

Innocent Threats and the Moral Problem of Carnivorous Animals

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ABSTRACT *The existence of predatory animals is a problem in animal ethics that is often not taken as seriously as it should be. We show that it reveals a weakness in Tom Regan's theory of animal rights that also becomes apparent in his treatment of innocent human threats. We show that there are cases in which Regan's justice-prevails-approach to morality implies a duty not to assist the jeopardized, contrary to his own moral beliefs. While a modified account of animal rights that recognizes the moral patient as a kind of entity that can violate moral rights avoids this counterintuitive conclusion, it makes non-human predation a rights issue that morally ought to be subjected to human regulation. Jennifer Everett, Lori Gruen and other animal advocates base their treatment of predation in part on Regan's theory and run into similar problems, demonstrating the need to radically rethink the foundations of the animal rights movement. We suggest to those who, like us, find it less plausible to introduce morality to the wild than to reject the concept of rights that makes this move necessary to read our criticism either as a modus tollens argument and reject non-human animal rights altogether or as motivating a libertarian-ish theory of animal rights.*

1. Introduction

Some philosophers argue that some animals are the holders of moral rights, and therefore are entitled to non-interference and are so equally.¹ Some of these animals are prey animals, others are predators. Given the widely held belief that it is the moral duty of human beings or the agents of their governments to prevent the violation of the rights of those living under their jurisdiction, predation, *prima facie*, seems to call for human intervention of some kind — assuming that some prey animals in fact *do* have moral rights.²

Given the fact that animal rights advocates untiringly express their moral outrage about the number of animals killed in the food animal industry, the sheer number of animals killed by predators should raise significant concern. In the United Kingdom, for example, the number of mammals killed by domestic cats between April and August 1997 is close to two hundred times larger than the number of clean pigs slaughtered for their meat during the same period of time.³ While predation initially did not receive the attention it deserves from those engaged in the animal rights debate, a number of authors have addressed the issue in recent years. Most of them, more or less, worked within the framework of Tom Regan's theory of animal rights, arguably because it is still one of the most comprehensive and robust such theories.⁴ We demonstrate that Regan's theory cannot adequately deal with the fact of predation, and that related proposals, for example

those by Jennifer Everett and Lori Klein, fail as well. We conclude our analysis by suggesting two possible solutions to the problem of predation.

2. Tom Regan, the Wolf and the Sheep

Tom Regan addresses predator-prey relations and human obligations that might arise from them in his book *The Case for Animal Rights*, which contains what we will call the *standard account* of animal rights. He argues that ‘[i]n claiming that we have a *prima facie* duty to assist those animals *whose rights are violated*, [. . .] we are not claiming that we have a duty to assist the sheep against the attack of the wolf, since the wolf neither can nor does violate anyone’s rights.’⁵ The argument he presents in support of this conclusion is the following:⁶

- P₁ Moral patients do not have the duty to respect the rights possessed by other animals.⁷
- P₂ Wolves are moral patients.
- C₁ Wolves do not have the duty to respect the rights possessed by other animals.
- P₃ Individuals that do not have the duty to respect the rights possessed by other animals cannot violate these rights.⁸
- C₂ Wolves cannot violate the rights possessed by other animals (although they can cause harm to them).
- C₃ No animal is ever violated in his or her rights by a wolf.
- C₄ Although we have a *prima facie* duty to assist those animals who are victims of injustice, i.e. those animals whose rights are violated, it does not follow that we have a duty to assist a sheep against the attack of a wolf.

Certainly, what is said about wolves in P₂ is also true about some human beings, such as infants and the severely senile. Therefore, no duty to assist a sheep against the attack of a human being who is not a moral agent derives from the *prima facie* duty to assist those animals who are victims of injustice (cf. C₄). Furthermore, since C₃ not only applies to sheep and other non-human animals but also to human beings, no duty to assist human beings against the attack of a moral patient can be derived from the *prima facie* duty to assist those animals who are victims of injustice.

In a review of Regan’s *The Case for Animal Rights*, Dale Jamieson concludes that ‘although we are required to assist those who are victims of injustice, we are not required to help those in need who are not victims of injustice.’⁹ If this were to be true, we would not be morally obliged to help a drowning child even if we had the chance to do so at low cost for ourselves. However, Regan quite rightly replies in the second edition of *The Case* that ‘nothing in the rights view prevents it from recognizing a general *prima facie* duty of beneficence [. . .].’¹⁰ That is to say, even though it is not a duty of justice to help a drowning child, a duty to do so might arise from different grounds. Although Regan succeeds in defending his view against critics of Jamieson’s kind, the case of those in need who are not victims of injustice reveals the need for a full-fledged account of moral duties and their grounds. Until Regan’s moral theory is supplemented by such an account, his response to the *argument from predation*¹¹ remains weak. On the one hand, he agrees with Jamieson that ‘we have a *prima facie* obligation to warn a hiker about the

free-falling boulder even though free-falling boulders violate no one's rights¹² and claims we have a *prima facie* duty to intervene if we see a lion stalking a small child.¹³ On the other hand, he claims that we are not obliged to intervene on behalf of a wildebeest who is being stalked by a lion.¹⁴ Why is it that we have moral obligations towards a small child being stalked by a lion but not towards a wildebeest in the very same situation? Where does our duty to assist a child against the attack of a lion come from? Why does the reply to this question — whatever it may be — not apply to a wildebeest who is equal to the child, where 'equal' refers to 'their equal possession of inherent value'?¹⁵

