justice is at least one of the primary justifications for the state. As a political institution, the state exists primarily, at least, to guarantee the rights of those within the parameters of its authority. If moral rights are understood this way, to deny that moral rights theory is relational and political is baffling. And perhaps even more baffling would be to deny that property rights are relational and political.

Wildlife property rights theory gives justification for ownership and sets out prohibitions and permissions for those who own or for the non-owners of a property. An individual can own. By extension, a family can own. By further extension, communities can own, … several communities can own. The important point is that private, collective, and communal property all boil down to individual moral rights. Individual private rights are at one pole whereby ownership excludes everybody else but the owner. Null property is at the other pole whereby nobody is excluded from access to or exploitation of a resource.

Common-pool property is somewhere in between individual private property and null property. *Some* individuals have access to, and have the liberty to exploit, a resource to the exclusion of some other individuals. We have a class of individuals with use and security rights with respect to the resource and a class of individuals with no use and security rights to the resource. The first class (mentioned in the above scenario) we may call a family, clan, a village, or whatnot. My point is that individual rights still determine common-pool resource regime.

Conversely, it is not a collective such as a community that is excluded as such. Rather, it is every individual member of the second class that is prohibited from using the resource in question or from illicitly depriving first class's individuals from enjoying the resource. Thus, moral rights theory based on the intrinsic moral status of individuals—their capacity to have an interest that tracks some element of their wellbeing—yields a bundle of rights to exclude others singly or jointly from a resource, from using the resource, and from having security in possessing the resource. Unless Donaldson and Kymlicka can unpack their criticism of the grounding of rights theory on the 'intrinsic moral status of individuals', I see their criticism of

the approach's limitation as based on an uncharitable interpretation and as essentially unpersuasive.

Additionally, not all resources essential to wellbeing are material. People also create intangible cultural institutions and norms such as languages, rituals, rites of passage, and political structures. For many people, these elements of culture define who they are, providing a cultural landscape in which they can find meaning and flourish. That many rational and virtuous people are willing to make huge investments—including risk of loss of one's life—in the preservation of a culture somehow goes to underscore culture's importance to individuals' wellbeing. If this is reality, then individuals could have a right to a language just as they do to a piece of land. It is the individual's legitimate interests in a language, and in a set of norms and values, and social structure that may give rise to what we can call cultural rights. Violations of these cultural rights through alien rule can create anomie, with harmful effects on individuals' wellbeing.

In the last few paragraphs, I have tried to explicate what I see as relational or political dimensions of moral rights theory. Donaldson and Kymlicka envisage a non-political dimension and a political dimension and that moral rights theory suffices for the non-political but insufficient for the political. I argue that this may not be the case. It is quite plausible that moral rights theory as applied to humans and to animals is sufficiently robust to account for both property rights and sovereignty.

Donaldson and Kymlicka have questioned property rights theory for its alleged failure to identify boundaries for territories owned by individual wild animals. However, as argued in the previous section, only one boundary is required for all wild animals living in an identifiable ecosystem or national park.[36] Wildlife ownership of habitats and natural goods found therein does not exclude other indigenous species or non-anthropogenic 'invasive' species. Members of all species own the land in *common* to the exclusion of human beings. A human case clearly shows that there is nothing conceptually or practically problematic with this kind of ownership. Members of one tribe but coming from different families and clans may have ownership of the natural goods in a forest, to the exclusion of members of some other tribe. With regards to the forest in question, individuals have no claims against each other to any given square inch of the forest apart from perhaps where the intra-group rule of first capture applies. It is not the case

[36] Although an argument can be made for reallocation of land to wild animals, for my purposes, I have taken a *fait accompli* approach such that wildlife property rights will be limited to current protected area demarcations.

therefore, *pace* Donaldson and Kymlicka, that wildlife property is underdeveloped with respect to boundaries of ownership of parcels of land within an ecosystem.[37]

I will now address Donaldson and Kymlicka's second concern—forcible dislocation or displacement of wildlife. Donaldson and Kymlicka's argument relies heavily on the analogy between colonialism and dislocation of wildlife from their habitats. In their view, colonialism was based on the doctrine of *terra nullius*. Consequently, "existing inhabitants [such as Australia's Aborigines] were in an important sense simply rendered invisible" (Donaldson and Kymlicka, 2011: 168). In Donaldson and Kymlicka's view, wildlife property rights do not sufficiently protect wild animals from being displaced by humans. Colonialism provides us with reason or evidence for this insufficiency of property rights.

> European imperialists were often quite prepared to accept that indigenous peoples had property rights, even as they denied them sovereignty. The result was that indigenous individuals or families were able to maintain a plot of land, but lost their collective autonomy, as Europeans imposed their own laws, culture, and language on indigenous peoples. Similarly, what wild animals need is not (or not only) a property right in an individual nest or den, say, but protection of their right to maintain their way of life on their territory—in short, they need sovereignty. (Donaldson and Kymlicka, 2011: 178).

The nub of Donaldson and Kymlicka's argument for sovereignty seems to be simply that, from the lessons of colonisation, wild animals cannot have full protection against dislocation or displacement by humans from their habitats based on animal rights theory. In their view, just like *terra nullius* was evoked for colonialism, wildlife territory is conceived as uninhabited, awaiting human acquisition and development. To give full protection of wild animals over their habitats Donaldson and Kymlicka recommend sovereignty for wild animals akin to that of human nation-states. They explain the role of sovereignty thus: "Insofar as the flourishing of a community's members is tied up with their ability to maintain their own forms of social organisation on their territory, then we commit a harm and an injustice when we impose alien rule on them, and *sovereignty is the tool we use to protect against that injustice*." (Donaldson and Kymlicka, 2011: 172; emphasis added). A community's sovereignty entails that "we have no right to govern that territory, let alone to make unilateral decisions by stewards on behalf of wards" (Donaldson and Kymlicka, 2011: 170).

Assuming mine is a fair representation of the argument by Donaldson and Kymlicka, I interpret the argument as an inductive argument from analogy and I evaluate it as inadequate. The

[37] Of course, among the wild animals themselves, there is some wild 'morality' at work with territory markings indicating what parcel of land belongs to a family or clan of hyenas or elephants. But I think the morality at work is the 'might-is-right' sort. Other members will most likely 'respect' the boundaries only to the extent that the contrary might cost them their limb or life.

analogy between colonialism and displacement of wildlife from their habitats, in my view, contains some factual inaccuracies and an important disanalogy. However, before proceeding to address these concerns about Donaldson and Kymlicka's analogy, I would like to highlight a seeming contradiction.

Donaldson and Kymlicka allege that colonialists deemed indigenous territory *terra nullius,* and because of this, proceeded to occupy it. They claim that "the justifications given for colonizing animal habitats are strikingly similar to the 'terra nullius' justifications for colonizing indigenous lands" (Donaldson and Kymlicka, 2011: 168-169). If we assume that this was indeed the case—apparently, it was not the case—then, Donaldson and Kymlicka are contradicting themselves. *Terra nullius* literally refers to "uninhabited territory" (Ritter, 1996: 7) and there is no suggestion Donaldson and Kymlicka have in mind a different construal.

The contradiction occurs because Donaldson and Kymlicka deny that wildlife property rights can adequately protect humans or wild animals from displacement or dislocation. Yet they employ a concept that refers to land as nobody's property to explain colonisers' rationale for colonizing other peoples or wild animals. Surely, if the justification of colonisation was the apparent absence of property rights in land by indigenous people, then had the colonisers recognised indigenous people's right to their territories, morally at least, the existence of property rights alone would have prevented colonisation.

Contrary to Donaldson and Kymlicka's view, wildlife property theory would suffice to ward off colonisers. And similarly, wildlife territorial ownership would successfully ward off those who wish to displace wild animals from their natural habitats. But despite endorsing the *terra nullius* colonisation thesis, Donaldson and Kymlicka want to insist colonialists did leave indigenous people's land ownership intact but still colonised them. *Terra nullius* is absence of property rights and not absence of sovereignty.

Having exposed the contradiction, I will now proceed to discuss specific problems with Donaldson and Kymlicka's analogy between colonisation and displacement of wild animals from their habitats.

The first problem with the analogy is Donaldson and Kymlicka's identification of absence of sovereignty as what let imperialists impose their rule over indigenous peoples and resources. European imperialists could accept that indigenous peoples had property rights and yet deny them sovereignty, Donaldson and Kymlicka think. This is a theoretic possibility with respect to what Lea Ypi (2009) refers to as civilising colonialism whose purported aim was

enlightenment of barbarous ethnic communities. However, this does not seem to match the facts of colonisation. There are at least two reasons to be sceptical about Donaldson and Kymlicka's claim that colonialists accepted indigenous property and land rights even as they imposed alien rule.

Firstly, colonialism was partly motivated by the quest for new territory for settlement and by commercial reason. Colonialism took two forms that Lea Ypi aptly describes as "settler colonialism" and "commercial colonialism" (Ypi, 2009: 161). In many cases the decision to own foreign territory was made beforehand. The partition of Africa among some European countries at the Berlin Conference (1884-1885) is a case in point. Brute force and deceit were used to actualise the remote sharing of territory on the African continent. Furthermore, to some extent, both Britain's Cecil Rhodes' British South Africa Company and Belgium's King Leopold's International Association of the Congo indicate the colonial interest in resources or property. Theodore Roosevelt unequivocally admitted the colonial intention of land dispossession:

> The rude fierce settler who drives the savage from the land lays all civilised mankind under a debt to him. It is of incalculable importance that America, Australia, and Siberia should pass out of the hands of the red, black, and yellow aboriginal owners and become the heritage of the dominant world races (quoted in Dowie, 2009: 14).

This explicit statement of the colonial motivation casts doubt on the view that colonialists respected indigenous people's property rights. Although the reasons for colonialism are multifaceted, it seems there was a clear intent, at least in some cases, to disposes indigenous people of their land and resources.

There is reason for scepticism about Donaldson and Kymlicka's civilising colonialism, which may have involved political or cultural usurpation while leaving intact indigenous people's basic individual and property rights. A common image of the colonialist is that he went to Africa with a Bible under his armpit and a gun in his hands. Another illustrative story is that the colonialist asked the indigenous people to bow down in prayer. When the colonialist said 'Amen!' the natives looked up to find their land and resources gone. I think these anecdotes are closer to historical reality of colonialism than Donaldson and Kymlicka's picture.

If we accept land displacement and resource expropriation from indigenous peoples by Europeans as forming at least part of the motivation for colonising non-European societies, it seems we must reject the assumption made by Donaldson and Kymlicka. It seems that it is not the case that imperialists accepted indigenous peoples' property rights in their land and natural

resources and merely imposed foreign rule or alien cultural ideas. In many cases, it appears political rule was but a means to acquiring and maintaining control over resources to which, *prima facie*, the indigenous people had a prior moral claim. What this means is that, contrary to Donaldson and Kymlicka's view, sovereignty does not serve any purpose over and above property rights and is thereby rendered redundant as the possible alleged missing link for protecting wildlife from dislocation by humans.

Furthermore, even if we accepted that imperialists would not violate indigenous people's ownership rights to resources, there is a second reason for questioning the relevance of sovereignty. Donaldson and Kymlicka seem to be claiming that if the colonised societies had sovereignty, colonialism would have passed over them in a fashion similar to the Jewish Passover.

> When Europeans colonized the Americas, they denied this was a violation of the sovereignty of indigenous peoples on the grounds that indigenous peoples lacked any concept or practice of sovereignty—no individual or institution within indigenous communities was seen as having 'absolute political power' to issue commands binding on all members (Donaldson and Kymlicka, 2011: 172).

However, this attempt at explaining forced rule and resource expropriation runs into counterexamples. As Donaldson and Kymlicka themselves acknowledge, "many indigenous societies such as the Incas … clearly did have state-like structures" (Donaldson and Kymlicka, 2011: 286, n.17). Pre-colonial Africa has documented kingdoms with great political power, authority, and hierarchical structures. Among the well-known are the Azande, Buganda, Zulu, Kongo kingdoms, and Ethiopian empire (see Middleton, 2001).

It seems fair to say, for the imperialists, presence of sovereignty or lack of sovereignty was not a factor in colonising non-European societies. Indeed, as mentioned above, where the existence of sovereignty could not be denied, colonialism advocates would cite the spreading of civilisation seen as European norms and values such as monogamy as reasons for subjugating other societies (Donaldson and Kymlicka, 2011: 287, n.17). This creates a problem for Donaldson and Kymlicka. If the presence of sovereignty—in at least some African societies—did not deter the imperialists, why would it now be the solution to protecting wildlife habitat in a way that property rights is not?

It seems that Donaldson and Kymlicka's sovereignty addendum to animal rights theory lacks a defensible motivation. In other words, *terra nullius* was constructed or implored to rationalise—not to justify—control of other people and resources in many cases by brute force. Some authors have argued that *terra nullius* is a legal fiction. "It is becoming widely

acknowledged that *terra nullius* was not used in the eighteenth and nineteenth centuries to justify dispossession of Australian Aborigines. *Terra nullius*, it seems, was an impostor" (Fitzmaurice, 2007:1). David Ritter, for example, contends that "the classification of the Australian colonies as something like '*terra nullius*' did not … cause aboriginal land rights not to be recognised under Australian common law" (Ritter, 1996: 7). In fact, land which the colonialists took had owners and at least some of the societies on which they imposed their rule had political sovereignty.

A premise of Donaldson and Kymlicka's argument for the superiority of sovereignty rights over property rights is that indigenous people had property rights but no sovereignty. Their argument has some credence if in fact colonialists recognised indigenous people's land rights but proceeded to colonise them because of lack of sovereignty. It turns out we do not have such cases or, if such cases exist, there are so few that they can only offer very weak support for Donaldson and Kymlicka's argument. What seems historical is that colonialists had no regard for indigenous property rights in land or in sovereignty. Hence the fact of colonisation cannot be used as a theory test between a property-based theory and a sovereignty-based theory. As the basis for Donaldson and Kymlicka's analogy collapses, their argument is rendered weaker.

In addition to the above-highlighted historical inaccuracies, Donaldson and Kymlicka's analogy fails because of an important disanalogy between human societal sovereignty and the proposed wild animals' sovereignty. This is the difference that whereas we can separate between expropriation and political domination or illegitimate political power in the case of humans,[38] the distinction does not exist in the case of wildlife. As Donaldson and Kymlicka point out, it is possible—conceptually at least—for colonised humans to maintain their right to a parcel of land and yet find themselves forcibly subjected to the laws, culture, and language of the colonial masters. That is to say, property rights and sovereignty can come apart conceptually. This, however, has no analogy in the case of wildlife.

The upshot of the above disanalogy is that in the case of humans, sovereignty seems to play a unique role of protecting political and cultural elements of their society. Hence, there is something for sovereignty to protect which is not sufficiently, if at all, protected by property rights such as the right to a habitat. Contrariwise, in the case of wild animals, nothing seems to

[38] This is the distinction between the right to resources and territory and the right to jurisdiction (Ypi, 2009). I think property rights comes with the notion of sovereignty which is distinct from the sovereignty of political self-determination. Perhaps making a distinction between property sovereignty and political sovereignty can help make the discussion clearer.

count as imposition of laws, culture, and language of an alien community that would warrant the sovereignty appendix *in addition* to animal rights or wildlife property rights. Europeans can impose Christianity, languages, and loyalty to European royalty among African tribes. However, such imposition on wild animals can only be the content of fictional literature.

Lastly, part of the alleged superiority of the sovereignty model over the property rights model is based on Donaldson and Kymlicka's committing a straw man fallacy; they caricature John Hadley's argument for wild animals' property rights. As cited above, Donaldson and Kymlicka assert that "what wild animals need is not (or not only) a property right in an individual nest or den, say, but rather protection of their right to maintain their way of life on their territory—in short, they need sovereignty". Clearly, a property rights argument for a bird's nest or a hyena's den is insufficient. But Hadley has clearly not argued for wild animals' property rights in their isolated hiding, sleeping, or breeding spots. He states unequivocally that "the paradigm case of nonhuman animal property ownership is enjoyment of a secure territory free from deleterious human impact" (Hadley, 2005: 306). Any doubt left as to the content of wildlife property rights, Hadley dispels with his book's subtitle, *A Theory of Habitat Rights for Wild Animals* (Hadley, 2015). It is thus clear that property rights for wild animals are essentially rights in their habitat and in the natural goods found within the habitats. This right proscribes not only extractive human activities but also any form of intrusion that will compromise wild animals' enjoyment of their property, the habitat.

Indigenous people already had/have *moral* title to their land and so do wild animals to their habitat. Morally justified legal rules or political conventions can only be seen as supervening on the pre-existing moral reality. The wrongness of colonialism comes from violation of property rights of indigenous people, the violation of political rights to self-rule among other racial injustices, and as Ypi (2009: 174) argues, the "violation of standards of equality and reciprocity in setting up political relations."[39] This does not mirror well dislocation of wild animals from their habitats, which, in my view, would be sufficiently forestalled by recognition of property rights of wild animals alone.

