Journal of Agricultural and Environmental Ethics
https://doi.org/10.1007/s10806-018-9743-6

ARTICLES

Predation Catch-22: Disentangling the Rights of Prey, Predators, and Rescuers

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Accepted: 16 August 2018

Abstract

Predation poses a serious challenge for animal ethics of whatever ilk. For animal rights theory especially, the problem is potentially fatal as animal rights appear to require or permit interfering in nature to prevent predation, an implication that appears to be absurd. Several philosophers have written to deflect this challenge by showing how that implication is not absurd or how the allegedly entailed prescription to intervene does not follow from animal rights theory. A number of philosophers have taken different routes to arrive at the same conclusion that intervention in wildlife predation is not morally permissible or required on the rights view. In this paper, I explore a route hitherto unused to the conclusion that intervention in predation is neither required nor permitted by animal rights theory. I deploy the Hohfeldian analytical framework of rights as well as aspects of the theory of self- or other- defence. This, in my view is the most thorough-going rights perspective on the predation problem. I expose some ad hoc, incoherent, utilitarian, and even speciesist arguments among animal *rights* solutions to the predation problem. The approach I have used avoids these flaws. Taking animal rights seriously means guarding against any tacit speciesism. I think using Hohfeld's framework goes some way in keeping rights analysis free of implicit bias that might pollute our arguments in favour of human beings.

Keywords Predation problem · Other-defence · Animal rights · Alasdair Cochrane · Wesley Hohfeld

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Published online: 27 August 2018

Introduction

There are at least two challenges to animal rights that arise from the fact that wild animals prey on each other. The first is one called the naïve argument against moral vegetarianism. According to this challenge, since wild animals permissibly hunt and kill each other, it follows that human beings may permissibly hunt or rear animals for their own consumption. Benatar (2001) has persuasively rebutted this challenge to animal rights theory. I will not concern myself with this challenge. My quarry is the second formulation of the philosophical problem of predation. This version of the problem is simply that ascribing rights to wild animals has the absurd implication that humans must intervene to reduce or end predation. Some philosophers (e.g. Sapontzis 1987) deny that there is any conceptual or practical absurdity in the interference position.

Critics of animal rights theory say those who find unpalatable the prescription to interfere in predation must forthwith abandon animal rights theory. This is because, in the critics' view, taking rights seriously requires protection of prey rights from human or nonhuman threats including predators. Baird Callicott, for example, states clearly: "Among the most disturbing implications drawn from … rights theory is that, were it is possible for us to do so, we ought to protect innocent vegetarian animals from their carnivorous predators" (Callicott 1992: 258). The crux of Callicott's view is that, since the animal rights view presumably directs us to the ridiculous policy of acting as police between lions and zebras, the theory that animals possess moral rights must be abandoned. I will try to show that the predation problem poses no real threat to animal rights theory. Animal rights theory neither requires nor permits humans to intervene in predation among wild animals. However, before delving into the discussion of the predation problem, some preliminary clarifications.

Many authors applying moral rights to practical problems speak only of *rights* and *duties* as if Wesley Hohfeld never lived. This is despite some leading moral philosophers espousing Hohfeld's rights matrix (Sumner 1987; Thomson 1990; Kramer et al. 1998). Wayne Sumner has gone so far as to say that in moral rights theory, Hohfeld's analytical framework is "the beginning of wisdom" (Sumner 1987: 18). I find this acknowledgement appropriate as ignoring Hohfeld, in my view perpetuates—in animal rights and elsewhere—ills he sort to end. Hohfeld was concerned that rights discourse "was multiply ambiguous and that these ambiguities allowed [rights] arguments to equivocate as they slid effortlessly from one sense of the notion to another" (Sumner 1987: 18). I think animal rights discourse can benefit from Hohfeldian analysis. A discussion of Hohfeld's rights analytical framework is beyond the scope of this paper. However, a brief paragraph will help illuminate some of my discussions below.

