“Every good hunter is uneasy in the depths of his conscience when faced with the death he is about to inflict on the enchanting animal”
- José Ortega y Gasset

On Hunting:

A Philosophical Case Study in Animal Sports

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On Hunting: A Philosophical Case Study in Animal Sports

DISSERTATION

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Abstract

The objective of this project is to craft a preliminary normative theory of hunting. The primary driving question of the work concerns whether or not hunting is morally defensible. As a secondary question, I consider what conditions may justify hunting. As is required of normative ethics, I exercise these questions by mapping the relevant normative factors of hunting. Specifically, the goodness of its outcomes, understood as its intrinsic value, to which its instrumental value may contribute; and the harms involved with hunting, especially those levied upon the hunted in the form of inflictions and deprivations. Having mapped these normative factors and fully accounted for them I then resort to applied ethics for a set of interaction principles designed to govern the tension between the two normative factors just referenced. The result is an appeal to a moral constraint generated by harm (i.e., the harm principle), according to which we (i.e., moral agents) have a direct duty not to harm individuals, including the hunted. This duty is, however, subject to infringement in the event that we have no choice but to harm an individual, or individuals (i.e., prevention cases). I consider two thresholds for governing such cases but find each capable of justifying hunting only in rare and extreme circumstances. I also consider the possibility that hunters may justifiably harm the hunted outside the domain of prevention cases, as a matter of liberty; that is, as a justifiable option. This position is rejected, however, on the grounds that the liberty to harm as an
option, if it can be defended at all, would permit harm only in a weak and limited sense, and thus not to the extent that hunting requires. Thus in addressing the primary driving question of this work I ultimately arrive at the following answer, and the thesis of this work: modern hunting, which is practically the exclusive constituent of hunting in the United States, is morally indefensible. Concerning the secondary question driving this work I argue that hunting is justified only to the extent that the hunters’ dependents would be worse-off for having not hunted than the dependents of the hunted would be for having been hunted.
Acknowledgments

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Finally I would like to thank Judith Hartke for allowing me to use her wonderful piece “No Boundaries” on the frontispiece of this work. For more of her work visit www.judithhartke.com.
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“I saw deep in the eyes of the animals the human soul look out upon me.

“I saw where it was born deep down under feathers and fur, or condemned for awhile to roam four-footed among the brambles. I caught the clinging mute glance of the prisoner, and swore that I would be faithful.

“Thee my brother and sister I see and mistake not. Do not be afraid. Dwelling thus for a while, fulfilling thy appointed time – thou too shalt come to thyself at last.

“Thy half-warm horns and long tongue lapping round my wrist do not conceal thy humanity any more than the learned talk of the pedant conceals his – for all thou art dumb we have words and plenty between us.

“Come nigh, little bird, with your half-stretched quivering wings – within you I behold choirs of angels, and the Lord himself in vista. “

Towards Democracy.
1. Introduction

1.1. Terminology, thesis, and the need for a theory of hunting

My interest is with the human hunting of non-human animals. In the context that I am using the word and its variants, the “hunt” refers to humans who intend to kill animals and seek them out in habitat. This is an intentionally broad interpretation, capturing typical assumptions about hunting (e.g., the hunting of wild animals) along with less conventional, although perhaps comparably popular, “canned hunts.”¹ This interpretation is broad, but not a catchall. ‘Seek’ is an important qualifier. The abattoir, for example, contains no human hunters for lack of seeking. Cases here should be expected to flow along a continuum. A caged or chained animal is not sought, while perhaps a fenced animal is in a limited sense, and certainly an animal in the wild is. The caged animal is hardly in habitat but the fenced animal may be, even if not in the full sense of the word (i.e., wild habitat). This is a generous interpretation of canned hunts but the idea, initially at least, is to begin with a broad concept of the hunt. It is also important to highlight that what the hunter seeks, in the context that I am using, are non-human members of the animal kingdom. Those who hunt jobs, picturesque landscapes, or morel

¹ I use ‘canned hunts’ as a bit of a catch-all to refer to captive hunts (i.e., where animals are restricted by cages, boxes, or fences and “set-up” for hunters to shoot, internet “hunts,” where patrons literally shoot and kill animals with the click of a computer mouse, and “shoots” where animals are released into direct gun fire. For accounts of these see Simon J. Bronner, Killing Tradition: Inside Hunting and Animal Rights Controversies (Lexington: University of Kentucky Press, 2008), 99-170.
mushrooms, need not apply. It is specifically the hunting of nonhuman animals by human animals that I have in mind. I should also specify what I mean by a theory. After all, “theory” could mean a lot of things. The type of theory that I have in mind is a normative ethical theory; the kind that “involves substantive proposals concerning how to act, how to live, and what kind of person to be. In particular, [the kind that] attempts to state and defend the most basic principles governing these matters.”² These are certainly broad and difficult challenges but luckily I am only interested in how they relate to the specific context of hunting.

The questions that I am keen to answer are as follows. The broadest question, and the one which drives my general thesis, is simply, “is hunting morally defensible?” And a narrower question, driving a narrower thesis, is “if so, then on what conditions?” The answers at which I arrive, respectively, are as follows. Concerning my general thesis I argue that modern hunting, which is practically the exclusive constituent of hunting in the United States, is morally indefensible.³ And concerning my narrower thesis I argue that hunting may be justified only to the extent that the hunters’ dependents would be worse-off without the hunt than the hunteds’ dependents would be for having been hunted.⁴


³ By “modern hunting” I mean the practical consensus of hunting that goes on today in the United States, which is not inclusive of genuine subsistence hunters, of which there are, “vanishingly few.” Charles List, “On the Moral Distinctiveness of Hunting,” *Environmental Ethics* 26 (Summer 2004): 169.

⁴ I have excluded from my thesis statement one additional circumstance in which hunting appears to be justifiable. That is, in genuine prevention cases where the harms from which we must choose are comparable and where the dependents of the hunted are
In these dire circumstances subsequent questions become effectively moot. How should one hunt in such a scenario? The answer, perhaps surprisingly, is, “by whatever means are necessary,” and whereby necessary I mean minimally required. Anything done beyond necessity is gratuitously malicious. Because the sorts of circumstances that justify a hunt are, in fact, so desperate, they may justify a wide range of hunters’ means, again depending upon what is necessary. In this sense, and only to the extent that the hunt is justified (a criteria which I sketch below), I sanction a far wider set of means than many of the varied “codes of ethics.”

Because I am interested in a narrower use of normative ethics this project can be said to flow between normative ethics and applied ethics. What I will be doing throughout is seeking to build a normative ethical theory that works to set guidelines for settling ethical questions about hunting specifically. This is what I mean when I say that the project moves between the prescriptions of normative ethics and the empirical domain of applied ethics.

It might seem strange that such a project is in any way necessary. We have been at the hunt for thousands of years. How could we possibly be in need of guidance now?

4.5) in such situations the hunt ought to go on. The reason for the exclusion is that they are exceedingly rare scenarios; genuine prevention cases, in hunting, are rare in themselves and in the (very) unlikely event that they occur they almost never involve comparable harms. Theoretically such a scenario is possible, but as a practical matter it is a virtual impossibility, and for this reason I have excluded it from my thesis statement. This justification of hunting is, in practical terms, an empty set. This will be much clearer by my forthcoming discussion of the miniride principle.

5 For a good historical account of hunting see Matt Cartmill, A View To A Death In The Morning: Hunting and Nature Through History (Cambridge, MA: Harvard University Press, 1993).
Of course, just because we have been doing something for thousands of years does not mean that we are doing it right. Nor should we assume that an eon of practice somehow carries over in our modern lives. No individual among us, after all, has been hunting for thousands of years. Each hunter learns the trade. Better not to become stagnant in our moral thinking and besides, to my knowledge, no such theory exists, at least not qua hunting.6 Plenty has been said about hunting and its ethics, but nothing approaching a full-fledged normative theory, perhaps because the topic is, as José Ortega y Gasset pithily puts it, “enormously difficult.”7 Thankfully for me, since the time of this confession a lot of heavy lifting has been done. The enormous difficulty with hunting is, in part, a product of the morality of killing animals. The past thirty-five years have produced perhaps the most fruitful discussions of this issue and as we will soon see provides the framework the task at hand.8 This work permits me to downgrade the challenge I have taken up from enormously difficult to just plain difficult.

6 There are normative theories that have clear implications for hunting and they will play a central role in this work, but to my knowledge there is no such normative ethical theory of hunting per se.

7 José Ortega y Gasset writes on the “The Ethics of Hunting,” which can be distinguished from the morality of hunting in the sense that he uses the terms. The ethics involve how to hunt right, whereas the moral question involves whether it is right to hunt. Ortega y Gasset presupposes the latter as affirmative despite openly balking at the difficulty of the question. He says, “In a truly exhaustive study of hunting I would feel obliged to delve profoundly into that dimension of its ethics which inflicting death on the animal makes inevitable. But I restrain myself because the theme is enormously difficult.” See his, Meditations on Hunting (Belgrade, MT: Wilderness Adventure Press, 2007), 99.

8 Peter Singer, Animal Liberation: New Revised Edition (New York: Avon Books, 1990), originally published in 1975, is sometimes credited with sparking a now four decades old debate over animals “rights” (quotations because Singer might not refer to them as such). Tom Regan, The Case for Animal Rights: Updated with a New Preface (Berkeley: University of California Press, 2004), originally published in 1983 marks a leap forward in the discussion, and there have been virtually countless other commentators since. It is
A bit of contextualization should help illuminate the significance of this project.
Hunting has seen a steady decline, in the United States at least, over the same period as
the budding discussion of animal rights. It is doubtful that the relationship is causal but
the fact remains; hunting is on a persistent decline. Despite this, it remains one of the
most popular sporting-pursuits in North America. Twelve and a half million Americans
hunt annually. They spend about $22.9 billion dollars to do so. Collectively, they spend
about 220 million days hunting over the course of a year (i.e., each hunter, on average,
spends more than seventeen days per year hunting). In that time they kill about 200
million mammals and birds, to say nothing of fish. (Fishing is, after all, just hunting
with a hook). That is, approximately sixteen such animals per hunter, per year. Thus
despite its recent decline hunting still carries heavy consequence. Millions of Americans,
billions of dollars, countless hours, and over the years, countless animals are given to the
hunt. The grip that hunting holds on America, though perhaps softening just a bit, is still
quite strong.

also worth mentioning that these discussions did not literally start with Singer. Many
considered these questions before, including René Descartes, Discourse on Method
(Indianapolis, IN: Hackett Publishing Company, 1998), Immanuel Kant, “We Have Only
Indirect Duties to Animals,” in Life and Death: A Reader in Moral Philosophy, ed. Louis
P. Pojman (New York: Wadsworth Publishing Company, 2000), 398-399, and even as far
back as Aristotle, Nicomachean Ethics, trans. Terence Irwin (Indianapolis, IN: Hackett
Publishing Company, 1999), who speaks on animals throughout Nicomachean Ethics (see
316-317 for a map of Aristotle’s comments on animals).

9 U.S. Department of the Interior, Fish and Wildlife Service, and U.S. Department of
Commerce, U.S. Census Bureau. 2006 National Survey of Fishing, Hunting, and
Wildlife-Associated Recreation. Hereinafter, NSFHWAR.

10 This estimate is according to numbers compiled by The Fund For Animals with data
from the U.S. Fish and Wildlife Service and state wildlife agencies; see In Defense of
Animals, “Hunting Facts,” In Defense of Animals USA,
With so much invested and such a long history it is surprising that a thorough normative ethical theory of hunting has not been put forth. Good work has been done on the subject. Moral questions have been asked and answered, some well and others not, and I discuss them below where relevant. Yet still we have nothing approaching a comprehensive theory. Hunters have nothing comparable to *A Theory of Justice* or, for the present purposes, *The Case for Animal Rights* (each deservedly famous normative ethical theories).¹¹ This should not come as too much of a surprise. Hunting may hold a large constituency, but justice generally, and animal rights generally are larger (i.e., they are much broader in scope; with far more effect). Still that takes nothing away from the need for a theory of hunting. Clearly one could be put to good use. Hunters might gain something from it, as might others interested in hunting. Certainly hunters have approached such considerations. It is unlikely that the 12.5 million Americans who hunt annually have nothing like a normative theory guiding their decisions as hunters. It is more likely that they have carefully considered what they are doing. Many have likely even consulted, in writing or via oration, any of the varied codes of ethics that hunters often follow.¹² But such consideration and even published codes are not on par with the sort of systematic and principled analysis that is required of a full-fledged normative ethical theory. They are contributors for sure. After all, it is not as if any of the varied

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¹¹ This is not meant as a comparison or equation of Rawls and Regan. My point is only that hunters have no such normative ethical theory; Rawls being perhaps the ideal model, Regan being a more subject appropriate example. John Rawls, *A Theory of Justice* (Cambridge, MA: The Belknap Press of Harvard University, 1971).

hunter’s codes were sifted from the clouds. They are the product of careful consideration and the conclusions reached therein, some of them at least, can be expected to find a home in a normative theory of hunting. But they are not always consistent, or thorough, or just. 13 The contributions that these codes represent are merely that: contributions. Hunters have obviously thought long and hard about the questions driving this essay and the codes are a partial incarnation of that process. But they are not aggregative, or systematic, or thorough, or comprehensive, or foundational. Not, at least, to the extent that should be expected of a full-fledged normative ethical theory; for all that they contribute, we need more.

This project begins to fill that void. The very notion of a theory of hunting is itself sui generis. While others have theorized hunting this work is more comprehensive than the vast majority of what precedes it. 14 Perhaps nowhere is this truer than in my discussion of intrinsic value in hunting. This is an especially keen point because of the essentialist role of such value in normative ethics. Any theory of hunting that fails to take it by this handle has not even begun the work of theorizing. Yet, present work excluded, no one does so. The course of the project has also produced at least two other important and novel insights. First, at least two critics of hunting have tried to undermine its status as a game or sport. 15 In searching for intrinsic value in hunting I turn to games, which


14 Regan, The Case, is probably the most likely exception here, but his address of hunting (353-359) is not nearly as thorough as mine. His end is a theory of animal rights broadly conceived and applied to various social institutions, including hunting, which he addresses much more categorically and quickly than I have.

some have argued hold such value, and in the course of my considerations I have substantiated a strong case against what these critics have had to say. Whether or not hunting qualifies, from a definitional perspective, as a game or sport is ultimately of little consequence for this project. That others saw fit to critique hunting on these grounds has no impact on its moral evaluation, but nonetheless in the process of exercising my thesis I have shown their arguments wanting. And second, I have also put forth, in my closing comments, a brief but strong case for state neutrality on hunting. This argument, if correct, should leave a notable political impression. State programs that support and actively promote hunting, of which there are many, ought to cease per the argument that I put forth in closing. No other proponent or critic of hunting has, to my knowledge, addressed this important facet. Thus state neutrality, the game status of hunting, the question of intrinsic value in hunting, and the theory of hunting per sé all represent novel products of this project. The last of these is clearly the most significant. Though I have many peers who agree with my critical assessment of hunting, none have taken it to task as I have. There are analogous arguments, but none of which critique hunting in the form of a full-fledged normative ethical theory.

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Ecofeminist Critique of Hunting,” *Journal of the Philosophy of Sport* 23 (1996): 30-33; each of which I will say more about later.


17 My critique of hunting is most analogous to Regan’s since the building blocks of my normative theory are merely an application of his interaction principles. In this sense my critique of hunting is a reflection of his, which is also very similar to Jordan Curnutt, “How to Argue For and Against Sport Hunting,” *Journal of Social Philosophy* 27 (1996): 78-84. What sets me apart from each is primarily my consideration of intrinsic value in hunting, and, secondarily, my support for the game status of hunting and state neutrality. I am also considerably broader than Curnutt, whose scope is limited to “sport hunting.”
1.2. Moral patients and agents

The sort of theory that I have in mind must cohere much more closely with the standards of normative ethics. Recall the description I cited above: normative ethics concerns questions about “how to act, how to live, and what kind of person to be” and it asks us to “state and defend the most basic principles governing these matters.”¹⁸ In order to do this it may be useful to consider and draw upon a number of common and important moral distinctions. Several are made throughout the project but an initial distinction, between moral patients and moral agents, is helpful. In rough terms, moral agents are beings in full possession of the ability to bring impartial moral principles to bear in the determination of what, morally, ought to be done in a given situation.¹⁹ You and I are paradigm examples of moral agents. With our moral agent status comes a corresponding responsibility. Because we can exercise moral decision-making we are accountable for the choices that we make. In other instances moral agency is absent and correspondingly so too is moral responsibility. Some among us (e.g., infants, persons with severe mental impairments, the senile) lack the ability to exercise moral judgment in a way that would make it appropriate to hold them morally accountable for their actions. Though individuals of this sort cannot reciprocate moral consideration they are no less deserving of it. They are not moral agents but mere moral patients; moral in the sense that although they cannot do right or wrong they count nonetheless in determining matters of right and wrong. This distinction makes clear the appropriateness of limiting our discussion of guilt and innocence to moral agents. A defender of hunting might point out that what they do

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¹⁹ Regan, *The Case*, 151.
is (seemingly) no different, in kind, than what the animals that they hunt do to one another. But the ability to decipher right and wrong and to act upon our moral considerations is precisely what makes it reasonable to speak of moral agents as being guilty or innocent, when such considerations apply. The hunted, because they are mere moral patients, cannot be guilty (in the moral sense) of anything, in particular of hunting and killing others (i.e., moral patients and agents). Like all other mere moral patients, “they cannot be anything but innocent.”

Innocence is a common denominator among all moral patients. This is what it means to be a moral patient as distinguished from a moral agent. The relevance of this distinction is the first to become apparent as the project progresses and others are introduced as well, in time.

1.3. Foreshadowing

Having introduced this initial distinction we can now return to the questions of normative ethics. How do we go about deciding what sort of “basic principles” govern how we ought to act? Some minimal requirements seem fairly obvious. For example, such principles should be factually accurate and rational (i.e., logical and free from contradiction). Other criteria might include conceptual clarity (i.e., precision in defining our terminology, such as “hunt”), impartiality (i.e., compliance with the formal principle of justice), coolness (i.e., emotional balance in our decision making), and principle validity (i.e., using principles that are consistent, adequate in scope (the wider the better), precise about what we ought to do, compliant with our reflective intuitions, and

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20 Regan, *The Case*, 295, addresses and refutes the possibility of moral patients being capable of neither guilt nor innocence, thus reaching the conclusion repeated here.
applicable to all moral agents).\textsuperscript{21} Defending them is essentially a question of demonstrating that they provide the best overall fit with our various considered beliefs and judgments.\textsuperscript{22} In building such a theory we want to identify the most salient factors for consideration. A theory of hunting must identify and account for the most essential features of the hunt. Thus an important first step is to identify what central features or factors of the hunt are most relevant in a moral consideration thereof.

The most obvious and relevant factors for a theory of hunting include the goods of the hunt (i.e., the goodness of outcomes) and the harms involved (i.e., harms of infliction and deprivation). In sections two and three of this project I address these factors. Section two deals with the goodness of outcomes. I begin by discussing instrumental and intrinsic goods (2.1), specifically the subordinance of the former to the latter, and their role relative to hunting. I then construct a simple account of intrinsic good (2.2) using three subfactors: 1) well-being, including pleasure and pain, and welfare interests, 2) the total view, and 3) fairness (or formal justice) including culpability and desert. After a brief qualification (2.3) I discuss six potential sources of good in hunting (2.4 – 2.9): food procurement, wildlife management, conservation, heurism, atavism, and hunting as a game and a “form of happiness.” Finally, I discuss pain (2.10), which is the most apparent detractor from the goodness of hunting.

This disvalue leads directly to section three, the second normative factor in consideration, harm. The discussion here revolves around two distinct but related forms

\textsuperscript{21} See Regan, \textit{The Case}, 126-131, for a detailed discussion on how these terms are being used.

\textsuperscript{22} Kagan, \textit{Normative Ethics}, 15.
of harm: those of infliction (3.1) and those of deprivation (3.2). The former involve suffering (e.g., painful suffering, psychological suffering). A being incurs a harm of infliction in any event where they are made worse-off (i.e., their well-being is reduced) by the experience of suffering. For example, a goose is shot, feels pain (without some subsequent benefit), and is therefore worse-off as a result. The latter form of harm, deprivations, deals with instances where one’s well-being is reduced, though not necessarily through some painful occurrence. I am worse-off, for example, if my investments fail or if my assets are stolen, though I am not physically harmed in either case. Such deprivations involve the removal or (appropriately enough) deprivation of some good or source of value in my life. Perhaps the best example of this is my life per se. If I die a sudden but painless death, I am clearly worse-off as a result because I have been deprived, supremely, of the goods in my life. Such harms are relevant in hunting, obviously, because a constitutive element of the hunt is the pursuit of the kill. Having discussed these two forms of harm and their relevance I then make a number of distinctions important to their moral evaluation. I consider the distinction between doing and (merely) allowing harm (3.3) and conclude that if there is a distinction (some deny that there is) it is the former that is (probably) the more morally noxious of the two and it is the former that hunters perpetuate. A second possible distinction is between harm intended and harm (merely) foreseen (3.4). Just as the previous case, if there is such a distinction it is the former that is (probably) the worse of the two and it is the former that hunters carry out. Also important to the discussion of harm is consideration of risk. If moral agents are ever guilty of wrongly imposing risks on others, regardless of the outcomes, then this will certainly matter in a moral appraisal of hunting, given the
obvious risks that hunters impose on the hunted, and others. On the heels of this discussion I make some brief remarks on the nature of consent and its ability to absolve concerns over risk (3.5). This conversation has more to do with risk to beings other than the hunted (e.g., hikers, bird watchers, other hunters). The moral responsibility of hunters for the harms and risks that they impose on these others may more or less depend upon on their degree of consent. Obviously, but also very importantly, such considerations do not apply to the hunted, who cannot consent in the relevant sense. After mapping the considerations of harm, risk, and consent I turn to the possibility of these subfactors generating constraints; specifically, constraints on promoting intrinsic goods (3.6). Constraints work to explain our considered belief that in some instances the goodness of outcomes is not the only morally relevant factor. Sometimes we consider other factors more important than the goodness of outcomes and so we might say that these factors constrain our commitment to promoting the good. I argue that harm is precisely this sort of constraint generating factor. While some support absolute constraints I take a more moderate view according to which they are subject to infringement or overriding. On this latter view, for example, one might recognize a general constraint against, say, doing harm, with the understanding that in some instances the balance of intrinsic good that can realized by infringing said constraint is so significant that we are permitted or even obliged to go ahead and allow or even do the harm for the sake of the benefit. How such considerations are made is the business of a threshold, which I merely introduce before moving to a discussion of guilt and innocence, which influence how thresholds might be set (3.7).
After a brief summary of section three (3.8) I then turn my attention, in section four, to formulating, through applied ethics, a set of interaction principles to guide where and why a threshold might be set for infringing constraints on harm relative to hunting. I discuss the view that subjects-of-a-life (e.g., the vast majority of hunted animals) possess a distinct kind of value, inherent value (4.1) from which follows a right to respectful treatment (4.2), including, specifically, a (non-absolute) right not to be harmed (4.3). Because this right is non-absolute I then focus on the matter of establishing principled and specific thresholds for infringing the hunted's right not to be harmed (again relying on applied ethics). This discussion has to do with two specific exceptions for the constraint in question. In cases where we have no choice but to harm, that is, prevention cases (4.4) and where the harms from which we must choose are comparable (for those subject to the harm) what we ought to do is minimize the times we have to carry-out such harm. This is what is referred to as the “minimize overriding principle” or miniride principle (4.5). Relative to hunting its application is infinitesimal because it requires a condition of comparable harm, which is virtually never the case in modern hunting. More salient is the worse-off principle (4.6), according to which, in cases where we have no choice but to harm and where the harms from which we must choose are not comparable what we ought to do is choose the lesser harm, regardless of how many times we have to choose it. In the very rare instance that modern hunters face a genuine prevention case it is far more probable that the harms from which they must choose will not be comparable, thus the worse-off principle has a far broader application than the miniride principle. The worse-off principle substantiates the main thrust of my narrower thesis (i.e., the hunt is justified only to the extent that the hunters’ dependents would be worse-off for having not
hunted than the dependents of the hunted would be for having been hunted). Each of these two thresholds (i.e., the miniride and worse-off principles) is predicated on two conditions: that the agent is acting in a genuine prevention case and that the agent is presumed innocent. Unfortunately for most modern hunters it is clear that neither of these conditions is met. As I argue (4.8), modern hunters are not innocent in the relevant sense because they are not operating in genuine prevention cases. Rather, they are choosing harm as an option. Despite the value of liberty, and the fact that the rights view on which I rely upon for the miniride and worse-off principles also substantiates a liberty principle, according to which any innocent individual has the right to act to avoid being made worse-off even if doing so harms other innocents, it is clear that such an option to harm is quite weak and limited and is thus incapable of justifying the relatively extreme harms of the hunt (4.8). In summarizing section four (4.9) I restate my thesis, having substantiated my position in the preceding sections.