In summing up, this chapter has tried to distil the concept of property from Anthony Honoré's liberal conception of property. The result is a bundle of rights—rights to exclude, use, and security—that I believe are not ethnocentric or speciesist. Using this concept, I argue that the

[39] I think Ypi's Kantian analysis of what's wrong with colonialism is tantamount to morally nonbinding contract. Necessary conditions for a morally binding contract are sanity of contractors, no withholding of information, no force or threat of force, and the end is not to violate some rights (see Hooker 2000: 53).

idea of owning wild animals is conceptually confused as the idea of wildlife rights does not comport with the idea human ownership of wildlife. Wildlife rights impose restrictions that would attenuate what it means to own something. Conversely, fully owning wildlife would dilute what it means for wildlife to have moral rights. Given the scarcity of the goods of life, whoever owns something usually does so to someone's disadvantage. Morally, this calls for a stringent justification for excluding others from a resource. In this chapter, I explore 'first occupancy', 'labour-mixing', and 'basic needs' justifications. I find them wanting but illuminating, leading to a synthetic account of morally justified initial acquisition.

Finally, the account of wildlife property faces the charge of inadequacy from Sue Donaldson and Kymlicka. Hence, in the rest of the chapter I try to fend off the threat posed by the rival theory of wildlife sovereignty. I argue that Donaldson and Kymlicka's theory of wildlife sovereignty is not superior to John Hadley's or my version of wildlife property theory. I argue that rather than filling up any conceptual vacuum in the protection of the moral rights of wild animals, Donaldson and Kymlicka misdiagnose a non-existent problem and prescribe a solution which, if adopted, would merely serve to muddy the discussion, prolonging it when what should now preoccupy political philosophers is the integration of wildlife rights into new or existing hitherto anthropocentric political theories and institutions to halt the massive dislocation of wildlife, degradation, and fragmentation of wildlife habitats.

Rejection of human ownership of wild animals and affirmation of wild animals' ownership of some natural goods has completed setting up the stage for re-evaluating human-wildlife relations. I will now turn to one of the most controversial topics in wildlife conservation and political ecology. This is the problem of human-wildlife conflict, broadly construed.

Chapter 6 Human-Wildlife Conflict: A Rights-Based Analysis

Humans have a love-hate relationship with wild animals. The relationship oscillates between protection and extirpation from time to time, from society to society, and from species to species. A plethora of changing values influences what happens at the human-wildlife interface. John Robinson has eloquently expressed some of the contrasts that colour the contours of our relationship with wild animals:

> Jaguars are cultural icons throughout South America, but they also are major predators of cattle. Baboons exhibit social shenanigans that keep ecotourists enthralled, but they also raid crops. Elephants elicit inordinate attention from conservationists, but they are a threat to human life and limb. Pigs, goats and donkeys are valued by animal rights advocates, but they tear up our parks and reserves (in Woodroffe, Thirgood, and Rabinowitz, 2005: xiv).

The upshot of this human-wildlife relationship complex relationship is that even for human beings who for various reasons value wild animals, conflicts are an inescapable aspect of the moral terrain we share with wild animals. Acknowledging that wild animals have rights does not solve human-wildlife conflicts as such. However, what animal rights theory does is provide a different account of what legitimate human-wildlife conflicts are and the morally acceptable ways of preventing or resolving the conflicts whenever they might or do occur.

This chapter navigates cases in which the rights or interests of wildlife conflict with those of humans. These cases, I shall refer to as instances of human-wildlife conflict. These instances include when a human threatens the life, health, or livelihood of a animal or vice versa. Sometimes the conflicts arise from mere perception of a threat rather than from an actual threat. Human use of wildlife 'resources' is not normally regarded as a token of human-wildlife conflict and neither are managerial practices that involve decimation or extirpation of wildlife. In my view, however, these are conflicts in the sense of parties of the two sides having *prima facie* irreconcilable interests. The killed wild animal presumably has an interest in not being killed while the wildlife managers' interest is the opposite—killing the wild animal.

A conflict of rights is, in my view, a legitimate conflict. Those conflicts arising from human interests to utilise wildlife are not, in my view, genuine conflicts of rights. This is because—as argued in the previous chapter—humans have no use rights in wildlife when wildlife rights prohibit the use. In the next section, I discuss the question of the moral legitimacy of self-defence with a view to offering some insights into human-wildlife conflicts. Judith Jarvis Thomson is a thoroughgoing rightist and so, her theory of self-defence provides an appropriate starting point for my analysis of rights-based justification of self- and other- defence.

Before discussing the problem of self-defence in the context of human-wildlife conflict, I need to clarify a few important terms that spell out relationships in self-defence scenarios. Parties in the scenarios occupy roles of direct threats, indirect threats, bystanders, culpable threats, innocent threats, and victims. A being who is a *threat* puts another being, *victim*, in harm's way. An indirect threat will not harm the victim but her movements, actions, or position contribute to the danger to the victim in a way that, were the indirect threat absent, the direct threat would cease to pose any danger to the victim. Unlike the indirect threat, the direct threat's position, actions, or movements will in themselves actually harm the victim (Frowe, 2014: 32).

Threats can be culpable or innocent. Unlike culpable threats, innocent threats lack ill intent and are not negligent either but they fortuitously pose a threat of harm to the putative victim. Judith Thomson suggests an even simpler way to understand innocence—as "free of fault" (Thomson, 1991: 284 n1). By definition, whether directly or indirectly, moral patients—who include wild animals—are always in this category of innocent threats. This is because, "unlike human moral agents, *they cannot be anything but innocent*" (Regan, 2004a: 295).

6.1 Critique of Thomson's Account of Self-Defence

Thomson (1991) offers a rights-based defence of self-defence. Let us look at one of the scenarios she presents. She asks us to imagine a man who, by no fault of his is falling towards you and you have no way of getting out of the way to your safety. "If you do nothing, the fat man will fall on you, and be safe. But he is *very* fat, so if he falls on you, he will squash you flat and thereby kill you" (Thomson, 1991: 287). The very fat man is a paradigmatic innocent threat. The man could have been pushed by some malicious person or it could be that he was merely blown off balance by an unpredictable strong gust of wind. He poses a threat to your life not as a moral agent but as a mere moral patient. According to Thomson, it is well within your rights to kill the fat man to save yourself, his innocence notwithstanding.

Thomson's argument for self-defence in the fat man case or indeed any other case is as follows (Let us assume Y is the victim and X the threat):

(1) X has a right to kill Y if and only if Y has no claim that X does not kill her.
(2) Y has a claim that X does not kill her.
(3) X has a duty to not kill Y.
(4) If Y does not kill X, X will kill Y.
(5) In threatening to kill Y, X loses his right that Y does not kill him.
(6) Thus, it is permissible that Y defensively kills X.

Thomson stresses that "what makes it permissible for you to kill them is the fact that they will otherwise violate your rights [sic] that *they not kill you*." (Thomson, 1991: 302n13). The point she is making is that moral agency is irrelevant to the permissibility of killing someone who would otherwise kill you. In other words, moral agents and moral patients are morally in the same position and the same account goes for them as to why they may be killed defensively.

It is easy to see that we can substitute X with some carnivore or any wild animal that has the capacity to attack and injure or kill a human being who in this case substitutes the Y. In addition, although Thomson talks about killing, the question of self-defence need not always involve the use of lethal means. The structure of the argument remains the same whether we are talking about killing or some other non-lethal but harmful forms of defence such as pepper-spraying, tasing, or darting to disarm a threat. With these remarks, I will proceed to evaluating Thomson's argument.

Although I agree with Thomson's conclusion and with premises (1) and (4), I find her insistence on (2), (3), and (5) problematic. Premises (2) and (3) are logically equivalent. Thus, they fall or stand together. I will address these first before addressing number (5).

Thomson holds that the fat man who, by no fault of his, falls in a narrow well and will certainly kill you while he survives unless you kill him first would *violate* your right just as a malicious driver steering his truck towards you would. She rejects the hypothesis "that the fault-free driver [or fat man] violates no right of yours if you do not stop him, and therefore does not cease to possess a right by virtue of what he does" (Thomson, 1991: 301-302). Because for her what matters is only that, if not killed, the threat would have violated the victim's right, Thomson posits the same explanation for the justifiability of killing the threats irrespective of whether they willed their behaviour or not. This conflation of a villainous driver, innocent driver, and innocent fat man is rightly questioned by Benbaji (2005) and Frowe (2014).[40]

To give a rights-based account of innocent threats, we must recall the internal structure of a right. A right—we noted in Chapter 2—must have a subject, content, and a respondent. The subject of a right is any being whose interests could be aided or frustrated. The respondent—as the term suggests—must be someone capable of responding to a prohibition or requirement in the right's content. In other words, the respondent must be able to recognise the content of

[40] I disagree with the alternative accounts supplied by Benbaji and Frowe, which, however, I will not delve into here. Space allows me only to insert my own conceptual wedge between defence against a villainous aggressor and against a fault-free free-falling right-bearer. I must note, however, that unlike Benbaji's and Frowe's, my wedge seeks to remain loyal to the Hohfeldian framework.

the right *and* alter her behaviour accordingly. It only makes sense to hold certain rights against a being that has the ability to grasp the notion of a right (that is, the subject, content, and recognition of herself as the respondent) and the capacity to respond appropriately. Only moral agents fulfil this requirement. Rights prescribe or proscribe how the respondent *ought (or ought not)* to behave. Therefore, anyone or anything that *cannot* respond appropriately to the prescription or proscription cannot qualify as a respondent. Thus, boulders and moral patients cannot be respondents to any rights. They are not—*pace* Thomson—the sort of beings against whom we can have a claim-right that they do not kill us.

If X cannot respond to our rights, then we cannot have rights against X. And if X cannot respond to our rights, then X cannot have duties to respond to our rights. Therefore, we must reject the argument that predicates the permissibility of our killing X on X's failure to abide by the duty not to kill us. My own account of why we are justified in attacking those unjustifiably threatening us involves merely pointing out and correcting what I think is a minor oversight in Thompson's account. This misstep occurs in premise (5)—the assertion that, "In threatening to kill Y, X loses his right that Y does not kill him." Thomson's account leaves a mystery of how the aggressor loses or forfeits his claim-right against being attacked by the putative victim.

The flaw in Thomson's account, I believe, consists in restricting her account to first-order rights-relations. In Thomson's account, all the justificatory work is done by claim-rights, liberty-rights, and their correlatives. Consequently, Thomson misses a crucial turn, and missing this turn leads her to conflate otherwise discrete cases of the villainous and innocent threats. The conflation lies in her asserting that both villainous and innocent may be killed because they would otherwise violate the victim's right. The turn she misses becomes evident when we consider L. W. Sumner's analysis of the Hohfeldian framework of rights. Sumner explains that the first-order relations involving claim/duty and liberty/no-claim are static. Beings are, so to say, frozen in these moral positions. But the second-order alethic relations introduce into rights relations some dynamism.

The dynamism introduced by alethic rights relations can help us understand how moral positions change in real-life's continuously changing moral landscapes. The power-right is at the pivot of this flexibility. I must quote at length:

> Basically, I have the power to affect (that is, alter or sustain) some normative relation just in case the rules of the system make it possible for me to do so. A rule which confers a power thus creates the normative analogue of a physical ability. Familiar instances of powers in rule systems include … the capacity of individuals to alter their own normative relations by making agreements, and so on (Sumner, 1987: 29).

The power-right is not only exercisable in altering one's normative relations but also of those who wittingly or unwittingly come under one's power. Ways to alter moral relations between X and Y include giving away to the other what one has and entering agreements. In both these two ways, both X and Y—themselves or through some legitimate proxies—voluntarily accept the new moral relations. This emanates from one of the most important interests, the interest in self-determination. But voluntariness is not necessary for change of rights-relations. One's moral rights and correlative moral burdens can change involuntarily or non-voluntarily. However, this happened, by entering into your moral zone any moral patient becomes *liable* to your decisions relative to the gravity of the intrusion. We are on the verge of explaining the mystery of how innocent and culpable aggressors alike may lose their right to life.

My moral zone is the domain under which I have the final word on what happens to me or others. In other words, I have powers. Within the confines of this domain, those who enter it become subject to my decisions. In Hohfeldian terms, by entering Y's moral zone, X's moral status changes from immunity to liability corresponding to changes in Y's moral status changing from disability to power. It is important to note that Y's having a power-right against X means only that Y *may* alter X's claim-right into a no-claim. Y's having this power-right against X gives to Y the hitherto unavailable liberty-right to harm X. It does not follow—as Thomson thinks it does—that X loses or forfeits her claim-right. For all we know, Y may be a pacifist or a martyrdom-seeker who may decide against altering X's claim-right. This account comports well with a very important dimension of self-defence namely, other-defence.

Other-defence or alter ego defence involves "cases in which you cannot save yourself but someone else can" (Thomson, 1991: 305). We can express the same thought by saying other-defence involves cases where you are not imperilled but you are in a position to save somebody else who is. I think it is important to note that Thomson's definition of other-defence highlights the victim's *inability* rather than the victim's *unwillingness* to defend herself. This makes an important moral difference in the justification of other-defence.

We ask the same question as in self-defence but with actors being different: "Is the third party justified in killing an aggressor against an innocent putative victim?" Thomson answers affirmatively with the caveat that leaves room for agent-relativity.[41] She states that self- and

[41] To appreciate the importance of this caveat, imagine that the man falling in the narrow well is the beloved son of the elderly and sickly man at the bottom of the well. It is easy to see that the elderly man might sacrifice himself for his beloved son to live. This agent-point-of-view is *prima facie* opaque from a third party's point of view.

other- defence "are not exactly two sides of the same coin in light of considerations of autonomy" (Thomson, 1991: 306). The introduction of considerations of autonomy brings in the possibility of a third-party meddling where they should not be meddling. The third-party would be justified in killing the aggressor only if the victim implicitly or explicitly wishes that the third-party intervene. Other-defence is not agent-neutral for this reason that, in responding as if it were a case of self-defence, the third-party might actually not only violate the right of the victim but also of the threat since the threat's loss of a claim-right is incumbent upon the victim's decision. Other-defence is therefore permissible only in cases where the victim *cannot*, and not so in those cases where the victim simply *will* not defend herself. Thomson's analysis is interesting and sounds plausible. I think, however, that there is more to the story of the asymmetry between self- and other-defence.

There seems to be an agent-relative privilege in self-defense that is absent for other-defence that is not explicable merely by reference to the inability/unwillingness distinction. This difference is that whereas self-defence by the innocent is justified in cases of innocent threats and culpable threats alike, other things being equal, other-defence is justified only in cases of culpable threats. I do not have any confident argument for this. I can only timidly venture three explanations, some that are perhaps more sociological than philosophic.

The first explanation for the asymmetry in permissibility for self-and other- defence is that in the case of an innocent threat, we are faced with a situation where innocent people, who, in Jonathan Quong's words, are "tragically locked in a lethal conflict" (Quong, 2012: 58). In this scenario, the call is not for third parties to make and, in fact, we have to sympathise with the victim that she had to harm an innocent being, albeit permissibly so. At the same time, we feel sorry for the innocent threat for finding himself in such an unenviable situation where, despite his innocence, his defending himself is morally impermissible for he has strayed into a power domain of another rendering himself liable to defensive harm.

Secondly, in the case of the culpable threat, other-defence is *prima facie* permissible because the assailant violates some shared moral norms against malicious or negligent harm to others. The assailant's threat is thus recognised by other moral agents as unjust and, arguably, everyone has permission to prevent an injustice. The reason for this agent-neutral permission is easy to see on the rights account. The assailant lacks any claim-right whatsoever that others do not stop him from causing wrongful harm to others. This logically translates to the implication that everyone else has a liberty-right to stop the assailant from harming the victim. It is again easy

to see why this is the case. Causing wrongful harm to others does not track any element of the assailant's wellbeing, and of course, the function of moral rights is to protect some elements of wellbeing. The victim in this case has some important interest to protect whereas the assailant has none.

Lastly, other-defense of an innocent victim is disguised self-defense.[42] When a driver maliciously steers his truck towards an innocent pedestrian, he does not threaten her alone; he threatens all of us. When some serial killer strikes in a community, the prevention of the next attack is a matter of self-preservation or a matter of protecting those dear to us. I have every reason to fear for my life when a man is on the loose who kills only for his sadistic pleasure. So, his threatening another, gives me permission to act defensively as if in my own behalf. To adapt John Locke, by threatening one of us, the culpable aggressor has "declared War against all Mankind, and therefore may be destroyed as … one of those wild Savage Beasts, with whom Men can have no … Security" (1967, *supra* note 2, at 278). A threat upon one is a threat upon all and a defence of one is a defence of all. However, this third justification for alter ego defence suffers from a problem that it cannot be generalised without some qualifications. It seems less problematic if the state is the defender, though.

The foregoing analyses, albeit timid ones, bring us to a happy ending with respect to wild animals. We have no permission, all things considered, to intervene when a predator attacks another wild animal or, as the case may be, a human being. Only innocent victims may defend themselves or may be defended by others against wild animal threats. On the other hand, when a moral agent threatens to violate a wild animal's rights, we are within our rights to interfere on behalf of the victim to prevent an injustice from occurring. The laws regarding self- and other- defence must change to reflect non-speciesist prohibitions and permissions that are not biased in their content towards humans.

