

The Search for Liability in the Defensive Killing of Nonhuman Animals

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Abstract: While theories of animal rights maintain that nonhuman animals possess prima facie rights, such as the right to life, the dominant philosophies of animal rights permit the killing of nonhuman animals for reasons of self-defense. I argue that the animal rights discourse on defensive killing is problematic because it seems to entail that any nonhuman animal who poses a threat to human beings can be justifiably harmed without question. To avoid this human-privileged conclusion, I argue that the animal rights position needs to both (1) deploy a new criterion of liability to defensive harm, and (2) seriously consider whether human beings themselves are liable to defensive harm in human-animal conflicts. By shifting the focus to whether humans are liable to defensive harm, we will find that in many situations of human-animal conflict, human beings are actually the ones liable to be harmed because they are often culpable or, to some degree, morally responsible for posing an unjust threat to nonhuman animals.

Keywords: self-defense; moral responsibility; justified killing; nonhuman animal rights

Theories of animal rights, like those of Tom Regan and Gary Francione, maintain that most nonhuman animals have prima facie rights, such as the right to life and the right to liberty.¹ However, these accounts of animal rights acknowledge that even if an animal has a prima facie right to life, this does not entail that it is always wrong to harm that animal. According to both Francione and Regan, there can be cases of justified killing, such as when we kill a nonhuman animal in self-defense: the so-called paradigm case of justified killing. In these human-animal conflicts, the assumption is that since nonhuman animals pose a distinct threat to us, “we do no wrong if we harm the animal in the course of defending ourselves.”²

An ethicist who takes seriously the rights of animals should remain troubled by the seemingly unreflective responses offered by the dominant theories of animal rights regarding the issue of defensive killing of nonhuman animals. This is because when we consider the standard scenarios

¹See Gary L. Francione, *Introduction to Animal Rights: Your Child or the Dog?* (Philadelphia: Temple University Press, 2000) and Tom Regan, *The Case for Animal Rights* (Berkeley: University of California Press, 1983).

²Regan, *The Case for Animal Rights*, p. 296.

in which nonhuman animals are said to threaten the lives of human beings, what immediately comes to mind are situations where the lives of humans are threatened *because* of their unjust actions and treatment of nonhuman animals. For instance, we capture wild and exotic animals in order to bring them into zoos and circuses (or we breed wild animals into existence), we force them to live in unnatural habitats, we restrict their natural capacities, and then we remain dumbfounded when they “unexpectedly” lash out at human beings and “lament” the tragedy of being forced to “euthanize” these “dangerous” animals. We intrude into the homes of mountain lions, bears, and coyotes, and then send out lethal search parties if one of these animals happens to wander into our back yard. We raise chimpanzees in our homes, and then call it justified to stab and shoot them to death when they one day attack their human “companions.”³ The normative guidance regarding the defensive killing of nonhuman animals found in both Regan’s and Francione’s writings fails to acknowledge the fact that the unjust actions of human beings are, in a number of cases, responsible for bringing about the “lethal conflict” situations with nonhuman animals in the first place. As Marc Bekoff notes, there is something deeply problematic about the fact that “we provoke [nonhuman animals] unwittingly, then blame and punish them for our own mistakes.”⁴

It would seem that a less permissive account of defensive killing would be well received in the animal rights community, since a theory of self-defense that grants human beings the license to kill *any* nonhuman animal threat undermines the animal liberationist’s goal of challenging human supremacy, especially when these animals threaten us *because of* our unjust actions. In this essay, I will provide a philosophical foundation that makes sense of the animal ethicist’s intuition that killing nonhuman animal threats and attackers is morally problematic when the actions of human beings are responsible for creating the conditions that brought about the human-animal conflict situation in the first place.

I begin by drawing attention to how the current discussion in the animal rights discourse regarding the defensive killing of nonhuman animals is wanting, and, as a result, animal ethicists are not provided with satisfactory moral guidance regarding human-animal conflicts. Next, I suggest that theories of animal rights should refocus the discussion of defensive killing in human-animal conflicts so that they are in a better position to engage the following question: under what conditions are *human*

³In *The Animal Manifesto* (California: New World Library, 2010), pp. 38-39, Marc Bekoff writes about a chimpanzee named Travis, who was raised as a human being in a human home for years. He one day “unexpectedly” attacked his human companion, and as a result, was stabbed by his companion and shot to death by the police.

⁴Bekoff, *The Animal Manifesto*, p. 34.

beings liable to be attacked by nonhuman animals? Refocusing the debate from “when are nonhuman animals liable to be killed” to “when are human beings liable to be killed,” will demand that we rethink our common attitudes and responses to nonhuman animals who aggress against and threaten human beings. In particular, I argue that Jeff McMahan’s *responsibility for an unjust threat* account of liability to defensive harm best captures the complexities of human-animal conflicts. After applying this account of defensive harm to human-animal conflicts, I conclude that (1) in cases in which human beings are culpable for posing an unjust threat to nonhuman animals, human beings are fully liable to defensive harm and thus are not justified in harming nonhuman animals in order to defend themselves, and (2) in cases in which human beings are morally responsible (but not culpable) for posing an unjust threat to animals, they should at least share in the costs of their actions.

1. Review of the Animal Rights Position

The animal rights position, as advocated by Francione and Regan, aims to extend moral rights to most nonhuman animals.⁵ When a being is granted rights, it is “protected against being ignored or violated simply because this will benefit someone else.”⁶ Rights are often described as “moral notions that grow out of respect for the individual. They build protective fences around the individual and establish areas where the individual is entitled to be protected against the state and the majority even where a price is paid by the general welfare.”⁷

⁵See Francione, *Introduction to Animal Rights*, and Regan, *The Case for Animal Rights*. Also note that right-holders, according to Regan, are *subjects-of-a-life*. According to Regan, subjects-of-a-life are individuals who “have beliefs and desires; perception, memory, and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain; preference and welfare-interests; the ability to initiate action in pursuit of their desire and goals; a psychophysical identity over time” (*The Case for Animal Rights*, p. 243). While Regan maintains that, without a doubt, we can know that all normal mammals over the age of one are subjects-of-a-life, he leaves open the possibility that other beings might also be subjects-of-a-life and argues that we should err on the side of caution in cases of uncertainty and grant that certain animals, like fish, birds, and mammals under the age of one, are bearers of moral rights (*ibid.*, pp. 416-17). On the other hand, Francione maintains that sentience is necessary and sufficient for being a right-holder. While I recognize that Regan and Francione have differing views on moral considerability and that not all nonhuman animals are sentient or subjects-of-a-life, for the sake of simplicity, I will use the term “nonhuman animal” when referring to those animals who are generally the subject of both Francione’s and Regan’s rights position.

⁶Francione, *Introduction to Animal Rights*, p. xxvi.

⁷Bernard E. Rollin, “The Legal and Moral Bases of Animal Rights,” in Harlan B. Miller and William H. Williams (eds.), *Ethics and Animals* (Clifton, N.J.: Humana Press, 1983), pp. 103-18, at p. 106.