According to the Hohfeldian framework, rights are a family of four species of normative advantages. These normative advantages are claims, liberties, powers, and immunities. One of the most important features of these types of rights is what Kramer (1998) calls the 'correlativity axiom'. Each of the four types of rights has a specific moral disadvantage or obligation as an existence condition. If someone,

Eve, has a claim that p[1] then someone else, Kane, has correlative duty; if Eve has a liberty that p, then Kane has a correlative no-claim; if Eve has an immunity that p, then Kane has a correlative disability; and if Eve has a correlative power that p, then Kane has a correlative liability.[2] For every right-holder, there is some obligor(s) with the correlative moral obligation. The correlativity axiom introduces logical rigour and precision in the resolution of the predator problem. Below, I will only define Hohfeldian rights if and when they come up in the discussion of the predator problem. A full rights explication of the predator problem will require more than just the claim-duty relation.

Further, obligations correlative to rights are seen by many philosophers—as I do—to be enforceable. For some thinkers such as John Broome, justice and rights are closely related (see Broome 2012), or coextensive (e.g. Steiner 1994), with justice. In my view, moral rights are the appropriate and exhaustive analysans for justice. A moral situation is a matter of justice if and only if, and because, rights have been violated or rights violations are in the offing. The realm of rights is only a small—albeit arguably the most important—portion of morality. In this paper, the question of predation will be discussed strictly from within the tight boundaries of the realm of rights. As I will argue, several purported animal *rights* solutions to the predator problem do not carefully delimit the realm and consequently offer solutions that are strictly speaking not animal rights solutions.

Instead of clarifying all preliminary matters to do with rights here, I will try to do so in the course of the paper and will instead start considering possible solutions to the predation problem. As most contemporary discussions of animal rights theory and its implications are but footnotes to Tom Regan's pace-setting exposition of animal rights, I will first explain and critique Regan's proposed solution.

Regan's Laissez-Faire View

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

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

For Regan, the aim of wildlife management is not to produce the highest aggregate wellbeing among animals in the wild. Regan is thus against wildlife management as conceived in the current theory and practice of ecology. In his view, wildlife

[1] p is the proposition that requires that the obligor behaves in a certain way towards the right-bearer.

[2] See Wenar (2015, 4–9) for a helpful summary of the rights relations.

managers are morally obligated only to discharge their negative and their special positive duties. They should let wild animals be, and they should ensure that other humans let wild animals be.

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

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

Although helpful in offering a rights-based policy prescription for wildlife management, Regan's analysis suffers from some flaws. I will now discuss these errors.

A Critique of Regan's Solution

According to Regan, justice imposes both duties not to harm *and* duties to aid those whose rights are or would be violated. "These victims [of injustice] are owed assistance from us; help is something they are due, not something it would be 'awfully' nice for us to render" (Regan 2004b: 62). This view of the right to aid is, however, problematic for at least two reasons. First, the right to aid is not automatic or 'unacquired', to use Regan's term. Second, in those cases the right to aid arises, its bearers need not be victims of injustice.

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

The role Regan wants causality to play in the triggering of duties is clearly odd and morally counterintuitive. I agree with Dale Jamieson's verdict that Regan comes up short of providing "a satisfactory ground for distinguishing cases in which we are required to provide assistance from those in which we are not required to

provide assistance" (Jamieson 1990: 352). At best, Regan's line-drawing is arbitrary; at worst, it is an illicit ad hoc move to pre-empt the predation challenge. This is because prey are not necessarily victims of injustice, and so Regan is let off the hook regarding the predation problem as predators are lacking in normative agency. Regan's handling of the following case shows why his manoeuvre is arbitrary or ad hoc.

An implication Regan would have to accept as resulting from his view of duty allocation on grounds of nature of the cause is that we have no duty to rescue a human child who is about to be snatched by a lion. Instead of biting the bullet, as Ebert and Machan (2012) do, Regan introduces an ad hoc when he claims, "we have a *prima facie* duty of assistance in this case" (Regan 2004a: xxxvi). Admittedly, since there is no rights violation in the offing, this is not a justice-based duty. But it seems suspiciously the only reason Regan is introducing this 'duty' is to keep humans in and animals out. Regan's ad hoc adjustment is speciesist for he denies that this 'duty' extends to nonhuman animal prey.