Finally, in closing, I consider two important objections that are likely to follow given the conclusions drawn from my thesis. The first (5.1) has to do with the instrumental goods of hunting that, per my arguments, ought to be foregone; and the second (5.2) has to do with “cultural warfare” and the question of prohibition. I reject the former objection because appeals to instrumental value are, in themselves, generally insignificant in normative ethics. As I have made clear, instrumental values matter only to the extent that they contribute to intrinsic values. The latter objection has to do with the possibility that my conclusions may support a legal prohibition of hunting and that in light of this, they amount to an undue “cultural warfare” on those cultures whose identity politics rely, more or less, on hunting. My response to this objection is two-fold. First, I
am not advocating prohibition, and in that sense cannot be rightly accused waging such cultural warfare; second, and more importantly, I reply by pointing out that such an appeal reduces to cultural relativism, which is, I argue, and unacceptable normative position. I end with some brief closing remarks (5.3).
2. Goodness of outcomes

2.1. Instrumental and intrinsic goods

One widely accepted factor for consideration in crafting a normative theory of hunting (or of anything else for that matter) involves the goodness of outcomes. Generally we might accept a statement like, “all other things being equal, we should promote the goodness of outcomes.” In this context the good is thought of quite broadly. We select the act that best promotes the good considering present, future, and where applicable, past results. We should consider the entire upshot of the result (i.e., in the broadest sense, everything that happens as a result). At the same time, the good is also considered more narrowly than is typical. Specifically, we should not give the same weight to instrumental goods as we do to intrinsic goods. In fact, because instrumental goods are dependent upon intrinsic goods for their value, we should not give them any weight at all, provided the intrinsic goods that they promote are fully accounted for.

Intrinsic goods are valuable in themselves, not merely as means to something else, as is true of instrumental goods. Pleasure, for example, is often thought to be intrinsically valuable. We think of pleasure as being valuable in itself, not solely because of what else it might get for us. Something that is merely an instrumental good, on the other hand, is not necessarily valuable in itself, but (usually) merely as a means to something else that is valuable. Money, for instance, is not of intrinsic value; rather, it is only of value in virtue of what we can get with it. Thus money, like other objects of instrumental value, can be
reduced to whatever object of intrinsic value they can obtain for us. In a moral
discussion, something of instrumental value is needlessly complex, containing as it does
an additional layer (metaphorically); what we are interested in, because it is ultimately
what we are after, is intrinsic value. So by saying, “we should promote the good,” I mean
to say we should promote the intrinsic good in its entire upshot (i.e., considering all those
affected by the good, directly and indirectly). This is not to say that instrumental goods
do not matter; they do, but only insofar as they can promote intrinsic goods. Thus in a
normative theory our concern is with intrinsic goods.

The discussion of goods, instrumental and intrinsic, leads to an obvious question.
What constitutes the good? For the moment I will leave instrumental goods to the side
and instead ask the following question. What is intrinsically valuable? There is nothing
approaching agreement on this question. Answers, varied as they may be, hang upon the
various factors that are taken into account while considering the good (i.e., the subfactors
of the good). In what immediately follows (2.2) I discuss potential subfactors of the good
(i.e., factors that constitute intrinsic value), particularly the subfactors least likely to draw
criticism. In other words, what follows is a brief discussion of the most universally
acceptable subfactors of the good.

2.2. Subfactors of intrinsic good

2.2.1. Well-being, including pleasure and pain, and welfare interests

Well-being, for example, is usually considered a subfactor of the good. A state of
affairs is better when, other things being equal, one or more individuals in it is better off
(i.e., has a higher level of well-being). What it means to be better off, or worse off, will

depend on which theory of well-being is correct. Mental state theories hold that one’s mental state (e.g., happy, unhappy) alone constitutes well-being. One’s internal perceptions of their experiences constitute their well-being. If I am happy, then I am well, and vice versa, along a continuum. The sorts of experiences that make me happy, on this view, may be subject to preference. If I am happy, regardless of why I am happy, then all is well, and vice versa. A particular variety of such a mental state theory (one that is not subjective) is welfare hedonism, which posits pleasure and pain to be the lone constituents of well-being. Pleasure contributes to happiness and pain its opposite and each are understood in quantitative or qualitative terms, or both (more on the importance of pleasure and pain in just a moment). While one’s mental state is undoubtedly a relevant feature of their well-being mental state theories, including welfare hedonism, hold that one’s mental state alone constitutes well-being. This claim is much more controversial. Cases of deception can illustrate this point. A person who is happy only because of deception hardly seems to enjoy a high level of well-being. The happily deceived are truly happy but if we are inclined to think that they could be better off (i.e., that their well-being could be improved) then perhaps there is more to well-being than one’s mental state alone. They would seem to be better off if their happiness were not the result of deception. If their preferences were actually satisfied and they were happy as a result, then they would be better off. According to such a preference theory one’s well-being consists in having their preferences satisfied. It is not enough that I think that I am well-off, for instance, but better that I am actually well-off, which is a preference of mine. Of course, not all of my preferences contribute to my well-being, which is why

24 Ibid., 29-41.
preference theorists sometimes impose restrictions on what sorts of preferences count in
determining well-being. For example, I may prefer to take harmful drugs that will reduce
my well-being. In light of considerations such as this narrower preference theorists (e.g.,
restricted ideal preference theorists) limit their concept of well-being to the sorts of
preferences that are free of ignorance, immaturity, bias, and the like. For this narrower
group of theorists well-being consists in having one’s (restricted ideal) preferences
satisfied. Yet another view of well-being emerges in relation to such preference theories.
It may be that the restricted ideal preference theorist has, in the process of removing
ignorance and prejudice (et cetera), identified objective goods and that these goods are
worth having regardless of one’s preferences. In other words, it is not that we prefer and
get these goods that makes us well-off, but rather it is these goods per se that makes us well-off, irrespective of our preferences. Having objective goods makes us better-off,
even if we prefer not to have them. Of course, this view also seems a bit unsavory in that
it suggests that we are better-off even if our lives contain objective goods that we would prefer not to have (i.e., that we are unhappy to have).25

Obviously pleasure and pain play an important role regardless of which concept
of well-being turns out to be the best. None of the concepts of well-being just discussed
would deny that pleasure contributes to the well-being while pain detracts from it (special cases aside). Thus pleasure and pain clearly stand out as subfactors of well-being
regardless of which concept turns out to be right. These two subfactors are also very
important relative to the task at hand (i.e., a theory of hunting) because each is intimately

25 My review of well-being (i.e., in its various theorizations) comes from Kagan,
Normative Ethics, 29-41.
involved in the subject. As I discuss momentarily, many of the instrumental goods of hunting are cashed-out in terms of the pleasure that they bring to hunters; and conversely, much (though certainly not all) of the controversy over hunting centers on the pain that it entails for the hunted. Moving forward it is important to bear in mind that the considerations of pleasure and pain ahead ultimately appeal to well-being and its role as a subfactor of intrinsic good.

Interests are also important to well-being, particularly what might be called “fundamental interests” or “welfare interests.” Speaking of human interests specifically, Joel Feinberg says:

In this category are the interests in the continuance for a foreseeable interval of one’s life, and the interests in one’s own physical health and vigor, the integrity and normal functioning of one’s body, the absence of absorbing pain and suffering or grotesque disfigurement, minimal intellectual acuity, emotional stability, the absence of groundless anxieties and resentments, the capacity to engage normally in social intercourse and to enjoy and maintain friendships, at least minimal income and financial security, a tolerable social and physical environment, and a certain amount of freedom from interference and coercion. These are interests in conditions that are generalized means to a great variety of possible goals and whose joint realization, in the absence of very special circumstances, is necessary for the achievement of more ultimate aims. In one way, then, they are the very most important interests a person has, and cry out for protection, for without their fulfillment, a person is lost…when they are blocked or damage, a person is very seriously harmed.

Though Feinberg is not willing to grant that animals have ‘more ultimate aims’ he explicitly states what should be rather apparent: many animals (certainly those in the purview of this study) possess the majority of these sorts of welfare interests.

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27 Ibid., 37.
Humphreys takes the same position, though she does not rely on Feinberg (at least not explicitly), when she argues that game birds have an interests in (at least) continued existence and freedom from suffering.\textsuperscript{29} Because these sorts of interests are prerequisite to the pursuit of more ultimate aims Feinberg rightly points out that an outcome that detracts from one’s welfare interests is a “most serious” harm (I have much more to say about this in the next section (3), which is dedicated to harm) and thus we can rightly anticipate that an outcome in which those affected have their welfare interests foiled is a detraction, rather than a contribution, to the goodness of the outcome.\textsuperscript{30}

The concepts of well-being discussed above, very roughly, are the typical theories of well-being. Sometimes they coincide, other times they conflict, but the point is that well-being is clearly a subfactor of the good, regardless of whatever particular theory of well-being one adopts, and that pleasure and pain are each vitally important subfactors of any concept of well-being, as are welfare interests. At least two other subfactors stand out as particularly relevant in a discussion of hunting.

\textbf{2.2.2. The total view}

The second has to do with how much a given outcome contributes to well-being. Generally, outcomes that maximize the contribution to well-being are preferable. As Shelly Kagan writes, “how good an outcome is depends on the total amount of well-being in that outcome… the greater the total amount of well-being, the better the

\textsuperscript{28} Ibid., 58.


\textsuperscript{30} Feinberg, \textit{Harm to Others}, 38.
outcome,” and he calls this “the total view.” The more we can do to make ourselves and others well-off, the better. This is a relatively uncontroversial subfactor of the good but I must raise one quick reminder, which is subject to some controversy. The reminder, which should be pretty predictable given its relevance to this work, is that it is well-being per se that we are to maximize on the total view (i.e., regardless of whose well-being it is). In Kagan’s words again, “it seems possible…that our inclination to count the well-being of animals for less than that of humans is instead simply a matter of prejudice or confusion…perhaps…unit for unit, the well-being of animals should count just as much as the well-being of people.” To the extent that we can safely assume that animals have a well-being, which in the context of this work is a certainty, I take the position that well-being counts equally, regardless of its bearer.

There are difficulties for the total view. For instance, proponents of egalitarianism argue that an outcome can be better if it contains an even distribution of well-being, even if this sometimes results in a lesser total balance of well-being. To illustrate this point, imagine scenario A where one person has 600 units of well-being and another nine people have 50 units each ($\sum 1,050$) in comparison to alternative B where all ten people have 100 units each ($\sum 1,000$). If one prefers egalitarianism then they are likely to conclude that the alternative is the better outcome because what it gains in equality exceeds what it loses in total well-being (according to intuition, I guess).

32 Ibid., 47.
33 Ibid. I support this claim in greater detail in sections 3.1 – 3.2, and 4.1.
34 Ibid., 52.
Of course, a committed egalitarian must wrestle with the notoriously tough business of line-drawing as well. How much loss in total well-being can be offset by gains in equality; and how much equality must be gained? Should we make large sacrifices in total well-being for small gains in equality? Questions and concerns like these quickly complicate one’s decision between egalitarianism and welfarism (i.e., the idea that the total view is all that matters in determining the goodness of outcomes) and they can also quickly sidetrack the current project. Rather than flesh these issues out my point here is to take the relatively uncontroversial position that maximizing the total contribution to well-being makes a given outcome better. The point of introducing egalitarianism is simply to acknowledge what little controversy clouds the total view. I am intuitively inclined to the egalitarian position but getting my hands dirty in the line-drawing mess is enough dis-incentive to limit my commitments to the total view and besides, the sorts of distributive issues that fuel the egalitarian view do not seem especially pertinent in hunting. If they are a concern at all it would be with regard to the distribution of resources among hunters so that they may pursue the various goods of the hunt; but these types of considerations (i.e., how to ideally distribute hunting resources) have very little to do with the driving questions of this work, which are committed to the moral appropriateness of hunting per se. For these reasons I assume only the weaker view that that total view (in general) is a subfactor of good.

2.2.3. Fairness (or formal justice), including culpability and desert

Fairness is the final subfactor of the good that I consider here. The idea of fairness is that the treatment one receives should reflect one’s moral status and desert. Sometimes this is referred to as the formal principle of justice whereby one’s treatment is in
accordance with one’s moral status. With respect to the goodness of outcomes, fairness is
to be preferred over unfairness, where the former involves, again, treating individuals in
accordance with their moral status and desert, and the latter involves an outcome where
“the treatment received by the various individuals concerned fails to reflect the presence
of absence of morally relevant differences between them.”

As I make clear in the coming discussion of the subject-of-a-life criterion (3.1 and
4.1, most prominently) ‘absence’ is an important clause in this description of unfairness.
Without getting too far ahead of myself, a part of what the subject-of-a-life criterion
demonstrates is the absence of morally relevant differences between human moral
patients and nonhuman moral patients, including the hunted. If it turns out that hunters
cannot identify a relevant moral difference between these two groups (i.e., if, in fact,
there is no morally relevant distinction between human and nonhuman moral patients, as
it pertains to hunting) then the fact that many of us approve of hunting nonhuman moral
patients, but not of hunting human moral patients will count as an unfair outcome, and
thus a detraction from the goodness of outcomes involved in hunting.

Also important in considerations fairness are culpability and desert. In some
instances the subfactors of the good clearly interact. For example, while we may make a
general commitment to the total view we also often recognize special cases where it may
not be best, overall, if we promote the outcome with the greatest total well-being
(egalitarians certainly believe that this can be true, as my earlier example illustrates). If
an agent is culpable for some evil we might think it best if that agent’s well-being is not
promoted. Perhaps it would be best, all things considered, if the evil among us are not

35 Ibid., 54.
well-off. Perhaps, because they are evil, they *deserve* to suffer (this is generally called retributivism) or are at least subject to some sort of “culpability discount rate” whereby we “discount” (because of their culpability) the importance of their well-being in our considerations of what ought to be done. Of course there are difficulties with retributivism and culpability discount rates, but for this work I will assume a “general desert thesis” that accounts for culpability and desert by stipulating that, all things considered, an outcome is better if all of the effected subjects get what they deserve. Or, what is the same thing, if the outcome is fair.

2.3. A brief qualification

Well-being, the total view, and fairness are each important subfactors of the good (among many potential subfactors) in a discussion of hunting. Having introduced the goodness of outcomes as the first relevant factor for consideration in a theory of hunting and having mapped at least a rough account of intrinsic good and what constitutes it I would now like to consider the following question, what good is there in hunting?

While answering this question (2.4 – 2.10) I focus almost exclusively on the potential goods of hunting, my discussion of pain (2.10) being the exception. In all cases the most probable argument is that hunting reduces to an instrumental means to pleasure; which is to say that the goods that I am about to discuss are “cashed-out” in terms of the intrinsically valuable pleasure that results from them. Of course, that something is pleasurable does not in and of itself make that thing good, all things considered. As I just discussed (2.2) there are other subfactors that contribute to intrinsic goodness and

36 Ibid., 56.
37 Ibid., 57.
sometimes they conflict with more hedonistic theories of intrinsic good (i.e., the idea that
pleasure and pain are the only thing that matters). For example, it may be that the pursuit
of pleasure comes at a cost to fairness and the total view. But because I want this project
to begin with as favorable a view of hunting as possible I limit potential objections to a
few brief comments while transitioning sections. These critical comments highlight
reasonable doubts about the claims that follow regarding potential goods of hunting.
Rather than follow each reasonable doubt to its conclusion, which can be quite arduous
and time-consuming, I let reasonable doubt suffice throughout this section (2) and spend
valuable time and effort detailing more serious criticisms of hunting in the following
section (3). To foreshadow just a bit, there are serious doubts about whether the goods
which I am about to discuss are, in fact, goods at all; and other critics of hunting have
highlighted the reasons for these doubts (I discuss their work in the coming sections). My
work is broader in that it includes considerations of constrains (on promoting the good)
but it is worth pointing out here that because of these doubts, arguments in favor of
hunting may fail on consequences alone (i.e., without resorting to constraints). That being
said, and as becomes apparent in the coming sections, I assume that there are plausible
arguments in favor of hunting if one limits their consideration to consequences alone and
stipulates that only the most favorable forms of hunting promote good outcomes.

2.4. Food procurement

A plausible place to look for good in the hunt is in the food that it produces. Many
hunters eat the animals that they kill. In fact, this is a common dictum among hunter’s
codes of ethics.\(^{38}\) The idea is that the ethical hunter will “harvest” the game, where

harvest is typically meant to convey the intent to make full use of the animals’ body and where eating the animal is generally the plainest means to do so. Food, in this case meat, is good to the extent that it satisfies many of one’s welfare interests. It helps sustain one’s life, health, vigor, and bodily integrity (assuming it is not eaten excessively or prepared in an especially unhealthy way), and in turn helps make possible the pursuit of higher aims, including the pursuit of preferences, including one’s preference for tasty meat which may contribute to one’s pleasurable experiences. Thus the two areas where hunted meat immediately stands out as a contribution to the good is in its ability to satisfy welfare interests (for the eaters, not the eaten, of whom I speak shortly) and provide a pleasurable culinary experience for those so inclined. As I said just a moment ago, the more prominent of these two sources of good is the potential for hunted meat to produce pleasurable outcomes for whoever eats it rather than for the potential for hunted meat to satisfy one’s welfare interests. The source of pleasurable good is more prominent for at least one simple reason. As Charles List makes very clear, most modern American hunters do not hunt to satisfy welfare interests, quite the reverse; most hunt once their basic welfare interests are already satisfied.39 The choice to eat the hunted is thus a matter of preference, which may be credited to a sense of obligation (e.g., codes of ethics), but may also be plausibly attributed to the simple enjoyment of hunted-meat.

Relative to other subfactors of the good, it is not so clear that hunted meat is a contributor to the good. On the total view, for instance, we have to consider the gain for the eater (the hunter) against the loss for the eaten (the hunted). While the hunter’s

welfare interest in sustenance in satisfied, the very existence, and thereby every interest (welfare or otherwise) of the hunted is lost. We must also consider any and all pain involved in killing the animal, which in this case is a detraction from the well-being of the animal. The relationship between the pain caused by hunting and the importance of the total view is more complex. If, for instance, a hunter is taking his or her meat from hunting wild animals, and if this source of meat displaces other, much more painful means of meat procurement, then perhaps hunting is an overall contribution to the total view. That is, if hunters are responsible for less pain because they procure meat by hunting, rather than, say, buying meat that is produced in a factory-farm, then they have chosen the less among two painful options for meat procurement. This is roughly why Donald Bruckner argues that hunted meat is morally preferable to factory-farmed meat.\(^{40}\) Of course, there are other options still, including options that involve neither the pains involved with hunting nor factory-farming. Moral agents (e.g., human hunters) can utilize “humane” meat sources that are relatively more successful at minimizing the pain involved with rearing and slaughtering animals or they can choose to avoid meat consumption all together and be that much more successful at avoiding these painful outcomes, which detract from the total view. Thus while it is clear that hunted meat satisfies the welfare interests of the hunter (and his or her dependents) and, as a matter of preference, may be quite a pleasurable culinary experience, there is still some reasonable doubt as to whether hunted meat succeeds at promoting intrinsic good or at least maximizing it. On the most favorable view of this potential good, hunts that successfully

minimize pain to the hunted, result in meat procurement while simultaneously displacing other, more painful means of obtaining meat, and where the enjoyment of said meat results in pleasurable experiences for its consumers we can reasonably assume that it contributes to the goodness of outcomes.

2.5. Wildlife management

Another potential good of the hunt concerns the overall health of biotic communities. Ecosystems depend, in part, on a balance of production and consumption. Herbivores need enough vegetation to sustain themselves and carnivores need sufficient herbivores (for example) in a like manner. If any link within a particular food chain becomes unbalanced the entire segment can be impacted. Take the soil-oak-deer-Indian (Native American) chain, for example.41 Suppose some parasite decimates oak populations. As a result we might expect corresponding changes to the soil, which is now flooded with sunlight for lack of oak shade. Or declines in deer populations, now deprived of a principle food source, which might in turn impact the viability of Native hunters now much less likely to prey upon deer; or some combination of these consequences. Thus balance, it seems, plays in important part in the overall health of environments. Any imbalance represents a potential threat. This much is fairly uncontroversial, so much so that one might even refer to such balance as “a classical ‘law’ of ecology.”42


These sorts of conditions ground the potential good that hunting represents as a wildlife management tool. The clearest example of this concerns deer populations, specifically, the predator-prey relationships of deer. The former have largely been decimated, be they Native Americans, wolves, wildcats, bears, etc. These predators are, or were, important links in many food chains. In an unbalanced state, deer populations might go relatively unchecked. If we stick to the particular chain just referenced the impact of this imbalance should be fairly predictable. Too few predators result in too many deer, which might then decimate oak, with subsequent impact on soils. If soils can no longer sustain oak, and oak can no longer sustain deer, and deer can no longer sustain predators like wolves, wildcats, and bears then the result is, potentially, a decimated biotic community. Other negative consequences might follow as well. Such an abundance of deer, in combination with urban sprawl, can create a dangerous environment for all concerned parties. Interstate highways are frequently littered with one consequence of this cohabitation (i.e., dead deer). Suburban gardens are sometimes ravaged by hungry deer, as are croplands, at potentially high financial cost to farmers. Imbalance in this particular chain can also contribute to the spread of chronic wasting disease, a fatal condition among deer (and other species), the spread of which can be exacerbated by high population concentrations. Such diseases have the potential to contribute to the decline in biodiversity instigated by the initial predator-prey imbalance.  