J. Braid Callicott raises similar questions in his review of Regan's *The Case* and argues that a human obligation 'to protect animals' rights not to be preyed upon by both human and animal predators¹⁶ is one of the consequences of Regan's rights view. Callicott further claims that 'Regan's theory of animal rights implies a policy of humane predator extermination, since predators, however innocently, violate the rights of their victims.'¹⁷ Regan responds to the second claim by saying that predators do not, or rather cannot, violate the rights of their 'victims' since what is said about wolves in C₁, C₂ and C₃ goes *mutatis mutandis* for all other non-human predators. He believes that wildlife policies should be designed 'to defend wild animals in the possession of their rights'¹⁸ and claims, rather implausibly, that this goal is most effectively achieved by 'letting animals be'¹⁹. Interestingly, Regan does not address Callicott's first claim. He avoids commenting on human obligations that might arise in cases in which one non-human animal harms another non-human animal. Let us recall one such case that was introduced above.

Suppose we see a lion stalking a prey and consider two scenarios that are equivalent except for the fact that the prey item is a small child in one scenario (A) and a wildebeest in the other (B). We assume that in both scenarios we have the chance to save the prey item at low cost and risk for ourselves (say by firing in the air at a safe distance). As we know, Regan holds that we have a moral duty to intervene in scenario A, but not in scenario B. Since, on a non-metaphysical interpretation, the only difference between both scenarios is the species membership of the prey item, the fact that Regan puts forward different moral judgments in the respective scenarios seems to be at odds with the spirit of his moral theory, in particular his rejection of speciesism.²⁰

The moral philosopher who holds that some animals have rights is left with two options. Either he or she shows how different duties can arise in the scenarios A and B that differ only insofar as one moral patient is replaced by another moral patient from another species.²¹ Or he or she accepts that our moral duties towards the small child and the wildebeest are the same, really.

Jennifer Everett and Lori Gruen have recognized this puzzle and have proposed solutions.²² Everett claims that a rights theorist can avoid a duty to intervene in wild predation while accepting the essential features of Regan's view. She suggests that there is a moral duty to assist those who possess moral rights in ways that are 'respectful of that creature's nature, where this includes both characteristic facts about members of its kind and the traits it possesses as a unique individual. [. . .] When creatures with inherent value are threatened by serious harm that is neither unjust in itself nor the result of injustice, moral agents have *prima facie* duties to assist them only insofar as such assistance is necessary as a matter of course for those creatures to flourish according to their nature.'²³ Humans could not flourish qua humans, if they 'could not, in general, count on assistance from others against all sorts of threats'.²⁴ Therefore, there is a duty to intervene in scenario A. Wildebeests, on the other hand, 'do flourish qua [wildebeests]

[. . .] without human protection from nonhuman predators.²⁵ Therefore, there is no duty to intervene in scenario B. This response to the predation argument is both cynical and speciesist. It is cynical, and implausible, to suggest that being ripped to pieces by a lion is compatible with the wildebeest's flourishing, while being saved by a moral agent is not. The same holds for Gruen's proposal according to which respecting the wildebeest means honouring his or her competence by not interfering while respecting the child requires us to assist him in cases of dire need.²⁶ Everett's account of duties of assistance is further speciesist insofar as it essentially refers to 'characteristic facts about members of [. . .] [the] kind'²⁷ of the one in dire need, where by 'kind' she clearly means 'species'. From an animal rights perspective, both Everett and Gruen fail to provide a satisfactory solution.

3. Innocent Threats

According to Regan, we do not owe anything to a human being, say John, who is being attacked by a wolf on the grounds of justice, since a wolf is not the kind of entity that is capable of violating the moral rights of any moral agent, or of any moral patient for that matter. However, we might have a 'prima facie duty of beneficence, a duty that includes lending meaningful assistance to those who need it through no fault of their own and that obligates us independently of any question of having their rights being violated.'²⁸ Accordingly, if we assume we could distract the wolf so that John can get himself out of harm's way, we might have a moral duty to do so. Even though the only duties of assistance Regan explicates are duties of justice, we saw that nothing in the rights view precludes recognizing duties of other kinds insofar as they 'conform to the demands of the fundamental principles of justice that define [his] theory. In other words, we can never have a duty to assist someone in ways that involve treating others with a lack of respect. In this regard, there is a moral limit to how much discretion we have in deciding whom we should help and how we can help them.'²⁹ In the case at hand, distraction of the wolf does not constitute a violation of his or her rights. Therefore, Regan can bring his theory in accordance with the widely shared intuition that we morally ought to assist John by postulating a *prima facie* duty of beneficence.

