

The Rights of Wild Things

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It has been argued that if non-human animals had rights we should be obliged to defend them against predators. I contend that this either does not follow, follows in the abstract but not in practice, or is not absurd. We should defend non-humans against large or unusual dangers, when we can, but should not claim so much authority as to regulate all the relationships of wild things. Some non-human animals are members of our society, and the rhetoric of 'the land as a community' is an attempt, paralleling that of humanism, to create the moral ideal of Earth's Household. But wild animals should be considered as Nozick's 'independents' and have correspondingly fewer claims on our assistance than members of our society. They still have some claims, often strong ones.

I

D. G. Ritchie, responding to Henry Salt's claim that at least some non-human animals had some rights in law, observed that were this so we should be obliged to enforce such rights even against other non-humans. If a mouse has a right not to be tormented, a cat ought not to torment him, and we ought, if possible, to restrain the cat. Ritchie's argument, of course, was intended as a *reductio ad absurdum*, his object to deny rights to non-human animals.

Must we not put to death blackbirds and thrushes because they feed on worms, or (if capital punishment offends our humanitarianism) starve them slowly by permanent captivity and vegetarian diet? What becomes of the 'return to nature' if we must prevent the cat's nocturnal wanderings, lest she should wickedly slay a mouse? Are we not to vindicate the rights of the persecuted prey of the stronger? Or is our declaration of the rights of every creeping thing to remain a mere hypocritical formula to gratify pug-loving sentimentalists?¹

Ritchie preferred to base 'our duty to the animals' on the requirement to maintain a civilized, humanitarian, human society, though he acknowledged that we might, metaphorically, have duties towards domestic animals as 'honorary human beings'.

Even Ritchie, were he to be acquainted with present practices towards the non-human, in farms, laboratories, zoos, circuses, and the wild, might have agreed that such are not the customs of a humane society, and that

our advocacy of 'kindness to animals' must be only a hypocritical formula if we always prefer our sensual gratification to the slightest realistic effort not to hurt our kindred. Even those who would deny that 'animals' have any 'rights', moral or legal, may agree that their suffering is an evil. A hurt is a hurt whoever has it. What Nozick has called 'utilitarianism for animals, Kantianism for people'² places the non-human on a lower level of moral concern, but surely outlaws most of our present practices. My object in this paper is not to defend vegetarianism but to try and disentangle the various kinds of right we might wish to impute to our kindred, and to help Utopian speculation a little further forward.

II

An immediate reply to Ritchie's argument might be that mice no more have rights against cats than they do against earthquakes, for neither danger has any duties. An event may injure or hurt a mouse but not infringe his rights, just as our rights are not infringed by epidemics, earthquakes, or tornadoes – unless these episodes are engineered by maleficent moral agents. One can have rights only against those capable of acknowledging them. This class, indeed, may be smaller than the class of moral agents. Harman's space-travelling anthropophages may perhaps acknowledge moral constraints in their dealings with each other, but are incapable of seeing our distress as any reason to refrain from action. There would at least be little point in demanding our rights from such oppressors.³

This reply makes use of an intuition often used against those disturbed by the thought of 'nature red in tooth and claw'. The hyena is not cruel in eating a zebra alive, for he is only seeking food, not the enjoyment of power or the distress of his victim. It is simply sentimental to be upset by such a sight. This is to say that it is moral and not physical evil which is to be denounced: not the victim's distress but the predator's character. What is evil, correspondingly, in our tormenting of a mouse is the cruelty or callousness we thereby display, not the mouse's distress. A cat shows no such fault of character, though maybe chimpanzees sometimes do,⁴ and there is therefore no important evil in the cat's pursuit of mice. She is innocent.

This reply to Ritchie, however, plainly concedes his case: that human character and society is the proper object of concern, not the pain of the non-human. We should not behave to them as Harman's aliens or Soame

Jenyns's demons⁵ do to us, for we should not want to be like such oppressors. Nor should we salve our consciences by fantasizing that as men hunt animals, so the spirits hunt men.⁶ It is part of a decent human life that it is susceptible to sympathetic distress. We should not be cruel or callous, but should not permit 'kindliness' to be our solitary virtue.

That the reply concedes Ritchie's point may itself be sufficiently counter-intuitive to count against it, but it has other faults. First, the laws against the torture or neglect of (some) animals are thereby revealed as laws of manners, acceptable to moralistic legislators, but not to anyone who refuses to let the law come between a man and his morals.⁷ Should they then be repealed?

Secondly, it is surely quite unclear what could be wrong with cruelty or callousness if suffering were not itself an evil. Why should we object to these character traits except because they multiply physical evil? A Kantian may reply that we should object because the traits, once established, will tend to multiply human suffering. There may be some truth in this – the psychologists who have been happy to experiment upon the non-human are also implicated, as a profession, in gross deception and oppression of human victims. But they could be restrained by Kantian considerations, to the effect that humans are a quite different sort of creature from non-humans (all of them?), that human suffering is evil (perhaps) because it interferes with distinctively human activities: a migraine makes it difficult to do philosophy. It follows, of course, that medical efforts to reduce human suffering of a kind that is not interfering with the realization of such capacities (because trivial, or because the patient has no such capacities) is misplaced, and many standardly emotive arguments for vivisection are thereby invalidated. Physical evil is surely evil in its own right.