Both Regan and Francione point out that, currently, we surround the interests of human beings with “protective fences,” yet the interests of nonhuman animals go unprotected, because they are denied the right not to be used as a mere instrument, tool, or means for increasing social utility. Yet, as most animal rights theorists point out, there is no morally relevant difference between the species of human beings and nonhuman animals. According to Francione, there is no characteristic or set of characteristics that is possessed by all humans that is not possessed by at least some nonhuman animal, because “whatever attribute we claim makes human beings deserving of rights is shared by some animal.”⁸ While it is often claimed that rationality is what places human beings above nonhuman animals, animal ethicists are quick to point out that not all human beings are rational.⁹ Furthermore, the morally relevant distinction between humans and animals cannot be species membership; while species membership might distinguish humans from nonhuman animals, it “does not [morally] justify us in treating animals as property any more than race justifies using blacks as slaves.”¹⁰ Rather, what makes most human beings deserving of protection is their ability to have experiences and interests of some sort.¹¹ Yet nonhuman animals also share in this ability to have experiences, thus we cannot be justified in denying rights to nonhuman animals while granting rights to human beings. Since (1) most human beings are granted *prima facie* rights, and (2) there is no morally relevant difference between human beings and nonhuman animals, both Regan and Francione urge us to extend to nonhuman animals the same *prima facie* basic rights that we currently grant to human beings.

In the discussion that follows, I will assume the following four principles of an animal rights position: (1) animals (humans and nonhumans)

⁸Gary L. Francione, *Animals as Persons: Essays on the Abolition of Animal Exploitation* (New York: Columbia University Press, 2008), p. 9.

⁹See, e.g.: Regan, *The Case for Animal Rights*; Francione, *Introduction to Animal Rights*; Peter Singer, *Animal Liberation* (New York: Avon Books, 1975).

¹⁰Francione, *Introduction to Animal Rights*, p. xxix. Also note that granting special moral consideration to humans simply because they are members of the species *Homo sapiens* is referred to as *speciesism* (see Francione’s discussion of this in *ibid.*, pp. xxviii-xxix). A common justification for valuing the human species over animals is the claim that human beings are rational, while animals are not. Such a defense is rejected in respect to the obvious fact that not all human beings are rational; infants and the severely mentally disabled are examples of human beings who are not rational. Human beings, then, are entitled to moral consideration not because they are “rational,” but because they have the capacity to experience *pain and suffering*. It is then concluded that there is no morally relevant difference between humans and animals, since nonhuman animals also have the capacity to experience pain and suffering.

¹¹For example, see: Regan, *The Case for Animal Rights*; Francione, *Introduction to Animal Rights*; and Singer, *Animal Liberation*.

have equal moral status (that is, they have equal inherent worth, which means they cannot be used as mere means, tools, instruments, or resources), (2) animals (humans and nonhumans) have an equal prima facie right not to be harmed, (3) harm can involve infliction (pain, suffering, or frustration of one's interests) or deprivation (death), thus (4) nonhuman animals and humans have an equal right not to be killed.¹² Since Francione and Regan have sufficiently argued for these principles, I will not belabor their position; the goal of this essay is not to defend the philosophy of animal rights, but rather to consider what follows from an animal rights position when we take seriously the issue of defensive killing. Thus, in proceeding, I will set aside objections to the basic tenets of the animal rights position while revisiting the following question: *if animals and humans have an equal right to life, under what conditions, if any, are they liable to defensive killing?*

2. Overriding the Rights of Nonhuman Animals in Self-Defense

Although Francione and Regan attribute rights to nonhuman animals, neither claim that these rights are *absolute* in the sense that they can never be justifiably overridden by other appropriate moral considerations. According to Francione, even though nonhuman animals have rights, this does not entail "that those rights will always trump other rights that may be held by humans or other nonhumans."¹³ The assumption, then, is that the rights of nonhuman animals (and also the rights of human beings) are prima facie, as opposed to absolute, meaning that:

(1) consideration of this right is always a morally relevant consideration, and (2) anyone who would harm another, or allow others to do so, must be able to justify doing so by (a) appealing to other valid moral principles and by (b) showing that these principles morally outweigh the right not to be harmed in a given case.¹⁴

¹²Contrary to Ruth Cigman ("Death, Misfortune, and Species Inequality," *Philosophy & Public Affairs* 10 (1980): 47-64, p. 57), R.M. Hare ("Why I am Only a Demi-Vegetarian," in *Essays on Bioethics* (Oxford: Clarendon Press, 1993), pp. 219-36, at p. 226), Jeff McMahan ("Eating Animals the Nice Way," *Dædalus* (2008): 66-76), and Peter Singer (*Practical Ethics* (Cambridge: Cambridge University Press, 1979), p. 104), who argue that a painless death is not a misfortune for nonhuman animals, both Francione and Regan maintain that nonhuman animals are harmed by death. As Regan puts it, an untimely death cuts an individual's life short in the sense that "a particular psychological being ceases to be" (*The Case for Animal Rights*, pp. 101-2).

¹³Gary L. Francione, *Animals, Property, and the Law* (Philadelphia: Temple University Press, 1995), p. 10.

¹⁴Regan, *The Case for Animal Rights*, p. 287. This notion of prima facie rights stems from W.D. Ross's discussion of prima facie duties, which he describes as obligations we have over other things equal unless they are overridden or trumped by another duty. A prima facie duty has at least one right-making feature, but that feature does not entail that it is an

In the rights discourse, there is widespread agreement that beings who possess rights can have their rights trumped if they pose a threat or danger to another's life or basic interests.¹⁵ As Francione points out, most moral theories permit us to defend ourselves (or others) from imminent harm presented by others (human or nonhuman) in emergency or conflict situations. Thus, Francione maintains that there may be times when it is permissible to kill a nonhuman animal in an emergency situation in order to protect ourselves (or others), such as if a rabid dog is about to attack one of our friends. Regan also provides the following example that motivates his case for normalizing the killing of nonhuman animal aggressors: if rabid foxes have "bitten some children and are known to be in the neighboring woods ... and if the circumstances of their lives assure future attacks if nothing is done, then the Rights View sanctions nullifying the threat posed by these animals."¹⁶

This brief discussion of defensive killing in human-animal conflicts found in the animal rights discourse leaves readers with the impression (perhaps unintentionally) that it is *always* unproblematic to eliminate nonhuman animals for the sake of human protection in human-animal conflict situations.¹⁷ This is because, both Francione and Regan remind us, that although we are morally obligated to respect a nonhuman animal's right to life, we also have the right to preserve our own life or the lives of others against nonhuman animal threats. Thus, when a nonhuman animal poses a danger or threat to humans, the only guidance provided by Regan and Francione is that human beings are permitted to override the rights of the nonhuman animal in order to preserve their own lives. The underlying claim, then, seems to be that merely *posing a threat* to humans makes nonhuman animals liable to defensive harm.

absolute duty: a duty that must always be performed and can never be overridden. While not all prima facie duties correspond to a rights claim, according to rights theorists, certain duties, such as negative duties of noninterference, have a correlative rights claim. So, if there is a prima facie duty not to harm individuals with inherent worth, there is a corresponding prima facie right, such as the right not to be harmed. Yet, if the duty to not harm others can be overridden, it follows that the prima facie right can also be overridden.

¹⁵See: Francione, *Introduction to Animal Rights*, p. 158; Regan, *The Case for Animal Rights*, p. 331; Judith Jarvis Thomson, "Self-Defense and Rights," in *Rights, Restitution, and Risk: Essays in Moral Theory* (Cambridge, Mass.: Harvard University Press, 1986); and Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

¹⁶Regan, *The Case for Animal Rights*, p. 353. By "nullify," it is assumed that Regan means "kill." See Lisa Kemmerer's essay, "Innocent Threats," *Between the Species* 5 (2005): 1-5, for a discussion on this point.