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

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

We can in fact imagine a case of insular prey species facing an invasive predator species on the island. Let us assume, *arguendo,* that the predators are on the island due to non-anthropogenic factors. They have not been introduced or reintroduced by conservationists, for example. The native prey animals will be evolutionarily ill-equipped to deal with this threat and Regan—on pain of inconsistency—must accept interference in this case. The cases to save the child or the wildebeest fall or stand together. However, I am not endorsing interference in the wildebeest and the child's cases. My argument here is only that vulnerability is not a sufficient condition to warrant aid to either species member—human or wildebeest. Regan's defence of his discrimination contains a further flaw.

Tom Regan defends his discriminatory duty by saying "if members of prey species, including the young, were unable to survive without our assistance, there would be no prey species" (Regan 2004a: xxxvii). This is a transgression against rights theory which identifies moral value as predicable to the individual rather than some features of the species or group to which the individual belongs. A rights

theorist cannot discount the harm to an individual wildebeest based on the survival of the wildebeest species. As Regan would most definitely agree, the survival of species of wild animals might be best served through utilitarian policy or unjust means. Such a policy is unacceptable by Regan's own avowedly anti-utilitarianism position regarding wildlife management. The survival of a group does not reflect a just system and so, by referring to the survival of species, Regan does not avert the problem of what we ought to do when an *individual* wild animal is threatened with serious harm from predation.

Further, we can imagine the vulnerable wild animal in question being one of the remaining members of an endangered species. The animal is going to be killed if we do nothing, and the vulnerability or incompetence of this species is exactly what has led to its decimation by predators. But except in the case of compensatory justice, Regan (2004a: xxxix–xl) does not think we owe the duty to assistance to endangered species. Yet some endangered species are endangered because of their evolutionary incompetence, a fact Regan overlooks in driving a wedge between a human child and a wild animal.

Even within *homo sapiens* competencies vary greatly with respect to predation. A Kenyan Maasai or a Kalahari san human is *generally* far more competent in surviving predation than a Londoner is. Shall we use Regan's competence criterion and recognise a Londoner's child's right to rescue and not san's child's when both children face the lethal threat of a hungry hyaena? Varied intra-species adaptability among humans for survival against certain predators shows that Regan's competence criterion does not satisfactorily guide us on the right to rescue from predators. It is at least logically possible that there are some *human* communities that are better adapted to predators than some nonhuman animal species are. As such, we can only maintain Regan's species-membership criterion on pain of arbitrariness and presumed human moral supremacy—the very ills that animal rights theory sets out to overcome.

Furthermore, Regan's use of species competence based on their hitherto evolutionary success is inconsistent with his denial that endangered species—species who may lack evolutionary competencies by no fault or actions of humans—have a right that we assist them, a right that members of more populous species would lack by dint of their abundance. If incompetence did some real substantive work and not just ad hoc, Regan would have to accord the right to assistance to at least those species endangered by no fault of humans. I am not arguing that members of endangered species have a right to human assistance but simply that invoking wild animals' competencies is a suspiciously speciesist ad hoc move by Regan.

It seems clear at this point that Regan has failed to give a coherent answer to the problem of predation. He sets off well by denying that animals have a right to life against other animals since nonhuman predators lack moral agency. But he is forced to make ad hoc adjustments when he is faced with the conundrum of saving a child and a wildebeest when both are faced with pain and death. He devises a duty to save the child but not the wildebeest. Regan's attempt to distinguish the baby from the prey animal on grounds of competence fails as facts may easily change to render the wildebeest more vulnerable than, or as vulnerable as, the baby. The attempts to explain away the individual wildebeest's vulnerability by appeal to the wildebeest

species evolutionary adaptability to predation or by pointing to wildebeest stable species populations fail.