A third difficulty with the moralistic response is that it does not even solve Ritchie's puzzle. If callousness is an evil, is it not displayed as well in watching a cat's play with a mouse, a chimpanzee's bashing out a baboon's brains, without any inclination to intervene? If susceptibility to sympathetic distress is a value, ought we not to be distressed by the behaviour of predators? And if we ought not, how are we obliged to be distressed by the behaviour of our fellow men? To be distressed only by moral evil and not by physical evil surely is, in the context, to be callous. Other writers than Ritchie have been more consistent in considering that animal pains and pleasures were morally indifferent, and no one obliged to take account of them.

Fourthly, animal distress is surely an intrinsic evil in just the way that

much human distress is, so that even if the cat has no duties towards the mouse, and the mouse therefore no rights against the cat, it may still be that the mouse has rights against *us*, to safeguard his life and liberty. McCloskey has argued that animals have no interests, and therefore no rights, just in that they are not subject to any obligations, even prudential ones, to preserve those interests.⁸ Regan has replied that any prescriptive element in the having of interests may be embodied in a more general obligation, that those able to keep those interests in mind, ought to do so.⁹ It would seem to follow that we ought to keep predators off their prey, even though the predators have no duty in the matter.

One final point against the moralistic response: it is by no means clear that non-humans cannot violate rights. A bigger bird who drives a smaller from the latter's nest is not absurdly described as 'violating the victim's rights', for property is generally acknowledged by members of the same population.¹⁰ Even butterflies appear to allow occupants of a patch of sunlight to have the moral edge over intruders: perhaps they could steal the patch?¹¹ A chimpanzee who grabs a young baboon with whom his own children have been playing, kills and eats him, is not implausibly described as doing what he ought not, at least to the same extent that a Yanomamo Indian who beats and mutilates his wife is 'doing what he ought not'.¹² If we ought to restrain injustice, perhaps we ought to restrain at least some predators. If that is absurd, perhaps it is also absurd to restrain human predation.

III

Instead of denying that the situation of a mouse in a cat's claws is in any respect an evil, could we reject the inference from animal rights to a duty of general protection? Perhaps non-human animals have rights not to be treated in certain ways, but no right to our assistance against their enemies. We violate their rights in hunting them ourselves, but not in allowing them to suffer at the claws of predators.

This distinction is difficult to draw on any utilitarian ethic. If what is of moral concern is the suffering of the victim, and if some action of ours could diminish that suffering (without untoward consequences elsewhere in the system), we ought to perform that action. It is not entirely clear why we should not, in that case, simply go around killing all creatures that would otherwise suffer. Total genocide might have bad effects, perhaps removable by further slaughter, but something less than a total cull would appar-

ently be obligatory.¹³ There seems to be little room for animal *rights* in such a system, and my suspicion is that the rhetoric of rights is a little out of place in some recent pleas for animal liberation.

Utilitarians have their own problems, but perhaps not Ritchie's. Animal suffering is an evil, but not all such evils can be eliminated without introducing worse ones. Caribou may be spared the pain of wolves, or Eskimos, but the consequent population explosion will lead to overgrazing, disease, famine, and a population crash.¹⁴ Ritchie would be ill-advised to interfere too much in the relations of prey and predator: but it does not follow that we are thereby entitled to inflict whatever suffering we please on our kindred. We should surely only inflict as much as is necessary for the fairly quick reduction, with high probability, of the total sum of suffering (a sum calculated on the basis of the intensity of individual distress and the number of individuals distressed, though it is not obvious how this calculation is to be performed). How could this justify the capture, imprisonment, deprivation, and slaughter of sentient creatures for merely gastronomic ends? Killing itself, of course, would not necessarily be an evil, nor the infliction of some suffering under circumstances that most people would think unjust if the victims were human.