43 Chronic Wasting Disease is “a contagious neurological disease affecting deer, elk and moose. It causes a characteristic spongy degeneration of the brains of infected animals resulting in emaciation, abnormal behavior, loss of bodily functions and death.” See Chronic Wasting Disease Alliance, “What is Chronic Wasting Disease?” Chronic Wasting Disease Alliance, http://www.cwd-info.org/index.php/fuseaction/about.faqDetail/ID/c683b1653b9e54bbf69e2cd62f71ce54 (accessed December 31, 2009).
The good that hunting represents has to do with the potential for human hunters to act as surrogates for natural predators. The idea is that what was once done by nonhuman predators like the carnivores already referenced is now handled, to the best of their ability, by human hunters. They fill the void left by wolves, wildcats, and bears and function as a surrogate predator working towards multiple ends, including the end of correcting any imbalance in the biotic community. Thus to say that a hunter is a surrogate predator is to say that they produce a particular good to the extent that they operate as wildlife managers working towards the preservation of environmental balance which is widely considered, from an environmental perspective, to be a good outcome. What makes this sort of outcome a contribution to the good is its ability to promote the total view. Balanced ecosystems are ideal with respect to promoting the highest quantity of well-being, according to this “law” of ecology. It is also worth pointing out that pleasure, again, is an important consideration here. As I discuss in much more detail momentarily (2.9. Hunting as a “form of happiness” and a game) hunting is itself a pleasurable experience for most hunters and thus again much of the good of hunting as a tool for wildlife management is cashed-out in terms of the pleasure that it gives to hunters.

The possibility of this particular good is not especially controversial. With respect to well-being, we should expect little potential for objection. Any plausible theory of well-being will result in there being instrumental value in maintaining the balance of nature in most cases (i.e., instrumental in that it leads to a contribution to the total view). The varied theories of well-being would likely agree (more or less) that a balanced ecosystem is a good thing. Hunting, in some instances, is a means for bringing about this state of affairs and is thus instrumentally valuable in this respect.
Once again, however, there is some cause for concern regarding these conclusions. For example, if it turns out that the initial imbalance that necessitates wildlife management is the result of poor initial management (as would be the case, for example, with over-abundant deer populations that have gone unchecked because many of their natural predators have been excessively hunted), then culpability and desert must also be considered. In a scenario like this hunters have essentially created a self-fulfilling prophecy. They have necessitated wildlife management by mismanaging wildlife. This is one of the most damning criticisms of the philosophy of “maximum sustainable yield” (MSY), the point of which is to sustain predator-prey imbalance in order to facilitate hunting. A critic might ask, how can a proponent of hunting claim that wildlife management contributes to good outcomes when the very purpose of the philosophy of MSY is to maintain less-than-optimal outcomes (balance being the optimal outcome, and MSY being the deliberate maintenance of imbalance)? And furthermore, if the mismanagement of wildlife is what necessitates “culling” in the first place then aren’t hunters and wildlife managers (more generally) culpable for this less-than-optimal outcome, and if so isn’t it an affront to fairness that they are rewarded with the pleasure of managing their own mismanagement? Additionally, one might raise concerns over alternative methods of managing wildlife. If, for example, efforts to painlessly manage wildlife prove successful, then defenders of hunting (as a wildlife management tool) would once again be choosing the more, rather than the less, painful option; which cannot be consistent with the total views’ commitment to maximizing the good or, in this case, minimizing evil. Given the choice between painful and painless wildlife management it is obviously the latter that is preferable, given the total view.
These are threatening problems for the status of wildlife management as a contributor to the good. Still, it seems possible that they can be addressed or refuted. For example, while previous mismanagement may have created a self-fulfilling prophecy the fact still remains that there are serious imbalances in many of our ecosystems that need our attention and efforts. Previous mistakes need not necessarily negate current and future efforts. Culpability and fairness may warrant consideration, but it may well be that even after accounting for them, hunters as wildlife managers, are still making an overall contribution to the total view, and to intrinsic good more generally. Thus to the extent that hunters as wildlife managers contribute to the total view I will assume that hunting, in this vein, is an instrumental means to the intrinsic good of wildlife management (which is itself good to the extent that it promotes the total view and to the extent that hunters enjoy said management). In other words, I will assume the possibility that hunting, as a wildlife management tool, is intrinsically good because it contributes to the total view and because hunters enjoy it as such.

2.6. Conservation

A similar potential good concerns the conservation efforts of hunters. Hunters represent “a major political pressure group working for the benefit of wildlife…both game and non-game animals by helping to preserve the habitat of both.”44 This is a reference to large tax revenues derived from licensure fees that are earmarked for the promotion of wildlife habitat as well as conventional philanthropic contributions made by

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44 Robert Loftin, “The Morality of Hunting,” *Environmental Ethics* 6 (1984): 241-242 argues that unlike commercial hunters, sport hunter provide an overall benefit for the habitats in which they hunt, whereas commercial hunters (as he characterizes them) are fundamentally exploitative and negatively impact the land.
hunters.\textsuperscript{45} In other words, hunters pay, directly and indirectly, for the environments in which they hunt and these environments benefit not only the hunted but also all other species that cohabit the environment. Anyone familiar with conservation organizations like Defenders of Wildlife, the Izaak Walton League, the National Audubon Society, the National Wildlife Federation, Sierra Club, the U.S. Fish and Wildlife Service, the World Wildlife Fund; or similar conservations groups more closely allied with hunters, like Ducks Unlimited, Pheasants Forever, Quail Unlimited, the Rocky Mountain Elk Foundation, Ruffed Grouse Society, Safari Club International, and the Wild Turkey Association, and many other similar organizations will likely recognize this sort of practice.\textsuperscript{46} These are groups that contribute millions of dollars towards the construction and maintenance of the wildlife habitats, many of which hunters frequent. Collectively, North American hunters, through taxation, licensure fees, waterfowl stamps and the like, combined with private donations, contribute more than one billion dollars annually to conservation initiatives in the United States.\textsuperscript{47} Such substantial and holistic contributions are given, in part, on the condition that these habitats lend themselves to hunters. Generally speaking, hunters expect their conservation efforts to work towards the continuation and expansion of hunting opportunities. Thus, according to Robert Loftin, “we can regard the game animals that fall to the hunter’s gun as martyrs,” having been sacrificed in the name of wildlife management and the broader conservation efforts of

\textsuperscript{45} For a summary of these contributions see Anthony P. Mauro Sr., \textit{The New Age Hunter} (New York: iUniverse, Inc., 2004), 55-66.

\textsuperscript{46} Mauro, \textit{The New Age Hunter}, 60.

\textsuperscript{47} Ibid., 65.
hunters. 48 These contributions and efforts clearly represent a commitment on the behalf of hunters to producing better outcomes, holistically speaking, for the environments in which they hunt. Thus the conservation efforts of hunters represent another instrumental good of the hunt to the extent that they contribute to the total view and help satisfy the welfare interests of those beings who live in the habitats that hunter’s contributions sustain.

However, like some other instrumental goods, this particular good is subject to some criticism. Later in this work I make a distinction between intended outcomes and outcomes that are mere side-effects of our actions (3.4). The outcomes in question here (i.e., the conservation efforts of hunters) are clearly distinguishable as mere side-effects. The goods that come from these efforts are in no way strictly dependent upon the hunt itself. That is, they are not actually outcomes of the hunt, but mere side-effects of it. We can see this most clearly by considering the fact that there are conservation organizations that work towards the same ends, yet have nothing whatsoever to do with hunting. There is also an apparent contradiction in the particular difficulty at the culminating moment of the hunt just before [the hunter] shoots…because, at this point, his or her financial contribution to conservation has already been made, no further benefit will come from continuing the hunt to its fatal conclusion. The kill is in this sense an unnecessary harm for which the hunter is personally responsible. 49


Of course it could be that the financial contribution would not have been made without the expectation that it would make the hunt possible. However, such a response has a particularly unsavory implication in that “by saying in effect that ‘we will conserve animals only if we can enjoy tracking and shooting them,’ hunters are precisely denying the value of animal lives independent of their utility as moving targets,” which puts them (i.e., hunters) at odds with the very ethics they themselves profess.  

For generosity sake, let us assume that hunters are unparalleled in their capacity as “a major political pressure group working for the benefit of wildlife,” and that other like-minded organizations cannot exceed the benefits that they produce towards conservation, at least, not without also embracing hunting. Even so, the fact remains that these outcomes, (generously) conceding that they may be dependent upon hunting, are not outcomes of hunting, but mere side-effects of it. This distinguishes them from some of the other goods in consideration here, which are instrumental goods of hunting. Thus to say that conservation is an instrumental good of hunting is a bit misleading. Rather, conservation is a mere side-effect of hunting, albeit an intentional and beneficial one. With these qualifications in mind I will assume that hunting, as a conservation mechanism, is good to the extent that it promotes the welfare interests of some animals (i.e., the ones that are not shot) and so far as hunters, again, enjoy hunting and contributing to conservation. It may also be good for what it contributes to the total view, but I will not assume this point because of the empirical difficulty of demonstrating that hunters, as conservationists, contribute rather than detract from the total view.

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2.7. Heurism

Hunting can also produce goods as a heuristic device. There are many lessons that the hunt has the potential to reveal for self-education. In practice the hunt requires an understanding of the functioning of natural environments. It has the potential to remind us of our intimate dependence upon nature. As Ortega y Gasset eloquently tells us, the hunt requires “a ‘universal’ attention, which does not inscribe itself on any point and tries to be on all points. There is a magnificent term for this, one that still conserves all its zest of vivacity and imminence: alertness. The hunter is the alert man.” And Ann Causey follows: “It is all too easy to forget that none of us is any farther from nature than our next meal. Hunting can renew this awareness and help us retain perspective and humility regarding our place and importance in the living world.” Hunters, as a matter of practice, educate themselves on as many details of their respective environments as possible; their success, as hunters, depends upon it.

This is so not only with respect to nature generally but in particular with respect to the hunted. In practice a hunter may develop what John Pauley calls a “relational view” of animals through which they come to know the them not only as they exist in nature but at their full capacities, which the hunt often provokes. “A hunter pressures an animal to reveal its power, strength, and grace, as it calls up all of its resources to avoid

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52 By “heurism” I mean enabling a person to discover or learn something for themselves.
53 Ortega y Gasset, Meditations on Hunting, 138.
55 Ortega y Gasset, Meditations on Hunting, 134-140.
or elude the hunter,” he says. This opposed to what Pauley calls an “artifact view” of animals, by which many of us come to know their existential nature only through our own devices. For example, we know them as pets, farm animals, caricatures, museum artifacts, zoo exhibits, and so forth. This is arguably an impoverished view of animal existence and an inferior perspective, relative to the relational view where we have a richer epistemic sense of animal existence. The rich engagement that hunting requires “yields existential knowledge” not merely that animals exist in nature, but how they exist in nature; and from this an “authentic humility follows,” whereby hunters come to better know their own existential limits. Such a natural education, an education in awareness, can be considered a good outcome of the hunt in the sense that it is an instrumentally valuable means for the hunter to access opportunities for self-affirmation (i.e., pushing the limits of one’s self in order to (re)discover who we are individually and in relation to others (including the hunted, in this case)). This is, like many other goods of the hunt, valuable to the extent that it constitutes a pleasurable experience for hunters, who presumably enjoy the sorts of intimate relationships with nature that hunting can make possible.

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57 Ibid., 238. This statement seems inaccurate given that a distinctive feature of skilled hunting is the element of surprise. If an animal is struck before it is aware of the hunters’ presence, as seems often plausible, then there can be no such pressure to reveal its capacities while avoiding or eluding the hunter.

58 Ibid. 238-239.

59 Ibid., 240-241.

Similarly, the success (and safety) of hunters depends upon an understanding of the tools of their trade. Knowledge of weaponry, including an appreciation for the deadly power of their implement of choice, is a prerequisite. All hunters are, at some point, taught how to use their weapons. This is a basic education, however, and many hunters develop an autodidactic relationship with their weapons, each of which has its own unique features, if not literally, usually figuratively. You will not likely hear a hunter claim, “all guns are the same,” or anything of the sort. Many hunters have a personal relationship with their weapons; a knowledge of each weapon that belies the fact that there are likely many identical copies of the same weapon in existence. Such an extensive and appreciative relationship with weaponry is, as far as weaponry is concerned, a good thing. Better to have knowledge and appreciation of the capacities of such weapons than not if they are in your company, possession, or use. Hunting may oblige hunters to exercise their autodidactic skills relative to their weaponry and in this sense functions as a heuristic device. Such knowledge of weaponry may contribute to better outcomes if it contributes to safety among hunters and it certainly seems possible that they simply enjoy weapons as such.

The enigmatic nature of death, specifically its place in the hunt, can also reveal important lessons to the hunter. The successful hunter develops an intimacy with death like few others. This intimacy makes possible a type of “tragic wisdom” by which the hunter comes to know and accept, if not necessarily understand, cycles of life and death.61 This clearly relates to the earlier discussion of meat procurement. There is by far

lesser “emotional distance from the animal deaths caused by food production” for hunters who eat their prey.62 This intimacy may afford tragic wisdom that could potentially carry into the hunters’ ordinary life and make possible a more complete understanding of matters of life and, in particular, death. In this way hunting can be an instrumentally valuable means for obtaining and enhancing tragic wisdom, which arguably contributes to the hunter’s well-being.63

The hunter, who is both educated and self-educated with respect to the alertness that the hunt demands and the importance of knowing and respecting their weaponry, is also in a position to recognize other heuristic lessons. Hunting is one of many practices that demand the exercise of self-reliance. Ralph Waldo Emerson tells us, in *Self-Reliance*: “trust thyself: every heart vibrates to that iron string.”64 Depending on the context, hunters are in as good a position to exercise such trust as anyone. The lone hunter, in particular, has the potential to exhibit this trait to the extreme. Backcountry expeditions and safaris can call upon a hunter’s knowledge and skill-sets in a way that demands absolute trust in oneself. Such self-reliance is, with little controversy, a virtuous trait. It is better to be able to rely upon oneself, should the context demand it, than not. Hunting, as a heuristic device, is an avenue to such an education in self-reliance for hunters and this

62 Ibid., 104. Tantillo argues, 105, that “dining on a plate of rice and beans (or on a store-bought roast), one is unlikely to know intimately the lives that were stolen to produce that meal. To the contrary, a reflective hunter ‘knows well’ the origin of his meal, and the lives sacrificed for his benefit. And I believe such tragic knowledge is a good thing, in an objective sense.”

63 This is Tantillo’s thesis, Ibid.

may count as an instrumental contribution to the goodness of the outcomes of the hunt, again in the sense that it may contribute to the well-being of the hunter.\footnote{Causey, “On the Morality of Hunting,” 338-339, echoes heuristic lessons of “our dependence on natural processes,” and “self-sufficiency,” “awareness,” “perspective and humility,” “temporary relief from the human condition.”}

However, once again, there are good reasons to be cynical about these supposed goods. It is difficult to see, for instance, what any of these heuristic lessons (i.e., the relational view, tragic wisdom, intimacy with our food and weaponry, and self-reliance) contributes to the good apart from hunter’s pleasurable experiences of them. The pleasure that hunters take from these experiences is, in and of itself, a good thing; but it is not at all clear that these heuristic lessons contribute to the total view, or the welfare interest of any concerned party (hunters or the hunted), or fairness. For these reasons I will assume that the heuristic lessons of the hunt are only good to the extent that they produce pleasurable experiences for the hunters who enjoy them.

2.8. Atavism

Another possible good that I consider recurs often in defenses of hunting. The argument here is that hunting may have the capacity to refresh our atavistic selves. Something atavistic refers, relates, or reverts to some earlier rendition of itself; an ancient or ancestral revitalization of some once-had but now-forgotten feature of one’s self. Many hunters profess an innate urge to hunt; an urge that “may be viewed as an original, essential human trait.”\footnote{Ibid., 337.} Some even claim that the suppression of such an urge has deleterious effects on the human psyche.\footnote{Ibid., 337.} Others maintain more moderate views,
including the notion that the hunt provides an escape from “the human condition.”\textsuperscript{68} Such views typically appeal to an anti-modern sentiment or a sort of revolt against the alienation of contemporary, presumably urban, life. Also included in these views, not surprisingly, is the notion that hunting can serve as a preventative or corrective against the feminization (presumably of men) that sometimes accompanies post-industrial life. In brief, the argument is that hunting is a means to escape the sometimes suppressive and often (overly-) sanitized ways of contemporary living. It is a means to get one’s hands dirty, even bloody, for a change; to remind oneself that we are, after all, animals.

The supposed good of this reversion depends upon what ends it serves for the hunter. On the more moderate view the good resides in the simple fact that hunting provides an escape from the oppressive elements of contemporary existence. On the more primitivist view, the view that suppressing the urge to hunt can damage the human psyche, not only does the hunter gain relief from oppression but they also take the natural incentive of satisfaction that comes with quenching an innate urge. Someone keen to defend this position might argue then, that satisfying this innate urge is beneficial to the welfare interests of the hunter, or what seems more likely, that hunters enjoy living atavistically. Just as one is happy to satisfy one’s hunger or sex drive, so too is the hunter happy to satisfy his or her primordial instinct to hunt via the atavistic means that hunting

\textsuperscript{67} Ortega y Gasset, \textit{Meditations on Hunting}, 63.

\textsuperscript{68} The quotation, and discussion thereof, comes from Ortega y Gasset, \textit{Meditations on Hunting}, 219-233. Kheel, “The Killing Game,” provides a succinct critique of this view, 35-36. Ortega y Gasset crosses himself a bit here, arguing in one section that refraining from hunting is a harmful act of unnatural suppression, 63, but also taking the more moderate view that hunting simply provides an escape from modernity, 219-233.
serves. If, then, we have a natural urge to hunt, one particularly good outcome of the hunt is its ability to satisfy said urge, and the pleasurable experiences that follow from this.

This supposed atavistic good is also vulnerable to criticism. There is an obvious objection to this argument and its use to defend hunting. The problem is, of course, that the mere presence of an “innate” urge does nothing to justify our actions; a point which defenders of hunting readily admit. As Jordan Curnutt sharply puts it, “I can here only express skepticism that an atavistic goal represents any more of a moral defense of hunting than such an appeal would represent a moral defense of defecating wherever and whenever I please.” With Curnutt’s point in mind, we still ought to recognize the fact that hunters may enjoy their atavistic experiences, and this enjoyment, in and of itself, certainly counts towards the good. Curnutt’s point is that this enjoyment alone is clearly insufficient justification for hunting (or anything else, for that matter). The pleasure of avatism is a good of hunting but one that is, again, subject to criticism.

2.9. Hunting as a game and a “form of happiness”

A final but very important source of good in hunting has to do with its status as a game and a “form of happiness.” I spend much more time in this section than in the previous sections (2.4 – 2.8) because this is among the most important potential sources

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69 I am being excessively generous to this particular view for the simple fact that it is so seriously and perhaps foolishly entertained by so many proponents of hunting (e.g., Ortega y Gasset, Mauro, to name only two).


72 Curnutt, “How to Argue for and Against Sport Hunting,” fn4, 85.
of good in hunting. As I argue below, games are valued in and of themselves. Unlike the goods discussed above (2.4 – 2.8), which are instrumental, this source of good values hunting in and of itself. For this reason it is probably the strongest case for intrinsic good in hunting. The argument here is that games are, among other things, quite pleasurable, perhaps even so much so that they qualify, as William J. Morgan argues, as final ends.  

In making this argument I first outline what constitutes a game, then I argue that fair chase hunts, in particular, qualify as a game, and finally I highlight the importance of games and their potential as final ends or, as Ortega y Gasset puts it, “a form of happiness.” I also consider several objections throughout this section.

The first step is to outline the best available definition of a game. No one is more apt to carry this load than Bernard Suits, who laconically calls a game a “voluntary attempt to overcome unnecessary obstacles,” or more precisely an attempt to achieve a specific state of affairs [prelusory goal], using only means permitted by rules [lusory means], where the rules prohibit use of more efficient in favour of less efficient means [constitutive rules], and where the rules are accepted just because they make possible such activity [lusory attitude].

An important feature of games, so defined, is their lack of dependence on instrumentality. In fact, the deliberate selection of inefficient means seems to run against the grain of instrumental thinking. Normally when we rule out the most efficient means for pursuing our selected ends it is because there is some attendant side-effect dissuading us, as is the case, for example, when we elect to visit a dentist rather than a guillotine in order to

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74 Ortega y Gasset, Meditation on Hunting, 42.

75 Suits, The Grasshopper, 54-55.
remove a toothache. But in games such practical reasoning is not necessary. We choose the less efficient means not because of some dire consequence of not doing so but simply because there is a rule stipulating that we do, and because doing so is necessary if we want to play the game. This sort of reasoning is what Suits jokingly refers to as the “bureaucratic justification; that is, no justification at all.”76 The explanation for this peculiar decision is the lusory attitude that game players have. With this attitude they accept the constitutive rules just so the game itself can occur. It is the game that they are after, not (necessarily) some end towards which it works. Strictly defined, games have no instrumentality; any end towards which they might work is external. The game player, who has the lusory attitude towards the constitutive rules, which prohibit the most efficient means in favor of the less efficient, chooses to follow these rules because he or she wants to play the game. The game player’s reason(s) for wanting to play, vast and varied as they may be, need not be anything more than affection for the game per se. Hence the game player values the game in and of itself, as an end.

We can even draw upon John Rawls’ Aristotelian Principle for strong reinforcement of this conclusion. According to this principle “human beings enjoy the exercise of their realized capacities (their innate or trained abilities), and this enjoyment increases the more the capacity is realized, or the greater its complexity.”77 Games, as defined here, are paradigm cases. What more can one do to exercise this principle than create artificial problems just for the sake of solving them (i.e., play a game)?


add, before the objection is raised, that none of this is equivalent to denying the possibility of instrumentality in games, which would suggest that it is not solely for the sake of solving problems or playing games that players adopt the lusory attitude. It certainly can be that games, some of them at least, fall into the “finest class” of goods; those that are valuable both in and of themselves and for their consequences (e.g., this is most clearly the case among professional game players, many of whom embrace both the lusory attitude, and the welcomed side-effects). That a game player accepts the constitutive rules just so the game may take place is not equivalent to accepting the constitutive rules only so the game may take place; there may be additional motives (e.g., instrumental motives) as well. Such an admission does no damage to the point being pressed here, which is that for game players’ games are valued in and of themselves. Rather, it simply concedes that they may also be instrumentally valuable; the two sorts of value are not always mutually exclusive.

If games, therefore, are the sort of thing that a person can select as an end for themselves because they enjoy them in and of themselves then we have good reason to ask whether hunting can take the form of a game and if so, under what conditions? I believe that the answer to this question is affirmative and that the necessary conditions for making a game of the hunt can be revealed in the process of substantiating the

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79 Suits describes this relationship, *The Grasshopper*, 131, as follows: “I interpret the phrase ‘A just because R’ to mean…R is always a reason for doing A, and there need be no other reason for doing A. Thus, a player’s acceptance of rules because ‘such acceptance makes possible such activity’ is the only reason he must have in playing a game, but it is not the only reason he may have.”
affirmative response. The strategy for doing so is to consider each of the four elements of a game in detail and in juxtaposition to hunting.