Next, consider a slight variation of this setup. Imagine the wolf, hungry and determined to fill his stomach, refuses to get distracted from his potential prey, John. Further imagine all other nonviolent options there might be also fail. In such a case, is it required by justice or other moral principles to violate the wolf's right to life or physical integrity, either by shooting the wolf dead or severely injuring him or her, in order to save John's life? The recognition of John's moral rights grounds our obligation to protect him against any others who would violate them. The wolf, being a moral patient, does not and cannot possibly violate John's moral rights. Accordingly, justice does not require us to assist John against the attack of a wolf. On the other hand, recognizing the wolf's moral rights implies a moral obligation not to violate these rights. In this modified scenario, therefore, we cannot allude to a *prima facie* duty of beneficence to comfort our intuitions. Duties of justice take priority over all other duties we might have. In particular, they 'take precedence over the claims of beneficence'.³⁰ In other words, according to Regan's rights view, it is morally *not* permissible to harm the wolf in order to assist John, even if inaction will result in John's death. In cases where somebody is being attacked by a moral

patient and all nonviolent options to help have failed, we have a moral obligation not to interfere on behalf of the threatened.³¹ If you decide to assist John anyway and, accordingly, act contrary to what justice would require you to do, all other moral agents have a *prima facie* duty of justice to protect the wolf in the possession of his or her rights — if necessary, even by overriding some of your rights.

In *The Case for Animal Rights*, Regan describes an analogous case involving a human innocent threat. He asks us to imagine a child who ‘has come into possession of a loaded revolver and has begun to fire it at us.’³² Pointing to our own innocence of any wrongdoing he claims that ‘it cannot be wrong to do what will harm the child, even though the child is innocent and so does no wrong.’³³ However, this claim finds no support in Regan’s rights view. What has been said above about the wolf and John applies *mutatis mutandis* to the gun-wielding child and whoever is threatened by the child. Justice requires us not to harm the child, no matter how dreadful the consequences will be. After all, Regan does not get tired of stressing the precedence of justice over the utilitarian greatest good, famously exemplified in his argument against animal testing; ‘we cannot justify harming a single rat *merely* by aggregating “the many human and humane benefits” that flow from doing it, since, as stated, this is to assume that the rat has value only as a receptacle, which, on the rights view, is not true.’³⁴

The implications of Regan’s rights view for situations in which a moral agent is a serious threat to others and nonviolent options have failed are contextually absurd in the sense that they are inconsistent with Regan’s own views on the defence of others, as expressed in the case of the gun-wielding child.

4. The Moral Problem of Carnivorous Animals

How can Regan avoid the *reductio* of his theory that we put forward in the previous section? One way could be to acknowledge that the wolf in fact does violate John’s moral rights. That way the absurd conclusion that we are morally obliged *not* to assist John who is being attacked by a wolf could be avoided. After all, while the wolf is not a moral agent, he or she surely is an agent. Wolves are evolved predators and make choices. Attacking John is a choice the wolf made, so why not say he or she is violating John’s rights? *Prima facie*, the fact that the wolf is a moral patient merely implies that he or she cannot be held morally responsible for his or her choice to attack John.

Regan cannot take this route because of his understanding of rights. According to his view, rights are valid claims. Accordingly, wolves ‘*could* violate our rights only if we could validate our claims-against [them], and we could validate our claims-against [them] only if we could make the case that [wolves have] direct duties to us to do or forbear doing certain acts that are our due. But [wolves have] no duties; only moral agents do.’³⁵

However, Regan’s case for animal rights is built such that, essentially, it could also stand on a different theory of moral rights. It is hence worth tracing the implications of replacing his analysis of rights as valid claims by another analysis that differs with regard to its practical implications only insofar as it recognizes that a moral patient is the kind of entity that can violate moral rights.³⁶ In this view, the wolf attacking John by doing so *is* violating John’s moral rights. In Regan’s terminology this now becomes a *prevention case*. No matter how we choose to act, we will override somebody’s *prima facie* moral

right not to be harmed. If we choose to kill or otherwise harm the wolf, we override his or her negative right not to be harmed. If we choose not to interfere, we override John's positive right to be protected against the wolf who would violate his negative right not to be harmed. In order to decide which one of these options we morally ought to choose, Regan wants us to employ what he calls the *worse-off principle*:

When we must decide to override the rights of one innocent individual or another, and when the harm faced by the one makes him or her worse-off than the other would be if any other option were chosen, then we ought to override the rights of the other.³⁷

Therefore, if we stipulate that death is a greater harm to John than injury (or even death) is to the wolf, it is the wolf whose rights we ought to override, morally speaking.³⁸ Although John and the wolf have equal inherent value and an equal *prima facie* right not to be harmed, our intuition that we should assist John against the attack of the wolf is justified by appeal to the *worse-off principle* which is a consequence of Regan's guiding *respect principle*.³⁹

In prevention cases in which the harms that will be done to the individuals involved are comparable, Regan-esque justice requires us to apply another principle — the *miniride principle* ('minimize overriding'):

[W]hen we must choose between overriding the rights of many who are innocent or the rights of few who are innocent, and when each affected individual will be harmed in a *prima facie* comparable way, then we ought to choose to override the rights of the few in preference to overriding the rights of the many.⁴⁰