Speciesist bias is currently pervasive in the way that human threats to wildlife are treated and vice versa. As Bernard Rollin observes, in many states in the United States "a farmer can shoot a dog that crosses his property as a potential threat to livestock. Ironically … a householder

[42] This point applies to other-defence of the innocent even against an innocent threat where the threat is a carnivore. Human-eating carnivores such as those in J. H. Patterson's *The Man-Eaters of Tsavo* are a good example showing how an attack on one can spiral into a threat for all. "At first [the two man-eating lions] were not always successful in their effort to carry off a victim, but as time went on they stopped at nothing and indeed braved any danger in order to obtain their favourite food" (Patterson, 2015: 10). I give this example only for demonstration and not to show Patterson was justified in lethally defending himself and his workers. It might as well have been that the humans violated the lion's territorial rights, eaten or scared away the lions' usual prey, and this is why the lions needed an alternative diet of human flesh.

may not shoot a burglar or robber unless he has reasonable grounds for believing that his life is threatened (Rollin, 2006: 155).[43] Of course, I assume—as I believe Rollin does—that livestock is here being seen as property and so they are not being defended as right holders. It is also well-known that stray dogs in the Third World are systematically killed on mere suspicion that they pose a public health threat of rabies to humans, which treatment is not extended to humans confirmed to be carrying contagious pathogens. In the remainder of this chapter, I apply some of the theoretic principles arrived at here and in preceding chapters to human-wildlife relations.

6.2 Other-defence of Wildlife against Human Threats

Under the current political arrangements, the defence of wildlife is primarily the role of states. Thus, wildlife living within the Amboseli National Park are under the protection of the Kenyan state. In performing this task of defending wildlife, governments have sometimes employed a highly militaristic approach that involves a shoot-to-kill policy against suspected poachers found in wildlife territories. This seems a clear-cut case of other-defence and this section shall be limited to a discussion of this, if controversial, approach.

In the mid 1980's, Zimbabwe launched Operation Stronghold whose core was the shoot-to-kill policy. The operation was devised to tackle the rife poaching of elephants and rhinos for their tusks and horns respectively. Within a decade of its launch in 1984, about 170 poachers had been killed, the majority being Zambian and a few Mozambicans and Zimbabweans (Duffy, 2000).[44] In 1988, Daniel arap Moi, then Kenyan President, issued a shoot-to-kill directive against poachers (Boynton, 2014: 34). As narrated by then Director of the Kenyan Wildlife Services, Richard Leakey, in his memoir *Wildlife Wars,* the poachers were killing not only elephants but also tourists and game rangers, and had also killed a lion conservationist. Richard Leakey was happy with the directive. He issued a strong warning: "This is the last stroke for the marauders in our national parks and game reserves. If they are wise, they will leave these areas—*now*! …. We are here and everywhere; we are looking for you and we will find you. And when we do, that's the end" (Leakey, 2002: 100-101). In a matter of days three Somalian

[43] The apparent bias may be because of several nonlethal means of dealing with the human threat that may not be available in the case of a animal threat. However, doubts justifiably linger that dogs—being dogs—are deemed more disposable than humans *qua* human. In the absence of a rabies outbreak, one would expect a non-speciesist policy to recommend nonlethal means of preventing dog attacks. The danger posed by burglars seems more clear and imminent than that of a stray dog who may have simply lost his way home or has been neglected by his human guardian.

[44] It is not clear exactly how many wild animals were poached during the same interval. It is, however, estimated that from the time commercial poaching of the black rhino began in Zimbabwe to the early 1990s, black rhino numbers in the wild had dwindled from 3000 to 240-350 (Duffy, 2000: 45).

poachers were killed, after which Leakey told a park warden: "You know, I used to wonder if we could really stop these poachers. But now I know we can" (Leakey, 2002: 103).

The Botswana Defence Force provides a more recent case of the shoot-to-kill policy, albeit an unwritten one. The Environment Minister is reported to have said that "if you want to come to poach in Botswana, you may not go back to your country alive … and poachers would be shot even if they surrendered" (Konopo, Ntibinyane, and Mongudhi, 2016). In the last twenty years, twenty-two Zimbabwean and thirty Namibian poachers have been killed by the Botswana Defence Force. We can conjecture that poachers allegedly killed are far outnumbered by the elephants and rhinos killed, though without the shoot-to-kill policy there would probably have been many more elephants and rhinos killed.

The point of the above cases is that states have defended or can defend wild animals even if this means killing the human aggressors. Opponents of the shoot-to-kill approach often refer to violation of human rights by militarised anti-poaching units. That is fair enough. Ideally, no rights should be violated and, if the killed men are poachers, no rights are violated. It is noteworthy that in the poacher fatalities mentioned above, the majority of them are from neighbouring countries. There can be very little doubt what the men were doing in wildlife protected areas that are sometimes hundreds of miles from their own countries. Further, Richard Leakey has aptly described the poachers as "willing to kill every last animal in a herd. These poachers and their backers were ruthless"[45] (Leakey, 2002: 2). Some protesters complain of wildlife agencies treating wild animals as though they were more important than humans. This may, however, turn to be mere speciesism. If their own villages were under attack from foreign rebels pillaging, raping, and killing their fellow villagers, it is doubtful the villagers or their sympathisers would complain that the lives of the locals were being regarded as more important than those of foreign militia killed on sight.

Poaching is more a war scenario than some isolated crime. Some poachers use military-grade weapons to kill wild animals or wildlife wardens. As Richard Leakey reported, wild animals "were not being killed with spears and arrows by poor, hungry tribesmen; they were being

[45] Richard Leakey's assertion is based on the recovery of ivory that indicated some short tusks came from very young elephants. In an interview (September 2013) I had with a 'former' poacher in South Luangwa National Park, Zambia, I learned about the tenacity of the poachers in their poaching. I asked why the poachers continue with their poaching even after their colleagues are imprisoned or are killed by wild animals. His response was a rhetorical question whether mines are closed because a mine collapse has killed some miners. For him, being arrested, imprisoned, or killed is an occupational risk like any other.

killed with automatic weapons by well-organised bands" (Leakey, 2002: 4).[46] More recently, in one of the world's most dangerous national parks, according to *National Geographic*—Virunga National Park—for example, 152 park rangers have been killed since 1996 mainly by militia operating within the park (Draper, 2016: 62). Over a period of ten years, a total of one thousand park rangers in thirty-five countries had been killed by poachers (Parry, 2014: 17).

I have described the shoot-to-kill as if it were other-defence in line with my rights-based analysis of other-defence. However, this is not the case. Leakey describes elephant poaching as "orchestrated economic sabotage" of the Kenyan tourism-reliant economy (Leakey, 2002: 4). Glenn Tatham, head of Zimbabwe's Operation Stronghold was more categorical. His justification of the shoot-to-kill policy was that "the rangers were carrying out their duties and protecting the national heritage in the same way that the police would protect a bank vault against armed robbers" (Duffy, 2000: 49). Elephants and rhinos are clearly seen as bank vaults—foreign exchange earners or GDP boosters—by many African governments and citizens. It seems evident, then, that the motivation for defending wild animals using lethal force is not the protection of animals' rights but rather, protection of other human's economic or property rights. However, the shoot-to-kill helps us to see what other-defence of wildlife would be like. If we can shoot to protect wildlife for our economic interests, we have an even stronger reason to kill poachers in defence of wildlife rights.

6.3 Wildlife Threats to Humans

In this section, I discuss some impacts on humans resulting from human-wildlife conflict. Human-wildlife conflict impacts severely on the lives and livelihoods of humans especially those living near national parks but also including visitors to national parks. I focus only on direct threats to humans or to human property. The moral question I try to answer is, "What—from the rights view—are the morally permissible ways of preventing or managing the conflicts?"

Thirgood, Woodroffe, and Rabinowitz (2005) have provided a five-fold typology of the sources or manifestations of conflicts between wildlife and humans. These are, (1) human fatalities and injuries, (2) transmission of disease, (3) predation on livestock, (4) predation on game, and (5)

[46] It may have been the case at the time and place Leakey was referring to that it was not the poor killing elephants with spears. But a UK *Daily Mirror* in-depth investigation reports a poacher who had killed seventy elephants using a spear (Parry, 2014). Watson *et al.* (2013) have also demonstrated wide use of indiscriminate wire-snaring whose ease of setting up, low cost, and low risk of detection make them a particularly dangerous means of poaching by the poor and hungry villagers living close to national parks. Even though the intended prey are smaller wild animals, large herbivores and carnivores are maimed or killed when they are inadvertently caught in the traps.

crop depredation. I will only add one more: (6) competition for scarce natural goods. The list seems comprehensive enough for my purposes here although the fifth category will be expanded to include all damage to property. It is also possible that a single conflictual incident has more than one of these aspects. I will discuss these six types of conflicts in turn with greater attention to human fatalities and injuries. First, I will summarily deal with (3), (4), and (6), which, in my view, are side-issues of discussions of earlier chapters or at least issues about which there is widespread consensus among animal ethicists. Later I will discuss (1), (2), and (5) with (2) as essentially a subset of (1).

Wild animals sometimes prey on cattle, goats or sheep kept by humans for their own slaughter and consumption. The rights view already rules out use of animals in this way (Regan, 2004b; Francione, 1995). Without animal husbandry, predation of livestock would virtually cease to be a source of human wildlife conflict. However, not all domestic animals are kept in a way or for purposes that are morally impermissible. Companion animals, rescued and adopted animals are examples of animals that may live with humans without their rights necessarily being violated. Due to their dependency on their human friends or carers, such animals have an acquired or emergent positive right that the humans defend them against wild animals (See Beauchamp, 2011). In other words, humans have fiduciary duties towards these animals, which include the duties to defend those under their care. However, most domestic animals are bred for human use as meat or some other animal uses. With these uses reduced or eliminated, there would be fewer domestic animals, which in turn would reduce the number of attractants that contribute to human-wildlife conflict. Hence, in the case of predation on livestock, human 'owners' are not victims.

Some human-carnivore conflicts arise from carnivore "limitation of economically valuable prey populations" (Thirgood, Woodroffe, and Rabinowitz, 2005: 21). For example, in North America, brown bears and grey wolves are persecuted and culled for preying on moose and caribou that are valuable prey to humans as well. Moose and caribou are highly valued for their meat by Alaskan residents and non-residents while moose antlers are also sought after as trophies. However, the conflict between humans and carnivores for limited prey is morally not a conflict of rights but one of conflict of interests. The carnivore rights are legitimate, as argued in Chapter 4's discussion of the problem of predation. In contrast, human interests are illegitimate; they do not yield moral rights. The moral asymmetry is that, whereas the grey wolves and the brown bears have a liberty-right to their subsistence, humans have no claims against the carnivores' liberty-right to hunt. Further, humans have a duty to not kill moose,

caribou, or any other wildlife. Hence, wildlife policy should reflect these moral relations by prohibiting humans from interfering with predation and from preying on any wildlife.

Also noteworthy is that carnivore predation on humans and livestock is at least in part due to human hunting of prey species. Reduced prey populations make it harder for carnivores to find their traditional prey. Humans and domestic animals such as dogs make an attractive alternative. It seems a policy to prohibit human predation of herbivores and omnivores would go some way in preventing human fatalities and injuries resulting from carnivore attacks.

Conflicts between wild animals and humans result in deaths and injuries to both wildlife and humans. Dangerous incidents resulting in deaths or injuries occur during various mundane everyday activities. Obviously, carnivores will always pose a threat to humans in one way or another especially as predators. The big cats, wolves, and hyenas evoke an evolutionary fear in humans as humans are potential food. In addition to carnivores, human contact with mega-herbivores can also end in death or injury to humans and wildlife. For example, in Lupande game management area (about 1800sq. miles), in Zambia, 78 elephants and 33 humans died within a period of five years beginning 2004. The number of elephants killed includes only deaths from Problem Animal Control operations. Cases of elephants killed from retaliatory attacks by humans are not documented (Nyirenda et al., 2013: 108). Quigley and Herrero (2005: 43) remind us "that often when attacks occur—whether provoked or unprovoked—the animal is pursued and killed."

Provocation or lack thereof is important to the analysis of ethical response to hostile human-wildlife encounters. Provoked attacks by wildlife occur "when a person(s) enters an animal's personal space or purposely tries to touch, injure or kill the animal and the animal attacks, or the person(s) had human food or garbage attractants … within the animal's personal space" (Quigley and Herrero, 2005: 29). Famous wildlife presenter Steve Irwin is a good example of the danger of entering the 'personal' space even of a perceived benign wildlife. While filming for a documentary, he swam too close to a stingray, which struck him lethally. Some tourists have faced a similar fate. Of the seven fatal wildlife attacks in South Africa between 1988 and 1997, three "tourists left their vehicles and approached the pride [of lions] on foot for closer photographs" while two others were killed by hippos because—against clear regulations—they walked in an unfenced area and for walking too close to a hippo calf (Fennell, 2012: 222).

There is reason to believe that many cases in which fatal and injurious conflicts occur between human and wildlife are a result of provocation by humans. Experts on carnivore attacks on

humans are categorical: "In all these cases, the animal is defending itself or some attractant or possession. The offensive action—the attack—is initiated by the animal due to a perceived threat" (Quigley and Herrero, 2005: 33). In addition, it is a truism that wild animals—whether carnivores or mega-herbivores—act more defensively and aggressively when they have vulnerable offspring among them.

Many wild animals have territorial behaviour. Lions, for example, mark and aggressively patrol and defend their territories while roaring to warn off would-be-intruders. This territorial behaviour should be known by both park officials and visitors alike. As one commentator observed, "It's pretty straightforward, really. The tourists are stupid…. The rangers … are over-worked and under-funded" (Fennell, 2012: 222). It appears, therefore, that it is human beings who require management to prevent conflicts rather than resorting to killing wild animals to resolve conflicts resulting from some human's careless or irresponsible actions.

Cases of provocation of wildlife by humans are cases where it seems the wild animals have a moral right to self- and other- defence against perceived or real human threats.[47] Not only may the mother elephant kill the threat to itself or its young one, but human agents may also do so in their behalf. As argued above, the agent-relativity complication does not arise in the case of defence of moral patients. Current legislation does not consider interspecies equality that moral rights confer. Apart from cases involving poachers, the defence situation is rigged in advance in favour of human threats to wildlife.

Sometimes there are media reports of tourists who fly out of the safety of their home countries and then walk out of the safety of their vehicles for an up-close photograph of some wild animal and then are lethally defended when the wild animal—most likely feeling threatened—attacks them.[48] The case of the killing of Harambe,[49] a gorilla at Cincinnati Zoo, because he was perceived as a threat to a human who had strayed into Harambe's enclosure is indicative of the wildlife and tourism policy in conflictual human-wildlife contacts. Provoked or not, the policy

[47] Compare, for example, with the Stand your Ground law in Texas, Florida, and other states in the United States that justify the use of lethal force on mere perception of threat to oneself as warranting shooting the perceived threat.

[48] I am making here the supposition that many wildlife tourist destinations have sufficient warnings about appropriate tourist behaviour. However, often times, adventurous tourists may simply relish the thrill of violating the regulations and having instead to stare death in the face. David Fennell reports as follows the thinking of some tourists for getting too close to wild animals: "This trip is expensive, and we deserve the opportunity to have some 'extras'…. Just think what my friends at home will say when I tell them I actually got to pet an orang-utan!" (Fennell, 2012: 203). Quong (2012: 52) describes a similar but hypothetical case—Delia's Risky Behaviour.

[49] See Paula Casal's (2016) "Death of the Zoo" where she gives brief but illuminating reflections on the Harambe incident and about the phenomenon of zoos.

seems to be that it is the human being who must be defended against the wild animal. On the rights view, this approach is morally untenable. Rights are moral levellers and, therefore, in cases of provocation by humans, if non-lethal means cannot be used to rescue him, the human must be left to his own fate.

My argument for self- and other- defence is applicable only in cases of a threat to an innocent victim. But where human beings recklessly stray into wildlife's 'personal space' or they deliberately provoke wild animals, they are no longer innocent and self-defence is no longer a morally open option. True, where nonlethal means of self- or other- defence are available, even a culpable threat might be saved from potentially lethal defensive action by wildlife. Other penalties may be more appropriate than letting a careless photographer be killed when we can harmlessly scare off the defensive wild animal.

Instinctively, a human will defend herself against a wild animal's defensive attack. If the human being successfully defends herself non-lethally, she must be punished for violating the wild animal's right by the initial threat and any subsequent injuries suffered by the wild animal. The punishment meted on her must be as severe as it would have been if she had caused comparable injury to a fellow human. If she lethally defends herself, this is a violation of the wild animal's right to life and must be accompanied by sanctions that parallel cases of homicide. Lethally defending oneself in such cases is a double rights violation. The wild animal has a right to not be threatened as threatening is a form of harm that affects negatively the wild animal's wellbeing through anxiety and associated opportunity costs such as relocating young ones.

Secondly, the wild animal has a right to not be killed, a right that she is liable to lose only if she attacks a non-threatening innocent human who then decides to use his power-right to alter the wild animal's claim-right to life into a no-claim. Perhaps the most important point is that wildlife that defensively attacks humans must not be killed. It does not matter that the human who strays into the gorilla's space, for example, is innocent. It suffices that the animal feels threatened *in its space*. In fact, a lion must not be killed even to save a child who has been neglected to stray into its space by his mentally infirm mother. Other means may be used to rescue the child but not lethal or seriously harmful means.

Some attacks on humans by wildlife are unprovoked. Unprovoked attacks by wildlife are those in which the human victim did not do anything to agitate the wild animal and cause them to become aggressive. Sometimes wild animals stray into human settlements and pose threats or wreak havoc to human property. Several factors can lead to unprovoked attacks. These factors

include predation, presence of disease that makes the wild animal irritable or aggressive, or wildlife seeking right of way (Quigley and Herrero, 2005: 33). For some carnivores—especially those that are very hungry, very weak, or very old—humans are an alternative source of food to animals the carnivores normally prey on. A sick or injured animal can be dangerous even if unprovoked by humans. Wildlife normally have established routes or migration corridors for going to look for food or to sources of water. In all these cases, humans who happen to be nearby are in danger. These are, all things being equal, cases of threats against innocent human victims. As argued above, the humans have a right to self- or other- defence against individual animals that attack.