Is there something like a prelusory goal (i.e., a specific achievable state of affairs that exists prior to and independent of the practice) at play in hunting? The answer, clearly, is yes. The state of affairs that all hunters are committed to attempting to bring about is the condition of “dead animal.” This state of affairs is to hunting as ball-in-hole is to golf, or soccer, or basketball, and many other ball games. Dead animals certainly exist both prior to and independent of hunting. It is worth pointing out that this is merely the prelusory goal of a hunter. It is not meant to imply that hunters are solitarily motivated by, or hell-bent on a commitment to bringing about dead animals. Such a view would be a grossly myopic representation of the intentions of most hunters. The prelusory state of affairs “dead animal” is an intention of hunters, not the intention. The first element of a game is met and thus far no conditions seem necessary. All hunters are similarly committed in this regard.

The remaining three elements are not so simple. Because of their inclusive nature I have collapsed the second and third elements (i.e., means and rules, respectively) into one. The details are as follows. For every state of affairs that we may make the prelusory goal of a game exist myriad means for bringing it about. Every game has constitutive rules that “set out all the conditions which must be met in playing the game” and these rules delineate the lusory means (i.e., those allowed) from illusory means (i.e., those disallowed). Furthermore, the constitutive rules invariably have the feature of ruling out the most efficient means (with attendant bureaucratic justification).

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80 Suits, “The Elements of Sport,” 11.
Is this combination of means and rules ever present and functional in hunting? An apparent place to begin is with the rules and regulations of hunting themselves. In the United States these are determined on a state-by-state basis.\(^{81}\) In my home state, for example, the Division of Wildlife publishes these rules annually.\(^{82}\) Included are allowances (i.e., a hunter may), proscriptions (i.e., a hunter may not), and prescriptions (i.e., a hunter must).\(^{83}\) Do these rules and regulations have the effect of proscribing more efficient means in favor of less efficient means, as is the nature of means and rules in games? The answer, in some instances, is yes. Proscriptions, in particular, have the effect of foregoing more efficient means in favor of less efficient means for bringing about the prelusory goal of the hunt. For example, the use of dogs to hunt deer is forbidden, as is the use of a telecommunication device. As is the case in a game, each of these proscriptions has the effect of disallowing more efficient means in favor of less efficient means. Such regulations appear to satisfy the second and third elements of a game in that they function as rules that work to clearly distinguish lusory from illusory means for bringing about the prelusory goal of the hunt.

However, a bit of criticism and foreshadowing is be beneficial here. It seems that the view of hunting regulations just advanced (i.e., as equivalent to means and constitutive rules in games) is vulnerable to some criticism. One objection has to do with a distinction between mere regulations and constitutive rules. The former


\(^{83}\) Ibid., 8-9.
are not rules which *constitute* hunting but rather are laws to regulate it, principally for the purpose of minimizing animal cruelty and to protect public safety. Clearly, hunting can exist in the absence of these regulations, while a [game] cannot exist in the absence of its rules.\(^{84}\)

This argument is both persuasive and detrimental to the claim (on the present grounds) that hunting has the sort of constitutive rules necessary to be considered a game. What it shows is that some forms of hunting, specifically, hunting that goes on in the absence of constitutive rules, which may include hunting that abides by the sort of regulations in consideration here, does not sufficiently qualify as a game because it lacks constitutive rules (i.e., it has mere regulatory rules, which do not define the hunt itself). In other words, the sort of state regulations that I have been discussing, even though they include prescriptions, are not sufficient to constitute the hunt itself. As I discuss in a moment, the effect of this criticism is not to categorically dismiss hunting from consideration as a game but rather, to introduce a narrowing element regarding what kinds of hunting may still qualify.

There are additional objections to the present argument (i.e., the attempt to make a game of hunting) as well, which I delay momentarily because they can be best addressed during the discussion of the fourth element of games (i.e., the lusory attitude). However, there is no point in advancing if we do not first account for the objection just raised. Hunting regulations alone may be insufficient to make a game of hunting but there exists a narrower class of hunting that is not similarly lacking.

\(^{84}\) Cohan, “Is Hunting a Sport?” 307.
Very popular among hunters is what might be called a fair chase ethic. First let me explain what this means. Roughly speaking the idea is to maintain some semblance of balance or fairness in the predator-prey relationship between hunters and the hunted.

Restrains on the hunted (e.g., man-made or natural enclosures such as fences, water, or high snow), the use of motorized vehicles for pursuit, the use of excessive weaponry (e.g., automatic weapons), electronic tracking, baiting, and the like are eschewed in the name of fair chase. Hunters have at their disposal a vast array of machinery capable of generating tremendous inequalities in this regard. With all of the best equipment at work the predator-prey balance can be significantly compromised in favor of the former. Thus fair chase ethics typically resemble the following:

Fair Chase…is the ethical, sportsmanlike, and lawful pursuit and taking of any free-ranging wild, native North American big game animal in a manner that does not give the hunter an improper advantage over such animals. Free-ranging…is any native North American big game animal that is unrestricted within its biological home range, has adequate protective cover, and reasonable opportunity to elude the hunter.

Such an ethic is subject to interpretation and to local application (e.g., what constitutes an “improper advantage” is at the discretion of the hunter), and thus not rigidly defined. The same is true, however, for the constitutive rules of many games. As is the case in many games, there is not necessarily an enforcement mechanism in place for fair chase ethics

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87 Suits, “The Elements of Sport,” 12, points out that we often modify the constitutive rules of game to fit the varied circumstances that game players find themselves in.
(e.g., golf and tennis are two paradigm games which often feature self-regulation of the constitutive rules). That the rules are self-imposed strengthens the notion that they are internal to and constitutive of the game that they intend to make of hunting. No one looks over the fair chase hunter’s shoulder to ensure that they are observing the rules, both written and unwritten, of fair chase (at least not usually). Observation of these rules is often a purely personal matter. As Ortega y Gasset eloquently puts it, hunting involves a complete code of ethics of the most distinguished design; the hunter who accepts the sporting code of ethics keeps his commandments in the greatest solitude, with no witnesses or audience other than the sharp peaks of the mountain, the roaming cloud, the stern oak, the trembling juniper, and the passing animal. In this way hunting resembles the monastic rule and the military order.88

Now, it will always be the case that the hunter holds the advantage – there is an “essential inequality between the prey and the hunter” – but the expressed intent of fair chase is to prevent this inequality from becoming excessive.89

As the weapon became more and more effective, man imposed more and more limitations on himself as the animal’s rival in order to leave it free to practice its wily defenses, in order to avoid making the prey and the hunter excessively unequal, as if passing beyond a certain limit in that relationship might annihilate the essential character of the hunt, transforming it into pure killing and destruction.90

If these counter measures did not exist, if the inferiority of the animal were absolute, the opportunity to put the activities involved in hunting into effect would not have occurred, or, to say it another way, the peculiar fact of the hunt would not exist…man opens this margin to the beast deliberately and of his own free will.91


89 For the quotation see Ortega y Gasset, *Meditations on Hunting*, 61. Ibid., 57-65 for a paradigm example of such a fair chase ethic.

90 Ibid., 59.

91 Ibid., 62-63.
As far as means are concerned, the fair chase ethic deliberately rejects more efficient means in favor of less efficient means for bringing about the prelusory goal of the hunt. Indeed, that is precisely the point. Such an ethic is superfluous in relation to the regulations mandated by the state. Perhaps more importantly, this ethic, though variously defined, can literally constitute the fair chase hunt. For some, a hunt without fair chase is not a hunt at all: “if man did not do this he would not only destroy animals, he would also destroy, coincidentally, the very act of hunting which fascinates him.”92 The fair chase rules represent the deliberate rejection of more efficient means in favor of less efficient, thus satisfying the second and third elements of a game. They play the role of constitutive rules and have the deliberate effect of ruling out more efficient means in favor of less efficient means. This is precisely what is required of a game. The fair chase ethic is constitutive of a particular form of hunting (i.e., fair chase hunting) in a way that mere regulations are not. Fair chase hunting qualifies for the first three conditions of a game. The only remaining element, which further distinguishes regulations from the fair chase ethic, is the lusory attitude.

Again, this attitude involves “the knowing acceptance of constitutive rules just so the activity made possible by such acceptance can occur” (i.e., the bureaucratic justification).93 For example,

Foot racers do not refrain from cutting across the infield because the infield holds dangers for them, as would be the case if, for example, infields were frequently sown with land mines. Cutting across the infield is shunned solely because there is a rule against it. But in ordinary life this is usually – and rightly – regarded as the worst possible kind of justification one could give for avoiding a course of

92 Ibid.

action…in anything but a game the gratuitous introduction of unnecessary obstacles to the achievement of an end is regarded as a decidedly irrational thing to do, where in games it appears to be an absolutely essential thing to do.  

Can this sort of attitude reside among hunters? If we confine our consideration of the constitutive rules and means to the domain of hunting regulations then an affirmative answer may be in doubt. Many such regulations have the sort of rational justifications that we see in ordinary, non-game life. In many cases the rules exist because they are prudential and other-regarding. Hunters may recognize this and accept these limitations for these reasons alone, absent any lusory attitude. For example, a hunter may follow the proscription against using dogs to hunt deer not solely because such an action makes the hunt possible but out of respect for the law or fear of punishment or some similar reason. Absent these limitations, many hunters prefer to use dogs in such a hunt.  

The case of fair chase ethics is different. In opposition to taking a lusory attitude towards fair chase ethics one might pursue the historically savvy argument that such ethics owe their genealogy to a complex set of political motives designed, primarily, to enshrine hunting as an elite reserve and co-opt hunting as an ally of public environmental interest. In other words, fair chase ethics have a covert political motivation and rational justification, disguised as a lusory attitude with a bureaucratic justification. The burden of proof is with history in this case, as many proponents of fair chase ethics readily admit.

94 Ibid., 12; and Suits, *The Grasshopper*, 53.

95 Ortega y Gasset, *Meditations on Hunting*, 86, refers to hunting with dogs as the “most complex and perfect form” of hunting; a sentiment shared by many in hunting communities.
However, this argument shows only that the fair chase ethic may have a rational justification. In no way does it deny the possibility of a bureaucratic justification. Perhaps there are both, but clearly some hunters accept fair chase for no rational reason; clearly some of them accept these limitations just to make a game of fair chase hunting; clearly some of them have the lusory attitude. What else could Ortega y Gasset, who is held up by many (perhaps even most) defenders of hunting, mean when he says that once it is “freed of its obligatory nature, hunting is elevated to the rank of sport,” or when he says that hunting as “sport is an effort made completely freely, for the pure enjoyment of it?”

One other objection regarding the lusory attitude has to do with the attitude of the hunted. It comes from Marti Kheel, who points out a major logical flaw in the notion of sport hunting as a voluntary activity, in that only one of the ‘participants’ has chosen to compete. The hunter selects a ‘wild’ animal as his target in order to create the illusion of freedom, but the animal does not consent to play, or be, his ‘game.’ The experience of the animal is rendered nonexistent or morally irrelevant.

As such, the lusory attitude is only half-present (so to speak), which is insufficient. Not only does the hunted animal appear to lack free engagement in play but it would also be hard to sustain an argument that the animal has anything like the lusory attitude required of a game.

However, this critique wrongly collapses a moral problem with hunting with the definitional question of its game status. The very act of hunting requires at least a partial

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96 Ortega y Gasset, Ibid., 39, would not deny this historical claim; nor would Cohan, “Is Hunting a Sport?” who is to be credited with the very argument being advanced here; nor Luke, “A Critical Analysis of Hunters’ Ethics.”

97 Ortega y Gasset, Meditations on Hunting, 40 and 42, respectively.

objectification of the hunted in order to carry out one of its central, and certainly most controversial features (i.e., the kill). To the extent that the hunter objectifies the hunted in order to carry out this act, and some degree of such objectification is required, then the notion of mutual engagement of the lusory attitude is rendered moot (i.e., with respect to the hunted). What sense does it make to require the mutual engagement of a mere object or to require a lusory attitude of it? We do not ask this of basketballs, hockey pucks, or rooks. Is it so hard to believe that someone who makes a game of killing an animal might also regard the animal as more or less of an object? I do not think so. Of course, the difference between such hunting and the other games that I have just referenced is that the hunted animal is not a mere object. However, this problem can be partitioned from the definitional question of whether or not hunting can be a game. Whether or not something qualifies as a game is independent, from a definitional perspective, from its moral appraisal. One of the more important lessons that we can learn from Suits is that there is nothing paradoxical about taking a game with deadly seriousness.

It is possible to make a game or a sport the over-riding concern of one’s life without falling into some kind of paradox. That extreme dedication to a pursuit should somehow destroy the pursuit would be the real paradox. But that a person will do anything to continue playing a game does not destroy the game, even though it may destroy the person.99

That a hunter “kills in order to have hunted” goes no way towards destroying the game that they have made of it.100 The point that this particular critique alludes to is that objectifying an animal to the extent that you might make a game of killing it is a serious moral problem. What has not been shown is that it is impossible to make a game of it.


100 Ortega y Gasset, Meditations on Hunting, 105.
Nothing in Suits’ definition of a game, which again, is widely regarded as the best available, includes or even hints at a morality clause (for lack of a better term). In fact, there are games, even sports, which involve what can be conservatively called “morally dubious” practices. Robert Simon, for instance, argues that the sport of boxing is immoral, and his argument can be easily applied to many mixed martial arts contests as well, and perhaps even to so-called extreme sports that involve very high risks, which sometimes result in expensive and risky rescue operations (e.g., mountain climbing, spelunking, round-the-world flights and sails, etc). Yet no one (in print and to my knowledge) questions the game or sport status of boxing on the grounds that the sport has, again conservatively, unresolved moral issues. Thus my point is, from a definitional perspective, we can make a game of just about anything (from tic-tac-toe to Russian roulette), regardless of moral concerns. In other words, a game can be immoral just as easily as it can be moral.

With fair chase hunting there can be no doubt. The superfluous nature of the fair chase ethic clearly bares the mark of a lusory attitude. A fair chase hunter willingly accepts a narrower set of lusory means just so the particular type of hunting that they are in pursuit of can take place. Even in the absence of a rational reason for accepting these

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101 Robert Simon, “Violence in Sports,” in **Ethics in Sport**, 379-388. A recent example of an extreme sport (or a game at least) that involved considerable cost to ‘others’ is the failed attempt of Abby Sunderland to sail around the world. After she was stranded nearly 2,000 miles off the coast of South Africa there was much press about the high cost of rescuing her, and the morality of allowing her to attempt the voyage in the first place. See for example, National Public Radio, “Sailor Abby Sunderland’s Parents: Brave or Bad?” http://www.npr.org/templates/story/story.php?storyId=127988324 (accessed June 29, 2010).

102 Any doubt about this assertion can be cleared up by reference to Suits’ story of Ivan and Abdul, **The Grasshopper**, 67-76.
limitations the fair chase hunter would likely still adopt them. The fair chase hunter happily accepts the bureaucratic justification. Thus, the strongest indication that the hunt has been made into a game is the adoption of a fair chase ethic. In fact, the very purpose of adopting a fair chase ethic is to make a game of the hunt.

If we assume, at this point, that hunting is a game, then one might ask of what relevance this is to its ability to contribute to the goodness of outcomes (which is, after all, the point of this section)? Why go through the trouble of defending the game status of fair chase hunting? Once again Suits can help answer this question. Perhaps the most important contribution of *The Grasshopper* is the argument that Suits puts fourth in support of the “intrinsic value” of games. Suits supposes an “ideal of existence” by which he means to refer to “that thing or those things whose only justification is that they justify everything else; or, as Aristotle put it, those things for the sake of which we do other things, but which are not themselves done for the sake of anything else,” and he (Suits) asks us to imagine a Utopia which is embodied by this ideal of existence; it is “a state of affairs where people are engaged only in those activities which they value intrinsically.” He further argues, “in Utopia the only thing left to do would be to play games, so that game playing turns out to the whole of the ideal of existence.” This is so, according to Suits, because in the supposed Utopian state all instrumental needs are satisfied and, as he argues, so too are all of the things that follow from them. “In Utopia

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103 Suits uses “intrinsic value” simply to mean those things that are valued in and of themselves (see *The Grasshopper*, 146), which is obviously different than the concept of intrinsic value that I am using here, and which is described in 2.2.


105 Ibid., 154.
man cannot labour, he cannot administer or govern, there is no art, no morality, no
science, no love, no friendship,” because “none of the necessary ingredients” of these
things (e.g., “human aspirations and frustrations, hopes and fears, triumphs and tragedies,
with flaws of character, moral dilemmas, joy and sorrow”) exist in Utopia (i.e., they have
all been satisfied by “the Computer in Charge or…God or whatever”). Suits’ argument
then, in brief summation, is that games are intrinsically valuable (i.e., in his sense of
intrinsic value, not mine).107

Suits is not alone in arguing that games may be among the most important things
in our lives. As I said at the outset of this subsection, Morgan is a proponent of Suits and
argues that sports, a subcategory of games, can be regarded as final ends. According to
Morgan, “sports are defined and guided by a particular good, that of seeking
excellence…and dedication to a perfectionist way of life” and what makes this so
important, to Morgan, is that those who care about and play sports do so precisely for this
reason. Although Morgan speaks specifically of sport there is nothing in this particular
part of his thesis to stop us from extending his argument to include the broader category

106 Ibid., 152-156.

107 This is the general thesis of his book, but much of what I have covered in this
paragraph, and much of what summarizes and substantiates his arguments can be found
in his final two chapters, “Resurrection” and “Resolution,” The Grasshopper, 141-160.

108 By “final ends” Morgan means: “ends whose value is such that they ground not only
the things or practices whose ends they are, but everything else we do as human agents.
That is, when something or practice is made the final end of our lives it becomes their
normative pivot point, the guiding force by which we determine how to live our lives and
fill them with as much meaning and sense of purpose as we can muster. In short, final
ends provide the answer to the perennial question how we human agents, even the half-

109 Ibid., 16.
of games. Thus he and Suits each work to establish games and sports as members of “the more illustrious kingdom of ends…rather than the less exalted kingdom of means.”

It is also quite clear that Ortega y Gasset, perhaps the foremost proponent of hunting, idealizes hunting in the same vein that Suits and Morgan discuss games and sports. This is especially true where he discusses hunting as a “form of happiness.”

According to Ortega y Gasset, life is filled with occupations of necessity and freedom. To the former we commit ourselves in a work-like fashion.

In English such tasks are called ‘jobs’; in the Romance languages the term for them derives from the Latin word *trepalitum*, which originally meant a terrible torture. And what most torments us about work is that by filling up our time it seems to take it from us; in other words, life used for work does not seem to us to be really ours, which it should be, but on the contrary seems the annihilation of our real existence.

And of the latter the opposite; “another kind of life consisting of very different occupations, in the execution of which he would not feel as if he were losing time, but, on the contrary, gaining it, filling it satisfactorily and as it should be filled.” Such pursuits are not work, but the supposed opposite, “vocations.” A universal feature of all vocations, according to the argument, is our compulsion to be happy. “We give ourselves to vocational occupations for the pleasure of them, without concern for the subsequent profit.” From these premises the supposition is that the vocations of the freest of the

110 Ibid., 9.


112 Ibid., 36.

113 Ibid., 37.

114 Ibid.

115 Ibid.
free (e.g., aristocrats) must represent paradigm examples of a true vocation (i.e., something done for its own sake). And from this, the following:

Now this greatly liberated man, the aristocrat, has always done the same things: raced horses or competed in physical exercises, gathered at parties, the feature of which is usually dancing, and engaged in conversation. But before any of those, and consistently more important than all of them has been…hunting. So that, if instead of speaking hypothetically we attend to the facts, we discover – whether we want to or not, with enjoyment or with anger – that the most appreciated, enjoyable occupation for the normal man has always been hunting. This is what kings and nobles have preferred to do: they have hunted. But it happens that the other social classes have done or wanted to do the same thing… the truth is that the important and appealing aspect of hunting is neither pleasure nor annoyance, but rather the very activity that comprises hunting.\footnote{Ibid., 38-42.}

On this view hunting is itself “a form of happiness,” a full-fledged member of the kingdom of ends and precisely the sort of thing capable of being good independently of its being a means to something else.\footnote{This argument is, summarily, Ortega y Gasset’s.} Hunters with such a mindset do not merely hunt for any of the supposed instrumental values addressed above (2.4 – 2.8). It is not only some outcome of hunting that they are after but the very act of hunting itself. On this view hunting is a form of happiness done for its own sake, independently of its being a means to something else. For some, hunting and happiness are one and the same. Thus hunting, as a game, even when all of its instrumental goods are stripped away, can become a source of good in and of itself. While many of the instrumental goods discussed above (2.4 – 2.8) are cashed-out in terms of the pleasurable outcomes that they promote, this good (i.e., hunting as a game and a form of happiness) is constituted solely by its pleasurable product. Simply put, even without all of its instrumental goods, hunting is
good to the extent that hunters enjoy it; and as Suits, Morgan, Ortega y Gasset, and even Aristotle point out, this is among the very best goods.

2.10. Pain

Not all of the outcomes of hunting are good. As I discussed in mapping the subfactors of intrinsic good (2.2) pleasure is not the whole of good. Pleasure’s opposite, pain, and fairness (at least) ought to be considered in any determination of the goodness of outcomes as well. Because the hunted are in many ways relevantly similar to us (a point which I sustain most forcefully in the next section (3)), for example, in that they are sentient and are thus capable of pleasure and pain, have well-being, and (at least) welfare interests, fairness, as a subfactor of intrinsic good, dictates that we give these relevant similarities equal consideration. Very importantly, hunters (generally) do not deny this. Practically all hunters’ codes of ethics include injunctions to minimize the pain and suffering that hunting entails for the hunted.\(^\text{118}\) It is also not unusual for hunters to report great guilt and sorrow when their efforts to minimize pain and suffering come up short of whatever ideal they might have. Jim Posewitz, for example, discusses this sort of concern in his discussion of wounding.\(^\text{119}\) And Ortega y Gasset himself, an idol for hunting apologists, admits, “every good hunter is uneasy in the depths of his conscience when faced with the death he is about to inflict on the enchanting animal.”\(^\text{120}\) These commitments to minimize pain and suffering obviously presuppose that hunted animals are capable of such experiences and that these experiences are detrimental to the overall

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\(^\text{119}\) Jim Posewitz, Beyond Fair Chase, 73-83.