Not surprisingly, when applied to cases that involve innocent threats, this principle combined with our new understanding of moral rights leads to results very different from those of Regan's original theory. We recall the gun-wielding child who has begun to fire at a group of people and is about to take the life of many. We stipulate that death will harm all individuals involved (that includes the child) in a *prima facie* comparable way and assume that the only way to stop the puerile killing spree is to kill the child. The child pulling the trigger is a moral patient and, as a consequence, would not be morally responsible for the death of the people shot. However, the innocent child is violating the rights of innocent people and, hence, the *miniride principle* commands us to kill the child.⁴¹ This result is in agreement with Regan's unsubstantiated claim that 'it cannot be wrong to do what will harm the child'.⁴²

One of the most outspoken opponents of the *standard account* is University of Michigan professor Carl Cohen. He asks us to imagine 'a lioness hunting to feed her cubs. A baby zebra, momentarily left unattended by its mother, becomes her prey; the lioness snatches it, rips open its throat, tears out chunks of its flesh and departs'.⁴³ Now make that *two* baby zebras.⁴⁴ What does our *modified standard account* command us to do? What we are facing is a version of the gun-wielding-child case in which we replaced the child by a lioness and the group of people by two baby zebras. The lioness is violating the moral rights of the zebras. It is 'two moral rights versus one'. Therefore, according to the *miniride principle* ('numbers count'),

(J) we are morally obliged to prevent the lioness from killing the baby zebras, if required even by the use of lethal force.

Cohen claims that ‘we do not intervene in such matters even when it is in our power; we do not dream of doing so.’⁴⁵ While, as a matter of empirical fact, we agree with Cohen, his implicit claim that any moral theory requiring us to intervene with natural predation is absurd deserves some thought. After all, intuition can be deceiving. A glance at political philosophy will help us to further substantiate our inclination to agree with Cohen in his rejection of (J).

In most political philosophies, the recognition of animal rights would lead to the problem of policing nature. If non-human animals have moral rights (as Regan holds), then a legal system designed to secure moral rights would owe it to those of them living under its jurisdiction to defend them against aggression. Accordingly, carnivorous⁴⁶ animals would have to be resisted by law enforcement agents, just as burglars, kidnapers or rapists do. In the spirit of this line of thought, Eric Rakowski toys with the idea of a moral obligation to sterilize predators, ‘thereby ensuring their eventual annihilation [. . .], in order to save the lives and spare the suffering of countless herbivores.’⁴⁷ The only option the animal rights advocate has within the framework of the *modified standard account* is to bite the bullet and accept consequences of this kind, including (J). However, to us this move seems less plausible than rejecting the concept of rights that made it necessary.⁴⁸

5. Two Ways Out

If one believes that animals are not possessors of moral rights, predatory behaviour in animals might not be seen as a moral issue but rather as an aspect of nature outside the scope of moral reasoning. So our first suggestion about how to tackle the difficulties outlined above is to drop the idea of animal rights altogether. However, note that those opponents of animal rights employing predation to construct *reductio ad absurdum* objections to the claim that animals have certain rights⁴⁹ will have to strengthen their cases insofar as they heretofore failed to give a thorough description of the nature of the absurdity assumed and merely rely, just as we did, on common intuitions about policing nature.

If one believes that some prey animals do have rights, predation does present a puzzling quandary. Carnivorous animals raise serious questions, some of them explicitly stated in this paper. None of the two accounts of animal rights examined in this paper so far offers satisfactory answers, unless one is, contrary to us, ready to accept (J). So what is needed is yet another approach to animal rights that establishes a reasonable distinction between human and non-human innocent threats. Our second suggestion will hint at such an approach.

5.1. *Animals Do Not Have Rights*

Is Cohen’s implicit claim justified that any moral theory requiring us to intervene with natural predation is absurd? It certainly is not on par with a view that holds that one plus one equals three. But it could be absurd on par with the view that a thinker is possible without his or her having a brain or with the view that seeing is possible without eyes (or comparable organs or substitutes). These are naturally necessary preconditions for thinking and seeing being possible, respectively. So then animals may lack rights just as

they lack guilt or culpability or shame or other moral states. If they had rights, they would have what it takes for something to be guilty, culpable, ashamed, etc., namely, moral agency. It is this that brings it about that some beings can be guilty, etc. And this is what brings it about that some beings can have rights, rights being side constraints one must have (which others may not transgress) in virtue of having the responsibility to act morally properly (which one could not do if one lacked the liberty to choose between right and wrong conduct).

Therefore, perhaps what is required here is a more critical discussion of the very idea of a moral patient. Now the fact that moral agents ought to treat some beings not themselves moral agents with consideration, by practicing certain virtues as they go about this, does not imply that those beings need have any moral status themselves. Cases in point would be ancient ruins and artefacts, precious objects such as paintings or books, and so forth. If one were to come across an item of this kind it is arguably one's moral responsibility to treat it carefully, not destroy it or damage it, etc. The moral position behind this would be one that demands, for example, that human beings act prudently, cautiously, and carefully when handling valuable things including objects in the wilds such as plants.