Our ordinary moral code, criticized but not yet defeated by utilitarians, would wish to set up barriers against the use of humans for utilitarian advantage. Even if a particular action against the interests and wishes of a given man would result in an over-all advantage to the common good, we do not consider that the man should be victimized without his consent (or even, sometimes, with it). We may be happier to avoid a massive disadvantage (which is not the same as a mere failure to obtain an advantage) to the commonwealth by imposing costs on an individual, but even here there is a standing intuition that the victim deserves compensation for his loss, that no one individual or class of individuals should be permanent victims, that some costs are too high. Some things should not be done even if they are advantageous. Some things should not be done even if not to do them is disadvantageous. Individual humans have a right not to co-operate: just as utilitarianism advances from egoistic hedonism to the realization that pleasures are goods, pains are evils whoever has them; so the rights theorist allows that every agent has as much right as the utilitarian engineer to determine what shall be. *The utilitarian has no right to overrule the judgment of his potential victims: they have rights of autonomy.*

In this non-utilitarian setting can we justify a distinction between rights not to be oppressed and rights to be protected? If the goal of our actions is

to be the minimizing of violated rights, then we cannot, nor can we rule out the possibility that it may be right to violate someone's rights in order to reduce the number of violated rights. This is surely to lose the point of having rights at all. If we follow Nozick's suggestion that rights are side-constraints, we may do better. 'The side-constraint view forbids you to violate these moral constraints in the pursuit of your goals.'¹⁵ We ought not to injure, enslave, or kill an individual right-bearer even if the commonwealth would, as we suppose, profit by these acts. We ought not to violate rights even to prevent the violation of rights.

We may not be entirely ready to agree that even human animals have such powerful rights. But if we do, it seems difficult to see any plausible reason why non-human animals might not also have them. It might be urged that non-human animals do not offer rival judgments of what ought to be done with as much claim to be enacted as the utilitarian engineer's. But in any sense in which many *human* animals present a rival programme, non-human animals may do so too. Rights of autonomy do not rest on the possession of a philosophically articulated moral system, but simply on having desires and preferences for an outcome perhaps different from the utilitarian ideal. If human animals have such (side-constraint) rights of autonomy, so do many non-human animals. And in that case Ritchie's argument may not convince us. We ought not to torment mice because mice have a right not to be tormented: a right that involves more than the intrinsic evil of their suffering, and is not to be balanced against other evils. But equally we ought not to rescue the mice by restraining and thereby tormenting the cats (though we might surely bell the cat without undue injury?). We ought not to do evil that good may come, when the evil is a matter of violating the rightful autonomy of our victims.

It appears therefore that neither utilitarians nor side-constraint theorists need allow Ritchie's *reductio*. On a utilitarian view, animal pains and pleasures must be taken into moral consideration. Our increase of their pains can be halted without serious costs; the pains of predation cannot usually be alleviated without making matters worse. On a side-constraint view we ought not to violate animal rights, but are under no obligation always to prevent such violations. On neither view are animal 'rights' rendered absurd, whether the rights consist only in the requirement that their distresses be entered in the moral reckoning, or more seriously in a *prima facie* bar against utilitarian or other exploitation.

Unfortunately, these solutions do not work, or do not work satisfactorily. For Henry Salt and his fellow-believers were not concerned only to

refrain from animal-torture themselves. They wished, as their predecessors in Parliament had wished, to restrain others from animal-torture. J. Kleinig has remarked, in passing, that 'if we do not wish to ascribe rights to animals it is . . . because we do not consider their welfare interests important enough to justify securing them by force'.¹⁶ But British law, and other legal systems, already embody the principle that the welfare interests of (some) animals do justify the use of force. It has not been true for over a century that men may do just what they please with 'their' animals. The fact that what would otherwise be illegal cruelty is permitted if performed under a licence granted under the Act of 1876, while readying the creature to be killed and eaten or in the course of hunting,¹⁷ can be explained either by basing this legislation on moralistic grounds (it is not the animal's distress that we regret but the human animal's goals), or more plausibly by recognizing that we have not applied the realization that 'animals have rights' at all consistently. But though our legislation is confused and inadequate, it does mark a readiness to enforce the welfare interests of the non-human.

When the first relevant legislation was being pushed through Parliament¹⁸ there were clearly costs to be borne by drovers, farmers, hansom-cab drivers, and slaughterers. Their pleasures were sometimes diminished, their pains (for a time) increased. Of course, the end result was such as to be desirable on any utilitarian calculation, but the route to that end was doubtless often difficult. So also was the route to the desirable end of abolishing the slave trade. Can the pleasures and problems of those engaged in an improper activity be reckoned into the utilitarian calculation on just the same terms as the pains of their victims? How could such utilitarianism avoid the problem of 'utility monsters', who derive greater pleasure from sadistic oppression than their victims lose, and who would suffer more from restraint than their victims suffer from tyranny? If such considerations should deter us from enforcing the welfare interests of mice against cats, or caribou against Eskimos, then it ought to have deterred the reformers from enforcing the rights of dogs, cats, horses, and cattle against those who profited from their pains. At the least, even if the calculation did determine that, all things considered, it was worth forbidding some current practices, this conclusion would not match the moral seriousness of the reformers' case: which was not that there were possible worlds with a better pleasure-pain balance, but that there were some things that we should not do.

Utilitarianism is perhaps not the best basis upon which to demand better

treatment for our kindred, but if it is right to bring about the pains consequent upon a successful reform movement in the name of an eventual improvement in the general good, then it is not out of the question that we should also bring about the pains involved in an over-all regulation of the relations of prey and predator. If slaughterers and circus-managers should be restrained, then maybe cats should be as well. If the costs of restraining non-human predators are reckoned too high, perhaps the reformers should have reckoned the costs of restraining people to be too high as well.