¹⁷Note that Regan writes that we are "sometimes" justified in overriding the rights of nonhuman animals when they pose innocent threats; however, he does not describe those situations when we are *not* justified in overriding the rights of innocent threats (*The Case for Animal Rights*, p. 353). The failure to fully engage this discussion is a deficiency of Regan's theory of animal rights.

To see why this is problematic, consider the following scenarios:

1. A man kidnaps a Bengal tiger and forces the tiger to perform in his circus show. One day, the tiger attacks the man and the man shoots the tiger in order to save his own life.
2. A man brings a chimpanzee into his home and raises the chimpanzee as a human. One day, the chimpanzee attacks the man and the man stabs the chimpanzee to death in order to save his own life.

When applying the guidance offered by Francione and Regan in their brief discussion of lethal conflicts between humans and nonhuman animals, it would seem that we should conclude that in both these scenarios, the men are morally permitted to kill the animals since they would be acting in self-defense. Because the tiger and chimpanzee pose a lethal threat to the men, one could argue that both the tiger's and the chimpanzee's right to life is overridden, and as a result, the men no longer have a duty not to kill these animals since, as Francione argues, we are justified in defending ourselves from imminent harm. Yet, this conclusion is unsatisfying because the *unjust* actions of humans are responsible for the human-animal conflict in the first place. Surely, someone who is responsible for creating a forced-choice situation through his unjust actions does not retain permission to kill innocent, nonhuman animal threats.¹⁸

For instance, there is widespread agreement in the self-defense discourse that a man who attempts to rape a woman is not permitted to kill the woman in self-defense if she were to pull a knife on him. Following this same logic, there should be widespread agreement in the animal rights community that a man who captures, confines, and tortures a tiger for entertainment is not permitted to kill the tiger in self-defense if the tiger were to one day attack him. Yet, for whatever reason, Francione and Regan fail to address the question of whether humans are justified in defending themselves against a nonhuman animal threat when the unjust actions of humans are responsible for creating the human-animal conflict situation in the first place.¹⁹ This incomplete discussion leads to the following unsatisfying and counterintuitive conclusion: it is seemingly

¹⁸A forced-choice situation is one where it is inevitable that someone will be harmed.

¹⁹In "Animal Rights and Self-Defense Theory," *The Journal of Value Inquiry* 43 (2009): 165-77, John Hadley argues that nonhuman animals have been excluded from self-defense theory because taking seriously a theory of self-defense poses a serious theoretical problem for species egalitarianism. According to Hadley, a sound self-defense theory for nonhuman animals would entail that those who harm animals are liable to third-party defensive actions on behalf of the nonhuman animals. Yet, since there are billions of people who harm nonhuman animals, there is a fatal problem, which he refers to as the "multiple inappropriate targets problem."

always morally justifiable to kill a nonhuman animal who poses a threat to us even if we are responsible for the forced-choice situation.²⁰

An animal rights ethic that does not afford specific attention to human-animal conflicts that arise due to the unjust actions of humans is, at best, incomplete. In order to provide a complete account of defensive killing, the animal rights position must make clear that in a significant number of human-animal conflict situations, human beings are, to some degree, liable to defensive harm because they are responsible (and in many cases, fully culpable) for presenting an unjust threat to animals. I suggest that both Francione's and Regan's animal rights theory can benefit from exploring the rich discussion of liability to defensive harm found in the self-defense literature in order to deploy a criterion of liability to defensive harm that can be used to emphasize the moral distinction between human-caused conflicts and human-animal conflicts for which humans are not responsible.

3. Theories of Self-Defense and Liability

As Seth Lazar explains, a theory of self-defense must provide a *criterion of liability* that identifies under what conditions a being's right to life (or right not to be harmed) can be diminished.²¹ One of the central aims of the discourse regarding defensive killing, then, is to determine the criterion of liability to defensive killing (or harm), since "killing in self-defense is justified only when the attacker has acted in a way that makes him morally liable to defensive killing."²² Liability, then, corresponds to a loss of a right, namely, the right not to be attacked or killed. When one is liable to be killed, she is no longer wronged by being killed; she has acted in such a way that she no longer deserves the right not to die. Furthermore, if one is *fully* liable to be killed, then (1) one has no justified complaint about being attacked or killed, and (2) one loses one's right

²⁰In Regan's defense, he claims that humans who are innocent of "any relevant wrongdoing" are permitted to do what they must do to defend themselves (*The Case for Animal Rights*, p. 293). Yet, this leaves open whether humans who are culpable or morally responsible for wrongdoing are permitted to defend themselves. I argue that this underdeveloped discussion in the animal rights discourse needs to be developed into a thorough discussion of liability to defensive harm.

²¹Seth Lazar, "Responsibility, Risk, and Killing in Self-Defense," *Ethics* 119 (2009): 699-728, p. 703.

²²See Jeff McMahan, *Killing in War* (Oxford: Clarendon Press, 2009), p. 157. Note that *liability* is the primary concern in the self-defense discourse and not *desert*, since one can be liable to be killed in self-defense even if one does not deserve to be killed (Jeff McMahan, "The Basis of Moral Liability to Defensive Killing," *Philosophical Issues* 15 (2005): 386-405, p. 386). Thus, desert always entails liability, but liability does not always entail desert.

not to be attacked and thus is not justified in fighting back; one has no right to resist a self-defensive action even if the only way one can save oneself is by killing the individual who attacks.²³

Before considering the competing views of liability to defensive harm, it is important to clarify important terminology commonly employed in the self-defense literature. First of all, harms can be either direct or indirect: someone might pose a direct harm to you if she is going to inflict harm upon you, such as by shooting or stabbing you, while someone might pose an indirect harm to you if she endangers you in some other way, but does not inflict harm upon you, such as by blocking an emergency exit in the event of a fire.²⁴ In addition, threats of harm can be either just or unjust: a threat of harm is unjust if it is aimed at someone who is not liable to bear harm, such as the threat of harm imposed on an innocent man as he is held at knife-point by a robber. Note that one might pose an unjust threat of harm to another without intending to do so or being blameworthy for the threat. For instance, a heavy man who is, against his will, pushed off a bridge poses an unjust threat of harm to a woman if he were to fall on top of her, since the woman is not liable to bear harm. On the other hand, a just threat of harm is one that is directed at someone who is liable to harm, such as the threat of harm a police officer imposes on a murderer when she points a weapon at him as he tries to escape.

Finally, there are different types of beings who can pose unjust threats: (1) *culpable threats* are morally responsible and fully blamable agents who pose a threat that is not justified and there are no conditions that excuse their actions, (2) *partially excused threats* are beings who have excuses that mitigate culpability (such as duress, negligence, diminished responsibility), but some residue of culpability remains, (3) *fully excused* and *innocent threats* are beings who both act voluntarily when imposing an unjust threat and meet the minimum standards of responsible agency, but they are not blameworthy because their conduct is fully excused, and (4) *nonresponsible threats* are beings who are not, to any degree, morally responsible because either they lack the cognitive capacities for minimal agency (like infants) or they do not act voluntarily or with any sense of agency (such as a man who threatens to squash a woman after he is, against his will, pushed off a bridge).²⁵

²³In addition, I will ultimately agree with McMahan that liability comes in degrees and that one can be less than fully liable, although still liable to some degree, making it the case that one should at least share in the costs of risk-imposing situations.

²⁴See Helen Frowe, *How We Fight in War* (Oxford: Oxford University Press, 2014), for a discussion concerning this distinction.