Yet do such items have a moral status at all? It is probably far more reasonable to hold that it is moral agents, such as adult human beings, whose character must be such as to show appreciation for these valued entities. It may then be argued, also, that non-human animals are not so much moral patients as the kinds of entities for whom moral agents should have consideration just as they should vis-à-vis precious items of those sorts mentioned above.

These considerations suggest a very different relationship between human beings and non-human animals, one based on a virtue ethical theory and resting firmly on what amounts to being a morally decent human being, not on any rights that non-human animals possess. It is this approach that is suggested in the sceptical paper by one of us, 'Do Animals Have Rights?'⁵⁰ Apart from the scepticism expressed there, based on an analysis of basic human rights, it seems to us worth mentioning that placing all the moral burden on rights could be a mistake because it may well be an unjustified politicization of the relationship between human beings and non-human animals.

Perhaps this has developed because of the widespread propensity in recent normative theory to render 'the personal political'. In ethics or morality the conduct we ought to engage in is supposed to be voluntary, not coerced or mandated by law — 'ought implies can'. Maybe out of an urgency to ensure proper conduct those concerned with animals have become reliant upon the power of governments. But this has the result of what has been called demoralization — e.g. by Gertrude Himmelfarb, the author of 'De-moralization of Society: From Victorian Virtues to Modern Values'⁵¹ — by actually removing morality from our relationship with non-human animals.

Of course there will be those who insist that how non-human animals ought to be treated is a matter of moral rights, just as murder and child molestation are; as in (J), which states that 'we are morally obliged to prevent the lioness from killing the baby zebras, if required even by the use of lethal force.' There is nothing virtuous in interfering with how wild animals behave; indeed, arguably it would be quite objectionable from an environmentalist ethical viewpoint.⁵² All that a virtuous human being would be required to do is make sure that animals are treated humanely, that they are not subjected to wanton cruelty, for example. If they have become part of one's household, they need to

be well taken care of, but not in such a way that one sacrifices care for one's family in the process. Animals can become precious but family members are far more so. This is a form of speciesism but there is nothing morally amiss about it, not from what is arguably a highly plausible moral framework, virtue ethics, which places human happiness or *eudemonia* as the highest good to be pursued by moral agents.

So, the issues raised in this paper need to be seriously addressed by animal rights advocates. If animals do have rights, in large measure because they are very much like human beings, then their assault and murder of other animals may well be unacceptable and this raises very serious moral (and arguably legal) questions and is not consistent with at least one very plausible moral viewpoint — virtue ethics.

5.2. *Animal Rights Libertarianized*

In order to avoid the line of criticism raised in this paper, animal rights advocates could rely on alternative accounts of animal rights that (a) render it morally permissible (or obligatory) to violate the moral rights of innocent threats and (b) adequately address the moral problem of carnivorous animals.

In every theory of rights that recognizes a right of prior restraint if someone is about to violate the moral rights of others, (a) can be achieved by acknowledging that innocent threats can violate the rights of those who possess them. A way to tackle (b) is to question Regan's basic assumption that all moral rights necessarily are both positive and negative. Recognition of moral rights, according to Regan, 'carries implications concerning both what you, as a moral agent, must and must not do. What you must not do is violate my rights, and what you must do, other things being equal, is protect me against any others who would violate them. Your recognition of my moral rights thus both imposes certain limits on your liberty and grounds obligations of assistance you have to me.'⁵³ Maybe the line of reasoning we offered above could fruitfully be read as a *reductio* of the view that rights oblige action. Maybe all we owe to the possessors of moral rights is *to leave them alone*. If that were true, we could avoid (J) and other seemingly absurd duties to regulate wildlife.

Libertarianism, for example, provides a theoretical framework that meets these demands on rights. According to libertarianism, moral agents have '*control rights* over the use of [one's self]; both a liberty-right to use it and a claim right that others not use it'⁵⁴; and *enforcement rights*.⁵⁵ The reason that libertarians usually concern themselves with moral agents only is that they think of rights as *choice-protecting rights*. However, as Peter Vallentyne points out, there is no good reason to assume that this is the only kind of right.⁵⁶ He claims that autonomous agents⁵⁷ have (mainly) choice-protecting rights, and non-autonomous sentient beings, such as children and certain other sentient animals, have *interest-protecting rights*.⁵⁸ The set of rights thereby granted to moral patients, at a minimum, includes control rights over their selves that make enforcement rights of others relevant to them.⁵⁹

Enforcement rights render it morally permissible to use non-consensual proportionate force against moral agents and patients when non-rights-violating options to stop or prevent them from violating the rights of one's self or others are not available. Whether moral agents exercise their enforcement rights in any particular situation is up to them. Accordingly, there are no justice-duties of assistance. The fact that zebras have control rights and we have enforcement rights makes it morally permissible, yet not obligatory,

to prevent the lioness from killing the baby zebra in our example discussed above. (J) does not follow from a libertarian theory of animal rights. An analogous result can be reached in the case of the gun-wielding child. Regan's claim that 'it cannot be wrong to do what will harm the child'⁶⁰ remains true as it stands in our libertarian framework.

