

**The Claims of Animals and the Needs of Strangers:  
Two Cases of Imperfect Right<sup>1</sup>**

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Some people use the term “animal rights” to refer simply to the moral claims of non-human animals, whatever those might be. In this paper I will be using the term “rights” in its more specific sense, to designate a certain kind of moral claim. Roughly speaking, a “right” is a moral claim that may be, and ought to be, legally enforced. The enforcement of rights is a matter of justice, not merely of humanity or kindness.

1. The Issue

Most people think that non-human animals have what philosophers call “moral standing.” That is, they agree that animals are the appropriate objects of moral concern, and that we have duties of humanity or kindness to them.<sup>2</sup> Most

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<sup>2</sup> The duties of kindness or humanity that most people would acknowledge are admittedly of a rather weak kind, along two dimensions. First of all, we may distinguish, at least in a vague way, between duties not to directly inflict suffering upon animals and somewhat more extensive duties to treat them in ways that are consistent with their good, where the latter is taken to include keeping them in conditions that allow them to live something like the life characteristic of their kind. On the former conception of what kindness requires of us, we have duties not to actively hurt animals, but it might be all right to, say, keep a bird permanently in a small cage, or keep a social animal isolated from others of her kind. The distinction here is probably based largely either on skepticism about the psychological lives of animals or a simple inability to imagine what things are like for them. (I once heard an otherwise intelligent person say that the idea that non-human animals even have

people also think that at least some of these duties should be enforced by legal sanctions. That is why there are any animal welfare protection laws on the books at all. These laws are notoriously ineffective, however, because any organization or group with a serious interest in activities that are harmful to animals manages either to get its own activities exempt from the restrictions or the animals it deals with exempt from the protections. Generally speaking, research animals and animals used in the food industry are not covered, or are only covered in limited ways, by animal welfare laws. In the United States, the Federal Animal Welfare Act, for example, does not cover laboratory rats and mice or farm animals. A second problem is that of standing – in the legal sense now – to enforce the laws. Who is in a position to demand enforcement? Public prosecutors can choose which cases to pursue. Non-human animals cannot sue to have welfare laws enforced themselves, and the circumstances under which individual people can sue for the enforcement of these laws are quite limited. Generally speaking, ordinary citizens who would enforce animal welfare laws must show that they themselves, as individuals, have some sort of a legally valid interest in the enforcement of the law.

Although animal welfare laws are supposed to afford animals some legal protections, they do not do so by granting the animals rights, and animal advocates often point out that some of the defects in enforcement that I have just mentioned would be remedied if they did. Yet, for reasons I will describe in a moment, many people think it is absurd to suppose that animals have rights, in the specific sense I am concerned with here.

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psychological needs is “ridiculous.”) More importantly, the duties are weak because although most people would agree that animals should not be made to suffer unless it is necessary, it turns out that many people count any substantial human interest that can be served by hurting an animal as making it “necessary.” In other words, very little besides wholly wanton or malicious cruelty is actually ruled out.

In this paper I will argue that animals do have rights, but rights with a different structure than that of most rights.<sup>3</sup> Most rights are held against individuals, at least in the first instance, either against every individual in a group, as one's civil rights are, or against some specific individuals, as when two people are bound by a contract or a promise. Animals, I will argue, have rights that are in the first instance rights against humanity collectively speaking, that is humanity considered as a group, to be treated in ways that are consistent with their good.<sup>4</sup> I will try to demonstrate that there are such rights – rights against humanity collectively speaking – by arguing that every human being who is in need of aid in order to survive in reasonable conditions has a right with exactly this structure – a right against humanity, collectively, to that aid. Both that particular human right and animal rights are traceable to the same fact, namely the fact that humanity, collectively speaking, is in a position to exercise extensive control over the fate of all of the inhabitants of the planet with whom we interact.

## 2. Objections to the Idea of Animal Rights

So what is supposed to be the problem with the idea of animal rights? I think we can identify at least five objections to the idea.

### 2.1 Animals are Property

Following the tradition of Roman law, legal systems generally divide the world into persons and property, treating human beings as persons, and pretty much everything else, including non-human animals, as property. Persons are the subjects

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<sup>3</sup> I say “do have rights” rather than “should have rights” advisedly; the argument I will give is in the natural rights tradition, as I will make clear below.

<sup>4</sup> I say “in the first instance,” since obviously one may have rights against a group by virtue of having rights against all the individuals in the group, and, as I will explain later, one may have rights against individuals in a group by virtue of one's rights against the group. See note 21.

of both rights and obligations, including the right to own property, while objects of property, being by their very nature for the use of persons, have no rights at all. Animals, of course, are traditionally classified as property – domestic animals and exotic pets or show animals as the property of individuals or organizations, and wild animals as the property of the state. For obvious reasons, there can seem to be a kind of incoherence in granting rights to property. It is perhaps for this reason that some animal rights advocates have proposed that animals, or certain animals – primates and cetaceans perhaps – should be reclassified as legal persons. To anticipate, the view I will advocate in this paper does not call for this kind of reclassification. I think we should reject the legal bifurcation instead, and acknowledge the existence of a third legally relevant category, whose members can have some kinds of rights.<sup>5</sup>

## 2.2 Reciprocity

Many people think of the realm of rights as being in some distinctive way a realm of reciprocity.<sup>6</sup> Rights are something we accord reciprocally to each other, and

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<sup>5</sup> Since I will not have space to discuss the issue properly in this paper, let me just briefly indicate one reason why I think this is important. I think that we can identify a fairly widely accepted concept of a person, and that non-human animals do not fit that concept. Only human beings and certain organizations, such as political states, do. Speaking very roughly, the concept of a person is the concept of a normatively self-governing being. I have explained my reasons for thinking that non-human animals are not normatively self-governing elsewhere (“Interacting with Animals” in *The Oxford Handbook of Animal Ethics*, 2011). Notice one implication of this definition of a person: if it is true that the decision in *Dodge vs. Ford Motor Company* establishes that corporations are obligated to take the maximization of shareholder wealth as their primary end, corporations cannot be persons. To be normatively self-governing, an entity must be able to choose its own ends. As the ideas on in the following section suggest, I think that many of many of our most important rights – those associated with autonomy – spring from the fact that we are persons in this sense, and that animals do not share in these rights, so I think that reclassifying animals as persons would be a mistake.

<sup>6</sup> While it is commonly thought that Kant’s opposition to the moral standing of animals rests in a thought about value – only rational beings are ends-in-themselves – I think it ultimately rests in a thought about reciprocity. Kant linked being an end-in-yourself to being a member of the Kingdom of

therefore to say you have a right implies that you also have obligations. It can be hard to pin this thought down in exactly the right way. For instance, we might be tempted to think of it as something like a bargain – I’ll keep my hands off of your property or your liberties if you’ll keep your hands off of mine. But making that kind of bargain could simply be a matter of self-interest, and actually *respecting* the rights of others, as an attitude, goes beyond conforming to them because the bargain is in your interest. However exactly we understand the basis of this reciprocity, we are inclined to affirm it, at least for the human case. Having rights, as we often tell the children when they claim them, goes along with having responsibilities or obligations; you can’t have one without the other. But non-human animals – or so I shall suppose – are not moral beings, and therefore cannot have moral or legal obligations.<sup>7</sup> So we might suppose that therefore they cannot have rights.