The Survival Arguments Against Intervention

Some philosophers have argued that predation is morally acceptable, if and only if, and because it is necessary for survival. I can see two forms of this argument. Firstly, Alasdair Cochrane's argument is that the individual predators needs to hunt and kill for it to survive. Secondly, Aaron Simmons' argument is more circuitous. He argues that we should not intervene in predation because doing so will result in serious disturbance of ecosystems that will be catastrophic for both human and nonhuman animals. I argue here that my account is a bona fide rights account while Cochrane's and Simmons are not bona fide rights accounts. Further, my account is devoid of speciesist undertones or implications and has not a whiff of utilitarianism.

The predation conundrum peats the interests in survival of prey animals against the interest in survival of predators. Cochrane defends the policy of non-interference on grounds that "interfering in prey-predator relations is ordinarily *more burdensome* on us than doing nothing" (Cochrane 2012: 94; see also Cochrane 2013: 134; emphasis added). Cochrane's reasoning seems to be that, since prey and predators have an equal interest in surviving, we ought to do that which is less burdensome for us to do, namely, nothing. The solution Cochrane offers appears to be more a utilitarian consideration than a rights consideration.[3]

It is perfectly acceptable and expected that duties correlative to some rights are very demanding. Hence, the demandingness of intervention in predation cannot be invoked as a tie-breaker between the interests of prey and those of predators, at least not from within the rights framework. Burdensomeness is a characteristic feature of moral rights or justice. However, as I argue below, *pace* Cochrane, even if it were not the case that "interfering in prey-predator relations is ordinarily more burdensome than doing nothing" rights relations would have the same prohibitions against interfering in predation.

Aaron Simmons commits a similar error, equivocating between rights-correlative duties and what Broome (2012) refers to as duties of goodness which are of an aggregative, utilitarian kind. For Simmons, prey animals do not have a right to life because such a right "would have calamitous ecological consequences" (Simmons 2009: 16). But having a right to life is not dependent upon such a consideration, although such a consideration may be sufficiently weighty to justify non-discharge of a duty. A hypothetical example may help. If I push a man off a bridge to stop a trolley that would otherwise go on to trigger a switch detonating a bomb killing the man himself and several hundreds of other people, I justifiably override the man's right not to be thrown in the trolley's path. Moral rights only provide *pro tanto* reasons for acting in a certain way. However, that there are overwhelmingly strong reasons for acting otherwise does not take away the right-bearer's right to life—

[3] I am not arguing against utilitarianism in wildlife management as such. My point is that justice—conceived narrowly as adhering to moral rights—has *pro tanto* lexical precedence over aggregative utility promotion.

where such a right indeed existed. *Pace* Simmons, that a right can be justifiably overridden does not annul its existence or validity.

My point is that both Cochrane and Simmons appeal to utilitarian duties and not rights-based duties to buttress their respective arguments. Neither demandingness (Cochrane) nor catastrophic ecological consequences (Simmons) are relevant in determining whether a being has a right or not although these factors may be relevant in justifying overriding a right or failing to discharge a right-correlative obligation. However, in every such cases, where possible, recompense or an apology is a morally required follow-up (see Cruft 2004: 355).

My account seeks to allocate specific rights and correlative moral burdens in resolving the predation problem using moral rights theory without any appeal to possible disastrous *consequences* or to demandingness of intervention.

The survival argument advanced by Cochrane has an insidious speciesist implication that the account advanced in this paper does not have. Cochrane argues that killing for survival is a necessary condition for non-intervention in predation. In those cases where the predator's survival is not at stake, "we *do* have an obligation to interfere" (Cochrane 2012: 95). Interestingly, Cochrane (2012: 95) points out that "[i]n the vast majority of human predation, such kills are unnecessary for survival". The implication of this is that in a tiny minority of cases, human predation is permissible within the rights framework. Or put differently, some humans do have a right to hunt and kill wild animals for their meat. Hunter-gatherer tribal peoples like the Inuit or impoverished humans living close to wildlife protected areas in Africa easily come to mind. Not too far-fetched is also the case of plane crash survivors who must hunt and kill while awaiting rescue.