²⁵Jeff McMahan, *The Ethics of Killing: Problems at the Margin of Life* (Oxford: Oxford University Press, 2002), pp. 400-403. McMahan claims that nonhuman animals are nonresponsible threats. However, I leave open the question of whether some nonhuman

3.1. *The rights-based account*

I return now to the question of when a right-holder is liable to defensive harm. One well-known account of defensive killing is that by Judith Jarvis Thomson, who argues that what makes someone liable to defensive harm is that she will otherwise violate the victim's rights if she is not killed. In other words, someone is liable to be killed simply if she poses an unjust, lethal threat to another person.²⁶ This entails that neither culpability nor responsibility is relevant when considering whether a being is liable to be killed in self-defense. Rather, Thomson maintains, all unjust threats (culpable, innocent, or nonresponsible) "violate your rights that they not kill you, and therefore lack rights that you not kill them."²⁷ According to this account of defensive killing, which is often referred to as the *rights-based account*, innocent and nonresponsible threats, that is, beings who pose threats to others but are not culpable for doing so, are always liable to be killed, because they are said to *violate* the victim's rights not to be killed.

Thomson's view on defensive killing has been criticized by a number of scholars, such as McMahan, who points out that innocent threats, such as nonhuman animals and the mentally impaired, can pose a lethal threat to us, yet they cannot be said to violate another's right not to be killed, because they are not moral agents. Since rights are constraints against the actions of morally responsible agents, it is problematic to claim that nonresponsible threats can violate another's rights. Thus, Thomson's account of liability to defensive killing, which incorrectly assumes that all threats are liable to defensive killing because they violate another's rights, falls apart. As McMahan puts it, the rights-based account does not "have the intuitively appealing implication that nonresponsible threats may be liable to defensive killing."²⁸

Furthermore, McMahan points out that Thomson's rights theory of self-defense is subject to another fatal objection concerning self-defense against "justified threats," that is, people who impose threats that are justified by substantial moral reasons. He presents the following case that is said to challenge the rights-based account:

A tactical bomber fighting in a just war has been ordered to bomb a military facility located on the border of the enemy country. He knows that if he bombs the factory, the explosion will kill innocent civilians living just across the border in a neutral country. But

animals might be classified as fully excused or innocent threats, since more cognitively advanced nonhuman animals might in fact meet the standards of McMahan's minimalist conception of responsibility. See n. 41 for further discussion on this point.

²⁶Judith Jarvis Thomson, "Self-Defense," *Philosophy & Public Affairs* 20 (1991): 283-310.

²⁷Thomson, "Self-Defense," p. 302.

²⁸McMahan, "The Basis of Moral Liability to Defensive Killing," p. 388.

this would be a side-effect of his action and would be proportionate to the contribution that the destruction of the facility would make to the achievement of the just cause. As he approaches, the civilians learn of his mission. They cannot flee in time but they have access to an antiaircraft gun.²⁹

The question that McMahan is concerned with is: “Assuming that the tactical bomber would be morally justified in dropping his bomb, would the civilians be justified in shooting him down in self-defense?”³⁰

In answering this question, McMahan points out that there are two ways of acting against a right: “when one is morally justified in doing what another has a right that one not do, one infringes her right. When one acts without justification in doing what another has a right that one not do, one violates her right.”³¹ Because the tactical bomber acts with justification, he will merely infringe the civilians’ rights. Furthermore, since the tactical bomber performs a justified action, he retains his right not to be killed. As McMahan points out, this leads to the counterintuitive conclusion that, according to the rights view, the civilians are not justified in killing the tactical bomber in self-defense because the tactical bomber merely infringes upon, and does not violate, their rights.

3.2. *The culpability view*

An alternative view is that the basis for liability to defensive killing is *culpability* for an unjust threat.³² Let us refer to this as the *culpability view*. According to this view, only those beings who are *culpable* for posing an unjust threat are liable to be killed. So, if one does not possess some degree of moral blame, then one is morally innocent and thus always retains her right to life. The underlying idea, then, is that the right to life is so significant, perhaps the most important right one can possess, that the arguments for its diminishment should meet a heavy burden of proof.³³

In many cases of self-defense, an agent defends herself against an actor who is fully culpable for her actions, while other instances of self-defense involve harming innocent threats: dangerous moral patients who are inno-

²⁹Ibid., p. 388.

³⁰Ibid.

³¹Ibid.

³²See Michael Otsuka, “Killing the Innocent in Self-Defense,” *Philosophy & Public Affairs* 23 (1994): 74-94; Gerhard Øverland, “Killing Civilians,” *European Journal of Philosophy* 13 (2005): 345-63, and “Killing Soldiers,” *Ethics and International Affairs* 20 (2006): 455-75.

³³See Lazar, “Responsibility, Risk, and Killing in Self-Defense,” p. 701. In *The Case for Animal Rights*, Regan also argues that the most fundamental and irreversible kind of deprivation is death, making death the “ultimate harm because it is the ultimate loss—the loss of life itself” (p. 100). Thus, if one can, under certain conditions, acquire the right to kill another, there had better be a very good reason.

cent and are not fully culpable for the threats they pose.³⁴ Keeping this in mind, the culpability view of defensive killing is often criticized because it implausibly restricts the right to kill innocent threats and nonresponsible beings for reasons of self-defense in *all* circumstances.³⁵ So, for instance, if we walk outside and find a child pointing a gun at us, the culpability view prohibits us from defending ourselves by using lethal force. Since a child has diminished agency, and thus cannot be culpable for his actions, the *culpability view* is committed to the claim that he is not liable to be killed, and thus we are not justified in killing him, even if doing so would save our own life. Instead, we should submit to our fate of death.

3.3. *The responsibility for an unjust threat account*

McMahan criticizes the culpability view because, according to him, the idea that an innocent victim should submit to being killed is unacceptable.³⁶ Likewise, Mapel points out that most people, along with the Anglo-American legal system, firmly believe that self-defense against innocent threats is morally justified.³⁷ In response to the unsatisfactory consequence of the culpability view that denies innocents the right to protect themselves, McMahan proposes a well-respected alternative account of liability to defensive harm, which he refers to as a *justice-based account* that “treats the morality of self-defense as a matter of justice in the distribution of harms.”³⁸ I argue that this account can best address the complexity of human-animal conflicts.

In this justice-based account, McMahan puts forth his *responsibility for an unjust threat* view of liability to defensive harm. According to this view, the criterion of liability to defensive harm is “moral responsibility, through an action that lacks objective justification, for a threat of unjust harm to others, where a harm is unjust if it is one to which the victim is not liable and to which she has not consented.”³⁹ Thus, if one is liable to

³⁴Regan, *The Case for Animal Rights*, pp. 293-94.

³⁵See: McMahan, “The Basis of Moral Liability to Defensive Killing”; David Mapel, “Symmetrical Self-Defense,” *The Journal of Political Philosophy* (2009): 1-20; Yitzhak Benbaji, “The Responsibility of Soldiers and the Ethics of Killing in War,” *Philosophical Quarterly* 57 (2007): 558-72, and “A Defense of the Traditional War Convention,” *Ethics* 118 (2008): 464-95; Uwe Steinhoff, “Debate: Jeff McMahan on the Moral Inequality of Combatants,” *Journal of Political Philosophy* 16 (2008): 220-26; Whitley Kaufman, “Torture and the ‘Distributive Justice’ Theory of Self-Defense,” *Ethics and International Affairs* 22 (2008): 93-115.