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Ends, and thought that the capacity of engage in reciprocal obligation – that is, to obligate one another - is required for such membership. (See my “Fellow Creatures: Kantian Ethics and Our Duties to Animals” *The Tanner Lectures 2005*, especially pp. 91-92; “Interacting with Animals,” §§7-8, for discussion). I have explained what I think his mistake was elsewhere, most recently in “Kantian Ethics, Animals, and the Law” *Oxford Journal of Legal Studies* 2013, §5.) Hume gives us a more utilitarian version of the reciprocity argument in his *Enquiry concerning the Principles of Morals* (Oxford, 1975, 190-191), one that comes closer to the “bargain” view. He think that human beings owe one another duties of justice because, given the approximately equal powers of human beings, we are all in a position to benefit from entering into relations of justice. By contrast, he thinks we owe only kindness to the other animals because our power over them is so complete that we have nothing to gain from entering into reciprocal relations with them. It is notable that Hume thinks this is true only because of the human capacity to organize ourselves into collective agents. He points out that men have nothing to gain from entering into reciprocal relations with women so long as men remain organized and so able to control women collectively, but thinks that in advanced societies women use their charm to “break up the confederacy.” My own argument draws the opposite conclusion: I derive the rights of animals and human beings in need in part *from* the human capacity to organize ourselves into collective agents which exert control over the members of these groups.

<sup>7</sup> During the Middle Ages people did not find this so obvious. Evans (*The Criminal Prosecution and Capital Punishment of Animals*, 1906) reports that animals were sometimes held responsible for breaking the law and punished for it – even executed or burned at the stake. Vermin who attacked crops or water supplies could be condemned under ecclesiastical law: sometimes having been given due warning to depart, they were anathematized or excommunicated before being destroyed. But

### 2.3 Autonomy

A third and related problem is that some theorists, especially those in working in the “natural rights” tradition on which I shall be drawing, believe that the special point of rights, as opposed to other kinds of moral claims, is to secure the liberty and autonomy of those who hold the rights.<sup>8</sup> Kant, for example, thought of rights as coercively enforceable prescriptions that are essential to maintaining the (equal) liberty of everyone. The use of force or coercion against free rational beings, he argued, is wrong, *except* when you are using force to protect someone’s freedom – to hinder a hindrance to freedom, as he put it. So we may use force or coercion – that is, we may use the power of law – in order to protect equal liberty, but not to promote other good ends. John Rawls, to take another example, thought of rights in a liberal society as aimed at securing to each citizen, as far as possible, the ability to pursue her own conception of the good – that is, her own conception of what is

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animals could be condemned under civil laws too. The doubly unfortunate victims of human sexual misconduct were sometimes found complicit in their own rapes and punished accordingly. There are records of a number of cases of pigs killing human children by mauling them; these pigs could be and sometimes were tried in courts, represented by lawyers, and found guilty of homicide. But all of this seems absurd and deeply alien to us now.

Nowadays some students of animal behavior (e.g. De Waal, Beckoff) claim that we can discern the evolutionary roots of moral conduct in the altruistic and social behavior of some of the other animals. To that extent, they think it makes sense to characterize non-human animals as moral beings. Elsewhere I have explained why I think this is wrong. (“Reflections on the Evolution of Morality.” (<http://www.amherstlecture.org/korsgaard2010/index.html>)). But in any case, no one is proposing that we return to the days when people held non-human animals legally responsible for violating human laws.

<sup>8</sup> This conception of rights is not universal, of course. Utilitarians are inclined to think of rights as protecting our more important interests generally, regardless of whether those interests have anything to do with our freedom or not. That conception might seem friendlier to the idea of animal rights, since animals certainly have interests. But as I have already indicated in note 5, I think that most of our rights do have the kind of connection to freedom Kant envisioned, and I will explain later in what sense I think that connection is maintained in the case of animal rights.

worth doing and caring about in a human life. On these kinds of conceptions, rights ensure that we are not bound by restrictions grounded merely in other people's ideas about what is worth doing and caring for. We are only bound by restrictions that spring from the requirement that everyone's liberty or autonomous pursuit of her own conception of the good should be equally protected.

But there is no point in trying to secure political liberty or autonomy in this sense to the other animals. They live according to their natures, not according to their values or their free choices or their personal conceptions of what is good. Nor is there much to be said for granting them the nearest analog to that kind of liberty – freedom of action in the simplest sense, allowing them to go where they please and do what they want. When animals, either wild or domestic, live within the confines of human society, it is essential both for their safety and ours that they live under a certain degree of human control. So on this showing rights do not seem to be the sort of thing we could intelligibly grant to animals. Rights protect a kind of liberty that the other animals do not and could not possibly have.

#### 2.4 History

There are also worries, perhaps of a more vague kind, about the implications of the idea for humanity's past relations with animals. It is natural to think that our duties of beneficence or kindness are scaled to what we can afford, and so that the nature of such duties changes with changing conditions. When we think of our duties to animals in those terms, we can say things that sound sensible. We no longer need to use real furs to keep from freezing, for example, we've got polar-tech and things of that kind. But our ancestors, especially in northern places, could hardly have refrained from wearing furs. We don't need to eat meat nowadays, when we can ship vegetables from wherever they are now growing to places where they are out of season, or keep them frozen or refrigerated until times of need. But this was

not always true. We can now afford to be more humane than we once could; and we can make that change without any implied criticism of those who came before us.

But it's harder to think of rights as something that be can balanced against the costs to those who are supposed to respect them. Slave owners, most of us now think, were always wrong, regardless of culture and economic conditions. No one has the right to treat another human being as property, and no one ever did. Our ancestors had to use furs, eat meat, hunt, and use animals for labor. So if animals have rights, were our ancestors simply wrong to do these things? If that seems counterintuitive, doesn't that show that even if animals have claims on our kindness, those claims don't spring from anything like rights?

## 2.5. Practical Implications

Most importantly, however, the idea of animal rights seems worrisome because of its practical implications. Are all animals going to be accorded a basic right to life, and, if so, are meat-eating and hunting going to be outlawed? Would experiments on animals have to be brought to an end, or limited to those that do not harm the animals? And what about those of our own activities that inevitably hurt or kill animals, even when the purpose of those activities is benign? We kill mice and rabbits when we drive tractors through the fields on which we grow our vegetables. We kill and injure birds when we put up wind turbines – or for that matter, when we put up windows and power lines. Whenever we use pesticides, we kill not only their targets but other animals as well. Should all such activities be illegal, or legally regulated in some way? These are controversial questions, and I think that under any reasonable conception of animal rights, the answer to some of them will be yes. I am claiming that the idea of animal rights can be made to seem reasonable, not that it can be made to seem uncontroversial.



But the questions I've just raised lead naturally to other questions that begin to make the idea of animal rights seem a little silly. If animals have a right to life, for instance, might people be prosecuted for killing vermin that are infesting our homes or our food supplies or for swatting mosquitoes that are trying to bite us? And if animals have rights to life, or rights not to have suffering inflicted upon them, ought we to interfere between predators and their prey, in the name of protecting the rights of prey animals to escape this form of suffering and death? And must we then find adequate meat substitutes for the predators? Or should we actually try to eliminate predator species altogether, as Jeff McMahan suggested in a New York Times editorial a few years ago?<sup>9</sup>

There are obvious reasons, based on past experience, to worry about human competence for tinkering with nature on this kind of scale. But even leaving those worries aside, many people find the idea of our managing nature in this way deeply distasteful, although the reasons are a little obscure. Some of us do not like the idea of living in a completely domesticated world. Some people feel that it is not part of humanity's business to try moralize nature, or even that we do not have the right to. These worries give rise to some rather deep questions about what the human place in nature is, and how we should think about and respond to the amoral character of nature itself.