However, the devil is in the detail of what makes things equal (or unequal). Provocation seems to connote actions taken in close temporal and spatial proximity. Yet growing human populations and increased development activity may exacerbate human-wildlife conflicts. What this means is that care must be taken to ascertain the relevant facts before we can defend or make rules to defend humans under attack by seemingly unprovoked wildlife.

Another serious manifestation of the human-wildlife conflict is crop raids by herbivores and omnivores. This can fall under provoked or unprovoked threats posed by wildlife. As Quigley and Herrero (2005) have pointed out, provocation can be in the form of food and garbage attractants. Growing (certain) crops near protected wildlife territory can thus be provocation or invitation of certain herbivores and omnivores. Unprovoked crop-raiding is still a possibility especially where natural food is scarce due to environmental or climatic conditions such as drought. Crop-raids can be very costly to wild animals especially through retaliatory killings by farmers. Innocent farmers have a right to defend their crop or farm produce against wildlife. However, to prevent excessive and arbitrary defensive actions, it is desirable that management strategies are put in place for state agencies to do the defensive work for the farmers whenever it is possible to do so.

Furthermore, wild animals are not moral agents. For this reason, I do not think the so-called retaliatory attacks by villagers on wildlife are retaliation in the conventional sense, against wild animals. I think such attacks should be understood as protests against ineffective wildlife governance by government agencies and conservation nongovernmental organisations or as pre-emptive defensive actions. Ineffectiveness by relevant agencies can be in the form of failing to prevent the attacks or crop raids by wild animals or failing to provide adequate and timely compensation for damage or loss caused by wild animals.

6.4 Bushmeat and Rural Livelihoods

One of the commonest uses of wild animals is as meat—a source of nutrients or a source of palatal pleasure. Let us call this use subsistence hunting, which Gary Comstock defines as the "traditional practice ... of habitually killing [wild] animals at a sustainable rate to feed one's self and family when no other adequate sources of protein are available" (Comstock, 2004: 360). This is a good definition except for some minor corrections. It does not seem that hunting needs to be 'traditional' or 'habitual' to be subsistence hunting. A lone plane-crash survivor who hunts and kills wild animals to survive is obviously a subsistence hunter even though doing so is neither traditional nor habitual. Additionally, the association between subsistence and protein deficiency is largely a by-product of literacy. Many rural and illiterate people hunt and kill simply because they are hungry or because meat is tastier than available protein-rich plant-based foods. In my view, it is still subsistence hunting if a vegetarian villager kills an impala to generate some money to buy some plant-based foods, for example, after a poor crop season. Lastly, subsistence need not be restricted to food. I do not see why hunting to earn some money to build some basic shelter or clothing should not be classed as subsistence hunting. It is subsistence hunting provided it is not excessive or for luxuries.

Meat obtained from carcasses of wild animals is part of the diet of people all over the world. The off-take is however highest in West-Central Africa with lower but still significant killing and consumption in Asia and South America (Brown and Davies, 2007). In recent estimates, figures of bushmeat consumption in the Congo Basin alone for example, "range between one and five million tonnes per annum" (Brown and Davies, 2007: 1). If we project these estimates over a five-year period and convert tonnes of meat into individual wild animals, we are looking at 'speciecide' worse than any genocide in human history.

A study by Taylor Brown and Stuart A. Mark among the Bisa people in northern Zambia—where I originally came from—provides some details of hunting at household and community level. According to Brown and Stuart (2007) in a village of about 2,600 people, twelve percent are directly involved in hunting either as hunters as meat carriers. Furthermore, not only is the bushmeat a source of protein to the villagers but about "one-third of all local households gain at least some income from [the bushmeat] trade" (Brown and Taylor, 2007: 92). In the past, when wild animals "where killed or snared, the meat was distributed to residents within the hunter's village" (Brown and Stuart, 2007: 94). However, with improved hunting methods and increased market demand for bushmeat, hunters target and kill more and larger mammals for

urban markets such as Ndola on the Copperbelt (310 miles away) and Lusaka, Zambia's capital (400 miles away).

The case of the Bisa people around the North Luangwa National Park mirrors that of the Kunda people around the South Luangwa National Park. Watson et al. (2013), for example, have discovered a positive correlation between the increase in demand for bushmeat and the increase in wire-snaring of wild animals in South Luangwa National Park and adjacent buffer zones or Game Management Areas. In fact, to varying shades of seriousness, this is the picture of the bushmeat consumption and trade in Africa (see Davies and Brown, 2007).

The cases of ordinary people living adjacent to national parks constitute what I refer to as soft cases as they are relatively easier to resolve. Some of the households are now made up of immigrants from other villages or even urban areas while some have attained at least a basic level of education or have acquired some income-generating skills that can enable them engage in livelihoods that are not dependent on wildlife exploitation. In short, usually, they have viable alternative sources of income that already exist or may be created as the Zambian initiative, Community Markets for Conservation (COMACO) demonstrates (see Lewis, 2007; Dale Lewis' COMACO overview video interview at http://www.itswild.org/).

There are, however, morally hard cases of subsistence hunting by humans who need to kill wild animals in order to survive. Oft-cited cases are those of tribal peoples who more or less share habitats with wild animals and the lives of the humans are so intricately interwoven with those of the wild animals and the ecosystem that the solutions available for the soft cases seem less plausible in such hard cases. I will address the special case of tribal peoples in the next section. However, the overarching question is the same in soft and hard cases: Is it morally permissible for humans in dire need of bushmeat for nutrition to kill wild animals for their consumption? Is it morally permissible for them to use wild animals merely as a resource for their sustenance?

Let us begin with the most clear-cut cases where killing is necessary for survival. Such a case presents itself most clearly in the case of a lone plane-crash survivor. The deer he is about to kill has a right that he does not kill it; he has a duty not to kill it. His killing the deer is clearly a violation of the deer's negative right. It follows that the survivor ought not to kill the deer even if he faces the hard choice of kill or starve. The direness of one's need does not change the moral landscape in this case. Our neediness does not dissipate rights other people or animals have that we do not help ourselves to their limb or property.

On the rights view, the deer's moral relation to the survivor does not change as the survivor becomes more vulnerable to starvation. The survivor has no power-right over the deer before or after the plane-crash. Since the deer has the same right as innocent humans in relation to the survivor, it is helpful to check our speciesist intuitions by substituting the deer with an innocent human being. Immediately, it becomes clear cannibalism will not be morally permissible in this instance as long as the survivor will first have to kill an innocent human being for his meal. Killing a being with a right not to be killed in order for you to survive is simply impermissible egoism. Therefore, the threat of malnutrition or starvation to poor people is not an adequate moral reason for subsistence hunting.

Subsistence hunting is not the only form of hunting tied to rural livelihoods. Trophy hunting is another form of hunting that hunters, conservationists, and some philosophers justify by appealing to rural people's subsistence needs. Alastair S. Gunn and David Schmidtz represent philosophers for whom human survival or economic needs trump the rights of the hunted wild animals. Both support trophy hunting as necessary for the survival of wild animals. Their approach finds them converging in their support for Zimbabwe's Communal Areas Management Programme for Indigenous Resources (CAMPFIRE).

The CAMPFIRE programme is one of the allegedly more successful and referenced of Community Based Natural Resources Management (CBNRM) programmes launched in several African countries in the 1980's. The rationale for such programmes is simple. If poor African communities are entrusted with care for wildlife and significant benefits accrue to them from utilisation of the wildlife 'resource', they will not themselves unsustainably use wildlife or encroach on wildlife land and they will support anti-poaching programmes. David Schmidtz puts it succinctly thus: "In parts of Africa, the dilemma for subsistence farmers is this: if they cannot commodify elephants (by selling ivory, hunting licences, or photo safaris), then they will have to push elephants out of the way to make room for livestock or crops" (Schmidtz, 2002: 418). CAMPFIRE and similar programmes in Southern Africa are thus seen as offering a win-win model for wildlife governance.

Wild animals do not become extinct or endangered with extinction (a win for conservationists such as WWF and the IUCN) and human development is achieved for rural communities living close to wildlife and revenue earned for national economies (a win for the human beneficiaries and for economists such as the IMF and the World Bank). The price for the wins is paid with life by the trophy animals and psychological trauma in the case of social wild animals such as

elephants. CAMPFIRE can only yield Pareto optimality if the killed wild animals did not have to pay the price.

But philosophers who see themselves as pragmatic—contrasted with 'idealistic' animal rights theorists—do offer some justification for the violation of wildlife rights to achieve anthropocentric conservation goals. Gunn (2001: 76) points out that "Many national parks … maintain populations of trophy animals *because this is the business that they are in* ...." And, if the regulation of lions "can be done for the *economic benefits* of impoverished local people by the issuing of game licences, why not?" (Gunn 2001: 89; emphasis added). David Schmidtz adds that "CAMPFIRE allows hunting" and "*does not treat animals as if they have rights*. But in Zimbabwe, it is CAMPFIRE that protects the wildlife, not PETA" (Schmidtz, 2002: 422; emphasis added). [50]

CAMPFIRE may be the ecologically and economically viable programme that its supporters claim. But it is not just. Such a programme makes change of moral paradigm difficult. It is hard for villagers and programme managers to develop an attitude of proper respect and care for wildlife, while at the same time seeing it as a resource. It is an approach that is based on veiled blackmail and false dichotomy. Pro-hunting conservationists offer support to CAMPFIRE *in exchange* for hunting permits hence the popular phrase of conservation 'paying its way'.

The approach further advances the false binary of trophy hunting-driven conservation or poaching-driven extinction of fauna. Yet alternative approaches are available—as I will suggest in the next chapter. Thus, people need not rely on whatever revenue is collected from killing some wild animals. Clearly, the CAMPFIRE approach would fail a non-speciesist test since killing of some humans to raise funds for others or create more living space for others would not be considered as a solution to poverty or population growth. Those parents who marry off their underage daughters or sell them into prostitution are properly judged to be evil. This is so even if the resources acquired from the marriage or prostitution help five of their other children achieve tertiary education and attain a higher standard of living and life expectancy than if their sister had not been married of or sold into prostitution.

[50] Notably, Gunn and Schmidtz's near-perfect picture of CAMPFIRE seems to depend on information from likely financial benefactors or beneficiaries of the programme: safari camp owners, African Resources Trust project manager, CAMPFIRE. Interestingly, for more information they both authors refer readers to the organisations' websites or their contact email. Mathew Scully gives us an additional reason to be sceptical of the CAMPFIRE public relations claims. "SCI secured renewal of congressional support for … CAMPFIRE, under which the creatures are sold off at $10,000 and up in Zimbabwe" (Scully, 2002: 67).

Furthermore, one question that supporters of hunting do not address adequately is why the rights of starving humans should trump those of elephants being auctioned to be shot for their tusks or for a hunter that is shooting for prizes at the Safari Club International (SCI). Once we accept that wild animals hunted as trophies have individual rights, it is hard to see how we would call CAMPFIRE a win-win programme. To strengthen their arguments, both Gunn and Schmidtz implore a false dichotomy between trophy hunting and extinction of wildlife species.

Dale Lewis' COMACO programme provides a counterexample to the false dichotomy. Unlike CAMPFIRE, COMACO does not deal in wildlife products. Instead, local communities and former poachers are empowered with skills, materials, and a ready market for agricultural products.[51] Farmers grow their crops and process them into products for Zambian supermarkets and for export. This seems to effectively address local poverty and win local people's support for wildlife protection without relying on the death of some wild animals for material benefits.

6.5 Wildlife Rights and Rights of Tribal Peoples

One of the most problematic issues in animal ethics is that of the relationship between wildlife and tribal peoples. Yet nearly all animal ethicists—including anthologies that aim to cover a comprehensive range of old and emerging problems in animal ethics—sidestep this problem (Regan and Singer, 1989; Sunstein and Nussbaum, 2005; Beauchamp and Frey, 2011). This seems understandable. The moral response is fairly straightforward but politically sensitive. With the background of historical injustices against tribal peoples across the world, it is not an easy thing to point out radical moral imperatives that go against the cultural, subsistence, and economic interests of these socially disadvantaged peoples.

The disadvantages experienced by tribal peoples are evident in that even in highly developed states of North America, tribal peoples face hardships that are typical of less developed countries of the global South. Searle (1995) states, for example, that the Canadian Inuit, Metis, and Dene have living standards that fall far short of the average of the rest of Canada. Stephen Corry—an anthropologist and indigenous people's rights activist—lists the problems of tribal peoples around the world as follows: slavery, violence, disease, land theft, resource theft, capitalism and globalisation, conservation, and climate change (Corry, 2011). However, any social injustices or tribal people's poverty, notwithstanding, I will in this section only go in one direction—the one to which my cumulative arguments of preceding chapters point.

[51] However, Dale Lewis himself seems not opposed to trophy hunting (See Lewis and Alpert, 1997).

Tribal peoples are defined as those groups of people "who have followed ways of life for many generations that are largely self-sufficient, and are clearly different from the mainstream and dominant society" (Corry, 2011: 22). Tribal peoples are normally indigenous people and hence they also go by the label 'indigenous people'. This can be misleading, however, as we can have, and do have, indigenous peoples that are now (part of) the mainstream society. Equally, a group could be a 'tribal people' and yet be composed of immigrants. An example is the Santeros of Cuba, who are of African Yoruba descent. 'Tribal people' is therefore a more apt label. There are many examples of tribal peoples today living in all our planet's continents. They include, among the more famous ones, the San, Pygmies, Inuit, and the Makah. These are our contemporaries who have, however, for various reasons, not (fully) joined mainstream cultures in the nation-states in which they are geographically located. Their lifestyles and livelihoods usually revolve around hunting, gathering, herding, and crop-growing.

Is it morally permissible for humans in dire need of nutrition from wildlife to kill wild animals for consumption or to hunt and kill to preserve a way of life? The preceding section dealt with what I term soft cases. The tribal peoples' case is the hard case—both morally and politically. Here I am primarily interested only in the moral. In order to separate the moral from the political, I will set up an imaginary scenario for subsequent moral evaluation.[52]

Two human communities live next to each other. One of them, the Gees (Giants) and the other, the Dees (Dwarfs). The Dees live in constant fear of a violent and sudden death at the hands of the Gees. Not only do the Gees obtain vital nutrition from the Dees' corpses but the hunting down, killing, and eating of the Dees is an ancient tradition that goes back for aeons of time. Hunting legends are recounted around evening fires from one generation to another, sometimes while the Gees roast and enjoy the remains of their neighbours, the Dees. Moreover, the hunting of the Dees is imbued with deep spiritual meanings and helps determine social structures according to bravery shown during the hunts.

Is it permissible for the Gees to hunt the Dees? No. The Gees may be taller and stronger than the Dees but moral rights are moral levellers. Morally, they are at par and any member of either group has, all things considered, the same moral importance and moral rights. In the language of our analytical framework, any individual *d* has a claim-right against every individual *g* that *g* does not wrongfully kill her. It is clear enough that no matter who the Gees are, as long as

[52] The scenario I set up is inspired by Gary L. Comstock (2004) although he differs from me in that he subjects his cases to consequentialist analysis albeit with similar conclusions.

they are moral agents, it is impermissible for them to kill and eat Dees as meat. The Dees may be nutritious and delicious—in fact, they may be the only food left for Gees; the Gees still have a duty to not kill the Dees for food. *A fortiori*, it is impermissible for the Gees to kill Dees for any cultural, spiritual, or social reasons.

Theo Ikummaq, a Canadian Inuit and secretary-treasurer of a hunters' organisation claims, "Hunting is the way I grew up and a way in which my people eat" (Chivers, 2002). This is a popular line of reasoning employed by tribal peoples and those who advocate for their rights. But, as Paula Casal puts it, "If an individual wishes to impose substantial suffering, or be granted exemption from the law, surely she should at least offer grounds others can understand and find minimally credible" (Casal, 2003: 10). In the case of rights violations, the grounds must be exceedingly weighty indeed to warrant systematic violations of moral rights of innocents. Clearly, Ikummaq's response that killing and eating walruses—and now including auctioning them off to non-resident trophy hunters—is "the way I grew up" is unsatisfactory to warrant violating walrus rights.

Ikummaq's is an argument from tradition which is fallacious since traditions themselves may be appropriately subject of a negative moral judgement. All cultures have had to abandon traditions that were cherished by their ancestors but could not pass the moral scrutiny of later generations—or that of other societies, as the case may be. For some, this includes cannibalism; for others, it includes slavery; for most, it includes systematic subjugation of women.

The Gees represent the tribal peoples and the Dees represent wildlife such as whales, walruses, and other wild animals that tribal peoples kill for food, as a cultural practice, or those they kill in complicity with rich hunters who sometimes pay $6,500 to shoot a walrus (Chivers, 2002).

The uncompromising negative response above against hunting takes as irrelevant any suffering—including severe malnutrition or even starvation—by tribal peoples that may result from complying with the prohibition of killing wildlife. Tom Regan's response to losses that might befall those who now benefit from the meat industry is just as enlightening for the case of the Gees (Inuit, etc.) and Dees (wildlife):

> Just as the benefits others obtain as a result of an unjust institution or practice is no moral defense of that practice or institution, so the harms others might face as a result of the dissolution of the practice or institution is no defense for allowing it to continue. Put alternatively, no one has a right to be protected against being harmed if the protection in question involves violating the rights of others (Regan, 2004a: 346).