Libertarian justice does not require us to assist others whose rights are being violated. Therefore, it is *prima facie* not morally wrong not to do what will harm the lion in scenarios A and B, in which a lion is preying on a small child and a wildebeest, respectively. However, there is room for *special duties* to the child generated by his or her special relationship to moral agents. These people with special duties might be the child's parents or the members of the human society he or she lives in or a part of this society like his or her school or church or state. In scenario A, there hence might well be moral agents who have the special duty to assist the child against the attack of the lion, but no duty to assist the wildebeest in scenario B. Note that this is not speciesist and consistent with the claim that the child and the wildebeest possess equal moral rights. In fact, if the wildebeest was, say, somebody's animal companion, there might be special duties directed towards the wildebeest, too.

Although caregivers, *prima facie*, only have special obligations to those they voluntarily took on responsibility for, it can be argued that they also have special duties to others *with respect to* moral patients under their care. Regarding children, Vallentyne, for example, holds that 'one has a duty to ensure that others are not disadvantaged in certain ways by the presence of one's offspring. More specifically, there are two relevant kinds of disadvantage: rights violations and disadvantage in equality rights or duties.'⁶¹ If one extends Vallentyne's view to include non-human animals, this entails that those who live with animal companions, such as cats, have a moral obligation to prevent them from violating the rights of other animals, such as mice; just like parents ought to ensure that their children are not cruel towards other animals or get hold of a gun.

In order to establish a well-functioning society and to promote wellbeing among its members, human moral agents might freely choose to make commitments to each other to secure each others' moral rights and the rights of moral patients with whom they live, such as children, other human moral patients and animal companions. Further, they might want to commit to lending meaningful assistance to all members of society in cases of emergency. If so, they have a special duty to live up to their commitments and, thereby, a good non-justice reason to set up a police force that operates within society. However, the political implementation of equal libertarian human and non-human animal rights does not necessitate the establishment of a wildlife police.

We realize that much more could be said about a libertarian theory of animal rights but we will leave this as a topic for another occasion. We nevertheless hope that we said enough to make this approach seem worthy of further development.

6. Conclusion

We demonstrated that Regan's standard account of animal rights is inconsistent, in particular in its treatment of human and non-human innocent threats. We further argued that the existence of predatory animals poses a serious problem to animal rights advocates and gives us good reasons to believe that there is no easy fix to Regan's rights view. What is needed is a radically different account of animal rights. We sketched a libertarian

theory of animal rights and suggest that it might constitute one such alternative account and is, hence, worthy of further thought. As long as there is no well-developed theory of animal rights that adequately addresses the moral problem of carnivorous animals and human innocent threats, opponents of animal rights can read our arguments as a *reductio* of the animal rights position. We invite them to rethink moral patienthood and consider a virtue ethical approach to moral questions concerning our interactions with non-human animals.

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NOTES

- 1 For an introduction to current research in animal ethics, consult, for example, Cass R. Sunstein & Martha C. Nussbaum (eds) *Animal Rights: Current Debates and New Directions* (Oxford: Oxford University Press, 2005) or Rainer Ebert et al. (ed.) *Tierrechte — Eine interdisziplinäre Herausforderung* (Erlangen: Harald Fischer Verlag, 2007). For a historical perspective on the status of non-human animals in Western philosophy, see Gary Steiner, *Anthropocentrism and Its Discontents* (Pittsburgh, PA: University of Pittsburgh Press, 2010). Here and below, ‘animals’ always refers to human as well as non-human animals.
- 2 Similar concerns arise in consequentialism, as Peter Singer already noted in the constitutive decade of modern animal ethics. In *Animal Liberation*, he admits that ‘the existence of carnivorous animals does pose a problem for the ethics of animal liberation, and that is whether we should do anything about it. Assuming that humans could eliminate carnivorous species from the earth, and that the total amount of suffering among animals in the world were thereby reduced, should we do it?’. Peter Singer, *Animal Liberation* (New York: New York Review/Random House, 1975), p. 238. In a recent *The New York Times Online* opinion piece, Rutgers philosophy professor Jeff McMahan explains why he is ‘inclined to embrace the heretical conclusion that we have reason to desire the extinction of all carnivorous species’: Jeff McMahan, ‘The meat eaters’, *nytimes.com* 19 September (2010), URL = <<http://opinionator.blogs.nytimes.com/2010/09/19/the-meat-eaters/>>. Like Singer, he argues from a consequentialist perspective. This paper, however, operates within the framework of rights theories.