For all of these reasons, many people think that we have duties of kindness and humanity to animals, but that the claims animals have on us do not arise from any rights on the part of the animals themselves.

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<sup>9</sup> See his editorial "The Meat Eaters," New York Times September 19, 2010.

### 3. Kant's Doctrine of Provisional Rights

Before I examine this claim, I want to clarify something about the conception of rights I will be working with. So far, what I have said has been ambiguous between two claims: that animals *should* have rights and that they *do* have rights. There is a reason for this ambiguity, for there is a problem about what is going on when someone makes the case for a legal right.<sup>10</sup>

Saying that I am arguing that animals “should have rights” has the disadvantage of making it sound as if all I am saying is that there is something to be said in favor of their having rights, some reasons that would support the policy of giving them rights. But that may not seem like the correct way to argue for a right, since a right ordinarily functions as a trump and a trump requires something stronger than some considerations in its favor.<sup>11</sup> If I have a right to something, call it X, then you have no right to deprive me of X. My right is supposed to be a *decisive* consideration against your depriving me of X, *however* good your reasons for depriving me of X would be if I didn't have the right. So to say that I have a right to X not just to say that there is a very strong reason for me to have X: it is to say something about the relations in which I stand to those against whom I claim the right. *However* good others' reasons are for depriving me of X, they will be wronging me if they do so. That includes my relations to society collectively speaking. But if my

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<sup>10</sup> The philosophical problem here finds an interesting echo in everyday language. A person who wishes to complain about the way she is being treated can voice almost exactly the same thought by saying either “I have no rights in this matter!” or that “After all, I do have rights in this matter!”

<sup>11</sup> Add refs; this passage from Micha. Ronald Dworkin's claim that “[r]ights are best understood as trumps over some background justification for political decisions that states a goal for the community as a whole” [Ref: “Rights as Trumps” 154] for instance gets at the same point,<sup>11</sup> as does Charles Fried's claim that “[a] claim of right blocks the appeal to consequences in justifying violations of a right, just as such an appeal is blocked in the case of wrongs. And in general, it is wrong to violate a right.” [Ref: *Right and Wrong* 81] For an argument that the idea of a side constraint and the idea of a trump are equivalent, see Philip Pettit's “Rights, Constraints, and Trumps.” [ref]

right is a trump even against society collectively speaking, how can society collectively speaking be in a position to *grant* me the right? When someone claims that she has a right, she is claiming precisely that no one is in a position to deny her that to which she has a right. But if no one is in a position to deny her the right, then it seems as if no one is in a position to grant her that to which she has the right either.<sup>12</sup> What she is saying is precisely that this is not the sort of thing that others may withhold or to grant, however good their reasons. Consider, for instance, the idea that a nation might give its slaves a right to their freedom. Is another human being's right to her freedom something that it is ours (all of us? the rest of us?) to give? How can society give someone his freedom, if it was already his own by right?

Some philosophers propose to deal with this problem by invoking the idea of a "moral right" and saying that moral rights are the grounds on which we should establish legal rights. That enables them to split the difference – the moral rights *do* already exist, although the legal ones do not. Then we can say that what society does when it enacts laws protecting people's rights is not granting them rights they did not already have, but protecting their moral rights by making them legal and so coercively enforceable.

That can sound sensible until we remind ourselves what exactly a right is. A right, at least according to Kant and others in the natural rights tradition, is – by definition – a claim that may legitimately be coercively enforced. You have a right when you have a claim on others to act in a certain way and it is morally legitimate for you (or for society on your behalf) to defend yourself with the use of force against violations of that claim. Not all moral claims, we believe, may be coercively enforced. I cannot sue you for hurting my feelings or being rude to me or have you thrown into prison for breaking my heart, though you should not do these things. I cannot have

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<sup>12</sup> Back in the 1970s, a man once said to me that he thought women should be "allowed" to do the same things as men.

you arrested if you fail to open a door for me when my arms are full of packages or to help me change a tire by the side of the road. How do we draw the distinction? Some philosophers would argue that the distinction should be drawn on pragmatic or consequentialist grounds: on whether the costs of coercive enforcement are worth preventing wrongs of this kind. Kant, however, believed that the distinction is based on principle. We have already seen what the principle in question is: we may coercively enforce a claim only when we are hindering a hindrance to freedom. According to Kant, I am free when I can pursue my own ends and in doing so I am not subject to the wills of other people. I am not made subject to your will when you try to break my heart, for I am perfectly free not to care. I am not made subject to your will when you fail to open a door for me, for that doesn't stop me from going through the door. But I am made subject to your will when you enslave me or make use of my person or my property without my consent. So my claims against your doing those things are coercively enforceable – that is, they are rights.

This account of what makes a moral claim one of *right* makes trouble for the proposed use of the distinction between moral and legal rights. It follows from it that if there are any rights, there is a sense in which they *already* have the status of law: that is, they may legitimately be coercively enforced. This, after all, is why we think it can sometimes be morally legitimate for people to fight even their own governments for their freedom: because they have a coercively enforceable right to that freedom even if there is no positive law upholding it. On this view, natural right is underwritten by natural law; indeed they are almost the same thing. So the state cannot be seen as making it possible to coercively enforce a claim that is already there, since the claim was not only already there, but already coercively enforceable too.

Now this may not seem like a big problem. For of course there is still a question about the relation between law in this natural sense and the positive

statutes that are actually passed by some political society. So why shouldn't we say that a state that makes a law establishing a right is simply acknowledging a natural right that is already there, by making its own laws match the natural laws?

But there's a problem with this too, which was brought out first by Hobbes, and then, following him, Kant. They pointed out that there *is* a sense in which rights do not exist even *morally* until laws upholding them are enacted by political society. After all, to say that a right exists morally is not only to imply that you are entitled to defend your claim with force. It is also to imply that people have a moral obligation to respect your claim. But Kant and Hobbes argued that no one can be morally obligated to respect my rights until he has some guarantee that I will respect his. For if I force you to respect my rights without giving you a guarantee that I will respect yours, then I am putting you in a position where you are subject to my will and so are unfree.<sup>13</sup> Or as Hobbes put it, a person who respects the rights of others when they do not respect his "would but make himself a prey to others, and procure his own ruin." Hobbes and Kant argued that it follows that no one has a duty to respect *anyone's* rights until some mechanism of enforcing *everyone's* rights is in place. Since a right involves a duty on the part of others to uphold that right, and others cannot have that duty unless their rights are upheld as well, rights occupy what we might call interpersonal space – my rights and yours can only be realized together. Notice that this explains one of the intuitions about rights that I mentioned earlier: that there is something essentially reciprocal about rights. Rights are reciprocal in the sense that the existence of my rights depends upon the existence of the rights of others. It

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<sup>13</sup> Kant distinguishes moral and legal obligation, and his argument actually concerns legal obligation, as this sentence brings out. You can be legally obligated (legitimately coerced) only to do what is required to uphold someone's freedom. But we also have a moral obligation to uphold rights and justice, so the point about moral obligation follows from his argument. I have ignored the distinction between moral and legal obligation in this paper, since when we are talking about rights they coincide.

follows that whenever you claim a right, you commit yourself to respecting the rights of others (I'll be more specific about *which* others later on).