Current benefits tribal peoples derive from the suffering and death of wildlife simply cannot trump the rights of wildlife. An adult walrus—prized by trophy hunters for its tusks—can weigh up to two tonnes. The meat extracted can feed tribal villagers for weeks while the $6,500 a trophy hunter pays could uplift economically the impoverished Inuit of Northeast Canada. However, the famous "Transplant" thought experiment of an innocent person's organs being forcefully harvested to save the lives of others (Thomson, 1990: 135) demonstrates the wrongness of using other right-bearers as mere means to the ends of others—no matter how many the others are. It is undeniable the plight the five organ beneficiaries or of the Inuit and other tribal peoples is serious. Even though tribal peoples are victims of historical and current violations of their rights, it is morally unjustified to violate the rights of wildlife in order to right these wrongs perpetrated by other humans.

Steven Wise (2005) notes that economic interests can be a huge obstacle to respecting the rights of those whose rights violations are an important ingredient of an economy. Ironically, this was no less true in the case of slavery than in the case of tribal peoples' continued violation of wildlife rights. In both cases William Lee Miller's observation is accurate. When there are substantial economic interests, "[r]ationalizations are supplied, positions are softened, conflict is avoided, compromises are sought, careers are protected, life goes on" (cited in Wise, 2005: 20). This said, it is important to separate the moral from the political. Moral judgements can be made independently of practical problems of enforcing such moral judgements.

Those who argue that wildlife rights trump the interests of tribal peoples may face the objection that their position is racist or misanthropic. It is sometimes argued that animal rights thinkers would rather see tribal peoples starve than see tribal peoples survive on wildlife. Citing the Inuit peoples of the Arctic and impoverished people in the Horn of Africa, Carl Cohen barely stops short of calling Tom Regan's "austere vegetarianism" misanthropic. "One has only to look at the face of recurrent starvation in Africa to decide whether this animal rights diet is humane or inhumane" (Cohen in Cohen and Regan, 2001: 232). There are at least two possible responses to the racism or misanthropy objection.

The first response is that there is nothing racist or misanthropic about defending wildlife rights from violations by impoverished tribal peoples. This is easy to see. The defence of wildlife rights rests on the same logic as the attack on the institution of enslavement of black people in Britain and the United States. In fact, members of the Inuit, San, or Pygmy tribal peoples will

themselves need to use the same logic to convince their own tribes people against violations of wildlife rights.

Slavery—an institution that lasted thousands of years—had become an essential part of the core of the economies of some countries or cities. Some anti-abolitionists argued that white people would wallow in disease and abject poverty if slavery were done away with (see Wise, 2005). We can perfectly understand and sympathise with poor communities that are victims of capitalist exploitation or racial discrimination or drought or disease. But when members of such communities rob and kill innocents, we rightly condemn them regardless of whether this was done for survival. Defence of a victim can go hand in hand with sympathy or even love for the culprit. She is an inconsistent animal rights activist who would not condemn violations of the rights of blacks, children, or women. Paula Casal sums up the same point well, "The very concern for the worst off which justifies our support for disadvantaged groups also prohibits sacrificing their weakest members" (Casal, 2003: 22). The very logic that protects abuse of tribal peoples by governments and huge corporations is the logic by which tribal peoples' hunting of wildlife must be banned. Those earnestly concerned for justice will condemn injustice regardless of who are the victims or culprits of the injustice.

The second response is that Tom Regan, Gary Francione, and others are primarily engaging in moral philosophy—albeit the applied sort. Implementation of their radical but logical conclusions is something else. The rules governing social change cannot rely solely on moral rights but must take into account human psychology, political, and economic theories and realities. There are many cases where the right thing to do might be done wrongly. One, for example, ought not to give in to blackmail. But the rights violations in the offing might be so many and egregious that, for prudential reasons, one might have to give in to blackmail by a terrorist.

To put it in another way, political compromise, say, towards some temporary *modus vivendi*, does not necessarily indicate moral acquiescence. Many people believe female genital mutilation and child marriage are morally abhorrent traditional practices that must be banned and the bans enforced. Yet an effective approach might focus more on education rather than enforcement of bans and imprisonment of people who have engaged in these centuries-old practices. Similarly, with respect to practices that violate wild animals' rights, an approach of winning minds and hearts and offering sustainable alternatives may be more efficacious in protecting wildlife than mass arrests and imprisonment of tribal peoples.

We might think that tribal peoples' practices involving the killing of wildlife should be banned and the ban should be enforced but not to the point where people are shot. Education about alternative livelihoods and lifestyles and moral education about the moral value of wildlife can be used where applicable. Here, Henry Shue gives some sound advice to rights theorists seeking social change:

> One must learn something about the life-cycle of social norms: how they are created, nurtured, and destroyed. For a theory of rights is a theory about which norms various groups ought to have, and this must depend in part on how norms actually operate psychologically and politically, within and across cultures. One needs then, among other things, to talk with members of other cultures (Shue, 2004: 227).

Enforcement of rights need not always be through militaristic intervention. Where violations are part of an ancient cultural practice not perpetuated by practitioners' malice or culpable ignorance, less violent approaches to cultural change may be more appropriate and effective. Ideally, tribal peoples must accept new norms that recognises the moral standing of wildlife. Compliance with new laws and wildlife policies must emanate primarily from this acceptance, and coercive means for enforcement must be employed only to supplement the non-coercive strategies. Acceptance is far much better than forced compliance. Unlike compliance, acceptance entails "dispositions not only to behave in certain ways but also to feel in certain ways" (Hooker, 2000: 76). In the long term, it is more effective and efficient to ensure wildlife justice if tribal people feel remorse or guilt if they harm wild animals and they feel indignation if some of their tribesmen harm wild animals.

Justified intervention on behalf of innocent victims would need to appreciate that evil practices such as female genital mutilation, child marriages are—perhaps till now—part of much cherished and revered traditions such that (1) we must be more charitable to members of communities that engage in the practice and that (2) the best way may not be to kill or incriminate all culprits but, rather, to win the hearts and minds of those people engaging in those practices that are morally wrong. A wildlife rights supporter, therefore, need not be seen as racist or misanthropic for arriving at conclusions that put wildlife first before tribal peoples. The wildlife rightist's radical conclusions simply indicate the morally right and desirable state of affairs that may not be realisable or that may require some strategic non-ideal compromises and, probably, a long time to realise. What is clear is that our political and social institutions must seek to change towards the morally acceptable human-wildlife relations.

States must seek to end social injustices and compensate past injustices against tribal peoples in ways that do not involve legislation that permits tribal peoples to perpetuate injustices against

wild animals. Robbing Peter to pay Paul does not end injustice but merely transfers the injustice to another victim. Similarly, legislation or policies that allow wildlife killing for previously wronged tribal peoples only serves to cause further injustice to a new group that in any case has been a victim of injustice together with—and as victims of—tribal peoples. It is a double injustice for wildlife.

This chapter has discussed the problem of human-wildlife conflict in the new light of both animals and humans are right-holders. This levelled moral status results in a re-evaluation of self- and other- defence involving humans and wild animals. Currently wild animals are harmed or killed whenever a human is under threat whether the human is innocent or not. I argue that this policy is unjust and must be replaced with one which permits only rescuing humans who are innocent. Liable or culpable humans may be saved only in those circumstances where such rescue can be accomplished with minimum or no harm to wild animals. I defend the shoot-to-kill policy against poachers as a case of justified other-defence. I further address the emotionally charged problem of human interests that are premised on exploitation of wildlife. I deal with the problem of bushmeat for subsistence of peasants living near protected areas and the more intense problem of tribal peoples who rely not only on wildlife as a source of nutrition but also on hunting as part of their cultural heritage.

A utilitarian approach might be compromising and perhaps advocate limiting the numbers of wild animals killed and restricting methods used. That option is unavailable for an adherent to the view of wildlife justice based on moral rights of individual wild animals. I argue that the only non-speciesist and rights-respecting policy is prohibiting of any killing of wild animals to satisfy human interests. I argue that both in the case of humans and in the case of wildlife, nothing in the Hohfeldian matrix changes because of a human's desperation for survival. That is, the deontic relations between the imperilled human and the individual whose meat would lead to that human's survival remain the same at the point of the human's starvation as they were when he was well-fed. The right of an innocent individual—a monkey or a human—not to be killed does not become weaker or vanish the nearer some human being gets to starvation.

In the final substantive chapter, I will discuss critically the problem of responsibility for protecting wild animals from human-created harms.

Chapter 7 Responsibility for Wildlife Rights

In previous chapters, I have argued that wild animals can and do suffer injustice ranging from physical abuse, loss of property, to invasion of 'personal' space. The injustices do not only involve physical pain and death. They involve immense psychological anguish and trauma and disruption of social structures paramount for individual wellbeing (Moss, 1992; Bradshaw, 2004). Elephant orphanages in Kenya, Chimpanzee orphanages in Zambia, ivory stockpiles in Viet Nam, wildlife zoos and museums in England, all tell different stories that attest to human injustices inflicted on wildlife. The central question I try to answer in this chapter is one of identifying those with the duty to ensure protection for wildlife and how those identified may need to act.

Negative duties to wildlife are straightforwardly *erga omnes.* All moral agents are under obligation not to violate rights of wild animals. As my discussion of the duty to assistance in Chapter 3 shows, positive duties are more restricted. There are several arguments for positive duties to morally considerable beings (Miller, 2007). For utilitarians (e.g. Goodin, 1985) and some human rights philosophers (Shue, 1980; Griffin, 2008) the existence of need or vulnerability is sufficient to create a duty on those with ability to mitigate and improve the conditions of the needy. This chapter will not be based on—and will not discuss—any of these grounds for positive duties that are based merely on ability and opportunity to help the needy. I follow, rather, those like Thomas Pogge whose grounds for ascribing positive duties appeal to some injustice to which the agent has some causal connection such that the agent's behaviour is tantamount to complicity to the injustice.[53] The positive duties I envisage are those I have described in Chapter 2 as emergent duties.

This chapter is divided into four sections. In the first section, I discuss the current statist model for wildlife protection. The second section attempts to free cosmopolitanism from its speciesist incoherence while in the third section, I trace causal responsibility and ascribe positive duties to states whose foreign policies, domestic wildlife regulations, and foreign investment policy or behaviour cause or constitute wildlife rights violations. I argue that although the current statist approach is flawed, a statist-cosmopolitan approach provides a theoretically defensible and practically viable model for protecting wildlife all over the world. In the proposed model,

[53] This is not to underestimate the importance of utilitarian, right-less obligations. In fact, since the goal of rights is not value maximisation as such, it might well be the case that right-less duties would achieve more for wildlife protection. However, I wish simply to narrow the focus to compelling duties that can be demanded and must be discharged as a matter of justice and not merely a matter of beneficence or promoting the good.

nation-states no longer have the ultimate say on the fate of wild animals that happen to share political borders with them. Other-defence interference by other state or non-state actors is permissible just as acts of benevolence especially in cases where the host state is unable to protect or provide for wild animals. More importantly, foreign states may be more liable than, or as liable as, the host state in discharging duties of justice towards wild animals in a given locality. Lastly, I make some tentative proposals of what form cooperative international protection for wildlife might take both in preventing future rights violations and in mitigating effects of recent past harms.

7.1 Statist Wildlife Protection

In chapter 5 I argued against the idea that wild animals are primarily legal property of the state. When treated as property, wild animals do not have any special protection different from owned inanimate things. The Convention on Biological Diversity (CBD) classifies wild animals together with plants and micro-organisms as 'biological resources'. Article 3 of CBD goes on to state that:

> States have, in accordance with the Charter of the United Nations and with principles of international law, the sovereign right to exploit their own [biological] resources pursuant to their environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction (United Nations, 1992: 4).

The CBD—whose overarching objective is sustainable development—thus recognises states' absolute ownership rights over their wild animals as resources. As noted in chapter 5, CITES, which regulates international trade in endangered species plant and animal species, takes trade in wildlife as a moral given. The convention's primary focus is to stop the threat of international trade to the numerical survival of species of wild fauna and flora. What is interesting to note is that 'wild fauna and flora' are bracketed together and treated with equal importance. A wild animal species may go onto or off a list for permitted international trade just like a plant species depending on its scarcity or abundance. In short, with regards to these two important international conventions—CITES and CBD—wild animals, plants, and micro-organisms are at par and are, at least in theory, given equal protection.

Both state laws and international law acknowledge wildlife as property of states under whose national geographical jurisdiction they happen to be. I take it to be uncontroversial that the primary responsibility of protecting property lies with the owner. In the case of private property, individuals or corporations 'enlist' the state for additional protection of their property. I herewith state what I will call the *narrow* statist thesis for wildlife protection as follows:

The state is the primary protector of wild animals within its state borders[54] for the following two reasons:

(a) Wild animals are resources or property of the states in whose political boundaries they live, or
(b) Wild animals are spatially located under these states' jurisdictions even taking into accountant transboundary nature of wildlife habitation in many cases around the world.

Some writers—and Chapters 3 and 5—have since argued that animals have a wellbeing that matters to the animals from their own cognitive viewpoint and that they are not property. We can therefore reject (a). I will now proceed to the second reason, (b), for the statist approach to wildlife governance which can accommodate the claim of wildlife rights. On the narrow statist view, wild animals are in the jurisdiction of state X, so, by default, it is X's responsibility to protect the wild animals found within its borders.

Some people might find some advantages in the view that host states have the primary responsibility for wildlife justice. One apparent advantage is strategic managerial positioning. The host state has, *prima facie,* best 'know-that' and 'know-how' of its physical and cultural terrain. It is in the best position to collect data regarding the security of its wild animals. Secondly, the host state having the primary responsibility prevents political problems to do with sovereignty. If another state were to be actively involved in wildlife governance within the borders of another, there is a likelihood of raising questions of interfering with the sovereignty or security of the host state. These two reasons are however easily shown to be too weak to support the narrow statist approach.

Firstly, it is not true that the host state will have the best or monopoly of knowledge and means for protecting wildlife within its borders. Most of the world's wild animals are now found in less developed countries. These are also countries with lower average education levels, which presumably includes low knowledge levels in subjects related to wild animals. Secondly, the threats faced by wild animals transcend national borders and capacities. Thirdly, ways of other states intervening can be found—and in fact do exist—that do not threaten the host nation. States routinely cooperate through bilateral relationships.[55] States can also act to protect wildlife through intergovernmental non-state actors.

[54] I will sometimes refer to such states as 'host states'.
[55] Arguably, most bilateral agreements reflect national interests of both parties. It may thus be difficult to achieve bilateral cooperation between states interested in protecting wild animals and others interested in exploiting them

Once we take the rights of wild animals seriously, the narrow statist approach exhibits similar limitations as with the case of ensuring rights for humans in the state. Onora O'Neil (2004) advances three reasons why it is not enough to see states as primary agents for ensuring justice. These are that states can be unjust, states can be weak, and states can be porous to powerful agents that become active within their borders. Although O'Neil has in mind states as securers of the rights of their citizens, her reasons are possibly even stronger when applied to the case of wildlife rights, as I try to show below.

Many states across the world have governments that have acquired and maintain power by sheer brute force. They lack political legitimacy. Others are simply corrupt, and distribute national resources in a way that results in severe rights violations. The 1994 Rwanda genocide of Tutsis by the ruling majority Hutus is just one case in point. Clearly tyrannical states cannot be expected to protect their own citizens' rights as they are violators themselves. Quite the contrary, in these cases the citizens need protection against their own states.

The situation can only be expected to be worse with regards to wild animals as they are unable to defend themselves or plan and execute a revolution, and violation of their rights receives hardly any international condemnation partly because all states are violators of wildlife rights and indeed they are violators of animals' rights in general. Unlike the case of human rights violations, most states are systematic violators of wild-life animals' rights, varying only in severity and extent of violations. Even humans whose rights are violated by other humans, states, and organisations are also involved in violating rights of wild animals.

States under pressure to grow their economies sometimes turn to national parks for more agricultural land. Jonathan Adams and Thomas McShane state that, in Rwanda, conversion of parkland for agricultural use is an even bigger threat to gorillas than poaching is. For example, in the 1960s, the Rwandese government converted 25,000 acres of Albert National Park for growing pyrethrum (Adams and McShane, 1992: 126). Whereas ethnic hatred and racism have caused some state-perpetrated rights violations—for example, Rwandan genocide, the Nazi holocaust, and South Africa's apartheid—speciesism permits human interests to easily trump the rights of wild animals in virtually every state. Unlike human citizens, wild animals do not need a totalitarian dictator to have their rights wantonly violated. A popular democratic

for economic gain, for example. However, I here assume that already, states have come to the enlightenment that wild animals are not property. Moreover, the point is merely that, where there's agreement, a foreign state can run programmes in another state's territory without threat to or violation of sovereignty.

government might, much more easily, in principle, see wildlife lose their habitat at the altar of human development than a totalitarian regime with a wildlife-loving dictator.