Dissatisfaction with the inadequacies of common utilitarian theory may lead us to conclude that there are some pleasures I have no right to demand, and some pains I have no right to be spared. We ought not to take pleasure in another's pain, and any pleasure we do take cannot be held to compensate for the pain. These rules of casuistry are part of ordinary moral reasoning, and may help to make a difference between the non-human and the human predator. We do not violate anyone's rights in preventing them from violating another's rights when they could do otherwise, for no one has a right to violate another's rights. In restraining them from such assaults we ought not to violate the rights they do have (broadly, to decent treatment and happiness according to their kind), but if we can restrain them without such a violation we ought to do so. A human animal is done no violence if required not to oppress his kindred, for such oppression is no necessary part of his life. Non-human animals, very often, are obliged to oppress others if they are to live at all or to live in happiness according to their kind. We cannot be obliged to defend their prey against them if to do so is to violate their rights. They need to kill: we, very often, don't. In Plutarch's words, *ἐκείνοις μὲν γὰρ ὁ φόνος τροφή, ὑμῖν δ' ὄψον ἐστίν* – their killing is for sustenance, and yours for relish.¹⁹ Henry Salt, similarly, insisted that his principle was not to outlaw killing but only unnecessary killing, killing inessential to the agent's life. A wolf needs to kill and should not always be restrained from doing so: we in the developed West clearly need, at least, to kill far less than we do. Farmers and furriers alike have a tendency to claim that their activity is as much 'a part of nature' as the wolf's, but it is certainly not true that, as human activities or as activities of civilized men, they are the products of natural necessity.

But why is necessity a proper justification? Why, if 'one must live', is that a reason for allowing predators to kill? If creatures have a right to life, then they ought not to be killed: why then is the predator not doing

something that ought not to happen? Why should the stronger's needs be paramount? Why should our necessity give us a right to kill when our victim's equal necessity does not give him a right not to be killed? We may restrain predators when to do so involves no violation of right, but do predators have any right to go on living if they can only do so at another's expense?

IV

If we cannot seriously doubt that animal suffering is an evil, nor that we ought to do our best to limit it; if we cannot doubt that non-humans may have rights of autonomy, rights to live their lives out according to their kind, and a corresponding claim on such help as we can justly give: then we cannot rule out the possibility that we may have a duty to help prey-animals. Why should we not defend victims against their oppressors?

Can we avoid Ritchie's *reductio* by denying that it is *ad absurdum*? What is wrong with the conclusion that we might indeed be required to defend the weaker party? Is his complaint that this would be very difficult? To this we might justly reply that this is no more than Cornford's Wedge: 'that you should not act justly now for fear of raising expectations that you will act still more justly in the future – expectations which you are afraid you will not have the courage to satisfy.'²⁰ It is sometimes easy to act rightly, and sometimes not. Should we omit the easy right actions merely because we would find it too difficult to do the difficult ones? Our failure to help the human victims of earthquake and famine to the utmost of our ability can hardly license us to create still more disasters. Ritchie might be claiming that one who fails to do what his professed principles require except when it is easy can hardly speak with authority when condemning others' compromises. The point indeed is a standard one: anyone who speaks against animal experimentation, fur-trapping, circuses is open to an obvious *tu quoque* as long as he himself helps to finance the factory farm. It is a just retort, but one who makes it, as I have pointed out in a passage fiercely denounced as self-righteous by reviewers who have not troubled to read it, should remember that we are all, variously and uneasily, in rebellion against our own principles.²¹ Our admitted failures do not require us to deny that some of our duties are quite easy.

Perceived difficulty, in any case, may not betoken a mere failure on our part. It might be said that though we should, in the abstract, defend prey

against predators, any realistic attempt to perform this abstract duty would grossly interfere with our performance of other duties. There is a limit to the positive action any of us can take. Merely to abstain from flesh-foods, cosmetics, and unnecessary medicaments is not generally an enterprise that diverts energy from other goals. Veganism, in the present state of society, perhaps does; and even vegetarianism, as both Buddhist and Christian missionaries have concluded, may interfere with the proper performance of one's mission under some circumstances.²² Most of us, not being wandering preachers, can be vegetarians quite easily. Some of us can be vegans. But very few of us can wholeheartedly devote ourselves to the defence of mice.

Ritchie's argument does better if he is seen to be saying that defending mice would be not merely difficult, but wrong. If a mouse has rights, we ought not to let him be tormented by a cat; but it is not the case that we ought not to let him be tormented, so a mouse has no rights. But why is it not the case that we ought not to let him be tormented? Presumably we do not have that obligation because we have an obligation to let the *cat* live a natural life after her kind. If mice have a right to life, so do cats.