\(^\text{120}\) Orgeta y Gasset, Meditations on Hunting, 98.
good of the hunt. What else would be the point of trying to minimize them? What makes them bad, it is clear, is that they are painful experiences. But if pain, just like pleasure, is not the whole of intrinsic goodness (or evil, in this case) then these outcomes may be bad for other reasons as well. If, for instance, discounting this pain is an affront to fairness and a mistake of “speciesism,” then there is more impact on the goodness of the outcome than the mere a subtraction for pain (i.e., we must also consider the damage done with respect to fairness).121

For some this pain is “the most serious argument that can be advanced against…hunting.”122 Whether or not this is true may depend upon several things. Most relevant, for now, is the fact that the pain produced by hunting exists along a continuum from minute to extreme. So if we suppose that pain is a “most serious” argument against hunting then we should probably be more specific about what we mean by pain. How much pain (to the extent that it can be quantified), and what kind of pain (to the extent that it can be qualified) constitutes an argument against hunting? Two extremes on this issue seem obvious, with myriad cases between. In the first we might suppose and ideal minimum of pain for the hunted (e.g., the animal is killed instantly, painlessly) in combination with an otherwise maximum ideal of good (e.g., the hunter takes great joy from the hunt, and, in fact, maximizes the total view through his or her wildlife


122 Loftin, “The Morality of Hunting,” 246. Loftin is referring specifically to “sport hunting,” which he feels is morally distinct from other forms of hunting. His full statement includes his qualifier (i.e., he refers to pain as “the most serious argument that can be advanced against sport hunting”).
management and conservation efforts, etc.). Simply relative to the goodness of outcomes, this outcome seems fairly desirable. The second extreme, however, is naturally the opposite. Suppose, for example, that the hunt results in terrible pain and suffering for the hunted (e.g., the animal is caught in a leg trap for days and near starvation when the hunter finally arrives, and after some torment, finally kills the animal) in combination with very little enjoyment for the hunter (who does not, despite his or her expectation, enjoy tormenting and killing the animal) and a loss to the total view (e.g., because of mismanagement of wildlife and a lack of conservation effort). And, I repeat, we can imagine myriad cases between these two examples. The product of this exercise, I think, is that we can see where pain constitutes a “most serious” argument against hunting, but at the same time, we can see that this is not necessarily, or even often the case. Most hunters, I suspect, happily follow the injunction to minimize pain and suffering and it seems far from unreasonable to suppose that they fail in this regard. So while pain alone may be capable of substantiating an argument against hunting, clearly there are cases, perhaps the majority of cases, where it does not. Fairness dictates that we consider any and all pain that derives from the hunt but speaking strictly about the goodness of outcomes all options are live. On consequences alone hunting can be justified or not, depending upon where we draw the line between these two extremes. I do not attempt to draw such lines here because doing so is exceedingly difficult and because, as I argue in the coming sections, other considerations probably supersede this issue. Thus moving forward, I assume that there is good in hunting, I assume the reasonableness of effectively minimizing pain and maximizing pleasure (and other subfactors of the good).
Though we must account for pain, it is certainly plausible that after having done so the outcome of a given hunt is still favorable (i.e., on consequences alone).

2.11. Summary

The purpose of this section has been to answer the question, what good is there in hunting? After briefly distinguishing between instrumental and intrinsic goods and highlighting the subordinance of the former to the latter (2.1) I briefly outlined a general concept of intrinsic good (2.2). Three subfactors of the good stand out as especially relevant for this work: well-being, including pleasure and pain, and welfare interests, the total view, and fairness (or formal justice), including culpability and desert. After a brief qualification (2.3) where I stipulate that I am reserving some criticism in order to be favorable to hunting I then discussed six potential sources of good in hunting (2.4 – 2.9): food procurement, wildlife management, conservation, heurism, atavism, and hunting as a game and a “form of happiness.” As I point out in my qualification, and in my discussion of each respective potential good, each of these six is most probably “cashed-out” in terms of what it does to promote pleasurable outcomes for hunters. Finally I discussed a sore spot and the pivot point for much of the controversy over hunting; that is, the pain that it entails for the hunted (2.10). I have pointed out that this pain flows along a wide continuum and that most hunters commit to minimizing the pain derived from the hunt, and even generously assumed that they are fairly effective at doing so. While it certainly seems possible that hunts can result in acute pain and suffering, with very little accompanying good I have assumed, because it seems perfectly probable, and because I want to be generous to hunters, that there is a reasonable case, on the goodness of outcomes alone, to take a favorable moral view of hunting. So the answer to the
question (i.e., what good is there in hunting?) turns out to be, primarily, pleasure for hunters; so much so that it can, theoretically, greatly exceed (in quantity and quality, and however one wants to measure such things) the pain that might befall the hunted.
3. Harm

It is doubtful that promoting the good is the only relevant factor in moral consideration. Many of us recognize that in some instances the act that best promotes the good is not morally preferable. Such might be the case, for example, if an act had a favorable balance of consequences overall but a particularly tragic outcome for some individual or group of individuals. Consider the following story.

My Aunt Bea is old, inactive, a cranky, sour person, though not physically ill. She prefers to go on living. She is also rather rich. I could make a fortune if I could get my hands on her money, money she intends to give me in any event, after she dies, but which she refuses to give me now. In order to avoid a huge tax bite, I plan to donate a handsome sum of my profits to the local children’s hospital. Many, many children will benefit from my generosity, and much joy will be brought to their parents, relatives, and friends. If I don’t get the money rather soon, all these ambitions will come to naught. The once-in-a-life-time-opportunity to make a real killing will be gone. Why, then, not really kill my Aunt Bea? Oh, of course I might get caught. But I’m no fool and, besides, her doctor can be counted on to cooperate (he has an eye for the same investment and I happen to know a good deal about his shady past). The deed can be done…professionally, shall we say. There is very little chance of getting caught. And as for my conscience being guilt ridden, I am a resourceful sort of fellow and will take more than sufficient comfort – as I lie on the beach at Acapulco – in contemplating the joy and health I have brought to so many others. Suppose Aunt Bea is killed and the rest of the story comes out as told. Would I have done anything wrong? Anything immoral? One would have thought that I had.\(^{123}\)

If we are inclined to say that this person has in fact done something wrong then we will want to explain what it is, precisely, that is wrong about their actions. The answer, per the example, cannot reside in the badness of its consequences, which are, ex hypothesi,

\(^{123}\) Regan, *The Case*, 427.
favorable overall. This suggests the possibility of an additional factor that is capable of outweighing the goodness of consequences. The second presumption mentioned just above (i.e., that all other relevant factors are neutral) is not satisfied. All other factors are, in some instances, not equal. In fact, they sometimes outweigh the goodness of outcomes. That in the process of bringing about the most favorable consequences we must involve some measure of harm is often considered just this sort of factor. When we say that someone has been harmed what we mean, generally, is that their well-being has been reduced; they have been made worse-off as a result of some occurrence.124

3.1. Harms of infiction

That there is harm in hunting should seem self-evident. This inclination sprouts, no doubt, from an almost universal recognition of sentience among animals. The evidence behind this claim (i.e., the claim that animals, the type with which we are concerned here at least, are sentient) is beyond reasonable refute. The attributions of sentience to animals accords with common sense, it is consistent with animal behavior, it is consistent with our biological understanding of many animals, and it is consistent with evolutionary theory (e.g., sentience is a valuable survival mechanism).125 Hunters do not deny any of this. There would be no point in their commitment to minimize the pain that they deal the hunted (as most hunting codes entail) if they did not believe that they were sentient. Many hunters admit that their efforts, despite their intentions, are not always

124 As Kagan, Normative Ethics, 84 states, “to harm someone is to bring about a lowering of their well-being relative to the level that they would have been at, but for our action. If someone is worse off as a result of our act, then we have harmed that person.”

125 See Regan, The Case, 25-28 for “The cumulative argument for animal consciousness,” from which I have borrowed several ideas to support the claim that animals are sentient (without yet specifying which animals are sentient).
successful, in this regard.\textsuperscript{126} Sometimes the best intended hunters inflict tremendous pain and suffering upon the hunted, if only by accident. In many if not all instances of a “successful” hunt some degree of pain is an inseparable feature. We may minimize the pain but it cannot be eliminated. Hunters understand this and their codes reflect it as well; calling as they do, for the minimization of pain, not the elimination of it. In a practical sense it is much more likely that our attempts to minimize such pain will fall short of ideal. We cannot expect every hunter to make clean, quick, “painless” kills on every occasion. The hunted, categorically, are capable of feeling, and in particular of feeling pain, and this pain is a practically unavoidable feature of the hunt.

However, the mere presence of pain (i.e., the experiencing of pain) is not sufficient evidence of harm. This is so because, again, to harm is to reduce one’s well-being. Not all pains harm (just as not all harms are painful). I am better off for having gotten a flu shot, despite the pain of the injection (and assuming I have no adverse reaction). Only pains that reduce one’s well-being amount to harm. So the question is not whether hunting merely causes pain to the hunted but whether they are capable of having a well-being and if so, whether the pain caused by the hunt is capable of diminishing said well-being. Let us call such instances, where pain is sufficient to reduce one’s well-being “harms of infliction,” or simply “inflictions.”\textsuperscript{127} Thus the next apparent question is, do the hunted have a well-being; followed closely by, if so, can they incur such harms of infliction? The former question is clearly more important, in part, because the latter is not worth answering if the former turns up negative. But if the hunted have a well-being then

\textsuperscript{126} See Posewitz, \textit{Beyond Fair Chase}.

\textsuperscript{127} Regan, \textit{The Case}, 94-96 discusses harms as inflictions.
any pain the hunt brings them amounts to a harm of infliction. Unlike the example above, where not all pains harm, there is no resultant benefit for the hunted. There is no subsequent gain (e.g., flu immunization) to counter the pain and avoid harm. Any pain that a hunter exacts upon the hunted (if they have well-being) will amount to a harmful infliction, more or less, depending on the severity of that pain (i.e., its intensity and duration). So I say again, the more important question is whether the hunted are capable of having a well-being. If the answer is no, then all this talk of harm is moot. The evidence suggests, however, that this is not so.

The case for animal well-being is complex. It involves a slew of philosophical concepts of both complexity and controversy. Reviewing them here would be too much of an aside. Instead, some assumptions will have to be made, with mere reference to the evidence. The bottom line is this. Many animals possess a set of attributes that make it unreasonable to deny them a well-being. They are the experiencing subjects-of-a-life and have

beliefs and desires; perception, memory, and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain; preference and welfare-interests; the ability to initiate action in pursuit of their desires and goals; a psychophysical identity over time; and an individual welfare in the sense that their experiential life fares well or ill for them, logically independently of their utility for others and logically independently of their being the object of anyone else’s interests.128

Many animals share these attributes. (Normal) human adults are paradigm cases. The closer (biologically speaking) an animal is to the paradigm, the stronger the case for its subject-of-a-life status. “Mentally normal mammals of a year or more” mark a line

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128 Regan, The Case, spends the first three chapters substantiating the case of animal well-being. The passage here is his summation; what he calls the “subject-of-a-life criterion”, 243.
beyond which no reasonable dispute can be had regarding the subject-of-a-life status of a being. Regan, *The Case*, xvi and 78. “Wherever we draw the relevant line, these animals are above it.” Regan, *The Case*, xvi. Such a conservative policy is intended to eliminate endless dispute over “line drawing.” In all likelihood the scope of the subject-of-a-life criterion is much broader. We have good reason to believe that less complex animals meet the criterion as well. The best available evidence suggests that birds and fish likely qualify. Tom Regan, *Empty Cages: Facing the Challenge of Animal Rights* (Lanham, Maryland: Rowman & Littlefield Publishers, Inc., 2004), 59-61. According to one professor of neuroscience and animal behavior it is now clear that birds have cognitive capacities equivalent to those of mammals, even primates,” L. J. Rogers, *The Development of Brain and Behaviour in the Chicken* (Wallingford: CAB International (1995), 219.

That this is true of many animals, particularly mammals, birds, and fish, is especially relevant for a theory of hunting because hunters pursue, almost exclusively, these taxonomical classes. Like us, these animals are the experiencing subjects-of-a-life. Depending on the context, their lives can go better or worse for them. They can be better or worse off. They have a well-being. If this much is true, then the pain laid upon them by the hunt, assuming it has no attendant benefit to them, can be rightly viewed as a harm of infliction; more or less depending on the nature of the pain (e.g., mild and fleeting, intense and enduring). Thus inflictions are a dynamic harm (i.e., they vary by context). That the hunt causes the hunted pain which reduces their well-being constitutes a harm of infliction for the hunted; the greater the pain, the greater the harm.

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129 Regan, *The Case*, xvi and 78.
130 Regan, *The Case*, xvi.
3.2. Harms of deprivation

But just as not all pains harm, neither must all harms involve pain. One can clearly experience a loss of well-being that does not involve pain.

Individuals are...harmed when benefits they have are taken from them or when circumstances, including the acts of others, preclude their having some benefit that is necessary if they are to have a realistic opportunity to live well relative to their abilities.132

Let us call such instances, where one’s well-being is reduced by the (pain-free) removal or withholding of some benefit, “harms of deprivation,” or simply “deprivations.”133 Battery cages, for instance, which are sometimes used to raise birds for the purpose of hunting, confine animals in ways that severely restrict, and sometimes altogether eliminate an animal’s ability to exercise its natural tendencies. Humphreys argues, for instance, that “game birds raised in battery cages are significantly harmed from the confinement they endure” to the extent that that confinement causes “prolonged...stress and discomfort.”134 That is, they are precluded from having benefits, like the freedom to move, that are “necessary if they are to have a realistic opportunity to live well relative to their abilities.”135 Scenarios like these (i.e., battery cages) also illustrate the sometimes-integrative nature of inflictions and deprivations. Such extreme confinement causes the sorts of stress and discomfort that painlessly detract from an animal’s well-being, but it also often leads to inflictions (e.g., suffering from infections caused and spread by the inability of the confined to perform basic hygiene). These animals are subject to both

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132 The passage and the example belong to Regan, The Case, 97.
133 Regan, The Case, 96-97.
134 Rebekah Humphreys, “Game Birds: The Ethics of Shooting Birds for Sport,” 57.
135 For additional examples of such deprivations, see Regan, The Case, 96-99.
inflictions and deprivations. A very important harmful deprivation, for the task at hand, is
death. As Thomas Nagel argues, “if death is an evil, it is the loss of life, rather than the
state of being dead, or nonexistent, or unconscious, that is objectionable.”136 Perhaps the
loss of loved ones is a paradigmatic example of such cases. When we lose the ones we
love, when they die, the pain that we feel, intense as it may be, is not necessarily a
physical pain such as that involved with an infliction but rather, it is, in part, a harm of
derprivation. We are being deprived of something (i.e., the company of our loved ones)
that is an element of our own well-being. We are worse-off for having lost our loved
ones. But in addition to this loss there is also a sense of tragedy in the recognition of what
more has been lost. When a life is cut short, a young life in particular, at least a partial
explanation for the grief that we feel is the loss, not only of our own opportunity to enjoy
the company of our loved ones, but also for what they themselves have lost. All of the
future benefits of their lives have been precluded. Every possible benefit their lives would
have ever contained, utterly nullified. This, in part, explains our grief. Not merely that
they have been harmed by some pain but that they have been deprived of all the future
benefits of their own lives.

Death is the ultimate, the irreversible harm because death is the ultimate, the
irreversible loss, foreclosing every opportunity to find any satisfaction. This is
true whether death is slow and agonizing or quick and painless. Though there are
some fates worse than death, an untimely death is not in the interests of its
victims.137

136 Thomas Nagel, Mortal Questions (Cambridge, MA: Cambridge University Press,
1979), 3.

137 Regan, The Case, 117.
Such deprivations are possible in any event where one has an experiential well-being. If one is capable of well-being, as the hunted are, then they are also capable of being harmed by deprivation. This is true in all instances where they are deprived of the instrumental elements of their well-being, but especially when that deprivation is of the most irreversible sort (e.g., when their lives come to a premature end). Even if we assume that hunted animals do not have an interest in the future (i.e., they may not make plans for, work towards, or even merely anticipate the future) they likely still have future interests (i.e., states of affairs that are in their interests, such as the avoidance of future suffering and continued existence). In normal circumstances, that an animal’s life goes on living is in that animal’s interest (at least), even if the animal is not interested in going on living.\(^{138}\) When the hunted are deprived of any future benefits they might have had because they have fallen to the hunter, there is harm, specifically harm of deprivation.

This too is a dynamic harm in the sense that a life can be more or less deprived. Defenders of hunting sometimes call out the brutal facts of nature in support of their position. In relative terms, they say, death at the hands of a hunter is preferable to what nature may have in store. The big cats and bears are especially popular here. As the argument goes, death by the hunter may spare the hunted from being torn to bits or eaten alive; or worse, slowly tormented to death, as anyone who has seen a cat catch a mouse will likely recognize. Also invoked here is the threat of famine that the hunted are sometimes subjected to (e.g., chronic wasting disease). Again the idea is that death via

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\(^{138}\) Humphreys makes an argument much like this when she maintains that “freedom, functioning and well-being are not the only interests birds have. They also have an interest in living, or life, and are therefore harmed by premature death,” “Game Birds,” 57.
the hunter’s hands is preferable to starvation. Suppose a hunter kills a fawn that we know (ex hypothesi) would have otherwise died a quick and painless death after a long and benefit-rich life. In such an instance the degree of deprivation seems relatively high. The hunter precluded much good for this particular deer. Conversely, suppose the hunter waits and kills the same deer in the twilight of its life, with the additional distinction that this time, rather than a quick and painless death the animal is faced with a slow and agonizing starvation. Here the deprivation seems relatively less. In fact, all that the hunter seems to have precluded is more pain and suffering. The immediate point is simply that deprivations, like inflictions, are fluid. These examples also illustrate the sometimes-integrative nature of inflictions and deprivations. Arguments such as these rely on relative inflictions to justify deprivations. They effectively inflict harm in order to deprive the hunted, not of future benefits, but of greater future inflictions. They also show, as is my point, that like inflictions, deprivations are fluid and contextual. The hunted can be more or less deprived as a result of the hunt. Of course these examples bear all the controversy of any debate over so-called mercy killing.139 Even if we (generously) grant that these claims may be true they overlook an important and plausible distinction.

3.3. Harm done and harm (merely) allowed

There is a bit more to be said about these harms. First, each (i.e., inflictions and deprivations) may be demarcated as harm being done, rather than harm being allowed. Clearly the hunter (when successful) is doing harm. They are directly responsible for the

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painful inflictions and deprivations (painful or not) incurred by the hunted. They are not merely allowing the harm to occur, as is the case among non-hunters who do nothing to inhibit the harm done by hunters or in any instance where nature, brutal as it may be, is simply allowed to run its course. Depending on one’s philosophical orientation this distinction is more or less relevant. In very general terms, and allowing for exceptions, a consequentialist’s concern is with the (probable or actual) results alone. All that matters is that bad outcomes like harm are minimized and that good outcomes are maximized. A deontologist, on other hand, will hold tightly to the doing/allowing distinction. For them, both allowing and doing harm are especially relevant, but much more so the latter. In discussing this distinction Kagan says:

> It may well be morally objectionable if you fail to send money for famine relief, knowing full well that someone will die for the lack of food, whose life you could have saved; but however objectionable this may be, it would be even worse to kill someone by sending them poisoned ‘care’ packages. It is one thing to allow someone to die; it is quite another to kill them yourself.\(^{140}\)

So far as distinctions can be made between doing and allowing harm it is typically the former that counts more heavily against the moral permissibility of performing an act. This is what I mean when I say that we more heavily weigh the actual doing of harm than the mere allowing of it. In normal circumstances, doing harm is worse than merely allowing it.

But this is not always the case. For example, one might argue that passive euthanasia (i.e., intentionally allowing another to die) can prolong pain and suffering for the affected individual and that the extent of this pain and suffering can become so great as to overcome any evil seen in active euthanasia (i.e., taking direct action to kill

another). Sometimes we think that it is better to put an end to things, even if this means doing harm in order to avoid allowing some greater harm. This is precisely the sort of tension that I was relying on moments ago when I illustrated the fluid nature of harmful deprivations. In exceptional cases we might morally favor such a mercy killing. What is it about these cases that compel us to reverse our normal judgments on the doing/allowing distinction? Whatever our answers may be they will have to account for both factors in consideration (i.e., the goodness of outcomes and harm). The present point is simply that normally we take a harsher view of doing harm than merely allowing it. For the moment I simply say here, briefly, that hunting, despite what some defenders argue, can only perversely be construed as a case of mercy killing. For one, hunters typically take prime animals; that is, specimens which are at or near the apex of their lives, and thus seem utterly disqualified for such “mercy killings.” Additionally, it may be that the (mis)management of wildlife, which is often done (in part) by hunting, is responsible for conditions that necessitate such “mercy killings” (e.g., chronic wasting disease is in part a product of predator scarcity, which is itself the product (in part) of hunting). To suggest then, that hunters are merely carrying out mercy killings may utterly overlook the fact that hunters share culpability in necessitating the mercy killings to begin with. Clearly the burden of showing that hunters are carrying out genuine mercy killings rests with the hunters themselves and it appears that any such argument faces a steep uphill climb. Thus relative to hunting, such exceptional cases (i.e., mercy killings) seem exceedingly unlikely or, what is only slightly less, minutely rare. Most of the time, relative to hunting,

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it is the doing of harm, rather than the mere allowing of it, that is in need of consideration
and is, at the same time, the more morally evil of the two.

If such distinctions can be made, hunters do not merely allow harm, they do harm;
and this is appears to be the morally worse option of the two. Whether or not the
doing/allowing distinction is itself persuasive and its moral relevance fully accountable is
ultimately not all that important to a theory of hunting. Again, generally speaking, if the
consequentialists are right, there is no moral significance to the distinction and hunters
and non-hunters are (roughly) equally accountable for the harmful inflictsions and
deprivations produced by the hunt. And if the deontologists are right then the hunter does
harm and this is (probably) morally worse than merely allowing harm. In either case the
harm, in toto, is morally relevant. The question is, on who does the burden more or less
fall?

This is not the last that we will hear of this distinction and its relevance (5.2).
Once we have considered all the harms of the hunt, and a particular harm not of the hunt,
but related to it, we will find ourselves in a dilemma where we cannot avoid harm per se,
whether done or allowed. In this dilemma the doing/allowing distinction (or lack thereof)
will be relevant because the options of the dilemma require a choice between doing and
allowing harm. If the distinction is moot, as the consequentialists assert, then our options
will be evenly weighted (assuming that the harms from which we must choose are equal,
and there are no alternatives that are less harmful); and if the distinction is legitimate then
we will have to have some way to govern a choice between (roughly) 1) doing much
harm, 2) allowing much harm, and 3) doing little harm to avoid allowing much harm.
This dilemma has to do, again, not with the hunt, but rather, with its prohibition and the
possibility that prohibiting the hunt can harm hunters. This is an idea to which I return later (5.2).

3.4. Harm intended and harm (merely) foreseen

There is, however, another possible and relevant distinction that may be made relative to the harms involved with hunting. Some may be inclined to reject the doing/allowing distinction in favor of another; that between harm intended and harm (merely) foreseen. When we say that someone intends harm what we mean is that the harm that results from their action (or inaction) is incurred either as an end in itself (rarely) or as a means to the agent’s ends (more commonly). A sadist, for example, intends harm as an end (i.e., harm itself is their ultimate goal). More commonly we intend harm as a mere means. Such is the case, for example, when one person uses another for his or her own gain and at some harmful cost to the used (e.g., a thief). (Merely) foreseen harm is different. In this case there is no harm intended at all, either as an end or a means, despite the fact that harm is plainly predictable. Circumstances arise in life, regrettably, where we must choose among limited options which all involve harm (these are called prevention cases, and I discuss them later, (4.7)). But sometimes this harm is neither an end nor a means to us; rather, it is a mere side-effect of our action (or inaction).