Kant argued that it is only the political state that can provide guarantees of the enforcement of everyone's rights. So if I say, "I have a right to X," I make a demand on others that I am not in a position to make unless we live together in a political state: claims of right presuppose the existence of the political state, that is, it presupposes our membership in a collective body with a General Will devoted to upholding the rights of all. Claims of right presuppose this even if we are in the state of nature and the political state exists only in idea, so when I claim a right in the state of nature I commit myself to supporting the existence of a political state. According to Kant, this means that we have a duty to live in the political state. Our rights in the state of nature, are, as Kant put it, "provisional." They exist in the sense that we have the right to defend them, but not in the sense that anyone else has a duty to respect them. It is only when the state is actually formed that they become, again as Kant put it, "conclusive."

Kant's distinction between provisional and conclusive rights explains the status of so-called natural rights much better than distinction between moral and legal rights does. Provisional rights are in one sense already legal, since the right-holder is morally entitled to coercively enforce them. In another sense, however, they are not yet quite moral, since no one else is obligated to respect them. What society does when it legalizes a right is neither to grant the right holder something that is already his own and not society's to give, nor to acknowledge a merely moral right that is already there by making it enforceable. What society does instead is to *realize* a right whose existence is *essentially* incomplete or imperfect in the state of nature.

#### 4. Perfect and Imperfect Duties

With that conception of natural rights in view, I now want to return to the question of what our obligations to the other animals are. What exactly is the difference between saying that human beings owe a moral duty of humanity or kindness to the other animals, and saying that animals have a *right* – that is to say, a natural right, in the sense I have just defined – to be treated in ways that are compatible with their good? The tradition of moral philosophy supplies us with one fairly standard way of thinking about this difference: in terms of the distinction between perfect and imperfect duties.<sup>14</sup> As the distinction is normally understood, it goes something like this: A perfect duty is a duty to do some particular action. It is what is nowadays called a *directed* duty, meaning that it is owed to someone in particular who is *wronged* by its omission. A standard example of a perfect duty is the kind of obligation we incur through an act of our own, like making a promise. If I make you a promise, I owe you the act I promised to perform, and I wrong you if I fail to perform it.<sup>15</sup> The duties of justice are generally considered perfect duties. Here what is required is often omission rather than action. If you violate one of my rights, you have wronged me by performing that act, which you should have omitted.

We have an imperfect duty, on the other hand, when we are obligated to do some general kind of action, but the duty isn't specific about exactly which actions we should do, and it is not owed to anyone in particular. Many of us think of our

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<sup>14</sup> The distinction is commonly associated with Kant, but in the *Groundwork* he cites it as one of the “usual divisions,” employed by moral philosophers (4:421) and its roots go further back, at least to Grotius and Pufendorf. Mill, in *Utilitarianism*, also mentions it as one common among “ethical writers.” (p. 48). The description of the distinction in the text is largely drawn from Mill.

<sup>15</sup> There are some technical problems about the individuation of acts and actions that make it unclear what is meant by “a particular act or action.” Generally, if I have promised to pay you \$500 by 4:00 on Tuesday, it is fine if I pay it either at 3:00 or 3:05, and absent some special arrangement I can pay it either in denominations of \$50 or \$100, if both are available. Whether I would count as doing what I promised if I paid you at 4:02, or if I brought you a truckload of potatoes worth \$500, however, depends on many other things, some of them circumstantial or cultural.

duties of charity as taking roughly this form. We ought, we feel, to do something for those who are less well off than ourselves, but it is entirely up to us what form the giving takes and exactly to whom we will give. You can give volunteer time if you don't have much money, or money if you don't have much time. You can give to Oxfam or the Red Cross or you can micro-finance would-be entrepreneurs in third world countries. Or you can give spare change to homeless people sleeping in doorways on the street. For that matter you can give your spare change to one such person and give nothing to the next. All of that is entirely up to you. But no homeless person or would-be entrepreneur in a third-world country has a particular claim on you. No such person is entitled to feel wronged or to drag you to court if you choose not to give to him. Imperfect duties, in short, do not correspond to rights.<sup>16, 17</sup>

The picture that results is a familiar one. There is a realm of justice in which we can make claims on one another. If those claims are not met, someone has been wronged. The duties of justice serve mainly to protect our freedom or autonomy and the rights in which it is embodied. But a good person, a well-motivated person, will go beyond meeting the demands of justice. She will want to promote the good of

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<sup>16</sup> Or at least not to individual rights. As I will mention later, Kant's position on this is a little unclear, since Kant classifies all duties as owed either to others or to oneself, and therefore seems to deny the possibility of an undirected duty. I think he *should* deny that possibility, since in his theory, people and their wills are the sources of normativity. Arguably, an undirected duty would have no source.

<sup>17</sup> Kant employed another distinction, between duties of strict and broad obligation. This distinction, unlike the first, is not a commonplace in the literature. A duty of broad obligation is a duty to have a certain maxim – essentially, to have and act from certain motives or with certain ends or attitudes. A duty of strict obligation is just a duty to do a certain act, without regard to motive. We cannot be compelled by positive law to the performance of duties of broad obligation, because the law cannot intelligibly command us to act from certain ends, attitudes, and motives: it can only tell us what outward actions we must or must not do. Although there is debate about this in the interpretive literature, many philosophers have supposed that Kant intended these two distinctions to be, if not exactly the same, at least coextensive. I believe this is wrong. I do not want to complicate the matter by taking up the question in the text here, but it will come up again later on. See note 22.



others as well as to respect their rights, and so will engage in acts of charity, kindness, and beneficence. These actions cannot be required of us by law, but a good person will want to do them. It is into this category, according to this traditional story, that the morality of both kindness to animals and of charity to strangers falls.<sup>18</sup> This is the picture I wish to challenge.

### 5. Imperfect Duties vs. Imperfect Rights

Nowadays many people would call this story into question. An obvious worry concerns the duties of rescue. If you are driving down a deserted road and encounter someone who has been injured in a car accident, your duty to help him seems to be a duty of beneficence. You are concerned with promoting his good, not with protecting his freedom. But you do not seem to have the discretion supposedly associated with the imperfect duties of beneficence. You cannot just choose either to help or not as you please in the way you can (supposedly) choose to give to a particular beggar on the street or not as you please. Of course if stopping would put you in some sort of danger, or if you are even now rushing someone else to the hospital, then we might think you do nothing wrong in not stopping to help. But short of that, it seems as if you owe it to the injured person to stop, and as if you have wronged him if you just drive on by. So there seems to be a required action and a specific person who will be wronged if you don't do it – the characteristics of a perfect duty.

We might try to argue that the duties of rescue, unlike ordinary duties of charity, simply are perfect duties. But Peter Singer has famously argued that our

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<sup>18</sup> The reader might wonder what exactly is involved in thinking of duties to animals as imperfect duties. The main consequence would be that, like duties of charity to strangers, they are not legally enforceable. But I think people also think of them as imperfect in the sense that you need not fulfill them when it is inconvenient to yourself. People think we only need be kind to animals when we judge that we can afford it.

duties of charity to distant strangers often have the same features as the duties of rescue. There are people in third world countries in conditions of famine or extreme poverty who are dying as we speak. Assuming that there is simply not enough charity already on offer to cover all the need, a small donation, not costly to you, could make the difference of life and death to one of these people. It is not clear which one, of course, so there is no particular person who can accuse you of wronging him if you don't make the donation. In that respect, the duty looks imperfect. But in other ways, it looks just like the more local case of rescue – someone will die or be harmed if you do not act – and that seems to make it a perfect duty.