But what sort of *reductio* is this? All this shows is that *prima facie* rights conflict: where they do, one right may defeat another either because it is more important or because the winner can bring other rights into the game. If two humans have an equal right to life I may still save my wife with justice because she has additional rights against me. Such conflicts do not prove that the creatures concerned have no rights: how could they? Ritchie cannot plausibly argue that we should not describe animals as having rights because to do so would commit us to doing them grievous harm. If it is wrong to cause them grievous harm, they have rights. Would it sound plausible to argue that we should not speak of human animals' having rights because we thereby commit ourselves to interfering injuriously with the internal affairs of other nations and tribes? We are perhaps more cautious than Ritchie in rushing to defend 'human rights' at whatever cost, but our recognition of the likely costs is itself an acknowledgement that humans have rights. So also animals.

Before considering what rights human animals may have if non-humans have any, can we clarify the appeal to 'nature'? Many vegetarians have laid stress on the fundamentally frugivorous nature of our species, insinuating that flesh-eating was a relatively late corruption to which we are only imperfectly adapted. It was perhaps a natural response to the converse claim that 'nature intends us to eat flesh', a natural response and not

an entirely ill-founded one. Gorillas and chimpanzees are chiefly plant-eaters, though chimpanzees will also eat such small animals as they can catch. The enormous popular appeal of fantasies about 'Man the Mighty Hunter' should certainly be corrected by a reminder that modern hunter-gatherers get almost all their food from plants (though eggs and small animals may be gathered up as well), and certainly eat nothing like the amount of flesh consumed in the developed West. We know practically nothing about our hominid ancestors, but what little we can guess gives as good a case for thinking they were grain-eaters as that they were predators.²³ We certainly know that human beings can survive well and happily without eating flesh or drinking non-human milk: more healthily, in some respects, than omnivores.

The picture of 'the murderous ape, our ancestor' has been well mocked by Elaine Morgan, quoting Robert Ardrey on the baboon.

'He is submissive as a truck, as inoffensive as a bull-dozer, as gentle as a power-driven lawn-mower. He has predatory inclinations and enjoys nothing better than killing and devouring the new-born fawns of the delicate gazelle. And he will steal anything . . .' And so on. While [Ardrey's] male reader avidly polishes his spectacles and thinks: 'Yeah, that's me all right. Tell me more about the bull-dozer and how I ravaged that delicate gazelle.'²⁴

As Morgan observes, it is clearly very attractive to some people (mostly males, or mostly American males, perhaps) to think that 'all that power and passion and brutal virility is seething within him, just below the skin, only barely held in leash by the conscious control of his intellect'. But there is every reason to doubt the diagnosis. E. O. Wilson remarks that any Martian zoologist might well conclude that 'we are among the more pacific mammals as measured by serious assaults or murders per individual per unit time, even when our episodic wars are averaged in'.²⁵ The wish to think ourselves predators also occurs in the form of supposing it important to be at the 'top' of the food chain, though that is obviously the narrowest and most uncertain perch of all, a quite unsuitable one for so huge a population of hominids.

It is perfectly reasonable, then, to insist that the human animal is calmer, more companionable, and less committed to a grossly predatory way of life than some have supposed. The 'natural' life is a baseline against which we can gauge unhealthiness and unhappiness, a moral norm, and the life 'natural' to our kind need not be a predatory nor a violent one. But if 'natural living according to one's kind' is what we should be engaged in and encouraging, then the cat should presumably be encouraged to catch

mice. We ought to consider animals in a kindly fashion because it is part of our normative nature so to do. We ought to be kindly, but for the sake of human life and society, not because of animals' rights. Cats should not be kindly. And once this position is taken as our own we may consider ourselves justified in doing as other animals do, employing creatures of another kind to sustain and improve their own lives.

This attempt to make 'natural living' the proper criterion of moral health is supported by a naïve assumption that 'whatever is, is right'. If animals behave in a certain way without obvious signs of divine disapproval, it must be all right. If it were wrong to have sex in religious sanctuaries the gods wouldn't let animals do it.²⁶ If fish eat fish, so may we. This approach is often associated with the claim that whereas animals respect their conspecifics they do not respect those of another kind. From this it is concluded that we are under obligations only to honour humans, not those of another kind. It is natural to be speciesist.

Even if we accept that non-human animals are good exemplars in this (and why should we not rather conclude that it is in *our* nature not to be speciesist?), the data are debatable. 'The ethic of 'speciesism' . . . has no proper basis in evolutionary biology.'²⁷

First, we are wrong to think that non-human animals always respect their conspecifics. The groups within which they live are much more limited: conspecific strangers are rejected, and of small account. When Zeno urged that 'we should regard all men as our fellow countrymen and fellow citizens, and there should be one life and one order like that of a single flock on a common pasture feeding together under common law',²⁸ he was openly urging us to feel in a way that as a rule we do not. Our natural loyalties and affections are directed to those of our own flock: humanism is an attempt to stretch our sympathies beyond their natural reach. We are not likely to have been equipped, by natural selection, with any impulse to seek the good of our species, any more than has any other animal kind.