- 3 Cf. Michael Woods, Robbie A. McDonald & Stephen Harris, 'Predation of wildlife by domestic cats *Felis catus* in Great Britain', *Mammal Review* 33,2 (2003): 174–88 and Department for Environment, Food and Rural Affairs, *United Kingdom Slaughter Statistics* 20 August (2009), URL = <<https://statistics.defra.gov.uk/esg/datasets/slaughm.xls>>.
- 4 Tom Regan, *The Case for Animal Rights* (Berkeley and Los Angeles, CA: University of California Press, 1983).
- 5 Cf. Regan 1983 op. cit., p. 285.
- 6 Regan 1983 op. cit., p. 285.
- 7 Moral patients are animals, human or non-human, 'who have desires and beliefs, who perceive, remember, and act intentionally, who have a sense of the future, including their own future [. . .], who have an emotional life, who have a psychophysical identity over time, who have a kind of autonomy [. . .], and who have an experiential welfare' (Tom Regan, *The Case for Animal Rights*, 2nd edn. (Berkeley and Los Angeles, CA: University of California Press, 2004), p. 153), but who are not morally accountable for what they do.
- 8 Some readers might find this claim unconvincing. However, as we will argue later, rejecting P3 does not solve the problem posed by the existence of carnivorous animals.
- 9 Dale Jamieson, 'Rights, justice, and duties to provide assistance: A critique of Regan's theory of rights', *Ethics* 100,2 (1990): 349–62, p. 351.
- 10 Regan 2004 op. cit., p. xxvii.
- 11 Opponents of animal rights sometimes claim that the recognition of animal rights leads to the supposedly absurd consequence that we have a moral duty to protect prey animals against the attack of predators. Therefore, or so they conclude, non-human animals do not have rights. This argument is commonly referred to as the *argument from predation*.
- 12 Regan 2004 op. cit., p. xxvii.
- 13 For the example with the lion stalking a small child, cf. Regan 2004 op. cit., p. xxxvi.
- 14 See Regan 2004 op. cit., p. xxxvi.
- 15 Regan 2004 op. cit., p. 240.
- 16 J. Baird Callicott, *In Defense of the Land Ethic: Essays in Environmental Philosophy* (Albany, NY: State University of New York Press, 1989), p. 45.
- 17 Callicott op. cit., pp. 45–6.
- 18 Regan 1983 op. cit., p. 357.
- 19 Regan 1983 op. cit., p. 357.
- 20 Peter S. Wenz tries to circumvent this problem by 'attributing a stronger right to be free of harm to the child than to the [wildebeest]': Peter S. Wenz, *Environmental Justice* (Albany, NY: State University of New York Press, 1988), p. 148. He suggests that '[t]he child's right is strong enough to require that we protect it against the [lion's] attack, whereas the [wildebeest's] right is not strong enough to require our protection' (Wenz op. cit., p. 148.) This move is not available to Regan, for at least two reasons. First, Regan builds his case for animal rights upon the basic convictions that non-human and human animals should be given equal moral consideration and that species membership as such is of no moral significance. Wenz's suggestion to attribute rights in degrees clashes with these convictions insofar as it is intrinsically speciesist. For Regan, moral rights, by their very nature, are equal. 'This means that if any two individuals have the same moral right [. . .], then they have this right equally. Possession of moral rights does not come in degrees' (Regan 2004 op. cit., pp. 267–8.) Second, in Regan's view rights are not relevant for the case at hand because the lion is not a moral agent.
- 21 As an animal rights advocate, he or she might want to avoid speciesist argumentation. In our opinion, this will make his or her task impossible within Regan's rights view.
- 22 Cf. Jennifer Everett, 'Environmental ethics, animal welfarism, and the problem of predation: A Bambi lover's respect for nature', *Ethics and the Environment* 6,1 (2001): 42–67 and Lori Gruen, *Ethics and Animals* (Cambridge: Cambridge University Press, 2011).
- 23 Everett 2001 op. cit., p. 54.
- 24 Everett 2001 op. cit., p. 54.
- 25 Everett 2001 op. cit., p. 54.
- 26 Gruen 2011 op. cit. p. 182.
- 27 Everett 2001 op. cit., p. 54.
- 28 Tom Regan, *Defending Animal Rights* (Chicago, IL: University of Illinois Press, 2001), pp. 51–2.
- 29 Regan 2001 op. cit., p. 52.
- 30 Regan 2004 op. cit., p. xxvii.