This suggests that there is something wrong with the distinction between perfect and imperfect duties. Imagine a reasonably affluent society in which people are entirely well motivated – good, genuinely charitable people. If it were really true that it is entirely a matter of discretion to whom each person gives, and exactly when and how, then someone could starve or die of an injury in their midst, without anything anyone doing anything wrong, simply because no one happened to choose him as the object of their charity.<sup>19</sup>

Faced with this sort of problem, I think we should take a look at a different possible way of understanding the duties of beneficence – not in terms of the idea that benefactors have an imperfect duty, but in terms of the idea that those in need of aid have an imperfect right. The early modern philosophers who introduced this

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<sup>19</sup> Someone might respond that if the people I'm imagining are really giving so much of their income to Oxfam that they have nothing left over with which to help this man, then there *is* no wrong done to him after all. The well-off are not obligated to help any one person rather than another; but they are obligated to give as much as they can. This points to another much-discussed implication of Singer's argument, which is that the duties that result are very demanding. After all, the only circumstances that relieve us of the duty of rescue are ones in which we ourselves would be harmed or endangered by the act of rescue, or someone else would. If those are also the only circumstances that relieve us of the duty of charity, then the requirements of charity are demanding indeed.

category into our moral thinking often write as if an imperfect right were just the right correlative to an imperfect duty. But in fact it matters which of these ideas we start with.

Suppose we take the fundamental moral fact here to be that each of us, individually, has an imperfect duty to help others. It is not owed to anyone in particular. Is it owed to anyone at all? There seem to be two possible answers. First, it is not owed to anyone, but is an undirected duty. Or perhaps it is owed in some vague way to “the needy.” Apparently, then, it is the needy, taken collectively, who hold the correlative imperfect right, and the needy, taken collectively, who are wronged if it is not met.<sup>20</sup> Either way, the analysis seems inadequate to the case: it is individuals, not just this group, who are wronged when their need is not met. If people who do not get needed assistance are wronged in any way, it is surely not in virtue of their membership in the general group of those who are in need.

But suppose instead that we take the fundamental moral fact to be that of an imperfect right. Then we can say that every person has a right to, say, adequate sustenance and care when sick or injured. But the right is “imperfect” because it is not clear who among us owes it to him, or exactly how the need is to be met. Who then holds the correlative imperfect duty? The parallel answer is that it is all of us – the members of the group taken collectively – who have a duty to ensure that everyone among us gets help when he is in need. (Again: I will come back to the question which group, exactly, this is.)

I am not the first to point out that assigning the duty of beneficence or charity collectively to a group explains some other intuitions that many of us have about this kind of duty. In particular, it explains the intuition that for each of us who does have enough to help others, there is something like a “fair share” of charitable

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<sup>20</sup> As I mentioned in note 15, Kant is apparently committed to this view, since he seems to think that all duties are directed.

contributions, a proportion of the total need that she should be expected to meet, given her level of wealth and income. If others in the group don't give their fair share and you do, then not only those who remain in need but you also are in a sense wronged by them. It also implies that the duty of each of us is not, at least in the first instance, to give enough to charity to support all of the unmet need that we possibly can. Instead, our most immediate individual duty is to try to organize the group in such a way that all unmet need will be met. Speaking a bit roughly, this means that taking political action to realize better conditions, where possible, may be just as good as or better than to trying to solve the problem of unmet need through extensive charitable giving.<sup>21, 22, 23</sup>

The idea each of us has an imperfect right to aid, should we come to need it, makes much better sense than the idea that each of us has an imperfect duty to give such care to some unspecified people. It implies that if people among us perish for

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<sup>21</sup> Liam Murphy, *Moral Demands in Non-Ideal Theory* (Oxford, 2000).

<sup>22</sup> In my view, however, this does not relieve the problem of demandingness. If people have a right to aid, and you are not only the only one who could provide it, but the only one who will, arguably you are obligated to do so. In that case, the problem of demandingness reemerges. It emerges in a somewhat different form than it does in traditional utilitarianism, where if we assume diminishing marginal utilities the duty is to give until you equalize everyone's position; the right I am talking about here is only to the aid that you need to survive in reasonable conditions, not to an equal share.

<sup>23</sup> It's worth noting that Kant's distinction between broad and strict duties (see note 16 above) gives us another possible way to handle the problem of rescue. On Kant's view, a broad duty may be either perfect or imperfect. It is not clear exactly how he intends us to understand this, but here is a possible way. Suppose we have a broad duty to help those in need – to make “the welfare of others” or “helping those in need” our end, or “to ensure that those in need get helped,” or something along those lines. From that duty we may derive an imperfect duty to help sometimes. But perhaps we may also derive a perfect duty to help in circumstances like these, when you are the only one around who can help. The difficulty is that merely requiring that we have a certain “obligatory end” (as Kant called them) does not seem to give rise to a perfect duty – we always have multiple ends, and a freedom to weigh them as we think best. If we could make it out that the required end or maxim was “ensuring that those in need get helped” we would get the wanted conclusion, and the practical consequences would be nearly the same as they are in the solution I will propose. But I see little advantage to this way of handling the problem, especially given that Kant himself says some things that imply that he would prefer my own solution. I will quote these in §9.

want of aid, those individuals have been wronged. The “imperfection” of the right rests in the fact that it is hard to pick out any particular individual who is responsible for the wrong.<sup>24</sup> But it seems perfectly in order to say that society, or humanity taken collectively, has failed to uphold the rights of this needy person, and so has done wrong.

If we accept this, we are left with some questions. First of all, is there such a right: does each of us have a right to aid when in need, and if so why? Second, who exactly – what collective – owes the correlative duty? And finally, how can a collective have a duty? I will start by saying something about that third question.

## 6. Claims of Right Against Collective Agents

For some entity to hold a duty – to be required to do something – that entity must be an agent. On most accounts of morality, and certainly on Kant’s, it must be a rational agent, one who is capable of thinking and making decisions based on reasons. In particular the rational agent must be capable of recognizing that it has duties and responding to the fact that by doing them. How can a collective or group of people have a duty, on this account?

Like many philosophers, I think there is no problem in recognizing that groups of people can form collective agents in this way. Groups can think when their members can think, and when they can also talk and debate, which amounts to thinking together. And they can act – not just individually but as a group – when they have a procedure for making decisions that makes those decisions count as the

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<sup>24</sup> As I will be able to make clearer later, this is not just because it is unclear who exactly is responsible for *righting* the wrong. It is because there can be unjust situations that have not arisen from anyone’s doing anything wrong. Economic inequality, global economic inequality especially, is at least to some extent like this: it is the result of economic conditions being established through historical processes whose wider outcomes no one was controlling, at a time when there really was no one who had a duty to control those outcomes.

decisions of the group. Political states are collective agents in exactly that sense. A political state thinks through the thoughts of its legislators, and makes its decisions by voting and passing laws.<sup>25</sup>

So it is possible for a group to hold a duty corresponding to a right. Of course, humanity, taken collectively, is not already such an organized group. We have no mechanism for making decisions that makes those decisions count as the decisions of humanity, collectively speaking. But Kant's argument shows us that a right can still exist provisionally against a group that as yet exists only in idea, so long as the ideal group is one to whose existence everyone who claims such rights is committed. I say this because I believe each of us does have a right to be helped when in need, an imperfect right that we hold against humanity collectively. I will now explain why.