³⁶McMahan, *Killing in War*, p. 157.

³⁷Mapel, “Symmetrical Self-Defense.”

³⁸McMahan, *The Ethics of Killing*, p. 402.

³⁹McMahan, “The Basis of Moral Liability to Defensive Killing,” p. 394. In “Responsibility, Risk, and Killing in Self-Defense,” Lazar refers to this as the *minimalist*

defensive harm, then three conditions must be fulfilled: (1) one must pose an unjustified threat to another, (2) one must pose this threat through performance of an action that lacks objective justification, meaning that there is no positive moral reason for performing that action, and (3) one must be responsible for the unjust threat, whereby responsibility might vary in degree and thus there are different degrees of liability that correspond to one's degree of responsibility. Responsibility then, and not culpability, is said to be the criterion of defensive killing, whereby there are different degrees of responsibility, with culpability ranking as the highest degree of responsibility.⁴⁰ This *responsibility for an unjust threat* view can explain why, in certain circumstances, nonculpable threats are liable to be killed: they are in some way responsible for the unjust threat, for instance, if they could reasonably foresee that the activity in which they choose to engage could pose a risk of significant harm to others.

Note that there are two conclusions that can be drawn from McMahan's account. First, someone who is fully culpable for an unjust threat is fully liable to defensive harm and thus is not justified in fighting back when threatened. To make this clear, recall the example employed earlier in this essay: a man who attempts to rape a woman is not permitted to kill the woman in self-defense if she were to pull a knife on him. In such a case, since the man is fully culpable for posing a threat to the woman and there are no conditions that justify or excuse his actions (assuming he is rational), he is not permitted to defend himself even if he were to feel threatened by the woman if she were able to fight back. In this case, since there is both *fault in the act* and *fault in the agent*, the attacker is fully culpable and thus fully liable to defensive harm.

Second, McMahan's account is unique in that he also maintains that someone is, to some degree, liable to defensive harm if she is responsible for an unjust threat even when she is not culpable. Lazar refers to this kind of nonculpable responsibility as *agent responsibility* (McMahan employs the phrase *moral responsibility*, although he does not intend for it to contain the connotation of blameworthiness), which only requires that the actor (1) voluntarily (in the sense that the actor is not physically forced into performing that act) chooses to perform some act that she foresees could bring about an unjust harm to another (or an act that she foresees will create a forced-choice conflict with an innocent right-holder), and (2) meets the minimal standards of rational agency.⁴¹

conception of responsibility view (p. 702). A version of this view is also endorsed by David Rodin in *War and Self-Defense* (Oxford: Clarendon Press, 2002).

⁴⁰According to McMahan, although being culpable for an unjust threat is *sufficient* for liability to defensive harm, being culpable is not *necessary* (*Killing in War*, p. 34).

⁴¹McMahan does not describe the minimal standards of rational agency, but he does

According to McMahan, there are two ways in which one can be morally responsible, but not culpable, for an unjust threat: (1) there might be fault in the act, but not in the agent, for instance, when an agent creates an unjust threat through an action that is wrongful but fully excused (such as when an actor performs a wrong act, like pointing a gun at an innocent person, because she acts under irresistible duress), and (2) one might be responsible even in the absence of fault in the act. So, an actor can be responsible even when she acts permissibly, such as when a person voluntarily engages in a permissible but foreseeably risk-imposing activity, like driving a car, which creates a threat or causes harm to which the victim is in no way liable. It is this second sense of non-culpable responsibility that I am concerned with in this paper.

In motivating his argument that someone is, to some degree, liable to defensive harm when he is responsible for an unjust threat even though the act he performs is absent of fault, McMahan provides this example:

A person [call him Driver] keeps his car well maintained and always drives cautiously and alertly. On one occasion, however, freak circumstances cause the car to go out of control. It has veered in the direction of a pedestrian whom it will kill unless she blows it up by using one of the explosive devices with which pedestrians in philosophical examples are typically equipped.⁴²

In such a case, McMahan argues, since Driver could have stayed home, he voluntarily imposed a risk of the forced-choice situation, while the pedestrian did not. He voluntarily “set a couple of tons of steel rolling as a means of pursuing his ends knowing that this would involve a tiny risk.” Driver, then, is a morally responsible agent: “he voluntarily engaged in a risk-imposing activity and is responsible for the consequences when the risks he imposed eventuate in harms.”⁴³ Of significance, then, is *nonreciprocal risk imposition*: if A imposes risks on B, but B does not impose risks on A, when those risks eventually bring about some cost, A should assume the cost.⁴⁴ An individual agent, then, can be liable to de-

maintain that both child and psychotic aggressors meet this standard (*Killing in War*, pp. 122, 155-63, 198-201). For the purpose of this paper, I will leave open the question of whether or not more cognitively developed nonhuman animals meet McMahan’s standard of minimal rational agency. For instance, Marc Bekoff, Frans de Waal, and Mark Rowlands all agree that more cognitively advanced nonhuman animals are moral beings in the sense that they have a sense of justice, fairness, compassion and so forth (although they all agree that nonhuman animals are not moral agents thus they can never be blamed for their actions). This sense of morality that some nonhuman animals possess might very well elevate them from the category of nonresponsible threats to innocent threats.

⁴²McMahan, “The Basis of Moral Liability to Defensive Killing,” p. 393.

⁴³Ibid., p. 394.

⁴⁴This is a summary of Lazar’s discussion in “Responsibility, Risk, and Killing in Self-Defense” of McMahan’s account of liability to defensive harm.

fensive killing if she is indirectly responsible for creating a situation in which risk would arise, even though she is not culpable for the “forced-choice situation” itself (in this case, the driver is not culpable for the car’s malfunction itself, which is what poses the actual threat to the pedestrian). According to McMahan, this account of liability to defensive harm is one of preventative justice; it treats liability to defensive action, as in the case of Driver, as strict:

It says to all people who engage in socially permitted risk-imposing activities such as driving: “You know that if you drive you impose a very small risk on other innocent people. If you choose to drive, the consequences are your responsibility unless others also contribute to the outcome through their own risk-imposing activities. You will be liable to defensive action even if you satisfy the relevant standards of due care.”⁴⁵

4. Justified Self-Defense without Liability

While McMahan provides a theory of defensive killing that explains how we can be justified, under certain conditions, in killing innocent threats, his account is often criticized for providing inadequate moral guidance regarding conflicts with nonresponsible threats, that is, beings who are not morally responsible agents, like nonhuman animals and the mentally impaired. In response to this apparent deficiency, Mapel presents a theory that justifies self-defense against even nonresponsible innocent threats by appealing to the notion of symmetrical self-defense: situations in which each party lacks liability to defensive harm.⁴⁶ While McMahan maintains that one is not permitted to fight back if one is liable to be killed, Mapel suggests that this entails the following: if one is *not* liable to be killed, then one *is* permitted to fight back. Thus, in situations where neither party is responsible for an unjust threat, Mapel argues that *both* parties are justified in defending themselves because *neither* is liable to be killed.

According to Mapel, when considering these cases of symmetrical self-defense, we find that moral liability is not *always* a necessary condition for the justification of all cases of defensive killing; there can be cases of justified self-defense in which the one killed is not liable to be killed, yet the one who kills is still justified, since she herself is not liable to be killed either. Since those who are innocent have a right to resist being harmed, an innocent person is justified in using lethal measures to defend herself even against another innocent who has done no wrong and is not responsible for her actions.