For example, if you’re behind me in line, and I buy the last ticket to the concert, I may know full well that this will cause you distress and disappointment. But I don’t intend the harm, neither as an end nor as a means; your suffering is a mere side effect of my action. (It’s not an end, since I don’t wish you ill; and it’s not a means, either, since your being inconvenienced and disappointed doesn’t do anything to help me achieve my goal of getting into the concert.\footnote{Kagan, \textit{Normative Ethics}, 102.}
In order for the harm to be intended it must be as in end in itself or, as is more common, as a means to the agent’s alternative ends; “if...the harm itself helps the agent to achieve one of her ultimate goals, and this is the reason the agent permits the harm, then she intends it as a means.”\textsuperscript{143} Similar to the doing/allowing distinction it is the intending of harm that we find more morally reprehensible than harms that are merely foreseeable side-effects of our actions (or inactions). Intuitively, at least, it is worse to intend harm than it is to do or allow harm as a mere side-effect.

Once again hunting can be clearly differentiated relative to this distinction. In some instances, perhaps rare, the harms of the hunt (i.e., inflictsions and deprivations) may be interpreted as ends. Many critics of hunting have alleged that hunters are hell-bent on killing; that for them, it is a mere “killing game.”\textsuperscript{144} More common is the recognition that the harms involved with the hunt, particularly the inflictsions and deprivations brought on by death, are a mere means to the hunters alternative ends. This is surely the sentiment behind Ortega y Gasset’s oft-cited line, “one does not hunt in order to kill; on the contrary, one kills in order to have hunted.”\textsuperscript{145} What has not been argued (at least to my knowledge), perhaps because it is rather implausible, is that the harms involved with the hunt are merely foreseeable side-effects.\textsuperscript{146} As was the case with the doing/allowing

\begin{flushleft}
\textsuperscript{143} Ibid.


\textsuperscript{145} Gasset, Meditations on Hunting, 105.
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distinction, the intending/foreseeing distinction, relative to hunting, involves the more morally invective of the two. If there is a legitimate distinction between doing and allowing harm hunters carry on the more morally offensive of the two (i.e., they do harm). And the same is true of the intending/foreseeing distinction. Hunters carry on the more morally offensive of the two by intending harm sometimes as an end in itself (perhaps), but certainly as a means to other ends. Hunters seem to both do and intend harm (to the extent that these distinctions are legitimate), both of which are serious moral problems that can be expected to play a prominent role in a normative theory of hunting.

3.5. Risk and consent

In some instances neither of these concerns (i.e., over whether a hunter does harm, and if so, how it was intended) come to fruition. Sometimes, despite their intentions, hunters do no harm. In cases of an “incomplete” hunt (i.e., where neither killing nor wounding occurs) both harms of infliction and deprivation largely disappear, albeit not entirely.\(^1\)\(^4\)\(^7\) If the animal is stalked, harassed, fired upon, etc., even without actually being struck and injured, it may well be that they incur harm in the form of distress, fear, panic, etc.\(^1\)\(^4\)\(^8\) Additionally, it is worth noting that any moral significance that we attach to risk remains. On an objective account of moral wrongness, where we take actual harm to be the wrong-making feature of actions, we would be inclined to say

\(^{146}\) In light of Kagan’s comments, *Normative Ethics*, 102, is seems apparent that hunters intend harm as a means: he says: “if… the harm itself helps the agent to achieve one of her ultimate goals, and this is the reason the agent permits the harm, then she intents it as a means,” which clearly is the case among most hunters.

\(^{147}\) See Curnutt, “How to Argue For and Against Sport Hunting,” 66 for distinctions between “complete,” “partial,” and “incomplete.”

that no moral foul has been committed. The hunter has put the hunted at risk but nothing has come of it. No harm, no foul. A subjective account, on the other hand, would not take a kind view of the incomplete hunt.\textsuperscript{149} The simple fact that no harm actually occurred does not tell the whole story. Many of us plainly recognize the appropriateness of holding people accountable for the risks that they impose on others even when those risks do not materialize. For example, we would hardly excuse a drunk driver simply because he or she happened to arrive safely. “To knowingly perform an act that runs a high risk of causing harm is to act immorally,” (at least on first appearances).\textsuperscript{150} Hunters hardly garner an exemption in this regard simply by virtue of an occasion where the hunt turns up no harm. The fact remains that they intended to perform actions that were, in fact, harmful and they intentionally imposed risk. Particularly, they imposed risk on the hunted; but it should also be noted that other, less probable, though no less consequential risks are also imposed. Each year hunters shoot, injure, even kill, hundreds of fellow hunters and non-hunting bystanders (e.g., hikers, naturalists, rangers, plain citizens) when they violate basic firearm safety protocols and/or shoot at unidentified others.\textsuperscript{151} The risks imposed by hunters are, in this sense, not limited to the hunted. Such harms, though much less probable than the risks imposed on the hunted, count nonetheless as risks imposed. They should also be distinguished, to the extent that these distinctions hold up, as harms done, though (presumably) not intended.

\textsuperscript{149} See Kagan, \textit{Normative Ethics}, 83 for an explanation of what I mean by “objective account” versus a “subjective account.”

\textsuperscript{150} Ibid., 83.

\textsuperscript{151} Bruckner, “Consideration on the Morality of Meat Consumption: Hunted-Game Versus Farm-Raised Animals,” 322.
We must also consider that because the hunted are mere moral patients they are incapable of consenting to such risks. That is, we have no recourse to exempt the risk because it is consensual, as we sometimes do.\textsuperscript{152} The risk that a boxer takes, for example, loses some of its normative weight (though not all of it) because of the (presumably) consensual nature of the act.\textsuperscript{153} But just as human moral patients are incapable of consenting to risk so too are the hunted. Consent may also be absent with respect to the bystanders of hunting who incur risk. Although they are moral agents (assuming they are), and thus capable of consenting to such risks, it is plausible to suggest that they do not do so. This is most apparent in instances of ignorance. Had the bystander known that they may be shot by a hunter they might have foregone the hike. One cannot consent without knowledge of the risk. Of course, ignorance itself is no excuse and some degree of responsibility still belongs to the clueless wanderer who knows (or ought to) that a walk in the woods is never free from risk, including the risk of being harmed by a hunter; but relatively speaking the hunter is more so culpable if we recognize the doing/allowing distinction because it is the hunters action(s) that bring about the harm; that is, the hunter does the harm. It is also perfectly reasonable to suggest that these bystanders are fully consenting. The risks that they incur are, relatively speaking, miniscule. It is far from absurd to think that a naturalist would choose not to go for a hike simply because there is a risk of being harmed by a hunter. With due precaution such risks can be well-guarded against and thus worth taking, depending on one’s commitment to being a naturalist. So


such bystanders may or may not consent to the risks imposed by hunters and the degree of their having consented to the risks imposed by hunters ought to be considered as well. So too should the bystanders own responsibility (e.g., for their ignorance of the risks, or worse, negligence regarding them). If one does nothing to guard against the risks of walking in the woods with hunters, or worse, acts negligently by, say, dressing in camouflage or mimicking wildlife, this too would surely matter. So as the case of risk pertains to bystanders we see a full range of possibility. If a bystander behaves negligently then the hunter is correspondingly less culpable for the risks they impose; if a bystander is fully consenting to the risks then perhaps the culpability is more evenly balanced; and if the bystander is absent consent then they would seem culpable only for their ignorance (if they are, in fact, ignorant of the risk), not for the harm done by the hunter, who would be relatively more culpable.

Risk to bystanders is a small matter relative to the larger issue of risk to the hunted, however, the fact that hundreds of hunters and bystanders are injured and killed annually in the United States cannot go without consideration. More commonly, hunting involves risk imposed on a mere moral patient (who, again, is incapable of consenting to it) by a moral agent. By analogy, consider our (typical) reaction to a parent who puts their infant at considerable risk by say, refusing to restrain the baby in while driving, or a parent who encourages a young child to use/abuse harmful drugs like tobacco and alcohol. At least a part of our (presumably) negative reaction to such

scenarios is that we recognize the inappropriateness of a moral agent imposing such risks on mere moral patients. Surly such an imposition counts against the morally permissibility of the risk. When we limit our attention to the risk imposed on the hunted the case of hunting is not drastically different. Hunters, who are moral agents, impose risk on the hunted, who are mere moral patients, when they intend to harm them and this is morally worse than imposing risk upon (more or less) consenting risk takers.

These facts will be especially relevant in determining what role such risks ought to play in a normative theory of hunting. How we assess their relevance is also important. We have to be able to balance such risks against other (sub)factors. In just a moment I discuss how we might go about this balancing act (3.6). For now it will suffice to say that the risks imposed on the hunted by hunters is high risk in the sense that if it bears fruit (as it very often does) the hunted will incur at least two forms of harm which are of substantial yet varying severity (i.e., they will receive more or less painful inflictions from a hunter, which if severe enough will result in the ultimate deprivation, death), this risk is in the form of intended harm, and it is imposed by a moral agent on a mere moral patient, all of which are negative features of the relevant risks. That the incomplete hunt does not actually involve harm does not necessarily erase any moral culpability that attaches to the risk imposed on the hunted, by the hunter.

3.6. Constraints and thresholds, and infringements and violations

The factors that I have discussed (inflictions, deprivations, doing harm, intending harm, and risk and consent; 3.1 – 3.5) are the sort that may ground constraints on promoting the good. Constraints work to explain our considered belief that in some instances the goodness of outcomes is not the only morally relevant factor. Sometimes we
consider other factors more important than the goodness of outcomes. It is not the constraint per se that matters in moral consideration, but rather the weight of the moral factor to which it attaches. In other words, upon reflection, some of us find some factors to be more important than promoting the good and so we might say that these factors constrain our commitment to promoting the good. We might say, for example, that our commitment to promoting the good is restricted by a constraint against doing harm (i.e., promote the good, but not if it requires doing harm), or intending harm, or imposing risk.

How might such a constraint operate? We could consider it an absolute constraint. In this instance the degree of good in question is irrelevant. No matter how heavy the balance in favor of good consequences we simply cannot do harm in order to bring it about. No exceptions. Such an absolute view of this particular constraint would amount to an abolition of hunting. All of the potential goods considered above (2.4 – 2.9), no matter how great, would be insufficient to outweigh even the most diligent hunter’s success at minimizing the harm done to (or even the mere risk imposed upon) the hunted and other bystanders. We cannot do harm. Not even a little. Not even if the stakes are great.

Or we could take a more moderate approach to the constraint and try to establish thresholds for infringing it. It may be that we generally recognize a constraint against doing or intending harm, for example, but that in some instances the balance of good that would result (or the prevention of evil) is so significant that we find it permissible to infringe the constraint, even considering the fact that we more heavily weigh the factor that generates it. For example, we might infringe a supposed constraint against lying in order to keep a murderer from his or her intended victim, whom we know to be innocent.
and happen to be secretly harboring. In examples like this we intuitively think that the
good we can do (or, rather, the evil that we can prevent) by going against the grain of the
constraint-generating factor is sufficient to justify the infringement. Better to do an
otherwise bad thing (i.e., lie) than let our innocent refugee be murdered. Thus
infringements involve cases where sufficient good (or prevention of evil) is at stake such
that we consider it appropriate to make an exception of the constraint. We do not violate
the constraint, we merely infringe it; the former term suggests wrongdoing, while the
latter is meant to convey an active break from the usual terms (i.e., an exception). In
setting the boundaries of a threshold (i.e., the point at which a violation becomes a mere
infringement) we have to consider (at least) the balance of good against the constraint-
generating factor(s). So the obvious question is, how much good must be at stake before
we are willing to approve of the sorts of harm, for example, in question (i.e., inflections
and deprivation)?

In principle…the range of possible answers is tremendous…if the constraint is to
have any force at all, the threshold must be set above zero. And if absolutism is to
be avoided, the threshold must be set at a finite amount. Still, this obviously
leaves a huge range of possibilities (an infinite range, in fact). A low threshold
might permit killing one to save ten [persons, in this example]. (Indeed, an
extremely low threshold might even permit killing one to save two!) A high
threshold, in contrast might only permit killing one to save millions, or
billions…the level of the threshold in any given case is a function of the nature of
the harm involved. 156

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155 Here I am thinking of Immanuel Kant, *Grounding for the Metaphysics of Morals with
On a Supposed Right to Lie Because of Philanthropic Concerns* (Indianapolis, IN:
Hackett Publishing Company, Inc., 1993), 63-67. Several philosophers utilize this
example; Stanford Encyclopedia of Philosophy, “The Definition of Lying and
Deception,” Stanford Encyclopedia of Philosophy http://plato.stanford.edu/entries/lying-
definition/ (accessed March 26, 2010).

This is relative, of course, to the consequences that the harm makes possible. Where we set the threshold is determined by the goods in question vis-à-vis the harms (or other constraint-generating factors) involved. What we need when proposing such a threshold is a set of principled criteria that is supposed to help us decide how much good (or prevention of evil) is sufficient to overwhelm the given constraint and make a mere infringement of what might otherwise be a violation. We need a threshold, short of which the constraint ought to be followed, at or around which we are free to choose, and beyond which it ought to be infringed, and as the above passage indicates, we will have to be fairly precise regarding where and why the threshold is set where it is.

Setting such thresholds is exceedingly difficult. For the purpose of this project I do not do so myself. I do, however, rely on a set of thresholds put forth by Tom Regan (i.e., the miniride and worse-off principles; 4.5 – 4.6) to articulate my narrower thesis. While my general thesis is that modern hunting is morally indefensible I do recognize particular circumstances in which exceptions seem warranted and the point of relying on Regan’s thresholds is to provide a principled groundwork for these exceptions. Thus the importance of thresholds, for this project, is narrow in the sense that it has little import on my general thesis, but also very important in that the thresholds that I take from Regan anchor the more precise features of my thesis and my response to the question: under what circumstances is hunting morally defensible? The point of this section is simply to introduce thresholds generally. My actual discussion of them (4.5 – 4.6) is much more precise.
3.7. Guilt and innocence

One other subfactor will have an influence on how we set thresholds. We might try to stipulate that a given constraint applies only to the innocent, either categorically or by degree. Such a proviso is sometimes invoked to account for the widely held view that it is permissible to do harm in self-defense. Of course this position could be substantiated on consequences alone (i.e., without recourse to constraints) by arguing that the threat of harm (i.e., from the defender towards the offender) is sufficient to deter future offenders, and thus results in better outcomes, broadly speaking. But we can reach the same end (i.e., justifying self-defense), on different terms, by stipulating that constraints apply only to the innocent, or at least more so to the innocent. They too appear to function in degrees. The innocent are fully under the purview of the constraint, and the guilty, depending on the degree of their guilt, less so. Generally speaking, the harm that we do in self-defense is ideally proportional to the threat posed by our aggressor. If you intend some painful infliction to me and pitch hot coffee into my lap I would hardly be justified in attacking you with my letter-opener in self-defense. That is, the harmful infliction that I intend as retribution is the same in kind as that which you have dealt me, but is hardly comparable in degree. My reaction is, in this example, an over-reaction. Despite your guilt, my aggression towards you is still subject to a constraint on doing harm (for example). Your guilt does not remove the threshold but rather, merely lowers it. That a guilty person in a given scenario is subject to a lower threshold will be especially relevant in light of the comments that I made earlier regarding the guilt and innocence of hunters and the hunted, respectively. Hunters, if they are guilty of laying risk on the hunted (and others), and intending and doing harm to the hunted, are subject to lower thresholds with
respect to harm, in particular. Thus the guilt of hunters will be a subfactor in determining how and why we set thresholds relative to the hunt. Specifically, their guilt will have the effect of lowering the threshold for the sorts of harm that they perpetuate.

The innocence of the hunted has a similar effect. Because the hunted are innocent (as Regan successfully argues, they cannot be anything but innocent) they are under the full purview of any supposed constraint on promoting the good.\(^{157}\) For example, a supposed constraint against doing harm to promote the good is higher, in relative terms, when the individuals whom we have to harm to promote the good are innocent (as the hunted are). In other words, the innocence of the hunted has the effect of raising the threshold for permissibly harming them. It is more difficult to justify harming the innocent than it is to justify harming the guilty, and this is relevant to where we set thresholds for harm relative to hunting given the innocence of the hunted, and guilt of hunters.

### 3.8. Summary

All of these subfactors (3.1 – 3.7) fall under the umbrella of harm. Against the instrumental and intrinsic goods of hunting are the painful inflictions that the hunted bear when struck by bullets or arrows, or caught in hunters’ traps. Some among the hunted are left wounded and die excruciatingly painful deaths via infection or starvation. Others suffocate (when their lungs fill with blood after having been pierced by bullets or arrows) or exsanguinate, which may be less painful than death via infection or starvation. Others are more seriously wounded and have less time before they expire. These animals too suffer inflictions, but to a lesser degree. In either case, the hunt produces harmful

\(^{157}\) Regan, *The Case*, 295.
inflictions (3.1). Depending on the context, these cases also involve a second form of harm. When hunters kill they preclude any and all future benefits of the lives they have taken. That is, they do harms of deprivation. These harms are also more or less, depending on the particular context of the kill. Animals that are living well have more to lose and thus to kill them is to preclude a greater good. Animals that are relatively worse-off have much less to lose and death for them precludes much less future benefit (3.2). In either case, both inflictions and deprivations can be clearly demarcated as harms not only done (3.3), but generally intended (3.4) (i.e., to the extent that the hunter avoids unintentional inflictions on the hunted) and almost always foreseeable (i.e., to the extent that hunters fail to avoid unintentional inflictions on the hunted). Furthermore, these are harms intentionally done by moral agents to mere moral patients. And finally (3.5), not only are hunters morally responsible for intending to do harm to mere moral patients, they are also responsible for the relatively high risks that they impose on these patients, and to a lesser degree, other moral agents, even if these risks do not materialize (i.e., even if the harmful inflictions and deprivations that they intend do not come to bear). Each of these subfactors counts against the moral permissibility of the act and should be expected to have the effect of moving the threshold for permitting such harms higher, rather than lower (3.6 – 3.7). With the two primary factors (i.e., goodness of outcomes and harm) having been thoroughly explored we are now finally in a position to estimate where and why we ought to set the threshold for the kinds of harm that hunting involves vis-à-vis the goods that it makes possible.
4. Interaction principles

Interaction principles are supposed to tell us how the various factors of a given theory are to function in relation to one another. They come into play most prominently when we have two or more factors in consideration and we need to decide how those factors jointly influence our decisions in a given case. This is precisely the shape that we find ourselves in with respect to hunting. The intrinsic goods of the hunt are at odds with its constraint-generating factors. If we take a moderate view of constraints then we will have to deal with the matter of establishing where and why, precisely, to set thresholds. Given the opposite directions in which the goods of the hunt and its constraint-generating factors pull, we need to know what to do and why.

This is the point where the project moves closer to an exercise in applied ethics. Earlier I referenced a large body of work concerning the rights of animals (1.3). This work figures prominently in what follows. The situation that we find ourselves in involves a conflict between the intrinsic goods of hunting (which benefit hunters) and the harm involved (which detracts, most notably, from the well-being of the hunted). How to act in these sorts of circumstances is a prominent part of the animal rights literature.

158 As Kagan, *Normative Ethics*, 183 puts it, interaction principles specify “how the various factors interact so as to determine the moral status of particular acts.”
After all, the discussion sprouts from frequent clashes between human and nonhuman animal interests, so this should come as no surprise. Within this literature is a codification of what I have already had to say about the constraint-generating capabilities of harm and this is precisely where I begin, with a formalization of “the harm principle.”

4.1. The postulate of inherent value

Because the thresholds that I ultimately appeal to in order to justify hunting come from Regan I begin this conversation by presenting his formulation of the harm principle. However, this brings a rather controversial postulate into play; that is, Regan’s postulate of inherent value. Though I discuss this postulate in what immediately follows I say here that Regan’s is one of many formulations of the harm principle. Feinberg, David DeGrazia, and John Stuart Mill, for example, all offer similar principles. The point here being, we can postulate the harm principle without, necessarily, taking recourse to Regan’s (controversial) postulate of inherent value. Still, because I rely on Regan for a pair of thresholds I think it is appropriate to give his formulation of the harm principle and what he takes as sufficient cause to substantiate it (i.e., the postulate of inherent

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159 Regan, The Case, 187.


value). While I am keen to defend his postulate, the argument that I make in substantiating my general thesis does not necessitate it. I could just as easily appeal to a general principle of non-malfeasance (e.g., DeGrazia) and reach the same ends. With this qualification in place, I now address Regan’s formulation of the harm principle.

This discussion begins with a postulate. It has to do, very closely, with Immanuel Kant’s ‘formula of the end in itself,’ according to which “man, and in general every rational being, exists as an end in himself, not merely as a means for arbitrary use by this or that will: he must… always be viewed… as an end.” Such beings (i.e., ends in themselves) have what might be called “inherent value.” Regan, describes his concept of inherent value as follows:

Concerning inherent value, I argue four things. First, while an ethical theory would be simpler if it could dispense with this kind of value, simplicity isn’t everything; in order to have the best theory, all considered, I argue that we must postulate inherent value. Second, inherent value is logically distinct from, is not reducible to, and is not a function of the other kinds of value previously mentioned [e.g., instrumental value and intrinsic value]. An individual’s moral status as one who possesses inherent value is logically independent of how happy she is, how talented or deserving, how useful, and so on. Third, inherent value is a categorical concept; an individual either has it, or that individual does not; and all those who have inherent value have this value equally. Fourth, all those individuals who are subjects-of-a-life, as this concept was explained in the preceding, have inherent value…the subject-of-a-life criterion constituting a sufficient condition for the possession of such value.


163 Kant, *Groundwork of the Metaphysic of Morals*, 95.

164 Kant, Ibid., 95, refers to it as ‘absolute value,’ while Regan, *The Case*, 235-239, uses the term ‘inherent value.’ Unless I am mistaken, the two terms are synonymous. Regan, 236, speaking only of moral agents, describes inherent value as follows: “to view moral agents as having inherent value is thus to view them as something different from, and something more than, mere receptacles of what has intrinsic value. They have value in their own right, a value that is distinct from, not reducible to, and incommensurate with the values of those experiences which, as receptacles, they have or undergo.”

165 Regan, *The Case*, xxii.
The third condition probably demands a bit more attention. The reason, according to the postulate, that inherent value is a categorical concept is because if we allow the concept to admit of degrees we meet unacceptable consequences. Specifically, we may pave the way for a perfectionist account of inherent value, the sort that could justify, for example, slavery based only on the color of one’s skin. The postulate is better off, ex hypothesi, as a categorical concept, rather than one that admits of degrees and permits such seemingly unacceptable consequences.

I should point out that this is not equivalent to saying that all possessors of inherent value lead lives of equal value. Rather, possessors of inherent value are equal only (necessarily) in regards to their equal possession of inherent value. Other sorts of value (e.g., instrumental value, intrinsic value, etc.) clearly distinguish their lives. The fact that you and I, for example, might be equal in the possession of inherent value in no

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166 Of course, this does not show that we do not also run into unacceptable consequences if we treat inherent value as a categorical concept. This is another sense in which the postulate of inherent value is subject to controversy. I owe this point to Dr. Hubin.