#### 7. Rights to Aid, Step One: Kant's Doctrine of Property Rights

Kant, as I mentioned earlier, thought that the function of rights is to protect the freedom of everyone. Among the rights he thought necessary for that is the right is to claim things as our property: we can claim bits of the land and its fruits as our own. His argument for this comes in steps.

First, imagine you are living in the state of nature and you pick an apple off an unowned tree. If anyone attempted to prevent you from doing this, he would have to interfere with your body – grab you by the wrist, perhaps, and tear the apple from your hand. This would be inconsistent with your freedom – he would be using force to try to prevent you from acting, and you would therefore have the right to resist. It follows that you have a right to eat the apple, to make it your own by consuming it, simply because no one has a right to stop you.

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<sup>25</sup> It's perhaps worth emphasizing that when I say this I am counting "voter" as a legislative office. In a democratic republic, the voting public ultimately makes the decisions.

But that only shows we have a right to otherwise unowned things when they are in our physical possession. Kant thought that it must also be possible to have rights to objects even when they are not in our physical possession – that is, to own them. If it were not possible to do that, we could not make free and effective use of any natural resources that we cannot immediately consume or remain in physical contact with. The point is obvious when we think about the use of the land, the primary object of “property” in Kant’s theory. I cannot grow beans on a piece of land if you are free to rip them out and plant wheat there instead whenever I am not actually standing on the land we both wish to use. So without property rights, we could not use natural resources without getting the permission of everyone who might possibly compete with us for their use. Kant thought this would be inconsistent with our freedom. Therefore we must all agree that it is possible for an individual to claim ownership in the land and its fruits, a kind of ownership that goes beyond physical possession.

As we saw earlier, however, so long as we remain in the state of nature, these rights are necessarily provisional. They cannot be made conclusive until we are brought together into a political state, which will guarantee that the rights of all are upheld. This would be true as a conceptual matter even if the natural world offered itself to us in neatly bundled lots with fences already around them, like a development project. But of course it strengthens the argument when we recall that there will always be disputes about the exact contours of our rights. Do the oranges falling from your tree into yard belong to you or to me? May I put on a dam on the river as it flows through my land without regard for the effects when it gets to you? Such disputes can only be settled legitimately by laws we make together; otherwise one of us will be unilaterally imposing his will on the other.

Kant took the argument to imply that those who live on adjacent territory have a duty to organize themselves into a political state. It is people who live in

proximity who make claims of right against each other, and who therefore form the group against whom a right is held. But Kant was also keenly aware that ultimately, all territory is adjacent. The earth is round, as he liked to emphasize, and human technology conquers the mountains and the deserts and the sea, breaking down the barriers between us.<sup>26</sup> So, ultimately, a claim of property right is a claim against everyone else who can claim rights: a claim at least against every other human being. And that means that ultimately, whenever we claim a right, we presuppose the organization of the whole human race into an organized body dedicated to upholding and protecting the rights of everyone, and commit ourselves to membership in that group.<sup>27</sup> It is this conception of rights that gives rise to the duties of aid.

#### 8. Rights of Aid, Step Two: The Right to be Where You Are

In order to explain why, I want to return for a moment to the central question of this paper – the question of our relation to animals. I have explained why Kant thinks it must be possible for us to acquire rights in the land and its products, why we must be able to own property. Traditionally, philosophers have taken this kind of

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<sup>26</sup> Earlier I mentioned that on Singer's view, a group of people might blamelessly allow someone to starve in their midst, so long as they were giving all they could elsewhere. On Singer's view, proximity apparently makes no difference. I am inclined to what I suppose is the more conventional view that the rights of those with whom we are in immediate economic contact (part of a more extensively shared economic system) make a stronger claim on us than the rights of those who are at a greater economic distance.

<sup>27</sup> What I've just said may seem to imply that everyone who claims a right is committed to the existence of a world government. I think that it does imply that, but Kant, notoriously, held back from drawing that conclusion, for reasons I don't fully understand. He did, however, think that claims of right commit us to membership in some sort of collective body dedicated to upholding the rights of everyone – he thought it could be something like a non-coercive League of Nations. I leave the question to what sort of body exactly we are committed to one side here.



story also to show that we are able to claim the other animals as property. But why exactly should that be?

In the traditional doctrines of rights developed in the seventeenth and eighteenth centuries, especially in the theory of John Locke, it is perfectly clear what makes it possible for people to claim property in the other animals. It is a view, derived from Genesis, to the effect that God gave the earth and everything that is in it to humanity to hold in common, explicitly including the animals. Each of us can claim parts of this commonly held possession, provided that he does so in a way that respects the fact that the whole is owned in common with others. Locke thought that when you took property from the commons, you had to leave enough and as good for others. Kant, as we have seen, thought that when you claim rights to property, you commit yourself to upholding the parallel rights of others. Both insisted that the assumption that human beings hold the world in common plays an essential role in their explanations of why we can have rights to property. The role of the assumption, in both their theories, is to answer an obvious question: How could human agreements to divide the earth up into objects of private property be legitimate, if we had no right to the earth in the first place?

The idea that God gave us the earth in common captures something that goes right to the heart of the moral outlook, and that can be formulated in secular terms. Most immediately, it is the idea that others have just as good a claim on the resources of the world as we do, and that it behooves us to limit our own claims on those resources with that in mind. But I think it is possible to take the claim in an even more extensive sense. In making the argument for property rights, Kant emphasizes one consequence of legitimate possession – when you are in legitimate possession of something, anyone who uses it without your permission wrongs you. But it is also a consequent of the legitimate possession of a piece of territory that you

are the one who determines what happens there: you make the laws for that territory.

That remark will sound like some alarming endorsement of frontier justice until we remember that our rights in the state of nature are essentially provisional: we can claim them against those around us only to the extent that we are committed to joining in a political society with those around us. And of course in political society we all make the laws together. So Kant emphasizes that the sovereign (in a democratic republic, that would be the people collectively) is not just the legitimate ruler of the people, but also the “supreme proprietor” of the land, and as such has the right to levy taxes and to make laws that apply to the territory in general. Furthermore, Kant emphasizes that, on this conception, “the determination of the particular property of each is in accordance with the ... principle of division, instead of with principles of aggregation” (6: 323-324). In other words, it remains true within the state (and not just of the earth originally) that the land is regarded as held collectively by all, and *divided out* by the sovereign among the people for their use. In Kant’s story, because of the provisional nature of natural rights, the social contract is not made by people each of whom brings his land in with him, with the land then being *aggregated* into the nation’s territory. Rather, from the start the territory is seen as possessed in common, and every claim of right is based on the presumption that all of us collectively can agree that you can use a particular piece of land in the way you propose to use it. Indeed, Kant tells us that “... the real definition [of a right] would go like this: *a right to a thing* is a right to the private use of a thing of which I am in (original or instituted) possession in common with others.”(6:261) Although Kant doesn't say it this strongly, no individual really owns the land, a permanent thing which belongs to the people of the state collectively, and more broadly to humanity. This is one of the main reasons why, despite his emphasis on freedom and private ownership, Kant is no libertarian. Indeed the very first conclusion he draws from the

fact that the sovereign must be regarded as the supreme proprietor of the land is that the government has the right to tax the people for the support of the poor (6:325-327). But the more extensive interpretation of common ownership is that we all have a right to participate in making the laws that determine what can and cannot happen on the territory we hold in common. To be one of the owners of the world is to be legislative for it. In a way, to have the right to be where you are is just to be the sort of being who can have rights. Rights are the place where the moral world and the physical world come together, where the Kingdom of Ends takes hold of the Kingdom of Nature and starts to realize itself there. The idea of common ownership is the idea that we are all part of that enterprise.