I will side-step the contestable empirical question whether tribal peoples or the plane crash survivors *cannot* do without meat. However, even assuming the only way humans in these minority cases can avoid starvation or severe malnutrition is killing and eating some wild animals, there are at least two reasons for rejecting Cochrane's implicit view that some humans may have a right to kill wild animals.

Firstly, moral rights relations are not sensitive to thresholds such that above a certain threshold of needs the obligor's disadvantage turns into an advantage—for example, a duty turns into a liberty-right. If a wildebeest has a right to not be physically injured, a right to not be wrongfully stressed, or a right to life, then humans have a correlative duty to each of these claim-rights. This claim-duty relation is not subject to alteration based on some aggregative cost–benefit analysis. It is a fixed moral relation. The only way dynamism to the relation can be introduced is through exercise of a power-right to alter pre-existing relations between a claim-holder and a duty-bearer. Judith Jarvis Thomson defines a power-right as denoting "an ability to cause, by an act of one's own, an alteration in a person's rights, either one's own rights or those of another person or persons, or both" (Thomson 1990: 57). However, a human does not acquire a power-right to cause an alteration in the wild animal's right simply because he is on the verge of starvation.[4]

[4] Examples of legitimate exercise of one's power-right include giving another access to property one owns, lending out one's property, forgiving a debt one is owed, and harming an aggressor to prevent harm to oneself.

Thompson's famous transplant case convincingly shows how claim-rights prevent aggregative benefits to people who *must* obtain organs from an innocent man or *die*. The direness of the condition of the five patients needing organs to survive does not change the claim-duty deontic relation between the putative 'donor' and the beneficiaries or the surgeon. Similarly, a plane crash survivor's hunt-or-die situation does not alter the moral relation between him and the warthog he now plans to snare and eat. He lacks the power-right to alter his duty into a liberty-right and the warthog's claim-right into a no-claim.

Secondly, Cochrane would most likely not extend his argument permitting hunting in very rare cases when a human's survival is at stake when the prey is a fellow human being. A sexist may permit this when the human prey is a different sex than theirs. A racist too might allow the hunt if the prey is a different race from theirs. The only reason Cochrane allows the human to hunt walruses or elephants when this is necessary for survival of an Inuit or a Maasai seems to be that walruses and elephants are not members of the human species.

Cochrane's argument is speciesist to the extent that it appears to give a right to hunt to those humans—albeit in very rare cases—who must kill some prey wild animals to survive. Unless, of course, he would permit surgery to go ahead in the organ transplant case or the starving plane crash survivor to kill a fellow human for food. But a theory that deems as licit the transplant is one "in dire need of revision" (Thomson 1990: 135). In the same vein, I think a theory that takes animal rights as seriously as it takes human rights ought not to yield permission for humans to kill wild animals even if human survival is at stake.

A solution to wildlife predation that takes rights seriously regardless of the right-bearer would have the same prescription. One attractive characteristic of moral rights theory is that moral rights are moral levellers. A claim-right of the same content renders the right-bearers equal regardless of race, sex, or species. Any line-drawing between holders of the same right is bound to be unjustly discriminatory and arbitrary.

A Revised Rights-Based Solution to the Problem of Predation

In attempting to remedy flaws in Regan's rights view on predation, my starting point is first to agree with Regan in denying that animal rights theory implies that prey animals are protected from predators. However, I disagree with Regan on his understanding of the right to assistance and on how he draws the line that he assumes burdens us with the duty to assist humans but not animals when the threat is a moral patient. The result is a position that I think is consistent with moral rights as a theory of justice.