Unlike rogue or tyrannical states, weak states may have the political will to protect wild animals, but lack the ability. Weak states are very likely to be poor states as well. This means that weak states cannot adequately provide for their citizens, let alone protect wild animals. Richard Leakey has clearly stated the challenge of poverty to protecting wildlife. "Managing public institutions in countries that suffer from underdevelopment and poverty is never easy …. Protecting elephants and conserving natural ecosystems remain my personal priorities. But I am not sure this would be so were I ill, hungry, and living in despair" (Leakey, 2001: ix-x). Weak states may thus be faced with what David Schmidtz (2002) refers to as "conflict of priorities". This type of conflict depicts the dilemma between protecting wild animals or protecting themselves that poor Africans may face even if they share the same wildlife values as well-off Westerners. I think both Leakey and Schmidtz correctly describe the situation of weak states' inability to protect wildlife.

Living next to wildlife is usually dangerous and costly anywhere in the world, especially among poorer communities. Weak states have greater competition for resources between poor humans and wild animals. Competition for resources is a major cause of human-wildlife conflicts. These often result in violations of wild animals' rights through encroachment, and the so-called retaliatory killings of wild animals that destroy crops or kill domestic animals. The conflicts are exacerbated by poor state protection of humans and ineffective or non-existent compensation schemes, which in turn are typically due to lack of funds and lack of strong institutions.

The last reason Onora O'Neil gives for not entrusting states as sole primary agents of justice is that some states are porous states. This problem relates to outside actors having undue influence that may undermine the host state agencies. Examples of such foreign elements include transnational corporations and international crime syndicates. There are clear cases of wildlife rights being violated as a direct or indirect result of the activities of foreign elements. Transnational corporations, as will be elaborated in the next section, sometimes take advantage of weak institutions to violate rights of local people and wild animals.

Porous states are also vulnerable to crime syndicates, which include terrorist or rebel militia. Virunga National Park—home of half of the world's surviving mountain gorillas—has been infiltrated by militia fighting in the Democratic Republic of Congo. The militia include the

Hutu Democratic Forces for the Liberation of Rwanda (FDLR) and the Tutsi National Congress, who use the cover of the forests and exploit wildlife 'resources' (Draper, 2016). According to a *Daily Mirror* award-winning investigative report, the East African terrorist group al-Shabaab earns about $365,000 monthly from ivory alone (Parry, 2014:5). In Nepal, the taking over of Bardia's National Park by Maoist rebels has led to a reduction in rhinos from seventy-three to just three in a period of two years (Messer, 2010: 2334).

There seem to be no tenable grounds for allocating the responsibility for wildlife protection to host states alone as primary agents. We have reasons to reject the idea that wildlife is property of host states. Furthermore, proximity to wildlife is insufficient to justify always making host states the primary agents for ensuring protection of the rights of wild animals. Host states can be unjust, weak, and porous and thus abuse or fail to protect wildlife within their borders. "Given that there are many bad states, many weak states and many states too weak to prevent or regulate the activities of supposedly external bodies within their borders, the thought that justice must always begin by assigning primary obligations to states [is] implausible" (O'Neil, 2004: 247). O'Neil's concern is the state/non-state divide. I think it is a legitimate concern. However, I think that, in the case of wildlife rights, her conclusion will be stronger and more relevant if applied to the host state versus foreign state divide. In other words, it might be the case that a foreign state has a greater moral responsibility of protecting wild animals than a host state has.

7.2 Extended Cosmopolitanism

In this section, I will attempt to show that cosmopolitanism in its current form manifests one important blind spot. The blind spot is cosmopolitanism's omission of animals as individuals who matter morally and as individuals who must be accounted for in any legal or international institutions for ensuring justice. I argue that once we remedy it of its speciesist flaw, cosmopolitanism becomes a powerful vehicle for realising justice for wild animals around the world. I argue for a statist-cosmopolitan approach.

Unlike the statist approach critiqued by Onora O'Neil, I advance a broad statist position that does not single out the host state as the primary duty-bearer for wildlife rights but, rather, places the moral burden on foreign states as well to the extent that all are causally linked to making wild animals vulnerable. The burden of justice to wild animals is two-fold. It involves negative duties and emergent positive duties that are usually premised on the failure to discharge the negative duties.

Like any moral perspective, cosmopolitanism comes with some nuances on both theoretical and practical levels. However, there is a set of fairly set of uncontroversial propositions that represents the core of cosmopolitanism. Thomas Pogge (2008: 175) accords us the first three propositions that are central to cosmopolitanism:

a) Moral individualism: "the ultimate units of [moral] concern are *human beings,* or *persons.*" (Pogge's italics)
b) Moral universalism: "the status of ultimate unit of [moral] concern attaches to *every* living human being *equally".*
c) Generality: "Persons are units of moral concern *for everyone*".

Cosmopolitans hold that all humans matter equally morally and this, in turn, imposes obligations on moral agents everywhere. These core elements of cosmopolitanism are echoed by Erin Kelly (2004: 183) who defines cosmopolitanism as the view "that the fundamental unit of moral concern is the person, and that all persons matter morally. Cosmopolitanism is thus individualistic and universalistic; states or societies can have moral claims only derivatively."

Ironically, however, these foundations for cosmopolitanism are so uncontroversial that they are bound to be endorsed by virtually all major traditional moral theories. This has, understandably, led some to declare that "we are all cosmopolitans now" (Blake, 2013). Whether one's criterion for moral considerability is capacity to experience pleasure and pain or possession of rational autonomy, the subjects of moral concern will straightforwardly include individuals outside one's race, ethnicity, or nation.

To the three cosmopolitan claims, I will add one more that appears to me to be unproblematic but helps to set a picture of cosmopolitanism that does the work this chapter seeks to perform. The fourth assumption of cosmopolitanism is that,

(d) political institutions, like states, have moral value only in so far as they respect people's interests (Caney, 2005: 232).

A cosmopolitan moral world view is interventionist, at least in theory. The fourth proposition thus animates cosmopolitanism by defining the justification and limitation of the state in terms of its role of protecting or promoting people's rights or interests. I think two conclusions can be made from this.

Firstly, the state has no intrinsic value over and above ensuring respect for human rights, some of which will be obviously conventional rights including rights to healthcare, education,

housing, and transport. Secondly, states or any other political institutions have the liberty to ensure respect for human rights anywhere in the world. This conclusion aligns with the United Nation's *Responsibility to Protect,* which states that if imperfect states fail to protect human rights, then the closer-to-ideal states are at least permitted "to disregard the non-interference norm usually attached to the institution of sovereignty and to interfere" (Karp, 2014: 46). To avoid arbitrary unilateral intervention, usually such intervention would require a UN resolution which any state on the UN Security Council could veto.

Notwithstanding its laudable moral expansionism, cosmopolitanism commits the fallacy of speciesism—which is to regard as having less or no moral standing members of species other than our own, *Homo Sapiens,* just for the simple reason that those individuals are not members of our species. If cosmopolitanism's reason for breaking the tribal or national barriers is equal moral worth, it seems inconsistent to restrict moral cosmopolitanism to humanity.[56]

For many cosmopolitans, the international moral currency is human rights. But in Chapter 2 and Chapter 3, I have argued that there is no defensible ground for human rights that is not simultaneously a ground for animal rights. I have argued that moral rights protect those interests that track elements of wellbeing, and wellbeing turns out to be interspecific. Thus, Victor Tadros is right in doubting "that we have *any* rights in virtue of our standing as human beings. It is the properties that typical humans have that ground their rights rather than the fact that they are humans. Non-humans that have these properties have the same rights" (Tadros, 2015: 447). Non-intellectual elements of wellbeing cut across species and the adjective 'human' in 'human rights' is—at least in most cases—misguided at best, and speciesist at worst.

Cosmopolitanism can, however, easily remedy the speciesist blind spot. We can alter features (a) to (d) above by adding 'animals' to 'persons', 'people' or 'human beings'. Alternatively, we could eliminate any reference to human beings and refer instead to all sentient individuals or all individual animals, since humans are animals too. This move has been anticipated by Pauline Kleingeld and Eric Brown: "Moral cosmopolitanism could be grounded in human reason, or some other characteristic universally shared among humans (*and in some cases other kinds of beings) such as the capacity to experience pleasure and pain*" (Kleingeld and Brown 2014: 11; emphasis added). This goes to show that there is nothing inherently conceptually

[56] I think it is more accurate to say that moral theories such as utilitarianism, virtue theory, or cosmopolitanism do not exclude animals as such. Rather, it is moral philosophers who fail to acknowledge or include animals in their philosophising. Our psychology and personal interests sometimes hinder us from taking moral arguments to their logical conclusions.

problematic with inclusion of wild animals in the cosmopolitan moral framework. Thus, a non-speciesist cosmopolitanism will take seriously the rights of wild animals anywhere on earth against wrongful harms by humans anywhere on earth as well as ensuring rectificatory actions even against what may be innocent inflictions of harm.

Victor Tadros has alluded to a cosmopolitan inclusion of wild animal with specific reference to the right to security. He says:

> International interference is surely permitted, and perhaps required, in order to enforce duties owed by state officials to non-human animals, at least in the form of international condemnation and monetary sanctions. It is permissible for international organizations to condemn, and perhaps sanction, states that offer insufficient protection to non-human animals against being wronged by citizens of those states. As officials have positive duties to non-human animals to protect them against being harmed severely, non-human animals have a right to security (Tadros, 2015: 448).

Although I agree with the non-speciesist cosmopolitan spirit in Tadros' statement, I disagree with his assumptions that reflect the narrow statist approach critiqued above as well as his views on the nature of duties of justice owed to wild animals. Tadros seems to assume that the host state has the primary responsibility of ensuring wildlife rights are respected.

It is particularly important to resist any generous ascription of positive moral rights for wild animals as doing so will create a runaway inflation of rights that will devalue rights as measures of justice. As Brad Hooker has rightly observed, proliferation of rights threatens "not only to debase the rhetorical power of the term ['moral rights'] but also to blur conditions for appropriate application of the term" (Hooker, 2014: 170). To preserve the power of rights and their clear application for cases of justice or injustice, it is vital to block blank-cheque positive rights. In my view, justice only involves those cases in which the right-bearer's vulnerability is explicable through some relevant actions or omissions of the putative obligor.

I have argued above that cosmopolitanism can conceptually accommodate the rights of animals. I have also denied that positive rights trigger moral obligations *erga omnes.* Saladin Meckled-Garcia has pointed out that, "With no relevant agent identified, there are no strict obligations, no strict accountability, no real principles of social justice" (Meckled-Garcia, 2013: 112-113). My contention is that relevant agents for wildlife justice can and must be identified on the basis of two kinds of moral rights. The first kind is negative rights against wrongful harm. A chimpanzee in Uganda's Queen Elizabeth National Park has the same right against a Ugandan villager as it does against the British Prime Minister. Both humans have the potential to wrongfully harm the gorilla through their actions or omissions. The elephant in Zimbabwe's

Hwange National Park has a negative right against President Robert Mugabe as well as against an ivory crafts dealer in China.

Emergent positive moral rights are the other type of rights for identifying relevant agents for ensuring wildlife justice. These duties emanate from initial actions or omissions that harm wildlife whether these actions or omissions are wrongful or not.[57] In other words, unlike negative duties, positive moral duties do not require that the initial harm is a failure to discharge an obligation. Nevertheless, it is an injustice not to make amends for the harm that was caused when one can make amends. Wild animals are sometimes owed compensatory duties by agents who did not violate their rights. In the next section, I will describe actions or omissions of agents that are tantamount to wrongful harms or complicit to wrongful harms against wild animals in a way that identifies agents across the world as responsible for ensuring justice for wild animals.

7.3 Global Wildlife Rights Violations

In identifying principal violators of wildlife and those complicit to the violations, I will assume that individual humans, corporations, and states are agents. I take individual normal adult humans to be paradigmatic moral agents. The important feature of moral agents is that they can make moral judgements and can fashion their behaviour accordingly. If an entity cannot understand and comply with rules or make moral judgements it does not make sense to hold that entity morally accountable or blameworthy for its behaviour. When we consider sufficient conditions for moral decision-making and acting on decisions reached, corporations and states seem, at least for my purposes, do qualify as moral agents.

For an entity to be a moral agent, it must meet at least two criteria. The first criterion an entity must possess is a decision-making structure with an ability "to process, interpret and act on rules" (Karp, 2014: 9). Although a robot can process and act on information, only an agent proper can deliberately interpret rules and come to a decision whether to violate the rule or to comply with it. The second criterion for an entity to be a moral agent is for the entity to have some sort of unity or identity that "persists over time" (Karp, 2014: 8). It seems obvious that if we are to hold any entity morally accountable, it must in a way be the same entity that last year violated some moral rights that we are evaluating today.

[57] Duties for wildlife adaptation to climate change is a good example of duties moral agents have despite having done nothing wrong other than occasioning harm upon some moral patients. See Kapembwa and Well (2016).

If the minimum requirements above are sufficient for moral agency, it seems corporations and states are moral agents whose actions are morally evaluable vis-à-vis moral rights protection or violation. They can enter agreements, make policies, and undertake actions in a manner relevantly analogous to individual moral agents. I take Robert Goodin's statement to be an apt characterisation of the status of collectives as moral agents. He writes:

> But artificially created agencies are agents, too. Most especially, the state is a moral agent, in all the respects that morally matter. It, like the natural individual, is capable of embodying values, goals and ends; it, too, is capable (through its legislative and executive organs) of deliberative action in pursuit of them. The state is possessed of an internal decision mechanism (a constitution, and the process that it prescribes) that mimics perfectly … that which is taken as the defining feature of moral agency in the natural individual. Without such mechanisms, the state would not be a state at all. It would lack the minimal organisational content required for that description to fit. With such mechanisms, the state is indisputably a moral agent, much like any other (Goodin, 1995: 35-36).

Moreover, the moral agency of corporations or states is distinct from that of individuals within the state. The internal deliberative mechanism of these entities guides and constrains individuals in a way that the decisions arrived at may sometimes—even oftentimes, in some cases—differ from those the individual might make as a moral agent in their own individual capacity.

The strategy of 'naming and shaming' corporations and states that violate human rights shows a reasonable belief in the targeted entities as moral agents that can deliberate and change their behaviour. Corporations and states can respond to demands of justice. Onora O'Neil's rightly says, "There is nothing very unusual or surprising about ascribing obligations to institutions, including states" (O'Neil, 2004: 249). Because corporations and states have deliberative capacities for accessing, understanding, interpreting, and acting on information of a normative nature, they ought to behave justly towards wild animals. All types of moral agents—individuals, corporations, and states—are involved as principals or through others who are complicit in the violation of wildlife rights. Below, I will discuss how individuals, transnational corporations and states are responsible for wildlife rights violations.

Once we accept that animals have moral rights, it is clear that individuals are responsible for wildlife violations. Individuals violate the rights of wild animals when they kill them for any reason other than euthanasia or self- and other- defence of the innocent. Individual villagers violate rights of wild animals when they encroach on wildlife territory for resource extraction, permanent settlement, or agricultural purposes.

7.3.1 Safari Club International

Although we can distinguish between individual, corporate, and state responsibility for the rights of wild animals, there is nothing logically preventing all kinds of responsibility in the same instances of rights violations. A case in point is the Safari Club International (SCI)[58] based in the U.S. With 190 chapters around the world, the organisation seeks to protect hunting rights of its 55,000 members and to support wildlife conservation that recognises hunting "as an invaluable wildlife management tool" (SCI, 2016).

Hunting has always been an international adventure and enterprise. Over a century before the founding of SCI, Europeans and Americans travelled to Africa to hunt. In his *The Empire of Nature,* John M. MacKenzie gives a detailed historical account of hunting before and during colonialism. He writes:

> In many areas of the world, the colonial frontier was also a hunting frontier and the animal resource contributed to the expansionist urge. In the era of conquest and settlement animals sometimes constituted a vital subsidy to an often precarious imperial enterprise, while in the high noon of empire hunting became a ritualised and occasionally spectacular display of white dominance. European world supremacy coincided with the peak of the hunting and shooting craze…. In addition, soldiers, administrators, professional hunters and wealthy travellers produced a seemingly endless stream of specialised hunting books, many of them ended up dressed up as natural history (MaKenzie, 1988: 7).

Even as European states scrambled for Africa, a parallel scramble went on as corporations—zoos and museums—in the U.S. and in Europe scrambled for live or dead specimen of African wild animals. Long before the establishment of SCI in 1972, in the U.S., that country's twenty-sixth president, Theodore Roosevelt, had hunted hundreds of wild animals in Africa.[59]

One notable point about SCI is its global reach. Chapters and individuals are from all over the world. Individuals travel and hunt all over the world. The SCI hunting awards shows how their members from all over the world kill animals for fun or prestige. There are continental awards whose winners must have killed wild animals of certain species of certain continents. Thus, the organisation has awards such as African 15, European 12, South Pacific 8, North American 12, Asia 8, and South American 8, showing the part of the world and number of eligible species. Grand Slam awards include Dangerous Game of Africa, Bears of the World, Cats of the World, South American Slam of Indigenous Game, and so on. The SCI's goals, structure, membership,

[58] Unless otherwise stated, information in this section about the SCI is from the organisation's website www.safariclub.org.

[59] My point of this brief historical note of hunting in Africa, is not to make a ground for backward-looking reparations for *those* past violations. It is, rather, simply to stress the extraterritoriality of wildlife rights violations. Backward-looking reparations raises too many factual and theoretical issues that fall outside the scope of this chapter and thesis.

and awards give us reason to believe that wildlife rights violations transcend national jurisdictions and thus those responsible for harms to wildlife in Mozambique—as principal violators or as accomplices to the violations—need not be Mozambicans.