167 In critiquing a perfectionist account of inherent value Regan, Ibid., 237, says the following: “If moral agents are viewed as having inherent value to varying degrees, then there would have to be some basis for determining how much inherent value any given moral agent has. Theoretically, the basis could be claimed to be anything – such as wealth or belonging to the ‘right’ race or sex. More likely, the basis might be claimed to be possession of certain virtues or excellences, such as those favored by Aristotle. On this latter (perfectionist) account of inherent value, those who have abundant intellectual or artistic skills would have more inherent value than those who have some, and these latter individuals would have more than those who lack these virtues completely. To accept this view of inherent value of moral agents is to pave the way for a perfectionist theory of justice: those with less inherent value could justly be required to serve the needs and interests of those with more, even if it is not in the interests of those who serve to do so. And the subjugated could have no grounds to complain of the injustice of the treatment they receive. Because they have less inherent value, they would get what they deserve. Such an interpretation of justice is unacceptable.”
way precludes the possibility that your life may be more value-rich than mine, as would be the case if your life were filled with happiness and pleasure and the like while mine was filled with misery and toil. In this quick example, your life is clearly more value-rich than mine. That is, you are leading a better life (based only on the conditions that I have stipulated here). This says nothing of our relative inherent value. Rather, the difference is accountable, presumably, to the intrinsically valuable elements that your life has and mine lacks. In this respect we are different, not with respect to inherent value but with respect to intrinsic value. Only with regard to inherent value are absolute equals.168 Regan need not deny Mill’s oft-cited line: “it is better to be a human being dissatisfied than a pig satisfied” because he accounts for, as does Mill, the greater capacities of moral agents.169 In arguing that all subjects-of-a-life (at least) possess equal inherent value he is in no way denying that some subjects-of-a-life lead more value-rich lives (e.g., have more intrinsic value in their lives). In fact, he expressly admits this by pointing out that moral agents, who have and exercise rationality, enjoy greater benefits than mere moral patients (I discussed this point in my introduction: 1.2). In postulating inherent value Regan is not saying that all subjects-of-a-life are absolutely equal in respect to value broadly conceived; rather, he is only postulating that they are absolutely equal with respect to inherent value (as he describes it). The subject-of-a-life criteria is (and I can think of no


better way to put this) a common-denominator among beings of direct moral considerability. All moral patients and agents are the subjects-of-a-life which, on Regan’s view, constitutes sufficient evidence of their having inherent value at least; which is to say nothing (necessarily) of what they have beyond inherent value.

I might also highlight that Regan’s concept does not wax or wane. It is not something that a being can earn or lose. So long as one is the subject-of-a-life, in Regan’s view, they have, at least, inherent value. As a postulate, it applies absolutely equally to all of those who possess it, regardless of all other variables. As he poignantly puts it, “the most beneficent philanthropist is neither more nor less inherently valuable than, say, an unscrupulous used-car salesman.”

The question of who possesses such value is relatively more controversial than the concept itself (though both are controversial). It seems that what makes it morally wrong to harm individuals, absent just cause, is at least in part the sort of attributes that were described above (3.1) in addressing the subject-of-a-life criterion. The fact that we have beliefs and desires, perception, memory, and a sense of the future, including [our] own future; an emotional life together with feelings of pleasure and pain; preference and welfare-interests; the ability to initiate action in pursuit of [our] goals; a psychophysical identity over time; and an individual welfare in the sense that [our] experiential life fares well or ill for [us] largely explains why it is that our lives matter to us, regardless of whether they matter to anyone (or anything) else. It helps explain why we ought not be treated as mere objects, because we are valuable in our own right (i.e., we possess inherent value).

170 Regan, The Case, 237.
It is much less controversial to limit the application of inherent value to rational beings, namely, normal human adults.\textsuperscript{171} What happens to me matters \textit{to me} and because I am the experiencing subject-of-a-life I have the sorts of capabilities that make it reasonable, even if not obvious, to attribute inherent value to me, or at least something very much like inherent value. The heavier controversy comes into play when we consider the fact that the sorts of attributes that make it reasonable to attribute inherent value to me are, in fact, not exclusively attributable to moral agents, as some attest.\textsuperscript{172} Many mere moral patients possess these very same attributes. This is true whether the patient is a young boy or a bobcat. The sorts of things that make it reasonable to attribute inherent value to moral agents (e.g., the subject-of-a-life criterion) are not dependent on agency itself; they are, in fact, more fundamental than the sort of higher development required for agency. As Regan argues, quite persuasively, a vast array of the animal kingdom share with us humans the sorts of attributes described in the subject-of-a-life criteria.\textsuperscript{173} While there are distinctly human attributes that we can point to (e.g., rationality, language), the sort of attributes that substantiate a postulate of inherent value are not at all unique to humans. The traits that make it wrong (special cases aside) to harm humans (which are effectively captured in the subject-of-a-life criteria and which substantiate the postulate of inherent value) whether moral agents or patients, also belong to many animals. Thus we have a choice to make. Extend the domain of inherent value to

\textsuperscript{171} This is Kant’s preference, \textit{Groundwork of the Metaphysic of Morals}, 95-96.

\textsuperscript{172} Again, I am alluding to Kant here, who limits absolute value (inherent value in Regan’s terms) to “every rational being,” \textit{Groundwork of the Metaphysic of Morals}, 95.

\textsuperscript{173} Regan makes this case, completely, in chapters 1-3 of \textit{The Case}, 1-120.
include mere moral patients as members of a class who cannot be reduced to mere means to another’s ends because they have value in their own right, or deny any such inherent value to all (recall the unsavory implications of a fluid concept of inherent value). The former option seems clearly preferable. This is in large part why Regan concludes:

If, in short, we postulate inherent value in the case of moral agents, then we cannot nonarbitrarily deny it of moral patients... All who have inherent value thus have it equally, whether they be moral agents or moral patients... all animals are equal, when the notions of ‘animal’ and ‘equality’ are properly understood, ‘animal’ referring to all (terrestrial, at least) moral agents and patients, and ‘equality’ referring to their equal possession of inherent value.\(^{174}\)

If human moral patients (i.e., mere moral patients) cannot be reduced to a mere means to another’s ends then what grounds can we have for doing precisely that to non-human moral patients? That one is a human and the other is not is morally irrelevant in this case because the attributes in question are common among both, and thus the human/non-human distinction is supremely irrelevant. Regardless of whether one is a human moral patient or a non-human moral patient the same attributes apply. Thus in this sense (i.e., relative to the postulate of inherent value) humans and non-humans are relevantly similar. Like moral agents, many moral patients lead lives that matter \textit{to themselves}, regardless of whether they matter to anyone else. This may be true whether the patient is human or not. The very same attributes that make it possible to (wrongfully) harm a human moral patient belong to many animals as well. They can be harmed in comparable, and sometimes exactly the same ways.\(^{175}\) The attributes that define moral patient status are,

\(^{174}\) Regan, \textit{The Case}, 240.

\(^{175}\) Regan’s summary of this view is as follows: “some of the harms done to these moral patients are harms of the same kind as harms done to moral agents. We cannot consistently hold, therefore, that moral agents and patients can never be harmed in relevantly similar ways. They can. Thus, if we view all moral agents as having equal
simply put, not specific to humans; such a claim is not anthropomorphic, it is plain fact; its denial, “human chauvinism.”176

A final, but very important word, about the postulate of inherent value is in order as well. The language that I have used in describing the application of this postulate is, thus far, a bit lacking in precision. While the concept itself is categorical, its application is not (i.e., Regan does not intend it to apply to all life forms, or even all animals; he conservatively restricts its application to ‘mentally normal mammals of a year or more’). As was indicated in the passage above, the subject-of-a-life criterion is intended as
sufficient, though not necessary evidence for the attribution of inherent value. Remember, the concept of inherent value is a postulate. It does not follow from the subject-of-a-life criterion, which is merely meant to be an indicator of it. I also made reference earlier (3.1), to a “conservative policy” by which only “mentally normal mammals of a year or more” are the presumed subjects-of-a-life, and hence, presumably, possessors of inherent value.177 The point that I want to make here is that not every member of the animal kingdom falls within the subject-of-a-life criterion. It seems perfectly reasonable to

inherent value, if we rely on this account of the value of these individuals to avoid the counterintuitive implications of act utilitarianism [e.g., secret killings], denying that the harm done to some moral agents can be justified merely on the grounds that harming them brings about optimal consequences for all concerned, if some of these harms done to moral agents are harms of the same kind as harms done to moral patients, and if the duties not to harm either moral agents or patients in these ways are [pro tanto] duties owed directly to each, then it would be arbitrary to regard moral patients as lacking inherent value or to suppose that they have the status of mere receptacles,” The Case, 239-240.

177 Ibid., 78.
assume that zoological complexity comes in degrees and that some animals are, relatively, more or less complex and more or less in possession of the attributes that constitute the subject-of-a-life status. An amoeba and an orangutan are, obviously enough, not absolute equals relative to the subject-of-a-life criterion. Some animals are more complex than others and some are closer to the sufficient barrier for the attribution of subject-of-a-life status than others. As a postulate, Regan’s account in inherent value applies only to those animals in possession of all, not just some, of the attributes described in the subject-of-a-life criterion. The objective of his conservative policy is to dispense with the perpetual business of trying to draw a distinct line on the phylogenetic scale where a being just short of the line is not the subject-of-a-life while one immediately above it is. Such a line would seem arbitrary, given the vast array of animal life and complexity. By limiting the assumption of inherent value to mentally normal mammals of a year or more we are “drawing the line” relatively high on the phylogenetic scale. Animals at or above this point are, without a doubt, the experiencing subjects-of-a-life. Animals below this point may lack some of the attributes described in the subject-of-a-life criteria. Setting the line at mentally normal mammals of a year or more is not equivalent to denying inherent value in animals below this point. Rather, it is to simply admit that there may be reasonable doubt for these animals. Thus Regan’s insistence on the subject-of-a-life criteria represents a conservative departure from the claim that consciousness or even mere sentience (for example) is sufficient grounds for equal moral consideration. The conservative policy is excessively high, in fact, for as I mentioned

178 Singer, Animal Liberation, 7.
above (3.1), we have good reason to believe that relatively less complex animals, such as fish and birds, also possess the requisite features of the subject-of-a-life criterion.\textsuperscript{179}

From this postulate (of inherent value) Regan advances his respect principle (4.2), harm principle (4.3), minimize overriding (or miniride) principle (4.5), and worse-off principle (4.6). As I said immediately above, the postulate of inherent value is controversial and I have included a discussion of it here because Regan views it as an integral departure point for his theory and because I rely on what he believes follows from it (specifically the miniride and worse-off principles). There is good cause to postulate the harm principle without recourse to inherent value, as I discuss momentarily (4.3); and for this reason the general thesis that I advance in this project is not ultimately dependent upon the legitimacy of the postulate of inherent value.

4.2. The respect principle and formal justice

If we are to avoid human chauvinism we ought to face the fact that though humans and animals differ in many respects, they also have many relevant similarities. This is not an anthropomorphic mistake, but plain biological fact. A common denominator among the sorts of animals in question and humans is that they are all, at least, moral patients. Thus our treatment of animals, if it is to comply with the notion of justice as “the similar, and injustice the dissimilar, treatment of similar individuals” ought

\textsuperscript{179} Tom Regan, \textit{Empty Cages: Facing the Challenge of Animal Rights} (Lanham, Maryland: Rowman & Littlefield Publishers, Inc., 2004), 59-61. Rogers, \textit{The Development of Brain and Behavior in the Chicken}, 219, writes: “it is now clear that birds have cognitive capacities equivalent to those of mammals, even primates.”
to recognize these relevant similarities.\(^{180}\) Hence (according to Regan) the following principle, the respect principle, follows directly from the postulate of inherent value (as described). “We are to treat those individuals who have inherent value in ways that respect their inherent value.”\(^{181}\) This is true regardless of what they have beyond inherent value. Any being, mouse or man, in possession of inherent value ought to have that value considered in any moral deliberation about how that being ought to be treated.

Furthermore such a claim is not necessarily dependent upon the postulate of inherent value itself. Regan’s respect principle is only a slightly modified version of the formal principle of justice that enjoins us to give each person (or animal, in this case) what they are due, and what they are due (in the name of basic equality) is equal consideration of equal interests (to the extent that they have them).\(^{182}\) Since subjects-of-a-life have, among other things, welfare interests, the formal principle of justice commits us to consider and respect those interest in any event where we have to make a moral choice regarding them. Regardless of the postulate of inherent value, moral patients and agents have (at least) welfare interests and any normative theory that disregards these relevant similarities and what follows from them will be worse-off for it.

4.3. The harm principle

The respect principle and the formal principle of justice are, themselves, rather general. They do not specify what it means, practically, to respect inherent value or, at least, one’s welfare interests. Rather, they simply tell us that these properties must be

\(^{180}\) Regan, *The Case*, 128.

\(^{181}\) Ibid., 248.

considered. As a matter of applied ethics, we would like to be much more precise about what follows from them. What does it mean to respect inherent value or mere welfare interests, in a practical sense? Among other things (forthcoming) it seems to entail some fairly obvious negative obligations. We cannot respect a being’s inherent value or welfare interests in any instance where our actions treat the bearer of said properties as a mere means to some other ends (i.e., not as an end in themselves). This is precisely what happens when we harm others for our own ends (or the ends of others) without regard for the inherent value or welfare interests of the individual(s) that we harm. Thus we can articulate yet another general principle, the harm principle, derivable from and more specific than the respect principle or the formal principle of justice, which states “a direct [pro tanto] duty not to harm individuals.”\textsuperscript{183}

To say that we have a direct duty means that we owe it to those individuals themselves, who fall within the scope of this principle, not to harm them, while to say that the duty is [pro tanto] means that…this duty may be overridden in some cases.\textsuperscript{184}

And furthermore, it seems reasonable to require, as Regan suggests, that “the burden of showing why and how it may be justifiably overridden must be borne by those who override it.”\textsuperscript{185}

\textsuperscript{183} Ibid., 187.

\textsuperscript{184} Ibid. Here, and in the quote setting up this passage, I have substituted ‘pro tanto’ for Regan’s ‘prima facie’ to be consistent with a more contemporary use of these terms and to indicate that the duty Regan is referring to is not prima facie in the sense that it only appears to be a duty, but is rather a pro tanto duty in the sense that it not only appears to be a duty, but actually is a duty, but one that is subject to being over-ridden or infringed. The credit for this change is owed to Don Hubin.

\textsuperscript{185} Regan, The Case, 187.
In the sense that I have presented this principle here it deals only with negative obligations. The harm principle also entails positive obligations, such as a duty to assist others who are being treated unjustly. Some moral patients are incapable of guarding themselves against harm and, in particular, unjustified harm.186 In fact, this is sometimes true of moral agents as well. The idea that the mere presence of injustice (rather than our own propagation of it) calls for action is fairly widely recognized and accepted.

All initially plausible ethical theories recognize both the duty not to act unjustly oneself as well as the duty to assist those who are the victims of injustice at the hands of others. Justice, that is, not only imposes duties of nonharm; it also imposes duties of assistance, understood as the duty to aid those who suffer from injustice.187

Roughly speaking then, the harm principle generates both negative and positive duties with respect to our treatment of all moral patients and agents. We are obliged to respect their well-being, which means, among others things, not disrespecting it ourselves and defending it on behalf its possessors against others who disrespect it. As is articulated above, this is a pro tanto principle. This allows for exceptional cases where the principle itself, which is a constraint, can be overridden or infringed (to revert to my earlier language). Thus we are now in a position to articulate and defend the thresholds that I referred to earlier (3.6). These thresholds will have to settle with the harm principle at least, and if Regan is right they will also have to harmonize with his respect principle, and the postulate of inherent value on which it rests.

186 Regan sharpens this point, saying “when, as is the case of moral patients, they have right but are themselves incapable of claiming or defending them, then the duty ‘society’ has to do this for these individuals is, one might say, all the greater,” *The Case*, 284.

187 Ibid., 249.
Having now done most of the preliminary work for articulating these thresholds I now make just one further comment before getting directly to them. This particular juncture marks a turn in the focus of this project. The point of fleshing out these thresholds is not to answer the general thesis of this work but rather, to shed some light on the much more precise business of answering the following question: under what conditions is it morally permissible to hunt? Or what is the same thing, under what condition is it morally permissible to infringe the harm principle? Preventions cases immediately stand out as probable candidates.

4.4. Prevention cases

The clearest cases of justifiable harm involve instances where we have no choice in the matter. I appealed to this notion earlier when I used self-defense as an example of justifiably doing harm (3.7). Let us call such cases, where the circumstances are such that we have no choice but to do or allow harm (remembering that doing and allowing may be indistinguishable), “prevention cases.” Though they may be rare, there are clearly instances where such scenarios arise in hunting. If, for instance, an animal becomes an innocent threat then we may be faced with the choice of 1) defending ourselves (or others) by, say, hunting, and in the process, doing harm to the animal, or 2) doing nothing to prevent the actualization of the threat posed by the animal and thereby allowing harm to ourselves or others. Each of our options in this prevention case involves harm; the former involves doing harm, while the latter involves allowing harm. Let us assume, for the moment, that we decide to act, which in this case means we decide to do

188 Ibid., 298.
harm to the innocent threat (suppose, for the sake of this example, that the doing/allowing distinction is irrelevant). As I implied earlier (3.7), the fact that all of our options involve harm is not a license to utterly dismiss the harm principle. Rather, we expect that the harm we do in self-defense be proportionate to the nature of the threat (recall the inappropriateness of my stabbing you with a letter-opener for having thrown hot coffee into my lap; 3.7). We need additional principles to govern our behavior in prevention cases and help us decide if, when, and how we ought to infringe the harm principle. A couple (both in the sense that there are two, and in the sense that they are coupled) of particular thresholds are advanced here, each from Regan, each dealing with prevention cases, and each with a direct application to hunting.

Before mapping these proposed thresholds, let me first make one additional (and tentative) stipulation. Let us assume, for the present purposes, that all actors in the following scenarios are “innocent” with regard to the relevant features of the examples at hand. That is, let us assume that they have done no moral wrong relative to the relevant contexts. After having mapped the proposed thresholds this stipulation is revisited and rejected (4.6) based upon the application of the harm principle and the threshold itself. All of this should become much clearer once we have considered the thresholds themselves.

4.5. The minimize overriding (or miniride) principle

The first of these principles is the minimize overriding, or miniride principle. Its scope is limited to prevention cases that involve comparable harm (i.e., when we must choose between doing or allowing comparable harm to two or more individuals). (Its
couple, the worse-off principle, is supposed to govern incomparable harms). The
couple, as Regan writes, is as follows:

> When we must choose between overriding the rights of many who are innocent or
> the rights of few who are innocent, and when each affected individual will be
> harmed in a...comparable way, then we ought to choose to override the rights of
> the few in preference to overriding the rights of the many.¹⁸⁹

The crucial point for this threshold (and its couple) is the relative harm. That is, we must
harm one or another and the individuals involved are facing a comparable harm. In other
words, we must decide whose right not to be harmed (i.e., comparably harmed) is to be
infringed. Imagine, for example, that a mine has collapsed and that fifty miners are
trapped in one shaft of the mine, and a fifty-first miner in another. And imagine, further,
that the circumstances are such that we may only save one lot or the other and that the
death of the fifty or the one (depending on our choice) will be equitable. So we must
choose from saving the fifty and thereby killing the one, or vice versa. This is, obviously,
a regrettable circumstance. For most of us (I think) the intuitive reaction is to save the
fifty, rather than the one. Not everyone agrees with this assessment but there are quite
plausible reasons for accepting it, intuition notwithstanding.¹⁹⁰

¹⁸⁹ Ibid., 305. Regan prefaces this passage with “special considerations aside,” which is a
reference to the possibility of some party being relevantly guilty for bringing about the
prevention case, which would obviously impact its application; and he also says “prima
facie” where I have substituted ellipsis, and says in his footnote (fn28) that “in saying that
the harms are prima facie comparable it is assumed that no one individual would be made
worse-off than any other.” In other words, he means to stipulate that they are, pro tanto,
equal.

(1977): 293-316, famously contests the notion that the numbers should count. Regan
disagrees, for reasons that he spells out in detail, The Case, 297-301.
John Taurek, for example, disagrees. In his own words Taurek says “I would flip in a coin even in such a case…I cannot see how or why the mere addition of numbers should change anything.” Regan succinctly summarizes Taurek’s reasoning when he says:

The loss of one miner’s life cannot be added to the loss of another miner’s life, and another’s, and so on, to arrive at some aggregate or total of losses or harms. There is, on Taurek’s view, only the loss suffered by this or that individual miner; there is no “aggregate” of their separate losses. And it is this fact – the fact that such losses cannot be totaled – that, on Taurek’s view, leads to the conclusion that ‘numbers don’t count’ in such cases. Since there is no way to add the separate losses of the involved individuals, there is…no reason to regard saving the fifty as preferable to saving the one.

Regan continues:

His [i.e., Taurek’s] position in this regard comes to this: to treat all the miners equally, we must have an equal concern for the survival of each of them. But to have an equal concern for each miner requires that we not let the numbers count. If my concern for the one miner’s survival is equal to my concern for each of the fifty, then I must treat them all equitably; and to treat them all equitably requires that I give all an equal chance in the lottery of survival, so to speak, which in Taurek’s view, requires flipping a coin.

But Regan is not persuaded by Taurek’s argument; he replies:

This approach is unsatisfactory…to flip a coin just once in such cases is manifestly not to treat all the affected individuals equitably…to make recourse to coin tossing equitable, one would have to flip a coin at least fifty times, one toss for each of the fifty miners over and against the single miner. Indeed, to treat the several members of the group of fifty as if they constituted a single individual, which is what we would be doing if we allowed a single coin toss to decide their collective fate, is itself dramatically at odds with Taurek’s injunction to take their individual prospective losses seriously.

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192 Regan, The Case, 299.
193 Ibid., 300-301.
194 Ibid., 301.
Thus Regan and Taurek agree that the relevant issue is not the aggregate of losses but the losses to each individual. The difference is that Taurek accounts for their equal right to consideration by tossing a coin, the fifty against the one; whereas Regan rejects the idea of siding with the few, or flipping a coin, because each involves treating the fifty as though they were one. As he argues:

Showing equal respect for the equal rights of the individuals involved requires that we override the right[s] of… (the few) rather than the rights of the many… To choose to override the rights of the many in this case would be to override an equal right [fifty] times (i.e., in the case of [fifty] different individuals) when we could choose to override such a right only once, and *that* cannot be consistent with showing equal respect for the equal rights of all the individuals involved.195

It is not, in this case, a question of aggregating the total harm done, but rather, it is a matter of executing a regrettable scenario less often, rather than more often (or what is the same thing, of respecting the equal pro tanto right of each individual equally). To choose to override the rights of the many and spare the few is to fail to count each equitably. This is so because to spare the one and harm the fifty is to treat the fifty as though they were one, or worse, less than one, which, of course, they are not.196 In short, Regan argues, in prevention cases that involve comparable harm, contrary to Taurek’s argument, the numbers count and we ought to minimize the number of times that we override (i.e., infringe) an individual’s right not to be harmed.