Species are interbreeding populations, and formed very often by the preferences and pursuits of individual organisms. But conspecifics are united by mutual antagonism much more than mutual affection. Territorial rivalry is between members of the same species, and the owner of a territory is concerned to exclude conspecifics, and not true aliens: it is conspecifics, after all, who are rivals for food, mate, and nesting place. It is relatives who are most in danger from mammalian aggression, and 'murder is far more common and hence "normal" in many vertebrate

species than in man'.²⁹ We cannot live with our kindred, but neither can we live without them. Where aggression is so high as to exclude affection, new species, new breeding populations, will eventually form out of the old. If we are willing to follow the Stoics in recognizing that conspecifics not of our local group are nonetheless worthy of our respect, it is no more unnatural to extend our concern a little further.

Sexual interest and family affection have doubtless been consolidated in the genetic tradition because they facilitate the multiple transmission of just such traits. It does not follow that only conspecifics benefit from them. Altruism, self-sacrifice for another's benefit, will be stabilized in the gene-pattern if those benefiting from the sacrifice are likely to be carrying the same genes. It does not follow that the altruist intends this result, nor that the altruist only sacrifices himself for those who are in fact his relatives. As long as the beneficiary has the properties which are usually associated with close relatives (such as appearance, smell, familiarity) the altruist's self-sacrifice is no offence to evolutionary logic. There are insects 'who have broken the code of the social insects' and live companionably in ant-colony or bee-hive.³⁰ Cuckoos exploit the parental impulses of other birds. The domestication of the dog possibly began in mutual exploitation,³¹ but has long since progressed to a mutual socialization: of men as the dogs' pack-leaders, of dogs as 'honorary human beings'. Creatures of different species can find mutually advantageous modes of life,³² and can feel affection and loyalty to their social partners.

In short it is natural (i.e. it is almost bound to happen) that we should in general feel a primary loyalty to our most immediate families, even when those families are made up of creatures not all of one species. A rhetoric of animal rights is an attempt paralleling the Stoics' to extend our nexus of associations beyond that local group. Justice begins with parental feeling, concern for the small and defenceless creatures put into our hands,³³ a concern that can also be awoken for creatures of another kind. If natural law is properly defined as '*quod natura omnia animalia docuit*',³⁴ then one of its principal dictates is that parents should care for their offspring, or those socialized as such.

The drive to extend our concern has been expressed in rhetoric drawn from ecological science, talk of 'the land' as a community of which we are a part.³⁵ Passmore has criticized this:

Ecologically, no doubt, men form a community with plants, animals, soil in the sense that a particular life cycle will involve all of them. But if it is essential to a community that the members of it have common interests and recognize mutual obligations then men, plants, animals and soil do *not* form a community.³⁶

This seems an unnecessarily rigid concept of a community, and such as to exclude all but rational adult humans from membership. It does not indeed follow from common membership of a community, a network of relationships, that members' interests never conflict, nor that there is any way of settling disputes in a manner recognized as just by all participants. What exists ecologically is not, and probably never will be, a moral community with agreed rules of procedure. Neither is the human species 'a single flock upon a common pasture under one law', and probably never will be. But even if there is never a World State, and even though such a State would legislate for humans who were incapable of participating in its decision-making process (and hence not strictly citizens of that State), the Stoics were right to remind us that we can enter into social relationships with other people, have some common interests, and manifold sympathies. So also, *mutatis mutandis*, are advocates of Earth's Household.

In the household of earth and heaven, Aristotle taught, the free men have more responsibilities than those incapable of moral deliberation.³⁷ This is the sort of intuition on which Darling's ethic of 'noblesse oblige' is raised: that we are, within limits, able both to minimize our own destructive impact on the world, and to help creatures cope with natural disaster.³⁸

For though it does seem harsh, or even silly, to ask of us that we should protect creatures against predators, it is clearly not felt to be extraordinary that we should take steps to preserve wild things from flood, famine, and pestilence, even if we also reckon that the vital interests of our own immediate households have first call on our resources. Conservationists have made stumbling attempts to justify this intuition in terms of the preservation of beauty or potentially useful resources, or less anthropocentrically by talk of the rights of whole species. This second sort of justification has been held to license the killing or disturbance of individual animals, as though a population of animals were something other than those very animals taken together. A more satisfactory solution may be to say that the individual animals do indeed have some right to our assistance, but that these rights *require* our action only when the lives of many creatures are in question.

Their rights, moreover, are rights to a 'natural' existence, a life not seriously maimed by factors beyond the usual conditions of their mortal life. Unusual dangers they have some right that we protect them from. Usual dangers, of a predatory sort, which could not easily or ever be eliminated, they may perhaps be expected to endure (as may we). It is not

absurd to help them even in such cases, but there are bound to be limits to the dutifulness even of decent aristocrats.