Individual hunters violate rights of wild animals regardless of their membership in SCI. Unlike more complex cases such as those of the Nuremberg tribunals where a chain of command existed, individual hunters harm wild animals in their own individual capacities for their own hedonistic gratification, personal glory, or economic gain. That they belong to an organisation is irrelevant to their individual moral responsibility.

What is unique about members of SCI is that they have the protection of an organisation whose core aim is the protection of its members' 'right' to hunt. Mathew Scully (2002: ch.2)—a former speechwriter for President George W. Bush—documents in detail the activities, affluence, and influence of SCI. The organisation offers hunting-related and trophy importation litigation to its members, provides education and information related to hunting and updates members about hunting destinations. As observed above, SCI organises hunting awards which encourages and rewards the killing of many wild animals from varieties of wildlife species.

Another point about the SCI is the implication of states as agents of justice or injustice—the U.S. or other states such as Switzerland that have SCI chapters and many host states such as Zambia with wildlife sought by SCI members. These states that do not ban SCI chapters are implicated in the injustices committed against wild animals. They would not permit al-Shabaab training camps, so why do they permit SCI chapters?

One of the strengths of SCI is the wealth of its members. The average member owns twenty-two firearms, spends $14,000 a year on hunting, fifty percent of the members have an annual income exceeding $100,000 and the membership's total annual hunting expenditure is half a billion dollars (Scully, 2002: 53). The annual convention, as Scully describes it, is a marketing and trading arena where safari owners, taxidermists, gun makers, and makers of other hunting paraphernalia convene to sell their goods and services. SCI financial reports show that the convention alone brings the organisation revenue more than $14,000,000 annually.

With its resources including financial support they receive from some corporations, it is no wonder that "Since 2000, SCI has spent $140 million on protecting the freedom to hunt through policy advocacy, litigation, and education for federal and state legislators to ensure hunting is protected for future generations…. SCI has become a political force in Washington, D.C. and other world capitals" (SCI, 2016). In 2015 alone, the SCI Political Action Committee spent

over $600,000 on political lobbying. Ninety-four percent of candidates it supported were elected in the 2014 election while 147 SCI-supported pro-hunting candidates were elected to Congress. With over a quarter of the USA Congress being SCI candidates, wildlife legislation is likely not to negatively affect the alleged hunters' 'rights' to kill wild animals locally and to import those killed outside the USA.

As they have claimed, SCI are a "political force" not only in Washington, D. C. but in "other world capitals" as well. In Zimbabwe, as discussed in Chapter 6, CAMPFIRE is the face of SCI. Their political influence was even more apparent in Zambia following that country's ban on all hunting quotas for leopards and lions in 2013. Following the hunting ban, the SCI invited then Zambian Minister of Tourism and Arts, Jean Kapata, to the annual convention to address the SCI Board of Directors. Soon after, the minister announced the lifting of the ban on hunting of the two big cat species. SCI commended "Zambia for this important development in its approach to lion and big cat conservation and its recognition that hunting plays a valuable role in the sustainable management and conservation of these species."[60]

The case of SCI is important for demonstrating how one non-state actor can have substantial power over states. It also shows—with regards to wild animals at least—even perceived just and strong states in relation to human rights are unjust and weak in relation to wildlife rights. More importantly, the case shows individual members of SCI such as Palmer Walter as morally responsible for rights violations of wild animals. SCI is responsible for encouraging and defending rights violations of wild animals. States make or maintain wildlife laws and policies that permit individuals and organisations to violate rights of wild animals. The primary problem is that no state recognizes wild animals as having rights. Below I present miscellaneous further evidence of the extraterritorial nature of wildlife rights violations through actions of transnational corporations (TNCs) and states.

7.3.2 Transnational Corporations and States

Safari Club International is a non-state agent but not a transnational corporation. It was registered as a charity under the Internal Revenue Code 501 (c) (3) but has since changed to Internal Revenue Code 501 (c) (4) as a social welfare organisation. Moreover, organisation's rights violations are primarily killing of wild animals and those that are inseparable from or

[60] The SCI-Republic of Zambia relationship goes further back prior to this event. For example, Zambia's Conservation Strategy and Action Plan for the African Lion' thanks SCI for funding the lion conservation strategy (Republic of Zambia, 2009). This followed Zambia's rejection of Kenya's proposal to move lions from Appendix II to I of CITES.

normally accompany such violations such as psychological trauma and malnutrition for orphans. However, experts agree that habitat loss is the greatest threat to wildlife survival (Plessis, 2000: 14). The factors causing habitat loss help point to the agents responsible. The factors include "conversions to large-scale agriculture (eg, by fire, stocking rate, chainsaw, plough, or bulldozer), clearance by small-scale farmers, large-scale planting or logging, infrastructure development (eg, buildings, dams, powerlines, and roads) and mining" (Plessis, 2000: 16). From this, it is relatively easy to identify the agents responsible for wildlife rights violations.

Naturally, most TNCs have bases of shareholders or headquarters in the global North and in the emerging economies of Asia. A report financed by the European Commission revealed that this is the trend for logging corporations that have come predominantly from the U.S., Japan, and Europe but have recently been joined—and sometimes overtaken—by those from Malaysia, Taiwan, Philippines and Indonesia (Sizer and Plouvier, 2000). In many cases, the logging does not follow minimum standards for harvesting trees. The logging mainly takes the form of 'mining' of forests "through selective harvesting of marketable species. Almost without exception, management plans are neither elaborated nor implemented, and even basic silvicultural principles based on sustainable yield have not been applied (Sizer and Plouvier, 2000: 26).

The UK and France are the largest European importers of tropical timber and the tropics of Africa are habitats for the critically endangered grauer's gorillas. Large-scale logging affects wild animals in several ways, directly and indirectly. The clearing of large portions of forests reduces and degrades wild animals' living space as well as the quality and quantity of food resources and water upon which they subsist. Indirectly, hitherto impenetrable wildlife habitats are made accessible through cleared forests and roads made for transportation of the timber raw materials. "The opening-up of new areas of primary forest for logging often attracts people to the forest, in the short-term for hunting, and in the longer-term for subsistence farming" (Sizer and Plouvier, 2000: 12). What maybe impermeable to indigenous humans, presents no problem for the heavy machinery used by logging corporations. Hence, TNCs not only violate wild animals' habitat and subsistence rights but also literally pave way for further wildlife rights violations by hunters and indigenous human settlers.

I will end this section by showing that it is not only physical actions that are responsible for wildlife rights violations. Mere decisions made by state and non-state actors in the developed

world can also cause wildlife rights violations. Firstly, Western liberal democracies have extensively privatised many sectors of service and goods provision to the public. By reducing its sphere of operation, states may, in effect, "privatise away their human rights responsibility together with their traditional state functions" (Karp, 2014: 29). Running corporations comes with moral responsibilities. And so, when states privatise corporations, they rid themselves at least of some of the corporations' moral burdens. Examples include tax obligations, corporate social responsibility and abiding by any set ethical requirements such as responsibilities not to pollute or engage in bribery.

However, states retain responsibility for the regulation of the industries they privatise. Even with the reduced direct responsibilities, states are often complicit to the actions abroad of their TNCs. TNCs are vital to the economies of the states in which they are based. The benefits come through taxes, employment, and goods and services the corporations provide home. Some TNCs are at least partially owned by states. Without the revenue from the extraterritorial activities of TNCs, states may find it harder to provide essential goods and services to their citizens. There is thus a huge incentive for states to facilitate or not interfere in TNCs profit-maximisation even at the cost of violations of human or wildlife rights, especially when those whose rights are violated are foreigners or wild animals in poor countries.

David Karp clearly describes the behaviour of developed states. He notes that "to the extent that states have a strong economic stake in their (home-based) companies' profitability, states might, to this extent, prioritise regulation that makes it easier for those companies to make a profit instead of prioritising regulation that minimises the negative impact of those companies' operations abroad" (Karp, 2014: 30). Thomas Pogge provides further evidence that until 1999, "most developed states did not merely legally authorize their firms to bribe foreign officials, but even allowed them to deduct such bribes from their taxable revenues" (Pogge, 2004: 268).[61] This behaviour of states shows at least that states had knowledge of corporations from their countries engaging in bribery overseas and went ahead to mitigate financial losses incurred by these companies' engagement in corruption. It seems fair to say that if states behaved in this manner, then they were complicit in the corruption.

Among the impacts of TNCs corruption is environmental degradation and, corollary, wildlife rights violations. In 2012, Zambezi Resources Limited, an Australian mining TNC's mining

[61] In 1999, developed states adopted the Organisation for Economic Cooperation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

licence was rejected when Zambia Environmental Agency and Zambia Wildlife Authority found its Environmental Impact Statement (EIS) did not meet standards for opening a mining operation in a wildlife protected area, Lower Zambezi National Park (Mining News Zambia, 2014). However, in 2014, following an appeal by Zambezi Resources Limited, the Minister of Lands, Natural Resources and Environmental Protection granted a licence to the TNC to proceed with the open-pit mining operation within the national park. Environmental and animal welfare groups successfully obtained a court injunction to stop the mining firm from beginning its mining activities. My point is merely that TNCs and periphery host states can, and sometimes do, collude in violating rights of poor humans and those of wildlife.

I have described one way in which states of wealthy countries violate the rights of wild animals, that is, through support of TNCs that directly or indirectly lead to wildlife rights violations. Clear examples are those companies involved in logging, mining, and oil exploration and extraction. Decisions by strong states can have a big impact on violations of rights of wild animals. Below are a few cases in which such decisions that saved wild animals or condemned them to rights violations by poachers:

- Following the addition of elephants to CITES' Appendix I, prices of ivory quickly plummeted. "The day before the meeting, a pound of ivory sold for more than one hundred dollars; the day after, a seller would have been lucky to get five dollars" (Leakey, 2002:118).
- "In early June 1989, Pres. George Bush announced that ivory could no longer be imported into the United States; and a few weeks later Margaret Thatcher followed suit. Departments and jewelry stores in both countries stopped selling ivory. Sotheby's auction issued a statement that they would no longer auction elephant tusks or anything made of ivory" (Leakey, 2002: 88).
- "In mid-January 1990, Britain's prime minister Margaret Thatcher didn't help matters when she requested CITES to allow Hong Kong to sell off its stockpiles of ivory. Almost overnight we saw a fresh wave of poaching. Another twenty-one elephants where killed in Tsavo alone. [I] wrote bitterly in my diary: *This is extremely serious and the upsurge in poaching and … trafficking has begun"* (Leakey, 2002: 142).

There is little doubt that individual moral agents, corporations, and states are individually or jointly involved in violating rights of wild animals in a way that is not necessarily limited to national borders. States are a particularly special agent as they have legislative functions as

well as executive functions accompanied by monopoly over the legitimate use of coercive instruments. I therefore think that Onora O'Neil's (2004) attempt to make states *and* TNCs as primary agents of cosmopolitan justice ignores some fundamental differences between the actors such as their *raison d'être* and their capacities. Both individuals and corporations are moral agents subject to a larger moral agent—the state. As seen in the case of SCI and TNCs, states facilitate wildlife rights violations by individual and corporate moral agents. My view endorses the statist view that sees states as primary agents of ensuring protection of rights while corporations and NGOs are secondary agents for justice. What I desist from is the view that the host state for wildlife is the only state with primary responsibility for the rights of wild animals within its borders. I argue, rather, that it is all states to the extent that they have harmed wild animals living in poor parts of the world.

7.4 A Broad Statist Approach

The negative duties of all states against wild animals requires that the states do not make decisions, legislation, policies or take actions that are injurious to the interests of wild animals. Within a short time of the UK allowing Hong Kong to sell its ivory, elephants were murdered in Kenya. It is hard to deny the connection. And if the causal connection holds, it is hard to exonerate the UK from the killings and the accompanying trauma to the elephants and those orphaned babies that, according to Moss (1992), can go into severe depression that may result in death.

States have huge economic stakes in their TNCs whose extraterritorial investments are sometimes facilitated by the strong states through diplomatic channels as well as through loans. Some rights violating TNCs are for example funded by the European Investment Bank.[62] In virtue of being weak states, poor countries have little to no regulatory capacity to ensure the powerful, diverse, and sophisticated TNCs abide by required standards that safeguard the rights of poor people and wild animals. Yet Western countries and banking institutions such as the International Monetary Fund and the World Bank impose stringent conditions to bilateral aid or to loans including that recipient states uphold certain human rights. Hence, to require as a duty of justice that rich states impose stringent demands upon their TNCs operations in or near

[62] For example, Anne-Sophie Simpere (2010) shows how European Investment Bank mining loans have been given to TNCs that pollute the air, water, and the soil by not adhering to Zambia's environmental safety mining regulations. Even when some humans receive some meagre compensation for harms suffered, wild animals receive none.

wildlife territory is to ask for nothing novel. It is rather, to require that they take as seriously the negative rights of people *and* wild animals abroad as they do to humans at home.

In providing legislation that not only allows for the existence of SCI but that also allows the organisation to be exempted from taxation, the U.S. state has on its hands the blood of wild animals killed through SCI all over the world. It is the duty of the U.S. to outlaw organisations whose sole reason for existence necessarily involves violation of wild animals' rights. SCI does not want CITES to remove species from those Appendices where it is legal for SCI's members to hunt them. For example, if lions or polar bears are added to Appendix I, this would mean an end to some of the prestigious awards including the African Dangerous Animals or the African Big Five awards.

Steve Wise (2005) and other writers have compared the treatment of animals to slavery while others such as Charles Patterson (2002) have drawn parallels between human treatment of animals and the holocaust. I think an apt analogy for SCI is having the Ku Klux Klan or a terrorist group registered as tax-exempt non-profit organisation or a social welfare organisation. Although SCI claims to protect hunters' legal rights to hunt, there can be no such moral right. Sadistic pleasures or the satisfaction of evil desires do not warrant the protection of rights and *a fortiori*, protection of the law.

7.5 Cooperation in Ensuring Wildlife Rights

There is, currently—and has been in the past—global concern for wildlife. The British Empire was one channel through which globalisation of wildlife protection occurred, albeit for anthropocentric reasons. For example, in current Zambia, whereas the British South African Company (BSA Co) Board strongly opposed the preservation of wildlife where doing so harmed their economic interests, the Society for the Preservation of the Wild Fauna of the Empire countered that "I am strongly desired to ask that nothing should be done by any Department in any of the Colonies … to impair the present Game Reserves" (Astle, 1999: 27). In fact, the Society asked for the creation of further game reserves and national parks.[63] Thus, to suggest a global approach to wildlife protection is not so much to suggest something novel. However, it is the realignment of values and reallocation of moral responsibility I suggest that point to reshaping of institutions for ensuring wildlife rights.

[63] Game parks were arguably established as hunting grounds for 'game' animals. If it were not for the colonialists' love of hunting, wildlife protected areas would probably not have been created. However, national parks are now the morally legitimate property of its inhabitants, the wild animals. We can only condemn national park habitats today on pain of committing the genetic fallacy.

In the twenty-first century, Otter, O'Sullivan, and Ross (2012) note that supranational entities and regulatory frameworks exist that have competently managed animals for decades. The authors identify the Terrestrial Animals Health Code (TAHC), the World Organisation for Animal Health (OIE), and CITES as such codes or organisations. To these supranational agencies, we may add civil society organisations that have a global outlook. These include WWF and The Frankfurt Zoological Society.

However, although global in character, institutions or organisations lack a coherent normative underpinning because "they are far more concerned with protecting rare and endangered animals (usually those considered desirable by humans) and safeguarding international animal trade than they are with ensuring individual animals avoid paid and suffering" (Otter, O'Sullivan, and Ross, 2012: 55). There are some exceptions though. Some non-governmental organisations with a global outreach explicitly recognise animal rights or the intrinsic value of animals. These include the World Animal Protection, and International Fund for Animal Welfare.[64] However, even the organisations that recognise the moral status or rights of individual wild animals seem to work from the moral framework of benevolence and not justice.[65] These organisations do, however, give indications the sort of cooperative institutions states should pursue as a matter of justice for wild animals.

Wildlife governance is to a great extent already global with international organisations and institutions such as the IUCN, CBD, CITES, WWF, UN Environmental Programme somehow dictating member states' wildlife policies as well as providing technical, material, and financial support for state agencies responsible for wildlife protection. There is also a plethora of local and international non-governmental organisations such as the Jane Goodall Institute and the David Sheldrick Wildlife Foundation—both headquartered in the UK—working for wild animals especially in Africa. Perhaps what is needed is coordination among all these actors once there is a moral paradigm shift from anthropocentric conservation to a zoocentric ethic that prioritises protection of wildlife rights. Because protected areas are found in geographical areas of sovereign states, the host states must be accorded key administrative roles—compatible

[64] See their websites, www.worldanimalprotections.org.uk and www.ifaw.org respectively.
[65] My point is that recognition of rights requires identified obligors to desists from certain acts or omissions. There is, however, no contradiction in innocent moral agents—such as the NGOs cited—acting to mitigate the effects of rights violations even when the beneficent moral agents are completely innocent and not liable for the harm occasioned on wild animals. Once A's right has been threatened or violated by B, a kind moral agent, C, may permissibly step in to help A.

with their interests such as national security—within the international wildlife governance framework in order to respect their territorial integrity.