Moral rights are normally conceptually divided into negative rights and positive rights. Negative rights tell obligors not to do something to or against the right-holder. Positive rights tell obligors to do something to or for the right-holder. The negative duty to not harm wild animals wrongfully is uncontroversial among animal rights philosophers. Negative rights are *erga omnes; e*very right-holder demands that all moral agents individually or collectively refrain from harming her unjustly.

To make my point here more transparent, let me refer to Regan's distinction between 'unacquired' and 'acquired' duties. Whereas unacquired duties are natural and not dependent on our voluntary acts or some institutional arrangements, acquired duties are those that arise from our voluntary acts or institutional arrangements (Regan 2004a). This is a very useful distinction. For example, it highlights the important difference between the duty not to murder which is an unacquired duty and the duty not to break one's promise.

However, this dichotomy omits an important category of duties that are neither unacquired nor acquired. The distinction fails to account for certain duties that may arise not from one's intended actions or institutional positions and are not unacquired in the sense described above. To remedy this conceptual lacuna, I think it is better to replace Regan's 'acquired' duty with the broader 'emergent' duty whether the duty emerges from one's volition, institutional position, or not.

All wild animals have a negative claim-right against all normal adult humans that such humans do not harm the wild animals wrongfully in any of the animals' interests constitutive of their own wellbeing. The right does not exist if we substitute normal adult humans with wild predators. What we have is a negation of the universal right: No being has a right against any carnivores that the carnivores do not harm them. Therefore, no injustice results from predation regardless of who the victim is. And thus, as Clare Palmer rightly puts it, "On the basis of rights, at least, humans have *no* duties to act in the wild in the context of predation, flood, or drought, for instance" (Palmer 2011: 707). An important caveat to Palmer's correct view is that it must be the case that the predation, flood, or drought is not human-induced. Otherwise, we have a situation of an emergent duty to intervene on behalf of the vulnerable wild animals as we do in the case of anthropogenic climate change (Kapembwa and Wells 2016).

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

Firstly, from the rights view, there are reasons to intervene both in the child's and the cat's interests. Many people—philosophers and non-philosophers alike— would agree that parents have the emergent duty to raise morally upright children with a character that exhibits respect or even compassion for others; the child has the correlative claim-right.[5] The child does no moral wrong in breaking another's toy on purpose. Nevertheless, the parent has a duty to cultivate a good character in her child from the earliest age. She must guide the child against such behaviour toward

[5] Given the robustness and complexity of human wellbeing, being raised well morally is just as important as being physically protected and provided for.

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

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

When humans create more vulnerability for wild animals than already exists in the wild, humans become duty-bound to prevent harm that may come to the wild animals because of the exacerbated vulnerability (Kapembwa and Wells 2016). This may include appropriate interference to prevent predation. My point here is simply that permissible intervention in the cat-child case does not imply permissible intervention in wildlife predation. The cat-child and wild prey-predator analogy is flawed because of the important disanalogy that in the one case, we have human-created vulnerability but not in the other case.

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

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

The choice between interfering for the child or for the wildebeest is not predetermined by species membership. According to the rights view, the species one belongs to carries no moral weight to predetermine the answer to the questions 'to intervene or not to intervene'. This non-speciesist attitude shows the wrongness of non-interference in the cases of human or animal prey is something to be

determined only after consideration of the rights relations involving negative rights and emergent positive duties in any given instance of predation.

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

I have argued how a more coherent rights view sidesteps some of the problems Regan's view faces. To fully buttress my position, I will now draw some insights from the theory of self-defence and deploy Hohfeldian schema to address the problem of predation in the wild.

Innocent Predators and the Defence of Prey

I have so far reached the conclusion that preventing predation is not *morally required,* at least not on the rights view. This leaves still unanswered the question of whether human intervention to prevent predation is *morally permissible.* The rights of the carnivore have been ignored—until now. By focusing on the rights of predators in this section, I offer what I see as a challenge for those philosophers who argue for intervention to stop or reduce predation in the wild as such interventions are likely to be prohibited by the rights of the predators.