Rather than grounding the idea of common ownership in revelation, Kant characterizes it as an idea that we necessarily presuppose when we claim our rights. He describes it, somewhat surprisingly, as the right of every human being *to be where he or she is*. He says:

All human beings are originally ... in a possession of land that is in conformity with right, that is, they have a right to be wherever nature or chance ... has placed them. ... The possession by all human beings on the earth which precedes any act of theirs that would establish rights ... is an *original possession in common...*, the concept of which is not empirical ... Original possession is, rather, a practical(ly) rational concept which contains *a priori* the ... only principle in accordance with which people can rightly use a place on the earth. (MM 6:262; slightly rewritten)

When Kant says that every human being has a right to be “wherever nature or chance has placed them,” he means that every human being is part of the group that possesses the world in common. The argument may be reconstructed in a way that brings out a parallel with the argument by which Kant shows we may claim

ownership in previously unowned consumable goods. You are not doing anything wrong just by being here – you are not, so to speak, trespassing. It follows from that that if someone attempted to use coercion to remove you, he would be wronging you, and it follows from that that you have a right to be here.<sup>28</sup> The same is true of every human being, and so every human being must be regarded as one of the group whose rights you must acknowledge when you claim your own rights. You claim to be part of this group simply because you are here, and so must accord that standing to others who are here as well. Characterizing this most basic of all rights as a right to be where you are gives us a pleasingly literal way of interpreting the idea of moral standing: if you find yourself standing somewhere on the planet, then you are a being who can claim rights.

#### 9. The Right to Aid, Step Three: The Meaning of Common Ownership

The idea that we own the world in common may sound fanciful, but I think there is a way of putting it that brings out an important point. Obviously, the world is

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<sup>28</sup> Both Kant's argument here and the central argument in Hobbes give the appearance of pulling a normative rabbit out of a natural hat. Hobbes starts from a state of affairs in which no one has a right in the ordinary sense to anything. By a right in the ordinary sense, I mean one whose violation would be a wrong. Hobbes then redescribes this as a state of affairs in which everyone has a "natural right" to everything. Natural rights are unlike moral rights in the sense that they cannot be violated: everyone has a natural right to everything. Nevertheless they have normative effects, for when we transfer them or lay them down, we acquire genuine moral obligations. In a similar way, Kant starts simply from the fact that no one has a right to remove us, and then derives positive moral conclusions from that. So both authors seem to redescribe a state in which there are no particular moral facts in moral terms, and then draw positive conclusions from the redescription. Of course we might wonder about the legitimacy of this move. I am not sure about Hobbes, but one might defend Kant from the charge by pointing out that he is starting from a normative thought: namely, that we have the right to freedom. But Kant never says exactly what this right is grounded in, and it is really unclear whether it amounts to more than the fact that no one has any specific rights to interfere with us. This is a difficult issue, but I am tempted to think that both philosophers are trying to make the point that as soon as we stop thinking about our relations in terms of power and start thinking of them in terms of the concept of a right, certain specific conclusions follow immediately, just from that move.

not literally owned by anyone, individually or in common, until human beings come along and set up systems of property. So prior to any system of rights there would be nothing exactly wrong in my establishing myself on some piece of land and defending it against all comers: that is, I would not be violating anyone else's rights in doing so. But if I am to think of this act as establishing that I have a *right* against all comers, something that they have an obligation to respect, then more is needed. Or to put the same point another way, if I am to conceive of my relations with others in moral terms, in terms of right and wrong, and not merely in terms of power - then more is needed. For whenever I claim a right, as we have seen, I presuppose that humanity is an organized body dedicated to enforcing the rights of all the inhabitants of the earth. And if humanity did form such an organized body, then we would all have to agree, through our legislative process, about who had a right to what: about how we are going to divide things out. And – finally now to come to the point about the right to aid – we would not all agree to a division of things that effectively denies someone the resources he needs in order to live. That, after all, would amount to kicking him off of the planet, as if he had no right to be here. So my rights are by their very nature limited to a reasonable share of the earth's resources. They are limited for the simple reason that others also have a right to a reasonable share.

That means that if property is now divided up in such a way that some of us can only live because of the charity of others, then there must be injustice in the situation, even if no one has done anything wrong to bring the injustice about. Although in the *Groundwork* Kant categorizes beneficence as an imperfect duty, elsewhere he puts forward exactly this way of looking at it. In the *Metaphysics of Morals*, after describing the duty of beneficence, he remarks:

“Having the resources to practice such beneficence as depends on the goods of fortune is, for the most part, a result of certain human beings being favored through the injustice of the government, which

introduces an inequality of wealth that makes others need their beneficence. Under such circumstances, does a rich man's help to the needy, on which he so readily prides himself as something meritorious, really deserve to be called beneficence at all?" (6:454)

In his course lectures he was even more forthright:

One may take a share in the general injustice, even though one does nobody any wrong by civil laws and practices. So if we now do a kindness to an unfortunate, we have not made a free gift to him, but repaid him what we were helping to take away through a general injustice. For if none might appropriate more of this world's goods than his neighbour, there would be no rich folk, but also no poor. Thus even acts of kindness are acts of duty and indebtedness, arising from the rights of others. (27:416)<sup>29</sup>

Kant's point here is that if some people are rich enough to give and some so poor that they need to be given to, then there must already be injustice, even if it is not the result of any particular individual doing anything wrong. The world is not divided up into allotments of property in the way it would be if humanity were actually organized into a group and deciding on this division together. This need not be anyone's fault: it is the result of the historical development of economic conditions over a period of time when no one (no representative of humanity collectively) was in charge of world's economy as a whole. It was no one's job to make sure that things did not work out so that some people are rich and others poor. Indeed, this kind of story illustrates why there should be such a thing as an "imperfect" right. There are imperfect rights *because* there are provisional rights which have not yet been made conclusive, though this is through nobody's fault.

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<sup>29</sup> I owe these quotations to Nataliya Palatnik.

It is important to see that there is injustice here, not just an unfortunate situation. In the first of the two passages I just quoted, Kant draws our attention to the fact that this kind of inequality makes the poor *need* the charity of the rich. Plainly, if someone else is in a position to determine whether you are able, say, to eat or not, through discretionary acts of his own, then you are subject to that person's will. And that means that by Kant's criterion, you are not free. The traditional picture's distinction between a realm of justice concerned with the protection of freedom and a realm of beneficence concerned with the promotion of the good does not hold up. Without rights to a fair share of the world's resources, the poor are a subject population. They are subject to the wills of the rich. So as Kant urges here we should regard giving aid not as a discretionary act of virtue, but as the correction of a wrong.