Poor states can barely protect or provide for their citizens. Financial constraints are a major obstacle to recognising the rights of wild animals as well as to ensuring protection of wildlife rights. Usually wildlife is seen as a source of revenue even if this means loss of lives or compromised wellbeing for wild animals. Poor states may also see wild animals as preventing economic development by occupying fertile agricultural or mineral-rich land or as preventing infrastructure development.[66] Dislocating wildlife from their habitats for any economic projects would violate wildlife rights and is impermissible as national parks are wildlife property. However, securing the host state's and local communities' support is essential to ensuring wildlife rights. There is therefore need for the international community to at least fund wildlife protection to mitigate the host states' economic opportunity costs.

After the United Kingdom permitted Hong Kong to sell their ivory, Richard Leakey was on the edge of despair:

> *We are desperate for arms, ammunition, and equipment. Our radios are useless and we do not have nearly enough people. So much to do! I feel quite daunted by the sheer size of the problem. Money, money, money—beg, beg, beg! How long can I do this?* Two weeks later, I was on my way to England with my hat in hand. I had to keep begging. There was no other choice (Leakey, 2002: 142-143).

Such is the irony that a strong state decides to further its own national interest and elephants and game rangers protecting them must pay with their lives[67] while poor countries must spend more to protect the wild animals or beg more from the same rich countries that initiated the dominoes resulting in escalated poaching. Poor states sometimes must borrow from rich states or from banks in rich states to protect wild animals.

My point here is that, the distribution of costs of protecting wild animals is unjust to poor countries who have not only to lose economic opportunities of not being able to start certain economic activities in or near the national parks, but must reallocate their meagre resources or borrow to protect wild animals from vulnerability created by some rich states. Furthermore,

[66] In the 1980s, Richard Leakey prevented the building of an oil pipeline through Nairobi National Park (Leakey, 2001) and he is now trying to stop the building of a highways across Nairobi National Park and across the Serengeti that will especially put migrating wildebeest at risk annually (Boynton, 2014). In both instances, Leakey was depicted as hampering much-needed development.

[67] Leakey himself is a survivor of a near-fatal plane crush. Some, including Leakey himself, believe this was an attempted assassination by those who profited from the illegal trade in ivory. Assuming this was an assassination attempt, Leakey's life was imperilled and his life significantly transformed from the resulting amputations chiefly because ivory prices were high enough to kill for. The cost of ivory is determined partly by policy decisions of rich or strong states far away from the elephants.

reallocated resources result in poorer communities pressuring them to resort to poaching or encroachment on wildlife territory which in turn increases the incidence of human-wildlife conflicts and resultant wildlife rights violations.

Begging for resources to protect wild animals depends on a morality different from the one I am arguing for. It depends on the morality of benevolence. There is an abundance of goodwill in the strong states especially towards the protection of certain charismatic species such as elephants, chimpanzees, or gorillas. According to *National Geographic*, of the DRC's $8 million annual national parks operating budget only five percent comes from the DRC government. The rest comes from the European Union, the U.S. government, and international NGOs (Draper, 2016: 71). If rich states have a duty of justice towards wildlife, then it is inappropriate for them to 'assist' poor states or NGOs working in host states as a matter of charity to enable the poor states or NGOs protect wildlife. Rather—assuming an appropriate supranational body existed—a supranational body or the poor states should demand that the rich countries bear their burden of positive duties arising from the rich states making wild animals vulnerable.

Even assuming rich states are not causally responsible for wildlife vulnerability, begging assumes wrongly that the begging host countries have the primary responsibility of protecting wildlife in virtue of 'ownership' or proximity. In fact, it is the abler, rich countries who should shoulder more of the duty of benevolence—assuming arguendo that such a duty exists—to wild animals. Moreover, the problem with begging is that it is likely to come with conditions against the poor host nations or against the wild animals, as in the case of SCI who fund conservation just so they can be assured of killing some wild animals.

Last, charity means that when donors have financial strain or a change of government, those programmes to which they give freely risk being abandoned. Anti-poaching operations are day-to-day activities and any disruption in funding will result in an increase in wildlife rights violations. Thus, although organisations such as the David Sheldrick Foundation or Virunga Foundation may set up trusts in London or Washington, D. C. for donations from individual or corporate donors, this must be merely supplementary to the non-optional funding by states. Resources provided by states may be managed through any viable model such as one that takes the host state as the focal point, through a United Nations—or a UN-like—consortium of states and wildlife welfare/rights organisations.

To sum up, this chapter has tried to argue that many states other than one in which the wild animals live have a duty of justice to the wild animals. Because wild animals are legal property of states in which they are found, protection of wild animals is assumed to be the sole or primary responsibility of such states. I have argued that this is mistaken as, on the rights view, wild animals cannot be property any more than humans can be. I then follow Onora O'Neil's criticism of the statist view of (host) states as having the primary responsibility for ensuring the protection of moral rights. I argue that, as far as negative duties to wildlife are concerned—which in my view are the rights constitutive of justice in addition to emergent positive rights—extraterritoriality is an automatic implication.

To demonstrate the extraterritorial implications of wildlife rights violations, I used the cases of SCI and TNCs. I discuss SCI at length because not only does the organisation encourage wildlife rights violations by its members but it also provides arguably the single biggest obstacle to legislation and global policy that would provide serious protection to rights of wild animals.[68] This non-state actor is successful is protecting the 'rights' of members to violate the moral rights of wild animals. SCI is also successful in fighting against the inclusion of species such as polar bears and lions to CITES Appendix I and in so doing, it helps indirectly to perpetuate wildlife rights violations by criminal poaching syndicates. I have further linked wildlife rights violations to rich states' abetting their TNCs' deleterious actions in wildlife territory and, directly, through policies or legislation that perpetuate hunting or trade in species of fauna. I then reach my verdict on which agents have the primary responsibility for ensuring wildlife rights are not violated. These are states around the world whose actions are in various ways directly or indirectly responsible for wildlife rights violations. I end with a tentative proposal that would help safeguard wildlife rights through ensuring the discharge of negative duties and emergent positive duties. In the proposed global framework, it is states that are the primary actors but they may or must work with or through non-state agencies for effective enforcement of wildlife rights.

[68] Safari Club International has taken credit for two successes at the 2016 CITES COP 17 in Johannesburg. The two successes are that polar bears were excluded from the agenda for possible inclusion on Appendix I and, although lions were debated, they are still on Appendix II.

Chapter 8 Conclusion

The last half century has seen the emergence and flourishing of animal ethics as an academic discipline. Even as ethical discussion of animals has become entrenched in philosophy, a disproportionate amount of literature has focused on domestic animals or wild animals in zoos or science laboratories. Meanwhile the literature focusing on wild animals has a bias towards those wild animals closest biologically to humans—the primates—or to some charismatic mammals or cetaceans with high intelligence or emotional and aesthetic appeal. My thesis is a full-fledged focus on all wild animals. I have traversed what I see as key moral issues affecting wild animals. These issues are normally only covered in piecemeal fashion within the discipline, although the last five years have witnessed a surge in wildlife ethics—mostly consequentialist—literature especially focusing on the suffering of wild animals.

Moral philosophy is an expansive field. It is therefore not surprising that any practical ethics problems are approached from an array of normative theories. The approach I have taken is one of justice construed very narrowly in terms of respect for moral rights. On this view, an injustice occurs if and only if, and because, some moral agent has failed in discharging an obligation correlative to someone's right. Although moral rights theory or justice is but a fraction of morality, it is arguably the most important part of morality. Moral rights denote what is owed to someone, what someone can demand, fight, or kill for justifiably. This power of moral rights explains why people tend to create some conventional rights when some particularly important interests are at stake.

Moralities that promote charity or goodness as such are very important. But, in my view, many instances where beneficence is called for are instances where some injustices have led to the vulnerability. A just world would have much less use for philanthropy than an unjust one. An important difference between justice and charity is that justice can be rightfully enforced. For wild animals that may not elicit so much kindness from humans—especially for those seen as pestilential or as threats to human interests—moral rights seem the best way to protect them from anthropogenic harm.

The oratory of moral rights is so powerful that it is behind the defeat of diabolical discriminatory institutions including patriarchy, apartheid, and slavery. Unfortunately, like all powerful currencies, moral rights face the danger of being counterfeited. Too many illicit claims of moral rights can dilute the value of rights and generally make it harder to trade in the

powerful normative currency of moral rights. For some writers acknowledging moral rights for animals is just one such a way of diminishing the power of moral rights.

On the other hand, animal rights theorists tend to take moral rights as a philosophic given and simply embark on applying them in the various contexts and conundrums involving animals. I think the background philosophical work on moral rights can be very rewarding to rights thinkers focusing on animal issues. In this thesis, I have explored the structure of moral rights and the normative role of moral rights. This, I believe, has led to some new ways of diagnosing and resolving of moral problems involving wild animals that avoid the ambiguity that results from not distinguishing the various types of rights—claims, liberties, powers, and immunities—which entail different moral obligations.

Unpacking the structure of moral rights is beneficial in stemming the influx of rights by requiring specification of the *scope*—subject and respondent—of moral rights claims. Parents are appropriate respondents to their child's positive claim-right to provide the right quantity and quality of food. But the neighbours' child cannot demand provision the same goods although she can surely beg for the generosity of the first child's parents. Positive rights claims impose a very heavy burden upon the obligor such that injustices can easily be committed against wrongfully identified obligors. Such injustices are akin to those of convicting someone on false testimony. The *content* of a right is also helpful in curtailing both invalid claims of moral rights and mistaken argumentative counterexamples. This is so because not just any interest passes off as content of moral rights but only those interests that track some element of wellbeing.

Many problems afflict wild animals, many of whom will be found in designated protected areas. Most of the evil wild animals suffer from is not caused by human beings. Oscar Horta (2010), for example, has described the *r*-strategy[69]—a reproductive strategy in which millions of offspring are produced but only a tiny fraction survives to reach adulthood. The rest perish painfully from predation, thirst, or starvation. In addition to the inevitable victims of the profligate *r*-strategy, there are also bushfires, diseases, droughts, and earthquakes not caused by humans but which cause immense suffering to millions of wild animals.

[69] The *r*-strategy is contrasted with the *K*-strategy in which some animals produce few offspring and normally invest a lot of time and energy in providing for the young ones and protecting them until they are old enough to fend for themselves.

In the face of so much natural evil, there is no reason to make a universal 'let them be' ban against any intervention to help wild animals that can be helped without violating rights of some other wild animals. Although humans are morally permitted to intervene intelligently and cautiously to aid some animals, humans are not required to do so as a matter of justice. True, duties of beneficence are morally binding. For example, people *ought* to help those in serious need, if these people can help at only a small cost to themselves. But omission to discharge such duties, although such omissions could be morally wrong, do not constitute any injustice. In the absence of morally justified (legal) conventions, such duties of beneficence cannot be rightfully enforced. That there are no unacquired positive moral rights of wildlife to human protection is an important point that prevents a runaway inflation of moral rights.

I do not deny that there are sound moral theories that would require human cooperation to aid wild animals or to develop virtues of kindness and generosity to wild animals. But in my view, it is to misspeak to talk about wildlife rights to aid in instances where humans are not morally responsible, causally responsible for, or complicit to, wildlife suffering. My thesis has been about what actions are morally permitted, required, or prohibited as a matter of justice with regards to human-wildlife relations.

When it comes to justice for wildlife, there are several pertinent issues that are both philosophically intriguing and of great importance to wildlife policy. Most of the injustices humans commit against wild animals result from the denial of a moral status for wild animals that warrants the protection moral rights provide. Wildlife policy around the world—while recognising the need to avoid cruelty to wild animals—falls short of full recognition of the moral rights of wild animals and stringent requirements and prohibitions this entails for humans. Anthropocentrism is the ethical bedrock of wildlife governance praxis with wild animals relegated to the status of natural resources for humans to exploit. Under such an ethical framework, it is morally permissible—if not morally required—to kill predators that are seen as vermin, or as competitors for some economically or aesthetically valuable wild animals. Under that wildlife ethic, humans are further permitted to introduce species, to decimate or extirpate species that are deemed as excess or as threats to ecosystems or to biological diversity.

Under a rights-based wildlife ethic, intervention in predation or in environmental protection by killing or harming prey would be seriously curtailed. When humans attack innocent others, the victims or some third party can rightfully prevent the attack even if it means seriously harming the attacker. The attacker holds no liberty-right to attack innocent others and so others may

rightfully impede the attack. The attacker also becomes morally liable to defender's defensive harm as she has a power-right to alter the attacker's negative right not to be harmed. Carnivores are never liable to humans for their attacks on wild prey. It is morally bad that prey kill and feed on other sentient wildlife but it is not morally wrong. It is a near-truism that promoting the good must not be purchased at the cost of rights violations. We may lament the evil of predation but we are prohibited from violating predators' rights to prevent the natural evil of predation.

The behaviour of some wild animals and their dwindling or irruptive populations can pose a threat to an ecosystem that serves some human-centred interests such as tourism, sustainable yield in bushmeat, biodiversity, and so on. Wildlife policy permits the thwarting of such threats using any means possible. This permission, I think, results from the mistaken view that wildlife is human property and may thus be exploited for meat and tourism that must be sustainable. A related mistaken belief is that the ecosystem does not belong to wild animals that reside in it. Wild animals own their habitats and their habitats may undergo natural cycles of deterioration and resurgence. It is an injustice to control lethally wildlife populations to keep ecosystems 'optimal' in human eyes.

Wildlife justice prohibits humans violating rights of individual wild animals to maintain an ecology that best serves human interests. However, humans may legitimately intervene in cases that may amount to self-defense. Many writers acknowledge that rights of humans or animals may be overridden to prevent a moral catastrophe. If a leader of a pack of wolves is leading them towards a cliff where they will surely all fall off to their deaths if nobody intervenes, I think a far-off sniper may shoot the lead wolf to serve the rest of the pack. Down to earth, if a hyena family has an incurable lethal disease, the rights of the family members may be justifiably overridden if killing them will stop them from transmitting the virus causing the devastating disease from being transmitted to neighbouring families.

I think such isolated measures may be justified in the case of human beings as well where safe isolation is impossible. If an insane Ebola patient runs off from the quarantine camp and he may only be stopped through a lethal gunshot before he enters an overcrowded place, I do not see why his right to life may not be overridden. However, wildlife policy allows programmatically killing some animals to control populations when nonlethal options are available. On the contrary, in the case of control of human populations, birth control measures are voluntary and any birth control measures without participants' informed consent are viewed

as a gross injustice. I believe systematic lethal control of wildlife populations is institutionalised speciesist injustice. Such a practice cannot be part of a morally sound wildlife ethic.

Trophy hunting, poaching, trade in wild species of fauna—both legal and illegal, climate change, and corporate extractive activity in wildlife territory are some of the major threats to wildlife rights. Individuals and corporate entities that engage in these activities or exacerbate vulnerability to wild animals are not residents of any single state. In addition, wildlife is not property of any states, even those states in which the wild animals have their habitats. Given these two positions, states in which the wild animals reside—whether the state in question is Scotland or the Democratic Republic of Congo—do not have the primary responsibility of protecting the wild animals living within the national borders.

Poor states with wildlife in their territories lose a lot of human resource and their limited revenue—usually borrowed from rich states or from banks in rich states—in protecting wild animals. Yet elephants, rhinos, gorillas, and many other wild animals are in danger, to some extent, due to the actions and omissions of countries like the United Kingdom, the Netherlands, France, China, the United States, and Vietnam. These countries receive economic and other benefits from trade in wild animals' products, from the trophy hunting industry, and from activities of their transnational corporations. Rich states are not oblivious to the devastating effect on wildlife habitats of some of their corporations involved in mining, oil exploration, construction, agriculture, and logging in poor states. Wildlife are denuded of their protective and productive habitats making them vulnerable to poaching and starvation and additional threats of habitat encroachment resulting from making wildlife territories more accessible to local humans.

Given that wild animals suffer injustices from many states' actions, omissions, and complicity, it is simplistic to require 'host' states to have the primary burden of shouldering the direct and indirect costs of protecting wild animals. My view is that, because of direct responsibility and complicit being diffuse, justice for wild animals requires many or all states acting together with other states to protect wild animals.

States violating rights of its citizens or non-citizens receive various forms of international sanctions that range from naming and shaming, exclusion or expulsion from some international organisations, to military intervention. Violating the rights of wild animals is an injustice. But having certain dealings with states or corporations that violate wildlife rights is morally complicit and both types of behaviour require culprits' initiating or participating in some

preventative and compensatory programmes. Concerns for efficiency and coordination point in the direction of some global organisation(s). Intergovernmental prototypes exist in the case of human rights. There are also model international non-governmental organisations protecting or promoting wildlife interests that could be implemented under an intergovernmental framework for wildlife justice.

This thesis has moved from affirming moral rights for wild animals to pointing to what sort of actions—unilateral or cooperative—states must initiate or contribute towards ensuring justice for wild animals. Many pertinent issues have been critically explored relating to how humans ought to *justly* treat wild animals. Many of these issues are essentially interdisciplinary among disciplines such as anthropology, conservation biology, political ecology, and economics.

To this effect, it is unrealistic that many issues could be exhaustively explored or analysed in this work. My thesis, thus, does not pretend to be the final word. Rather, I hope that philosophers will find in this work new helpful ways of looking at ethical problems arising in human-wildlife relations. I hope scholars in relevant fields are challenged by some arguments and their implications to seriously rethink the moral position that their fields assume pertaining to wild animals. The real prize, for me—as is for any practical ethicist—would be the adoption of at least some of my arguments by animal activists, environmentalists, and wildlife policy makers, both at the local and at the global levels.

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