- 31 Note that Regan can neither employ his *miniride principle* nor his *worse-off principle* (see below) to avert this conclusion. Both these moral principles are tools to decide whose moral rights to override in situations in which there is no other choice. However, in the case at hand we have another choice, namely not to interfere.
- 32 Regan 1983 op. cit., p. 293.
- 33 Regan 1983 op. cit., p. 293.
- 34 Regan 1983 op. cit., p. 384.
- 35 Regan 1983 op. cit., p. 272.
- 36 Since we attempt to show that the move we propose is unsuccessful, there would be little point in actually spelling out such an alternative theory of moral rights. So, for the sake of the argument, we will just assume that such a theory exists.
- 37 Cf. Regan 1983 op. cit., p. 308.
- 38 The wolf's fate is analogous to the fate of the dog(s) in Regan's notorious *lifeboat case*, cf. Regan 1983 op. cit., pp. 324–5.
- 39 Regan's derivation of this principle can be found on the pages following Regan 1983 op. cit., p. 307.
- 40 Regan 1983 op. cit., p. 305.
- 41 Note that, in our new framework that accepts a moral patient as the kind of entity able to violate the moral rights of others, we also obtain intuitive results in the case where the 'group' of people consists of one person only, say another child. The situation we are considering comprises two children playing, one of which (Ch1) got hold of a gun and is pointing it at the other child (Ch2). A third person (T) at a large distance happens to have a precision rifle and observes Ch1 slowly pulling the trigger. The only way T can save Ch2's life is by shooting Ch1 dead. By allowing Ch1 to shoot Ch2 dead, T would override Ch2's moral right to be protected against Ch1 who is violating his or her rights. On the other hand, by shooting Ch1 dead, T would override Ch1's moral right not to be killed. In a situation like this, where 'the few' are as numerous as 'the many', the *miniride principle* neither commands T to shoot nor not to shoot. Either option seems morally permissible — in both cases something equally dreadful happens: a child dies.
- 42 Regan 1983 op. cit., p. 293.
- 43 Carl Cohen & Tom Regan, *The Animal Rights Debate* (Lanham, MD: Rowman & Littlefield Publishers, 2001), p. 30.
- 44 It is understood that, in all of our examples, we are talking about non-human animals who have moral rights, i.e. in Regan's view mentally normal mammals of a year or more. In case you feel it is inappropriate to call one-year-old zebras babies, ignore the word 'baby'.
- 45 Cohen & Regan 2001 op. cit., p. 30.
- 46 Everything we say about carnivores in this paper also applies to omnivores that kill other animals.
- 47 Eric Rakowski, *Equal Justice* (New York: Oxford University Press, 1991), p. 364.
- 48 This being said, we leave open the possibility that there might be special duties of people who took on responsibility for a carnivorous animal. As a matter of fact, we do police pet animals. 'If our dog threatens to bite our cat, or our cat threatens to badly scratch the dog, we intervene to prevent the pain and suffering,' (Tyler Cowen, 'Policing nature', *Environmental Ethics* 25,2 (2003): 169–82) not, say, to protect our property. Bernard E. Rollin, hence, suggests that 'we have a duty to stop a well-fed house cat from killing a bird': Bernard E. Rollin, *Animal Rights and Human Morality* (New York: Prometheus Books, 1981), p. 62. An easy and harmless way to lower the success rate of hunting cats, for example, might be to make them wear bells that scare off potential prey.
- 49 This strategy was already adopted back in 1895 by David G. Ritchie who asked 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? [O]r is our declaration of the rights of every creeping thing to remain a mere hypocritical formula to gratify pug-loving sentimentalists, who prate about a nature they will not take the trouble to understand — a nature whose genuine students they are ready to persecute?': David G. Ritchie, *Natural Rights: A Criticism of Some Political and Ethical Conceptions* (London: Swan Sonnenschein, 1895), pp. 109–10.
- 50 Tibor R. Machan, 'Do animals have rights?', *Public Affairs Quarterly* 5,2 (1991): 163–73. The argument of this paper is more fully developed in Tibor R. Machan, *Putting Humans First, Why We are Nature's Favorite* (Lanham, MD: Rowman & Littlefield, 2004).
- 51 Gertrude Himmelfarb, *De-moralization of Society: From Victorian Virtues to Modern Values* (New York: Alfred A. Knopf, 1995).
- 52 According to Paul W. Taylor, for example, 'to think of [predation] [. . .] in moral terms as cases of the maltreatment of innocent victims by evil animals and nasty plants, is to abandon the attitude of respect

- for all wild living things': Paul W. Taylor, *Respect for Nature: A Theory of Environmental Ethics* (Princeton, NJ: Princeton University Press, 1986), p. 178.
- 53 Regan 1983 op. cit., p. 270
- 54 Peter Vallentyne, 'Libertarianism' in Edward N. Zalta (ed.) *The Stanford Encyclopedia of Philosophy* (Fall 2010 Edition), URL = <<http://plato.stanford.edu/archives/fall2010/entries/libertarianism/>>.
- 55 Sometimes a theory of rights of this kind is derived from the claim that moral agents, at least initially, fully own themselves, just as they can morally fully own non-sentient entities. However, what is said below does not rely on any premise about self-ownership.
- 56 Cf. Peter Vallentyne, 'The rights and duties of childrearing', *William and Mary Bill of Rights Journal* 11,3 (2003): 991–1010.
- 57 Autonomy is a necessary condition for moral agency, and few views require more. Therefore, on most views both concepts are equivalent.
- 58 For more on choice-protecting and interest-protecting conceptions of rights, see Hillel Steiner, *An Essay on Rights* (Oxford: Blackwell Publishers, 1994) and Matthew H. Kramer, N. E. Simmonds & Hillel Steiner, *A Debate over Rights* (Oxford: Oxford University Press, 1998).
- 59 This view also provides an adequate account of our intuitions about the moral status of children (and other human moral patients). Even if there were only one moral agent in the world, this moral agent would still have duties with respect to children. This suggests that our duties towards children do not depend on our duties to other moral agents. We have direct duties of justice *to* children that derive from their interest-protecting rights.
- 60 Regan 1983 op. cit., p. 293.
- 61 P. Vallentyne, 'Equality and the duties of procreators' in D. Archard & C. M. Macleod (eds) *The Moral and Political Status of Children* (Oxford: Oxford University Press, 2002), p. 205.