Following Kant, I have argued that the world's needy have an imperfect right to the aid they need to live in reasonable conditions. If they did not have that right, they would be wholly subject to the wills of the rich. Correlative to this right is a duty of humanity collectively speaking to provide the needed assistance. The right is imperfect in the sense that it is unclear who exactly should provide the assistance. Yet we have a duty to make this right perfect, by organizing ourselves in such a way that the need will be met. We have this duty because such an organization is presupposed by our own claims of right. So here we have a right with a particular structure – an imperfect right held as against humanity collectively speaking. That, I will now argue is the kind of right that the other animals have against us.

#### 9. The Rights of Animals Against Humanity

In Genesis, God gives the world to humanity, explicitly including the other animals as part of the gift. On that showing we have collective power over them, as we do over the land and the tools that we own. But suppose that instead we

conceive our relationships to the other animals in moral terms: as fellow creatures, not just as objects that may be owned. As I mentioned at the beginning of this paper, most of us already do that, to a limited extent, for most of us agree that we have duties to the other animals. Then we should think of the other animals, like ourselves, as having a right to be where they are – that is, as among those who are in rightful possession of the earth. After all, if humanity’s claim to a common ownership of the earth is not grounded in revelation, then it is grounded simply in the fact that we are here, and are doing nothing wrong by being here. But that is true of the other animals as well.

Someone might reply that the other animals have no right to freedom. But, it is not clear what the content of that claim is supposed to be. If we drop the idea that God made them our property, then it is true of them no one has any specific rights to interfere with them. In that sense they are free. More importantly, though, we should see that there is an issue about the freedom of animals. It is this: so long as our laws afford them no protection, they are subject to human wills, both to individual wills and to our collective will. What the law does not forbid, it effectively protects. And the very fact that we are prepared to pass laws limiting what people can do to them shows that we do not think that is right. They should not be subject to our wills. If that is right, animals are among the possessors of the world, and have a right to some share of the world’s resources. More importantly, though, they have a right to be among those whose interests determine what sorts of laws will hold on the earth.

Of course that way of putting it - that it is their interests, not their wills, that should determine what sorts of laws we should have - brings out a difference. I have argued that when a human being claims a right to his share of the world and its resources, he presupposes the idea of humanity considered as a collective agent, making a fair distribution of those resources to everyone who shares in the right to



them. This is why a duty to assist those who are in need is presupposed in every claim of right that we make. More generally, as joint possessors of the world, we claim a right to participate in making the laws that determine what will happen in the world, so far as that is up to human beings. But we cannot form a collective agent that includes all of sentient life, or if we did presuppose such an agent, it could only be in idea. The other animals cannot join with us in setting up a set of rules to govern the world that we share with them. They cannot join with us in shared deliberations about these matters, or in making the laws that inevitably affect their own lives and welfare. That indeed is why the other animals only have claims of right against us, and not against each other. Humanity – increasingly – controls what goes on on this planet, and the other animals, or rather some of the other animals, are – also increasingly – subject to our will – that is, to our collective will. If we regard the other animals not merely as property, but as fellow creatures with a stake in what happens in this world, then that subjection raises issues of justice, not merely of kindness.

Animals – maybe not all of the insects and certainly not all of the tiny creatures that are everywhere around us – but middle-sized animals of the sort that we all agree are at stake in these discussions – are a subject population, dominated by the collective power of the human species. And every individual animal, as a member of that subject population, is subjected to human laws. This is of course particularly obvious of the animals in laboratories and factory farms, who are entirely at the mercy of the combined power of human technology and human law. If our human laws say people can keep animals in tiny cages for the whole of their lives, fatten them until they can no longer stand on their own legs, beat them when they put up resistance, and slaughter them in inhumane ways, then that's what's going to happen to them. But if our human laws say that they must not be so treated, then there is a way to prevent such things, without waiting on the kindness of individuals, and without leaving the animals wholly subject to the wills of the people and

organizations who have an interest in harming them. If we regard ourselves as making laws not merely about the other animals, but on their behalf, because they are also among the rightful inhabitants of the planet, then they have a right that we should make laws that are consistent with the animals' good.

The rich control the resources of the planet that we ought to share with the poor, so at least until we have greater justice, we owe them aid as a matter of right. The more humanity becomes actually organized, and therefore actually able to take collective action, the more outrageous it becomes that we do not organize ourselves in such a way that this need is met. Humanity determines the fates of both individual people and individual animals through the laws we collectively make determining what individuals may do to one another. Unlike the power imbalance between the rich and the poor, the power imbalance between human beings and the other animals is not something that will ever go away. But to the extent that animals live under the control of human laws, they are owed the protection of human laws. Animals have a right to that protection, in the same way that the poor have a right to our aid. Both groups have a right to that protection because they are a population effectively subjected to humanity's collective control.

#### 10. Some Replies to Objections

At the beginning of this paper I mentioned some of the objections that people make to the idea of animal rights: In conclusion, I am just going to sketch the responses to these worries that follow from the account I have defended.

People object that rights involve the idea of reciprocity. I have argued that the kind of reciprocity inherent in the idea of a right is this: that rights can only be made "conclusive" together, so that when you claim a right you commit yourself to the realization of the rights of others. This kind of reciprocity does not require that animals should be capable of respecting our rights in order to have rights against us.

Instead it implies that our own rights cannot be conclusive until we uphold the rights of the other animals.

Second, people object that rights serve to protect a kind of liberty – the right to live in accordance with one’s own values – that non-human animals could not possibly have. It is true that animal rights of the sort I have envisioned are concerned with their good, not with protecting their liberty. And I think it is important that we should preserve a category of rights, that are only the rights of human beings, and that are specially concerned with the protection of human autonomy. But I have tried to bring out there is nevertheless an issue about the freedom of animals, for even in Kant’s eyes freedom is not just the capacity to live autonomously, but the absence of domination by the arbitrary wills of others. And so long as animals do not have legal rights, they simply are subject to people’s arbitrary wills.

Third, people object that it is absurd to suppose that animals have rights, because then they would have rights against each other. The rights that I have attempted to defend in this paper are rights that animals hold against humanity collectively, rights that arise from our collective control of their world. They are not rights that animals hold against each other. I do not think that my view implies that we should try to moralize nature. Where possible – although there is little space left for this – we can leave it alone. Indeed, I don’t believe that the argument of this paper exactly establishes that all animals have rights that we must respect. Rights are essentially relational, and the claims of right I am talking about arise from the fact that our relations with animals are determined by human laws. Where that is not so – in the case of our relations with microbes, say, if we count those as animals – the argument has no footing.

As far as the impact of acknowledging animal rights on human interests is concerned, more detailed arguments are required. I can only say again what I said earlier. Acknowledging the rights of animals would have an impact on human

interests. Some of our practices, certainly factory farming, probably most experimentation, would have to be given up. The sacrifices would be real. My aim in this paper has not been to show that the idea of animal rights can be made uncontroversial. It has been to show that there is a reasonable basis for the idea. We may suppose that animals have rights against humanity for the same reason that the needy have claims to our aid. Neither the planet nor the animals are ours to do what we like with. To regard the world morally is to regard it as the collective possession of all its inhabitants, who all have a right to share in its bounty and to a share in the determination of who may do what to whom. In fact, whenever we ourselves make claims of individual claims of right, a commitment to dealing fairly with our fellow inhabitants of the planet is implicit in those claims.