⁴⁵McMahan, “The Basis of Moral Liability to Defensive Killing,” p. 395.

⁴⁶Mapel, “Symmetrical Self-Defense.”

5. Liability in Human-Animal Conflicts

It seems that when ethicists too readily absolve human beings for killing nonhuman animals in “self-defense,” they implicitly endorse either a view like Thomson’s or the view that human-animal conflicts fall into the category of symmetrical cases of self-defense. If they endorse Thomson’s view, they seem to assume that all nonhuman animal threats are liable to be killed since they presumably violate the rights of humans not to be killed. This view is problematic for the reasons noted earlier in this article. If animal ethicists assume that human-animal conflict cases are symmetrical cases of self-defense, then they are committed to the view that each party lacks a liability to defensive harm. If neither party is liable to be killed, it follows that both would be justified in defending themselves against harm in forced-choice situations. It just so happens that the human being will, in most conflict situations, end up successfully defending herself, since she might have access to fancy technology and weapons, such as a gun.⁴⁷

Yet, the fact that nonhuman animal aggressors are nonresponsible threats (or innocent threats) compels us to conclude that human-animal conflicts are rarely ever “symmetrical” cases of self-defense. This is because most rational human beings, as responsible moral agents, are usually, to some degree, responsible for creating a forced-choice situation and thus are, to some degree, liable to defensive harm. Furthermore, in many instances of human-animal conflict, human beings are fully culpable for presenting an unjust threat and thus are not justified in fighting back against nonhuman animals who pose a threat of harm to them.

6. Culpability for an Unjust Threat: Human-Animal Conflicts

In exploring how McMahan’s responsibility for an unjust threat account can successfully capture the complexities of human-animal conflicts, let us first consider possible situations in which human beings are fully culpable for posing an unjust threat to a nonhuman animal. In doing so, we can return to the two examples introduced earlier in this essay:

⁴⁷Note that Regan most likely would label a symmetrical case of self-defense as a “prevention case” and thus he would argue that we should appeal to the worst-off principle to resolve the conflict, which will usually inform us that the life of the rational human should be preserved, since, according to Regan, a rational human would be made worse off by death than a nonhuman animal. For a thorough discussion of prevention cases and the worst-off principle, see Regan, *The Case for Animal Rights*, pp. xxviii and 303.

1. A man kidnaps a Bengal tiger and forces the tiger to perform in his circus show. One day, the tiger attacks the man and the man shoots the tiger in order to save his own life.
2. A man brings a chimpanzee into his home and raises the chimpanzee as a human. One day, the chimpanzee attacks the man and the man stabs the chimpanzee to death in order to save his own life.

In both cases, the men are fully culpable for posing an unjust threat of harm to the animals because (1) they voluntarily brought these dangerous animals into their home/circus, which is both (a) an action with fault, in that it is unjust because it treats the nonhuman animals like mere resources or tools, and (b) a risk-imposing activity, since the men could foresee that these wild animals would feel threatened by them and might one day attack them, and (2) there are no excusing or justifying conditions for their unjust, exploitative actions, which imposed an unjust threat to these animals. Since there is fault in both the *act* and the *agent*, these men are fully liable to be killed and they should suffer the costs of their own wrongdoing by not harming the animal in self-defense, since they could have avoided these costs by refusing to perform the unjust action, while, on the other hand, the nonhuman animal did not have a choice. Furthermore, it is a *matter of justice* that these men suffer the costs of their wrongful actions rather than allowing those costs to be imposed upon the nonhuman animals.

7. Responsibility for an Unjust Threat: Human-Animal Conflicts

While the scenarios described above are fairly straightforward, I would like to draw attention to a less straightforward human-animal conflict scenario that I will argue is analogous to McMahan's "Driver" example:

A man is enjoying a leisurely hike on a trail near Anchorage where grizzly bears are known to be present. Halfway into his hike, he is confronted by a grizzly bear who slowly begins to walk toward him, growling all the way. The man pulls out a gun and shoots the bear.

It might, at first glance, seem as though the man is justified in killing the bear because the man's action, which is responsible for the forced-choice situation, is not, in and of itself, unjust. That is, there is no fault in the act of hiking, since one does not use a nonhuman animal as a means or resource to one's ends by hiking the Anchorage trail; rather, the human-animal interaction is merely an unintended side effect of the morally neutral decision to go for a hike.

Yet, upon further reflection, there are two possible ways one might challenge the conclusion that the man is justified in killing the bear. First, one might argue that there is fault in the act of hiking the Anchorage trail because this act involves the intrusion into the homes of nonhuman animals. Since we, humans, have taken it upon ourselves to destroy a significant number of nonhuman animal homes in order to create urbanized spaces, individuals commit unjust acts when they arrogantly infiltrate the few remaining nonhuman animal havens for mere entertainment, while shooting any creature who attempts to defend himself against our invasion into his home.

The second, more plausible, response stems from McMahan's view of nonculpable responsibility that involves responsibility even in the absence of fault in the act. This response is as follows: even if there is no fault in the act, the hiker, like Driver, is still responsible for voluntarily engaging in a risk-imposing activity. This is because, like Driver, the hiker could have stayed home, yet he voluntarily engaged in a risk-imposing activity that brought about the forced-choice situation, while the bear did not, since the bear cannot be expected to just "stay in his den." Furthermore, the hiker could *foresee* that the activity he participated in could potentially lead to a forced-choice situation that would incite risk or harm directed at an innocent right-holder. Since grizzly bears are known to frequent the Anchorage trail, the hiker could foresee that he might have an encounter with a bear that would lead to the bear's feeling threatened, which would then incite a forced-choice situation. Lastly, there is no justification, that is, there is no positive moral reason for engaging in this risk-imposing activity: one cannot justify putting a nonhuman animal at risk for the mere sake of a leisurely activity. This man is responsible for an unjust threat; in the words of McMahan, he "voluntarily engaged in a risk-imposing activity and is responsible for the consequences when the risks he imposed eventuate in harms."⁴⁸ Since, according to this interpretation, the hiker is responsible (but perhaps not fully culpable) for the unjust threat of harm he poses upon the bear, the hiker, then, is, to some degree, liable to defensive harm.

One might argue that this account of defensive harm is problematic because it would require all humans to accept harms that arise from decisions with anticipated risks. As the objection continues, this account might lead to the absurd conclusions that a woman who leaves her home at night for a walk is liable to harm because she chose to go for a walk alone, knowing full well that there is a risk of being raped. Yet, the scenario regarding the woman walking alone at night differs drastically from the scenario regarding the man hiking the Anchorage trail: a woman who walks

⁴⁸McMahan, "The Basis of Moral Liability to Defensive Killing," p. 394.

alone at night does not pose an unjust threat to the rapist, while the man who attempts to attack the woman is fully culpable of presenting an unjust threat to the woman since there is fault in the act of rape and no excusing conditions for his act (assuming the rapist is rational). In this case, there is a *nonreciprocal risk imposition*: the rapist imposes a threat of unjust harm on the woman, but the woman does not impose a threat of unjust harm to the rapist. Thus, the woman would be justified in fighting back since she is not liable to harm while the rapist is fully liable to defensive killing.