V

Stoic theory offers us the ideal of a World State in which men have rights just as men, that is as citizens or subjects of the World State. But this ideal is far from actual, and it may sometimes be wise to remember the rights we have as, say, Britons, rather than our *human rights*. Nations which think themselves potential founders of the World State may reasonably be subject to suspicion, for the thought encourages them to interfere in the doings of other communities whenever their moral opinions are sufficiently outraged. It may be that a World State is too high a price to pay for the universal realization of human rights. It may be similarly that Earth's Household could only be actualized by massive interference in the ways and preferences of our separated kindred. 'There is not a beast upon the earth, nor a bird that flies, but is a nation like to you.'³⁹ In the absence of an agreed international law, agreed between *all* the nations of the earth, we should perhaps attend to the regulation of our own immediate households and not seek to actualize our conception of animal rights throughout the world.

Just as Burke preferred the rights of Englishmen to the rights of men just as such, so we may maintain and seek to extend the rights of, as it were, British beasts. Some non-human animals are members, though not citizens, of our immediate society, and have rights in law to our care and protection. They pay for these rights by the advantages we gain from them, and should certainly in natural justice be paid far more. Some advantages we cannot seek from them without violating their rights as members of our society. Wild animals, to which condition those animals whom we cannot employ without injustice should be allowed to return, have rights not to be mistreated, but have no necessary call on our resources – though where their danger is great we may have a moral obligation that passes beyond the law. In short, wild things are like Nozick's independents, who have hired no protection agency:

The dominant protective agency's domain does *not* extend to quarrels of non-clients among themselves.⁴⁰

The agency, like any other moral agent, may have a moral responsibility to

protect those unjustly treated (within the limits I have already sketched), but it should not use this as an excuse to extend its hegemony, nor interfere where there seems to be a settled relationship. But though the agency should not necessarily defend baboons against chimpanzees, it is bound to defend its own clients, human and non-human, against the wild things. And since it thereby denies the independents the right to settle things by their own methods, it must compensate them at least by protecting them against its own clients.

Undoubtedly, the least expensive way to compensate the independents would be to supply them with protective services to cover those situations of conflict with the paying customers of the protective agency.⁴¹

Wild things should be protected against us and against our non-human clients, because we insist on being protected against them. It is as well not to seek to protect them against each other, because if we do so we shall easily slip into thinking that they owe us something for which they should pay. Where there is massive and unusual danger we should act; where it is our own clients who are the danger we may at least try to mute that danger. The rules are not very different from those we should apply to the troubles of human independents.

None of this is to say that the claims of wild things are of less importance than the slightest claim of members of our own society. On the contrary, we should not go to war against the other 'nations' unless for the most important of our interests, and perhaps not even then. The rights of wild things are fewer than the rights of those socialized as members of our society, but they are entirely real. 'If I say that I am more interested in preventing the slaughter of large whales than I am in improving housing conditions for people, I am likely to shock some of my friends,'⁴² but those who are shocked have been deluded by the rhetoric of humanism into thinking that the comfort of our conspecifics should always count for more than the very life of our more distant kin. Neither the moral paradigm of Earth's Household nor the legal, of the minimal state, allows the claim.

VI

My examination of Ritchie's argument has taken me a long way round. As always, there is more to be said. But my present conclusion is that non-human animals may have rights, even rights of autonomy, without

any absurd implication. For Ritchie's conclusion either does not follow, or follows in the abstract but not in practice, or is not absurd. Our clients we should protect, and sometimes even non-clients, but for the most part we should leave well enough alone. We have done enough remaking.