Some preliminary labelling first. Prey animals are (putative) victims since they are the ones at risk of injury or death. Predators are innocent threats since they will injure or kill prey but are innocent by dint of their lacking normative agency. Humans are bystanders or onlookers. If we adopt Regan's laissez-faire recommendation, human beings are equivalent to onlookers as they can only 'helplessly' look on as the struggle for survival goes on in nature. However, humans will find themselves as bystanders and even as threats themselves. There is only one sense of bystander to be considered here. Bystanders, in my view—in addition to Frowe's (2014) view—are not only possible indirect threats. They are also possible *rescuers* in alter ego cases. I argue below they are morally prohibited from aiding prey in virtue of prey being right-bearers.

Aaltola (2010) has put forward a solution along similar lines I want to take. She points to a difference between negative rights and positive rights. On her understanding, on balance, negative rights generally have precedence over positive rights. To be clear, Mika's negative right to not be killed trumps Chan's right to be saved, unless Mika is the one threatening Chan's life. It is, however, not true that all negative rights take precedence over all positive rights. A father's positive duty to rescue his child from drowning takes precedence over the blind and deaf woman's negative right who the father must shove out of the way to reach his daughter in time to save her.

Aaltola makes her case on the premise that a negative right generally has priority over a positive one. For her, we have a negative duty not to prevent a fox from hunting a rabbit, but we have only a positive duty to come to the rabbit's aid. "This means the right of the fox takes priority. We have a stronger duty to not intervene

with the fox than to assist the rabbit." (Aaltola 2010: 86). So, according to Aaltola, we recognise that the predator has a right to survival. And, of course, an inevitable consequence of the exercise of this right is the stress, pain, and death of a prey animal.

Aaltola's effort is a path in the right direction, but it does not take us far enough out of the thicket. First, negative rights do not have lexicality over positive rights. Which ones are stronger and take precedence is something to be determined a posteriori, case by case. More importantly, as argued above, we are simply not morally required to aid the rabbit *as a matter of justice*. The rabbit lacks the positive right Aaltola allocates it. What remains is the fox's negative liberty-right to hunt, eat, and feed itself or its pups. This liberty-right, jointly with the claim-right that we do not cause physical harm, seems to effectively bar most, if not all intervention by humans. The argument for impermissibility of intervening against the fox can be outlined as follows:

1. The rabbit has a no-claim that the fox does not kill him—as the fox cannot discharge any duties.
2. The fox has a negative liberty-right to hunt and kill the rabbit.
3. The fox has a claim-right against us not to 'prevent' her from securing her subsistence—which, naturally, involves killing rabbits.[6]
4. We have no power-right—that is, we are disabled morally—to alter any deontic relations between ourselves and the foxes in a way that disadvantages the foxes.
5. Therefore, we have no liberty-right to intervene to stop the fox from killing the rabbit.

Premises (1)–(4) are all concretisations of the Hohfeldian framework of rights with respective obligations. Premises (1) and (2) are logically equivalent.

Other philosophers besides Elisa Aaltola have been led astray by phantom positive duties to wild animals. Sagoff's oft-cited rhetorical question is a case in point: "If the suffering of animals creates a human obligation to mitigate it, is there not as much an obligation to prevent the cat from killing a mouse as to prevent a hunter from killing a deer?" (Sagoff 2002: 41). For utilitarians, the mere existence of suffering or vulnerability will trigger an obligation to mitigate it if doing so has optimific expected value. However, by my lights, for justice, the existence of a right is a necessary condition for the existence of a correlative obligation.[7] Neither the

[6] A liberty-right does not entail a claim-right. In football, a striker has the liberty-right to score but not a claim-right that the opposite side's defenders do not prevent him from scoring. I am not sure whether interventionists can explore this logical space. For example, respecting a lion's liberty-right to hunt a gazelle, can a human simply produce a disturbing sound that's within the gazelle's auditory wavelength and not the lion's and thereby effectively preventing what would have been a successful hunt? Practically, however, it seems implausible that humans can prevent wildebeest migration into predator territories, for example, without violating the rights of prey at least even if those of predators, arguendo, are not necessarily violated. It would be particularly hard not to violate predator and prey territorial rights that exclude humans.