Like the woman, the bear who roams about the Anchorage trail does not voluntarily impose an unjust threat upon the hiker in the sense that the bear cannot be expected to just “keep to himself” and avoid interactions with human beings. On the other hand, the hiker is responsible for an unjust threat because he voluntarily engaged in an activity that he knows involves a risk that he might encounter a bear, who might attempt to attack him if the bear were to act upon the threat of harm he experiences from the hiker’s presence. In this case, there is a *nonreciprocal risk imposition*: the hiker imposes unnecessary risks on the bear by inciting the bear to feel threatened, but the bear does not impose a threat of harm on the hiker (until *after* the man’s presence threatens the bear). Thus, when the risks eventually bring about some cost, the hiker should share *some of the cost*. For instance, the man should attempt to use nonlethal means to restrain the bear, even if using lesser force “entails a lower probability of successfully evading the threat.”⁴⁹

8. Consequences of the Responsibility for an Unjust Threat Account

Situations of human-animal conflict that resemble the above scenarios, unfortunately, occur all too frequently, and they comprise the majority of the cases that are often wrongly characterized as “justified self-defense against nonhuman animal threats.” In addition to kidnapping wild animals from their habitat so we can bring them into our homes, zoos, and circuses, we, human beings, continually move into the homes of nonhuman animals, infiltrate their living rooms when we are bored, and then assume that we are justified in using lethal force to protect ourselves when we feel “threatened” or “scared” after we have voluntarily and unnecessarily put ourselves into foreseeable harm. For once, we should pause to consider why we tirelessly blame and punish innocent nonhuman animals for the *forced-choice situations* we have brought upon ourselves as a consequence of imposing upon their lives and infiltrating their homes. As Bekoff writes, our response to nonhuman animals is always the same:

⁴⁹McMahan, *The Ethics of Killing*, p. 404.

Kill, kill, and kill some more; that's the only solution for righting the wrongs for which we—yes, we—are responsible. We move into the homes of other animals and redecorate them because we like to see them or because it's "cool" to do so, or we alter their homes to the extent that they need to find new places in which to live and try to feel safe and at peace. And then, when *we* decide they've become "pests," we kill them.⁵⁰

McMahan's *responsibility for an unjust threat* view provides us with the philosophical foundation to ground the animal ethicist's intuition that in most human-animal conflicts, the killing of innocent animals is unjustified because (1) humans are usually, to some degree, responsible for posing an unjust threat to animals since our voluntary, risk-imposing actions often foreseeably eventuate into unjust costs and risks to animals, and thus (2) human beings are often, to some degree, liable to defensive harm at the paws of animals. Yet, ironically, our first response is to kill, maim, and destroy nonhuman animals who simply desire to go about their lives in peace, free from human interference. As Bekoff puts it: "we are the pests who relentlessly redecorate nature and then kill the animals into whose homes we've trespassed."⁵¹

This essay, then, beseeches human beings to carefully reconsider (1) our habits of subjecting ourselves to unnecessary risks when we decide to perform risk-imposing activities, and (2) our responsibility for creating situations that impose an unjust threat of harm to nonhuman animals. We do not have a license to infiltrate every crevice of nature and then dispose of nonhuman animals whenever and wherever we choose by appealing to "self-defense" as a justification for the threat of harm that emerges because of our exploitative and reckless actions. When deciding "who should be killed" in human-animal conflicts, we should question our stubborn insistence that nonhuman animals are always liable to be killed and, instead, we should critically examine the choices that we have voluntarily made that led to our feeling "threatened." Our current discussions regarding animal threats tend to be limited to considerations of what the animal is doing wrong; we narrowly dwell on the harm or threat the *animal* is causing and how to "manage" the *animals* who we blame for presenting a threat to us. For once, we should take an honest look at ourselves and reflect upon the choices *we* have made and what *we* are doing wrong as moral agents who have the capacity to make choices that do not impose or intrude upon the lives of others and eventuate into "forced-choice" scenarios. We should remain firm in questioning the

⁵⁰Marc Bekoff, "Redecorating Nature: Have We Really Killed Pests Too Rarely?" *Psychology Today* (2013), <http://www.psychologytoday.com/blog/animal-emotions/201312/redecorating-nature-have-we-really-killed-pests-too-rarely> (01 December 2013), accessed 20 January 2014.

⁵¹Bekoff, "Redecorating Nature: Have We Really Killed Pests Too Rarely?"

voluntary choices moral agents are responsible for making that incite and generate situations of conflict. We should start asking how we can better manage *ourselves*. If we are honest with ourselves, we just might be surprised to find that we are the real invasive pests and threats.

9. Exceptions: Animal Displacement

Before concluding, it is important to note that there will always be exceptional cases of forced-choice conflicts between humans and animals that are not directly caused by the individual human(s) who are part of the conflict. For instance, Bekoff discusses how climate change is responsible for an increase in tiger attacks in India's Sundarban Islands. Due to the rising sea levels and coastal erosion, these tigers have lost 28 percent of their habitat. As a result, the tigers frequently enter villages looking for food and, consequently, they might prey on human beings or they might find themselves in a lethal conflict with the villagers.⁵² In such cases, it is doubtful that the Sundarban villagers directly caused the tigers to be displaced, since human-induced global warming is caused by greenhouse gases, which in turn are primarily produced by capitalist economies and large corporations. Although India is one of the major greenhouse gas emitters, it is not the case that local villagers are the ones producing significant amounts of energy that largely contribute to global warming.

We are then left asking the following question: Can the Sundarban villagers be held morally responsible, and thus liable to defensive harm, for the forced-choice situation with the tigers? One might say that the villagers are to some degree morally responsible because they knew, by living in such a village, that there would be a tiny probability that tigers might infiltrate their living space due to changing climate. Furthermore, since the villagers themselves (1) use some amount of energy, and (2) are citizens of India, and India as a nation is responsible for a significant amount of GHG emissions, the Sundarban villagers are, to some degree, responsible for the forced-choice conflict, thus they are, to some degree, liable to defensive harm.

Yet, there are two, more plausible responses that come directly from McMahan's discussion on liability to defensive harm. The first response is the following: the villagers' actions, which involve going about routine living and using a small amount of energy, are, as McMahan might put it, "causally too remote" for them to be responsible for the forced-choice situation. According to tort law, a person "must have been the 'proximate' cause of harm to another in order to be liable to repair that harm,

⁵²Bekoff, *The Animal Manifesto*, p. 47.

so a person must be the proximate cause of an unjust threat to another in order to be liable to defensive killing.⁵³ Since the villagers are not the “proximate cause” of the forced-choice situation, they are not liable to defensive killing.

This response, as McMahan notes, is not free from criticism. For instance, military leaders and commanders still should be held, to some degree, morally responsible when their subordinates torture detainees, even though they are not the “proximate cause,” that is, they did not torture the detainees themselves. Keeping this objection in mind, we might consider a second, more plausible explanation, as to why the Sundarban villagers are not liable to defensive harm at the paws of the tigers: a condition of responsibility for an unjust threat is that the action that “gave rise to the threat either was of a risk-imposing type or was such that in the circumstances the agent ought to have foreseen that it carried a non-negligible risk of causing a significant unjust harm.”⁵⁴ Thus, in order to be morally responsible for the forced-choice situation, the villagers must have engaged in an activity that is of a *risk-imposing nature*. If the villagers encounter a tiger attack when they are simply going about their daily lives, for instance, if they are walking to work, they cannot be said to be engaging in a “risk-imposing” activity. Yet, if the villagers voluntarily, and without a positive moral reason, wandered into islands that are known to be tiger territory, or if they unnecessarily provoked or aggravated a tiger, then we can conclude that the villagers are liable to defensive harm because they are responsible for voluntarily engaging in a risk-imposing activity that lacks objective justification.