NOTES

- 1 D. G. Ritchie, *Natural Rights*, Allen & Unwin, London 1916 (3rd ed.), pp. 107 f.; reprinted in T. Regan and P. Singer (Eds.), *Animal Rights and Human Obligations*, Prentice-Hall, Englewood Cliffs, New Jersey 1976, pp. 181 f. See also Michael Martin, 'A Critique of Moral Vegetarianism', *Reason Papers*, Vol. 3 (1976), pp. 13 ff.
- 2 R. Nozick, *Anarchy, State and Utopia*, Basic Books, New York 1974, p. 39.
- 3 G. Harman, 'Moral Relativism Defended', *Philosophical Review*, Vol. 84 (1975), pp. 3 ff.
- 4 See my 'Can Animals be Moral Agents?', forthcoming.
- 5 Soame Jenyns, *Free Enquiry into the Nature and Origin of Evil* (1757); see S. Johnson, *Collected Works* (1787), Vol. X, pp. 220 ff.
- 6 J. Siskind, *To Hunt in the Morning*, Oxford University Press, New York 1973, p. 154 (an opinion of the Sharanahua).
- 7 S. R. L. Clark, *The Moral Status of Animals*, Oxford University Press, Oxford 1977, pp. 11 f.
- 8 H. J. McCloskey, 'Rights', *Philosophical Quarterly*, Vol. 15 (1965), pp. 115 f.
- 9 T. Regan, 'The Moral Basis of Vegetarianism', *Canadian Journal of Philosophy*, Vol. 5 (1975), pp. 181 ff.; R. G. Frey, 'Interests and Animal Rights', *Philosophical Quarterly*, Vol. 27 (1977), pp. 254 ff.; T. Regan, 'Frey on Interests and Animal Rights', *Philosophical Quarterly*, Vol. 27 (1977), pp. 335 ff.
- 10 J. Rachels, 'Do Animals Have a Right to Liberty?', Regan and Singer, op. cit., p. 221.
- 11 J. Maynard Smith, 'The Evolution of Behaviour', *Scientific American*, Vol. 39 (1978), p. 144 (after N. B. Davies).
- 12 J. van Lawick-Goodall, *In the Shadow of Man*, Collins, London 1971; see M. Harris, *Cows, Pigs, Wars and Witches*, Hutchinson, London 1975, after N. A. Chagnon, *Yanomamo: the Fierce People*, Holt, Rinehart & Winston, New York 1968.
- 13 R. Godlovitch, 'Animals and Morals', *Philosophy*, Vol. 46 (1971), pp. 23 ff.
- 14 F. Fraser Darling and A. S. Leopold, 'What's Happening in Alaska?', *Animal Kingdom* (New York), Vol. 55 (1953), pp. 170 f.; see A. Macfadyen, *Animal Ecology*, Pitman, London 1963 (2nd ed.), p. 274.
- 15 Nozick, op. cit., p. 29.
- 16 J. Kleinig, 'Human Rights, Legal Rights and Social Change', E. Kamenka and A. Ehr-Soon Tay (Eds.), *Human Rights*, E. Arnold, London 1978, p. 42.
- 17 G. Sandys-Winsch, *Animal Law*, Shaw & Sons, London 1978, pp. 120 f.
- 18 E. S. Turner, *All Heaven in a Rage*, Michael Joseph, London 1964; S. Lynam, *Humanity Dick: a Biography of Richard Martin*, Hamilton, London 1975.
- 19 Plutarch, 'On the Eating of Flesh', 994b.
- 20 F. Cornford, *Microcosmographia academica*, Bowes & Bowes, Cambridge 1908, p. 15.
- 21 Clark, op. cit., p. 183: those who have misunderstood have read carelessly, but I must accept some share of the blame for having written unclearly.

- 22 Clark, op. cit., p. 196.
- 23 C. J. Jolly, 'The Seed-Eaters: A New Model of Hominid Differentiation Based on a Baboon Analogy', *Man*, Vol. 5 (1970); see E.O. Wilson, *Sociobiology*, Belknap Press, Cambridge, Mass. 1975, p. 568.
- 24 E. Morgan, *The Descent of Woman*, Souvenir Press, London 1972, p. 206.
- 25 Wilson, op. cit., p. 247.
- 26 Herodotus II, 64.
- 27 R. Dawkins, *The Selfish Gene*, Oxford University Press, Oxford 1976, p. 11.
- 28 Plutarch, *De Alex. Fortuna aut Virtute*, 329ab.
- 29 Wilson, op. cit., p. 247.
- 30 Wilson, op. cit., p. 356.
- 31 J. F. Downs, 'Domestication: an Examination of the Changing Social Relationships between Man and Animals', *Kroeber Anthropological Society Papers*, Vol. 22 (1960), pp. 18-67.
- 32 See T. Ingold, 'On Reindeer and Men', *Man*, Vol. 9 (1974), pp. 523 ff.
- 33 Plutarch, *Sollertia Animalium*, 962a.
- 34 Justinian, *Institutiones*, I. 2.
- 35 A. Leopold, *Sand County Almanac*, Oxford University Press, Oxford 1966 (2nd ed.), p. x; see Clark, op. cit., pp. 31 f.
- 36 J. Passmore, *Man's Responsibility for Nature*, Duckworth, London 1974, p. 116.
- 37 Aristotle, *Metaphysics*, 12.1075a16f.
- 38 F. Fraser Darling, *Wilderness and Plenty*, Oxford University Press, London 1970.
- 39 Koran, 6.39.
- 40 Nozick, op. cit., p. 109.
- 41 Nozick, op. cit., p. 110; R. W. Hanula and P. W. Hill. 'Using Metaright Theory to Ascribe Kantian Rights to Animals within Nozick's Minimal State', *Arizona Law Review*, Vol. 19 (1977), pp. 242 ff., follow C. D. Stone, *Should Trees Have Standing?*, William Caufmann, Inc., Los Altos 1974, in urging that guardians could speak for the inviolable rights of animals in the minimal state, but do not consider what rights wild things may have against each other.
- 42 Dawkins, op. cit., p. 10.