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# Animal property rights

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**Synonyms:** NA

**Definition:** Animal property rights theory is an approach to territorial rights in which wild animals are conceived of as owners of the natural spaces they inhabit and use.

## Introduction

Animal property rights theory is an approach to territorial rights in which wild animals are conceived of as owners of the natural spaces they inhabit and use. Its most important proponent is the Australian philosopher John Hadley (2005, 2015, 2017), while other defenders include the philosopher Josh Milburn (2017), the political theorist Steve Cooke (2017), and the lawyer Karen Bradshaw (2018). Though this suggests that the theory is a new approach to thinking about human-animal relationships and preservation of natural spaces, Hadley (2015, 8, 76) identifies the seed of animal property rights theory in influential works of 20<sup>th</sup> century animal ethics, such as the case for animal rights from Tom Regan (1984). That said, one of the only explicit early references comes from James Rachels (1989, 125), for whom animals would be recognised as owners on some theories of property. Rachels, however, mentions ownership of objects, rather than spaces.

## Animal property rights in practice

The two central features of Hadley's animal property rights theory are territory and guardianship (Hadley 2015, chap. 2). Replicating existing legal institutions (for example, protected wildlife areas), the extent of wild animals' property is determined by their territorial behaviours. And, again mirroring real-world legal institutions, animals' territorial rights are protected by guardians: individuals in a position to know about the interests of the animals, and who can enter good-faith deliberation with any human property-holders who might wish to make use of the animals' land. Guardians are necessary in part because animal property rights can be coextensive with human property rights. Thus, wild animals could have property rights in a field that is also owned by a human developer. Animal property rights, for Hadley, are not about excluding humans from spaces, but they do mean that those wishing to develop land must be conscious of the interests of animal property holders.

Bradshaw (2018), who grounds her argument in United States law rather than philosophy, similarly argues for a trustee model, but she bases the extent of animal property on whole ecosystems. Bradshaw holds that ideas of animal property, though she is the first

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legal scholar to argue for them, are already implicit in US law. Animal property rights, she holds, could come to be recognised through a statutory or litigation approach – meaning, respectively, that the state could pass laws recognising animal property claims, or advocates could fight for (expanded) recognition of animal property claims through the courts. Like Hadley's, Bradshaw's animal property rights do not entail excluding humans from the land – humans are just one species of animal among many with ownership claims.

## Justifying animal property rights

Hadley takes a deeply pragmatic approach to justifying animal property rights, allowing that different arguments may be appropriate in different settings. Some of the time, he favours an interest-based approach. Animals have important interests in making use of the natural goods in their territory to preserve life and stave off suffering (Hadley 2005, 2015, chap. 4, 2017). These interests can be sufficiently strong to ground a right (or sufficiently important to ground a duty in humans). While Hadley sees support for animal property rights as independent from support for wider animal rights, Cooke (2017) explicitly draws upon an interest-based account of animal rights when he argues that animals have sufficiently important interests to form the basis of a property right. He points to the interest that animals have in avoiding suffering and the interest that (some) animals have in continued life, and argues that territory is, for many animals, necessary for the realisation of these interests.

Hadley (2015, chap. 3) is generally opposed to the use of labour-mixing or first-occupancy theories of property for grounding animal property rights. The former grants those who mix their labour with a space (say, through building or cultivation) property rights over that space, and is the kind of theory to which Rachels (1989) pointed. The latter offer property rights to the first who live in a space. Though these are – historically and contemporarily – important philosophical arguments for property rights, Hadley believes that they are too tied up in accounts of personhood (intentionality, self-awareness, and so forth) to be usefully applied to animals.

Milburn (2017) challenges Hadley's case against the labour-mixing account, arguing that not only could the labour-mixing account be used to ground animal property rights, but that it might have advantages over the interest-based approaches used by Hadley and Cooke: the labour-mixing account clearly grounds a property right rather than a habitat right; the labour-mixing account can easily talk about animal property beyond territories; and the labour-mixing account offers stronger rights than an interest-based approach. As has been pointed out by Kathy Squadrito (1981), however, John Locke – an early modern philosopher and the key proponent of labour-mixing accounts of property – would certainly be opposed to extending property rights to animals. Milburn (2017) does not hold that a labour-mixing account is without its problems, and suggests that labour-mixing property rights and interest-based territory rights could exist side-by-side.

Hadley also holds that animal property rights might be justified indirectly, as a tool for conservation or environmental purposes (Hadley 2015, chap. 6, 2017). So, for example,

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animal property rights could be afforded only to members of a charismatic or endangered species, without any assumption that members of other species be granted them. Or the animal inhabitants of a fragile ecosystem could be given property rights over their territory as a tool to protect that ecosystem, with no assumption that animals living in other ecosystems are granted property rights. In both cases, while animals will surely benefit, human interests are the ultimate justification. Indeed, Hadley (2005, 2015, chap. 5) frames animal property rights as a possible reconciliation between mutually critical environmental and animal ethicists. Bradshaw (2018), too, draws strongly upon environmentalist ideas and legislation in her case for animal property rights.

## Interrogating animal property rights

Sue Donaldson and Will Kymlicka (2011) are critical of wild animal property rights, suggesting that they do not go far enough. They instead propose that wild animals should be considered sovereign over their territories. In turn, Hadley (2015, chap. 5) is critical of Donaldson and Kymlicka's sovereignty approach. Milburn (2016, 2017), however, has suggested that animal sovereignty and interest-based animal property rights might be closer than they appear, and may be compatible. Cooke's case for wild animal property rights (2017) provides a potential model for this compatibility: he argues that wild animals should be given property rights, and, if these fail to provide adequate protections for the animals in question, they should have the right to secede, and thus become sovereign over their own communities.

A key divide in the new literature on animal property rights is about whether animal property rights should be framed within a wider account of animal rights. The proposals of Hadley (2015) and Bradshaw (2018) are not, while those of Cooke (2017) and Milburn (2017) are. This leads Milburn (2016) to explicitly criticise Hadley's proposal for supposedly creating a perverse incentive to kill animals so that their property rights do not need to be considered. Hadley counters that this fails to assume the good faith of those involved (McKeown and Hadley 2017), while Bradshaw (2018) notes that this kind of objection highlights the need for additional laws.

The key opponents to statutory interventions supporting animal property rights, Bradshaw (2018) claims, will be ranchers and mineral developers. To an extent, this opposition has already begun. Peter White, the president of the South Australian Farmers Federation, condemned Hadley's proposal in the Australian press as something that would lead to animosity between farmers, environmentalists, and animal welfare advocates, and would serve to "give animals more rights than humans" (quoted in Anon. 2011). However, Bradshaw (2018) identifies animal property rights as being a practical proposal that even those critical of other more radical demands from proponents of animal rights – including an end to meat eating, animal testing, and animal ownership – could endorse.

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