[7] Many philosophers rightly agree that there are non-correlative duties, that is, duties to others whereby the beneficiaries do not hold a correlative right. But such duties are outside the bounds of justice or moral rights.

mouse nor the deer's situation have the protection of a moral right that induces a duty of rescue in humans as a matter of justice.

However, the cat-mouse and the hunter-deer cases are not quite the same. The first asymmetry is on the victim side. The mouse has no rights whatsoever against the cat whereas the deer has a claim-right that the hunter does not kill her. This takes us to the second difference which is on the harmer's side. The cat has a liberty-right to hunt because the mouse has no claim-right that the cat does not hunt him. The cat has a claim-right that humans do not harm him in their rescue of the mouse. The human hunter has no liberty- or claim- right against us stopping him from killing the deer. To the contrary, we have an alter ego defence permission to kill the hunter if necessary to stop his killing the deer. As Nozick (1974: 109) rightly states, we all "have the [liberty-]right … to intervene to aid an unwilling victim whose rights are threatened". Note that, *pace* Regan, Nozick does not talk of us having a *duty* to aid victims or would-be victims. The prey animal does not have a right against us to rescue *but* the predator has a right against us not to prevent his obtaining his food the only way he knows.

In ordinary cases of defense against innocent threats, the prey has no right to rescue against us. In the prey-predator scenario, the prey has a right to defend herself against the predator and may do so lethally. But this right of self-defense is non-transferable; it is strictly agent-relative. The rescuer has no agent-neutral reason for intervening in the predation. "An agent-relative reason to promote A's [wellbeing] will give me a reason only if I am A or suitably related to A" (Ridge 2011). A might be suitably related to the agent in that A is one of the agent's family. Or there might be a pre-existing agreement between A and the agent. Or there might be other special relations between A and the agent. But humans are not prey wild animals, and they are *prima facie* not suitably related to prey wild animals. Hence, they cannot engage in other-defence of the mouse against an innocent threat where the intervention would be inimical to the innocent threat's rights.

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

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

Conclusion

On face value, there seems to be a problem for animal rights theory in the face of wildlife predation. If prey animals have a right to life, then human beings have a duty to protect them from predators. But for humans to have the duty to protect wild animals from hunting each other is presumably an unacceptable proposition. It follows—so the critics of animal rights want us to believe—that animals cannot be right-holders. Tom Regan and others have attempted to rebut this challenge to animal rights theory. In this paper I have considered some rebuttals from within the animal rights framework and found them unsatisfactory as the proposed solutions are ad hoc, speciesist, or utilitarian. In their place, I propose a fuller and exclusively rights solution to the predation problem. The predation problem rests on the assumption that prey have a positive right to life against humans. On my view, this is mistaken as a positive right only emerges in cases where humans have directly or indirectly caused threats to prey animals' lives. Thus, humans are not required as a matter of justice to protect wild animals from any non-anthropogenic threats to their lives. Further, using the Hohfeldian analytic framework, I argue that the rights matrix between prey, predators, and humans does not morally permit humans to intervene in predation. My analysis recognises and stresses moral parity between humans and animals that other authors fail to do when similar cases of predation involve humans as prey or as predators. The moral parity that moral rights create is often so counterintuitive that even animal rights proponents appear to be unprepared to admit some implications in resolving the predation problem.

Acknowledgements I would like to thank Brad Hooker and Elaine Beadle, who were my Ph.D. supervisors, for discussions of the main ideas in this paper. I am also grateful for the helpful comments from the participants of the Animals and Death conference in 2016 at the University of Leeds organised by APE Collective. Lastly, I would like to say thanks to Anna Wienheus for her comments on a later version of this paper.

Compliance with Ethical Standards

Conflict of interest The author declares that they have no conflict of interest.

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