In conclusion, we might find that the villagers who do not perform risk-imposing activities are not liable to defensive killing because (1) they are not the proximate cause of the forced-choice situation, but more importantly, (2) they did not voluntarily create the forced-choice situation by engaging in a risk-imposing activity. In this situation, we might grant that this is a case of symmetrical self-defense, which would entail that both the villagers and tigers are permitted to defend themselves. Thus, we might say that in this particular case of lethal conflict, the villagers are justified in killing the tiger in self-defense.

10. Group Responsibility

We can imagine a myriad of other situations in which humans are *collectively* responsible for creating conditions that lead to conflicts between

⁵³McMahan, “The Basis of Moral Liability to Defensive Killing,” p. 396.

⁵⁴Ibid., p. 397.

individual humans and animals—situations in which the individual humans who find themselves in lethal conflict with nonhuman animals did not perform a risk-imposing activity. For example, there are often situations in which dangerous carnivores are displaced and wander into our back yard in an attempt to find food. In such a case, it might be argued that the individual who owns the home is not personally responsible for inciting a forced-choice situation. Rather, those who built the large residential housing development are the ones responsible for displacing nonhuman animals (and it might very well be that these individuals no longer exist).

In addition, Bekoff notes that cities and suburbs have taken over a significant amount of rural areas, and human consumption is responsible for global warming and climate change, all of which causes chaos in the nonhuman animal world, including displacement. In fact, Bekoff points out that we have affected the lives of animals in “myriad ways”: birds mimic ambulance sirens, car alarms; robins in urban areas sing at night because it is too noisy during the day; polarized light from glass buildings and roads confuses animals and changes their breeding habits, or attracts them to areas where they won’t find food; sea turtles, who usually use the direction of starlight and moonlight to help them find the ocean, move toward bright buildings and street lamps and never find the sea.⁵⁵ Humans, as a species, are also cited as being responsible for the problem of invasive alien species, since humans are oftentimes the ones responsible for moving organisms geographically, such as with the cane toads in Australia in the 1930s who, to this day, are causally responsible for ongoing ecological disasters.⁵⁶ Keeping this in mind, we should constantly remind ourselves, as Bekoff points out, that as a species, “we’ve intruded into the homes and lives of our fellow animals and this incessant and unrelenting trespassing will only continue as humans grow in numbers and available habitat dwindles.”⁵⁷

Clare Palmer suggests that in such scenarios, there is “group responsibility” rather than individual responsibility. As she points out, humans have “shared attitudes toward animals that create an ‘attitudinal climate’

⁵⁵Bekoff, *The Animal Manifesto*, pp. 44-45.

⁵⁶In “The Great Reshuffling: Human Dimensions of Invasive Alien Species,” (Switzerland: International Union for Conservation of Nature, 2001), Jeffrey McNeely argues that humans play a significant role in the problem of invasive alien species for the following reasons: (1) “virtually all of our planet’s ecosystems have a strong and increasing anthropogenic component that is being fed by increasing globalization of the economy, (2) people are designing the kinds of ecosystems they find productive or congenial, incorporating species from all parts of the world, and (3) growing travel and trade, coupled with weakening customs and quarantine controls, mean that people are both intentionally and inadvertently introducing alien species that may become invasive” (p. 5).

⁵⁷Bekoff, *The Animal Manifesto*, p. 48.

of risk to animals in which harming animals is likely to occur.”⁵⁸ In such situations, humans, as a species, foster attitudes and beliefs that contribute to creating this negative climate for animals, such as:

beliefs that animals do not or cannot feel pain, attitudes of indifference to animal pain, attitudes of deliberate ignorance about animal pain, attitudes that depend on human superiority and animal instrumentality, strong anthropocentrism, attitudes of enjoyment of animal pain, and so on.⁵⁹

This view of shared responsibility, I argue, is one we must engage when discussing displaced animals.

Keeping this in mind, we can agree that there will be situations in which the collective action of human beings is responsible for creating conditions that give rise to forced-choice situations between individual human beings and nonhuman animals. What this might entail is that we, as a species, need to act collectively to rectify injustices and create better conditions for nonhuman animals to go about their lives without human interference; yet this does not necessarily entail that *individuals* should bear the costs of lethal encounters or that they must stand by and sacrifice themselves.

Situations that involve collective harm, like general habitat loss caused by large-scale patterns of human activity, cannot be accounted for by McMahan’s responsibility for an unjust threat view, since this account of liability to defensive harm provides a limited framework that is concerned primarily with conflicts perpetuated by *individuals*. Perhaps, then, an additional theory that addresses the issue of collective moral responsibility needs to be invoked in order to deal with the conflicts that are engendered by human beings as a species. While there is not sufficient space in this article to discuss such a theory, we can imagine that such a theory might encourage us to take seriously the *proximate* causes of animal displacement. If this is the case, then the developed world should bear most of the responsibility, because global warming is primarily aggravated by the industrialization of the developed world. Industrialized nations, which include governments and citizens who benefit from modern industrialization, should take responsibility for both climate change and the human-animal conflicts that can be traced back to global warming. This account might then require that governments, companies, and citizen groups within industrialized nations pursue initiatives to save nonhuman animals who are displaced, or are endangered of being displaced, due to global warming and other human activity, such as provid-

⁵⁸Clare Palmer, *Animals in Context* (New York: Columbia University Press, 2010), p. 114.

⁵⁹*Ibid.*

ing these animals with sanctuary. Yet, even when acknowledging the complexity of conflicts that are engendered by the collective actions of human beings, we should not lose sight of the underlying concern of this essay: many of the human-animal conflicts are a result of the risk-imposing actions of *individual* human beings (which are oftentimes unjust) that foreseeably impose unjust threats to nonhuman animals.

11. Conclusion

A theory of animal rights should refuse to endorse an account of defensive killing that unrestrictedly permits humans to kill nonhuman animals when we, ourselves, are responsible for voluntarily creating forced-choice situations after we have invaded their homes and disrupted their lives. Rather, a satisfying discussion of defensive killing will be open to new priorities about who lives and who dies in forced-choice situations. A minimally decent account of defensive killing will remain skeptical of the view that the interests of human beings, which have the same value as the interests of nonhuman animals, somehow *always* manage to win out over the interests of nonhuman animals in forced-choice situations.

In conclusion, this essay is a call for preventive action: humans should use due care to perform actions that do not present unjust threats to nonhuman animals. And if we choose to intrude into the homes of nonhuman animals or kidnap them from their natural habitats, then we must be willing to accept the costs and risks that accompany co-existence. But more importantly, this essay enjoins ethicists to consider the lives of the nonhuman animals we affect, while questioning our common tendency to rely on, as Bekoff puts it, the easy “silver-bullet” solution when they get in our way or threaten us. Bekoff is right when he writes that “it’s an arrogant and anthropocentric double cross to choose to move into areas where wild animals are known to live and then compromise their lives.”⁶⁰ Once we acknowledge the risk we voluntarily assume when we kidnap and infiltrate the homes of potentially dangerous nonhuman animals, we might, for once, accept that we do not have an absolute license to kill in the name of self-defense.⁶¹

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⁶⁰Marc Bekoff, *Why Dogs Hump and Bees Get Depressed* (Novato: New World Library, 2013), p. 274.

⁶¹I would like to thank the two anonymous reviewers for *Social Theory and Practice* who provided thoughtful feedback that encouraged me to further develop my arguments.

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