Aside from the somewhat messy business of determining when harms are comparable (of which I have more to say in a moment), this principle is fairly precise. It tells us exactly what to do, and why, in a given scenario. It does not, however, do much

195 Ibid., 305.

196 Regan considers and refutes several objections to the minimize overriding principle, Ibid., 306-307.
for the scenario that we are in. That is, relative to hunting, its application seems infinitesimal. This is so because, first, rare is the situation in hunting where we are facing a genuine prevention case, and second, even more rare are instances of genuine prevention cases that involve comparable harms. The miniride principle would only apply in cases where a hunter has no choice but to choose among harms and where the harms from which he or she must choose are comparable. This might be the case, for example, if the hunter faced an innocent threat from an animal (or animals) and the degree of that threat were roughly comparable to the foreseeable harm intended to the hunted (i.e., some degree of both infliction and deprivation, including death). In such a rare scenario the miniride principle would enjoin us to count the interested sides in the case and minimize the number of times that we infringe the harm principle (i.e., infringe the rights of the few, rather than the many).

Trying to imagine a specific example of a prevention case in hunting that involves comparable harms should clear up any doubt about the rarity of such cases. For the hunted, this involves the harmful infliction, which can be more or less depending on the severity of pain levied, and the harmful deprivation, which is also more or less depending on the intrinsic goods of the animals life that are precluded (e.g., killing a young, healthy animal precludes more than killing a dying decrepit animal). What sort of harm, to the hunter or others, would be comparable to this loss? It is certainly hard to say. Remember, identical is not necessarily equal. Because moral agents, for example, are capable of so much more than mere moral patients they have much more to lose. A lesser infliction or deprivation can be a greater harm, depending upon whom it is levied. A certain measure
of deprivation (x) may have a more harmful effect on an agent than the identical measure, or even a greater measure (x + 1) would have on a mere patient.

Assessing what constitutes a comparable harm is itself apparently difficult given the vastly different forms and degrees of harm. Regan’s principle (i.e., the miniride principle) seems vulnerable in this regard as he (at least to my knowledge) has not put for a definition or criteria to illustrate what he takes to constitute “comparable.” Rather, he generally stipulates that whatever harm he happens to be discussing is either comparable or incomparable. In this sense, while the miniride principle is much more precise than, say, the harm principle, it still lacks some precision in that it is somewhat vague about what constitutes “comparable.”

This vulnerability is somewhat softened for Regan in light of that fact that comparable harms (whatever we take them to be) are much less likely to occur, in general, than incomparable harms (comparable harms occurring as a narrow point between a vast range of possible incomparable harms). Nonetheless, it is important to articulate, despite the rarity of its application, the relation of this principle to its more broadly applied couple (the worse-off principle, of which I speak momentarily (4.6)). The reason for this is because the miniride principle turns out to be the fulcrum on which a significant balance pivots for the normative theory of hunting that I put forth here. When harms are comparable, the miniride principle applies and as Regan argues, the numbers count. But much more frequently the sorts of harms involved in hunting are incomparable. In prevention cases where the harms involved are not comparable we have a second threshold, the worse-off principle, which may provide guidance.
4.6. The worse-off principle

This second principle is as follows:

When we must decide to override the rights of the many or the rights of the few who are innocent, and when the harm faced by the few would make them worse-off than any of the many would be if any other option were chosen, then we ought to override the rights of the many.\textsuperscript{197}

As was the case with the miniride principle, the crucial point in this case is the relative harm. Unlike the miniride principle, the worse-off principle applies in prevention cases where the decision we face involves incomparable harms. Such would be the case, for example, if we somehow found ourselves faced with the option of either curing my headache, or ending your life. If we assume that you and I lead roughly value-equal lives (i.e., no special circumstances obtain that would make one of us much worse-off than the other prior to the prevention case that we currently find ourselves in) then clearly the latter option (i.e., killing you) will be a greater harm than leaving my headache unchecked, for mine is a temporary and minor harm while yours is permanent and severe. In a simple case like this, equal concern for our respective interests dictates that my pro tanto right not to be harmed is overridden, rather than yours. “To show equal respect for the equal rights of the two, one must count their equal harms equally, not their unequal harms equally.”\textsuperscript{198}

Such a simple example can, however, be easily complicated. Obviously a prevention case that involves choosing between 1) laying some minute harm on one subject, or 2) laying some severe harm on another is fairly easy to adjudicate. But

\textsuperscript{197} Ibid., 308.

\textsuperscript{198} Ibid., 309.
suppose the example were not so extreme. Suppose it were a question of 1) doing or allowing some quantity of harm, say -75, to 100 subjects ($\sum -7,500$), or 2) doing or allowing a slightly greater quantity of harm, say, -100, to a single subject ($\sum -100$).

Should we spread a tremendous balance of harm (-7,500) over the 100 subjects to spare the small difference of harm to the one? Should we choose -7,500 to spare -100 because, as Taurek says:

If not one of us [among the 100] can give you [the one] a good reason why you should be willing to undergo a greater suffering so that he might be spared a lesser one, then there is simply no good reason why you should be asked to suffer so that the group may be spared.\(^{199}\)

Perhaps one way to avoid this complication is to expand the notion of comparable harm. That is, we might venture to say that -75 can be considered comparable to -100, with respect to harm, and that we therefore ought to resort to the miniride principle, which would have us side with the many rather than the few (i.e., choose the -100 balance, rather than the -7,500). Of course this response launches its proponent right into the messy business of line-drawing. If -75 is comparable to -100, then why not -74, and so on? As I said a moment ago Regan does fairly little to suggest how he would make these considerations. He stipulates in his examples that the harms are “prima facie” comparable, or “prima facie” incomparable, by which he means to suggest that they appear to be comparable or incomparable, and thus we are to assume that they are. He is effectively asking the reader to consider only obvious cases. Thus he does not address this complication head on. This may be a bigger problem for Regan than it is for me because the cases that matter to a theory of hunting, the vast majority of hunting that goes

\(^{199}\) Taurek, “Should the Numbers Count?,” 308.
on in the United States at least, involve harms that are clearly of the incomparable sort. That is, simple examples, ones that involve clearly incomparable harms, like the one I have chosen to illustrate my point here, are more analogous to hunting than the sort of line-drawing cases that substantiate this complication. In fact, most hunters are not operating in prevention cases to begin with, which means that among their choices is the option to do no harm (qua the hunt) at all, and thus any harm that they choose to do is obviously incomparable to the option of doing no harm at all (again, qua the hunt). Thus my move to stick to cases of clearly incomparable harm does not leave me especially vulnerable because it is exactly these sorts of cases that I am concerned with.

Speaking only of prevention cases that involve clearly incomparable harms Regan and Taurek agree: nothing changes when the numbers go up. If it were I, and fifty others who had comparable headaches that could be cured if only we chose to override your right not to be harmed and took your life, the worse-off principle would sooner have us override the rights of the fifty-one than yours. This is because there is no aggregate of the fifty-one. There is no fifty-second individual whose headache is equal to the sum of the fifty-one. Rather, there are simply fifty-one individuals with comparable headaches, each of which, individually, amounts to less harm than would occur if we took your life instead. Respect for your interests dictates that we choose not to override your right not to be incomparably harmed over the rights of the others, fifty-one times. This is relevantly different than choosing your right over the rights of the others, collectively; which would be, again, to treat the fifty-one as though they were one, which they are not. Hence

200 I expand upon this point, especially the notion that most hunters are not operating in genuine prevention cases to begin with, in section 4.7.
protecting the many from lesser harm, and subjecting the few to greater harm, in prevention cases where harms are incomparable, is to fail to respect the equal interests of both the many and the few. Rather, when we have no choice, and when harms are incomparable, we ought not count the numbers, and we ought to override the rights of the many, rather than the few (assuming, as we have throughout this particular discussion, that the many face a lesser harm than the few). Or more laconically, when we have no choice, we ought to do the lesser harm, regardless of how many times we have to do it.

It is worth noting that this is not, in this case, a consequentialist consideration (though a consequentialist could read the same conclusions, on different grounds), for the aggregate of doing the lesser harm fifty-one times may be greater than doing the greater harm once. Imagine we are to choose between option A, doing some value of harm, say -100, once, and alternative B, doing some lesser value of harm, say -1, two hundred times. In this case, the total of alternative B outweighs option A (-200 to -100). Rather than consequences alone, the reason for the worse-off principles’ preference for overriding the rights of the many, rather than the few (despite the aggregate) is attributable to the respect principle (as described in the previous paragraph), not the aggregate of the consequences, as consequentialism (broadly speaking) would have it.

Like the miniride principle, the worse-off principle seems minimally applicable to hunting. As was stated before, very rarely do genuine prevention cases (i.e., where we have no choice but to choose among harms) arise in hunting. The worse-off principle is dissimilar to the miniride principle in that when these rare circumstances do occur, they seem more likely to involve incomparable harms (comparable harms begin the neutral point along a continuum of incomparable harms). And when they do a second
dissimilarity becomes apparent, that is, when we are dealing with the miniride principle the numbers count, whereas with the worse-off principle they do not (for reasons already explained). According to the worse-off principle then, when we are faced with a genuine prevention case that has to do with hunting and when the harms from which we have no choice but to choose are incomparable, what we ought to do, out of respect for the interests of the individuals involved, is select the option that involves the lesser harm (understood not as the aggregate or global harm, but rather, the individual or local harm). Thus the threshold for infringing the right of the hunted not to be harmed will be especially high, given the fact that the harm that they incur is itself very high. Death is certainly not the worst thing that can happen to the hunted, but it is surely an extreme case of harm in that it deprives the hunted of any and all future benefits of their lives and it may, depending on the circumstances, be more or less exacerbated by the degree of infliction that brings it about. When we take the life of a prime animal we utterly thwart that animals’ welfare interests and all of the subsequent benefits that follow from them; and this situation is made all the worse when we do so without successfully avoiding the tremendous measures of pain and suffering that often accompany death via the hunter. When we hunt down an animal, the harm that we do, though not precisely quantifiable, is apparently great. According to the worse-off principle, if we are to choose this harm, then the harm that we avoid in its stay must not be less or equal to the harms of the hunt, but greater than them. That is, the hunter must be spared a greater harm than that to which the hunted is subjected. Again it is worth pointing out that identical harms are not necessarily equal. The death of the hunter and the death of the hunted (their deaths being, presumably, identical) are not equal because the former has more to lose than the latter. If
a hunter faces a mortal innocent threat (e.g., suppose a large cat is known to be stalking
humans nearby) he or she is beyond the threshold laid down by the worse-off principle
and thus rightly infringes the constraint that is the harm principle when he or she hunts
and kills the cat to escape the threat. In any case where the harm faced by the hunted is
exceeded by harms involved in the alternative option (assuming we are operating in a
prevention case) then the worse-off principle compels us to choose the lesser of the two,
regardless of how many times we have to choose it, and continue with the hunt. If an
entire village faces a mortal threat of starvation (and thus a pro tanto greater harm than
the hunted) and the only way to avoid this harm is to hunt and kill animals then, out of
respect for the equal interests of all parties, we ought to kill the animals; however many
of them is necessary to lower the threat posed to the villagers below the level of the threat
posed to the hunted, and in the process avoid the greater harm. Anything short of a
greater harm the worse-off principle cannot sanction. In this particular prevention case
the only scenario in which we ought to infringe the constraint against harming the hunted
is when all other alternatives involve greater harms.

4.7. Prevention cases, and guilt and innocence

These two thresholds (i.e., the miniride and the worse-off principles) provide two
justifications for infringing the harm principle. As should be apparent, they both set the
threshold fairly high, requiring that we have no choice but to harm (i.e., we are in a
genuine prevention case) and in the case of the latter principle, that the harms we avoid
by hunting are greater than the harms that the hunted themselves incur. As was
mentioned above, each of these two thresholds seems minimally applicable to hunting as
it is most commonly practiced today. Foremost, very little of what goes on today qualifies
as a genuine prevention case. Hunters, most of them at least, are not faced with the sort of bleak scenarios that narrow their options to choosing among harms. Rather, for them, the choice to hunt is exactly that, a choice. That is, it is not an ultimatum. Most often the miniride and worse-off principles simply do not apply because there are no relative harms from which the hunter has no choice but to choose. For those who choose to hunt, as modern hunters do, it is not a question of this harm or that harm, and what to do given these options. Strictly relative to hunting, they do have other options, including the option to avoid the harms of hunting altogether. In most cases the harms involved with hunting are not necessary harms, but rather, gratuitous harms. For precisely this reason my earlier stipulation (i.e., that we assume the innocence of hunters for the sake of mapping the two thresholds considered above: 4.4) is overly generous. Because the hunters are engaged in gratuitous harm we cannot attribute to them an unqualified innocence. Strictly relative to hunting, they are not innocent and thus do not qualify for either the miniride or worse-off principles grounds for infringing the pro tanto right of the hunted not to be harmed.

Modern hunters have no recourse to the two thresholds mapped here because they do not meet the requisite conditions. The two clearest justifications for infringing the pro tanto right of the hunted not to be harmed are closed off to modern hunters because they are not operating in genuine prevention cases and are thus not innocent in the requisite sense.

Here again the supposed subspecies of subsistence hunting may re-enter the fray in an attempt to defend the innocence of modern hunters and the possibility that what they do (i.e., as hunters) may indeed qualify as a prevention case. Perhaps, one might inject, modern hunters do not have other options. Perhaps hunting, for some, while not a means of primitive subsistence, is nonetheless an important means of offsetting or
supplementing the sometimes-high cost of nourishment. One might be inclined to think that subsistence hunting is a cost-effective alternative to (what has become) conventional meat consumption (e.g., factory-farmed meat). We might suppose that a tight budget might move modern hunters much closer to an instance of a genuine prevention case in the sense that the hunters’ limited financial resources preclude many options for nourishment. Without the financial resources to pursue alternative food sources perhaps modern hunters truly have no other choice. Given the “ought implies can” principle of ethics, it hardly seems fair to label such hunters “guilty” of violating the harm principle since they have no other choice. The notion of a prevention case may remain a live option, at least in such limited cases.  

This objection is, I think, much too generous. Foremost, the very purpose of factory-farmed meat is cost-effectiveness. Higher supplies make for lower costs and an Achilles heel of the meat industry has been the sometimes-pitiful depth to which those who own/operate confined feeding operations will stoop for the sake of lowering prices. Relative to cost, there is very little cheaper than factory-farmed meat. Perhaps the only thing more frugal is “free” meat (e.g., scavenged or stolen meat), of which hunted meat is not the sort. To the extent that they are applicable, licensure, equipment, and travel and lodging fees drive up the cost of hunted meat. Conservative estimates are nearly as high as $25 dollars per pound, to say nothing of the time spent in the pursuit of it; time that could, obviously enough, have been dedicated to obtaining other food

201 This comment is in response to an objection once raised by Dr. Sarah K. Fields, one of my committee members.

202 See the Pew Commission on Industrial Farm Animal Production.
sources, either directly (e.g., farming, gardening, gathering) or indirectly (e.g., working to earn money to purchase other, cheaper, foods). The idea that hunting is a cheap alternative to buying meat is misguided or myopic or both. The supposition that hunted meat might supplement a hunter’s income in the sense required to move such hunting back into the domain of prevention cases is plainly wanting. Modern hunting is not a supplement to one’s income, quite the opposite. It moves the hunter further from, not closer to, a genuine prevention case. This objection in no way sways the conclusion that modern hunters fail to qualify for the sorts of infringements outlined in prevention cases, particularly the miniride principle and the worse-off principle.

What each of these thresholds (i.e., the miniride and worse-off principles) does, or at least can do, is explain a particular set of circumstances in which the pro tanto right of an individual’s not to be harmed can be rightly overridden or infringed (i.e., they account for instances of non-rights-violating harm). It is unreasonable to suggest that an agent has acted wrongly based upon the harm that they have brought about when in fact the situation dictated all of the agent’s options. In other words, when all of our choices involve harm we cannot heap moral blame on the actor based only on the fact that their action involved harm. After all, they had no other choice. In prevention cases the agent

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204 Recall that the annual expenditure of modern hunters is roughly $22.9 billion and that most of that spending is not dedicated to procuring meat, see NSFHWAR.
must choose among harms and the two thresholds mapped here are supposed to guide our
decisions in such unfortunate circumstances. They provide principled reasons for
deciding when and how to infringe an individual’s pro tanto right not be harmed.
However, because the scope of each is limited to innocent agents (and patients) and
prevention cases they are of little use to modern hunters (who are not acting in prevention
cases). Thus a new question becomes apparent. Outside of prevention cases (in which we
have the strongest possible arguments for justly infringing the harm principle (i.e.,
because we have no choice)), what means might we have to justify an infringement? Is
harm ever a justifiable option? Whereby “option” I mean to indicate the lack of a
prevention case. If our choices include options that do not involve harm, are we ever
justified in choosing harm? Can we justify an option to harm?

4.8. The liberty principle and the “option” to harm \(^{205}\)

A third and final threshold (for our purposes) is especially relevant here. It is the
liberty principle, and reads as follows:

> Provided that all those involved are treated with respect, and assuming that no
> special considerations obtain, any innocent individual has the right to act to avoid
> being made worse-off even if doing so harms other innocents.\(^{206}\)

By “special considerations” Regan is referring to additional duties, such as obtained
duties or property rights, that may limit one’s liberty; and by stipulating “that all those
involved are treated with respect” he intends to “rule…out other cases;” which apparently
means any cases in which the subject harmed is harmed without respect to their

\(^{205}\) “Option” is in quotations because I do not want to give the impression that I am
assuming such “options” exist.

\(^{206}\) Regan, *The Case*, 331.
interests. In other words, the sorts of harms Regan’s liberty principle permits are limited to “respectful” harms, as he might have it. The idea of the liberty principle is to allow for the sorts of freedoms that were addressed earlier in the discussion (3.4) of the merely harmful side-effects of our actions. Recall the concert-ticket example from above (i.e., where you are harmed when I buy the last available concert ticket, which you had an eye for). Such a scenario is not necessarily a prevention case. It may well be that either of us will not be harmed for having not gotten the ticket. Let us assume, however, that having not gotten the ticket harms you while having not gotten the ticket would not have harmed me. Suppose that getting the ticket satisfies my preference, but that had I not gotten it I would have been no worse-off. I am happy to have it, but would have been fine without it. And for having not gotten it you are worse-off. In short, I have done (merely foreseeable) harm to you, though I did not have to. This is not then, a prevention case. If, intuitively, we think that I have done nothing (morally) wrong in this case then what justifies the harm that I have done? Of course, from our earlier discussion, one element of our explanation will surely be the fact that what I have done is merely a foreseeable side-effect that happened to involve harming you. I have not harmed you as a part of my own ends, or as a means to my own end. As the proviso within the liberty principle states, you have been “treated with respect” in the sense that I have not reduced you to a means to my own ends. What I want to show with an example like this is that sometimes, under certain conditions, we may very well have the option to harm; though this option is, in

207 Regan is somewhat unclear, I think, about what he means by “rules out other cases.” In this discussion he simply provides an example where he is not at liberty to torture his supposed Uncle John for the mere pleasure of it because to do so would be to treat Uncle John as a mere receptacle of value, which, on the rights view that Regan stands by, he is not; 331-333.
light of the provisos contained within the liberty principle, “quite weak and limited.”

Liberty is presumably a virtue but it is, obviously enough, subject to constraints. If our liberty leads to actions that harm others, and we want our actions to be just, we must be innocent in the sense that we ensure that what we do is respectful towards those whom we harm by doing it and no special considerations obtain (e.g., obtained duties, property rights, and the like). This is not an oxymoron. We can respectfully harm another. The prevention cases above involve just such harms. What this entails is showing respect for the interests of those that we harm in the process. It means, most notably, not treating them as a mere means to our own ends. We can harm someone as a mere side-effect, as is the case in the concert-ticket example, while simultaneously respecting their inherent value and interests, and their corresponding pro tanto right not to be harmed. In the name of liberty we have the option of doing harm, though it is, again, “quite weak and limited” in the sense that we must, in the process, show respect for the interests of those that we harm and be free from guilt or special considerations.

In presenting the option to harm in this way I am being especially generous. The conditions that the liberty principle stipulates are, in a sense, basic or fundamental. In all likelihood the “option” may be much more restrictive than this. We may even deny the possibility of such an option at all. That is, we may limit the domain of morally acceptable harm to prevention cases. The point of the more liberal interpretation of the option to harm is to be especially favorable to the possibility that hunters are within the

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209 By putting “option” in quotations I am indicating that I am no longer assuming the possibility of an option to do harm.
210 Kagan discusses the possibility of options to do harm, *Normative Ethics*, 167-169.
confines of the liberty principle when they harm the hunted. But even my generosity is not enough. Just as was the case with the prevention cases earlier, modern hunters do not seem to qualify for the liberty principle because they do not meet the prerequisite conditions. Foremost, they do not meet the condition that those who are harmed in the exercise of the hunter’s liberty are treated with respect. Unlike the case of the concert-ticket, where the harm that accompanies my actions is a merely foreseeable side-effect of my actions, the harms done by hunters is done, at best, as a means, and at worst as an ends. Such cases (i.e., harming as means or ends) seem much less likely to qualify as “respectful harms” in the sense that they involve, more or less, reducing the harmed to a mere means (or less). As I argued above, the harms done by hunters are severe in that they involve tremendous inflictions and deprivations. These harms are detrimental, and in the case of deprivations, destructive of the welfare interests of the hunted. As Curnutt argues, hunting as an option entails privileging the hunter’s preference-interests over the welfare interests of the hunted.211 To do so is to obviously fail to treat comparable interests equitably, as is required of equality. One cannot respect the interests of another (regardless of species) in behaving this way. In any event where satisfying a hunter’s preference-interests results in such tremendous harms to the welfare interest of the hunted (which is always the case with “optional” hunts) hunters have not done respectful harm because they have treated comparable interests incomparably (i.e., they have treated the welfare interests of the hunted as though they were subordinate to their own preference-interests).

211 Curnutt, “How to Argue for and Against Sport Hunting.”

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Those who support hunting will almost surely object that hunters do, in fact, fully respect the hunted. Such objections are, I think, a bit too cavalier with the concept of respect. How a hunter convinces him or herself that they are respecting an animal by thwarting that animal’s welfare interests, often in vain, is beyond my comprehension. A rhetorical question from Henry David Thoreau comes immediately to mind: “what right have you to celebrate the virtues of the man you have murdered?” Nonetheless it certainly seems possible to respectfully take a life (e.g., “mercy killings”). The question here is whether hunters do so. The answer appears to be no, for the following reasons. Cases where we (rightly) exercise an option to do harm typically have exceedingly low thresholds. That is, the sorts of harm that these options might permit are minimal. The harm that you incur by missing out on the concert is, relatively speaking, far down on the continuum of potential harms. Such a minimal harm is nothing like what the hunted face. As has been made clear by now, what they face are more or less harmful inflictions and deprivations; including the potential for some of the most extreme and eternal harms possible. I have been generous in entertaining the potential of options to do harm but it is


214 In Kagan’s words: “options to do harm might be much more limited in their extent than options to allow harm. First of all, the sacrifices involved in not doing harm will typically be small, unlike the sacrifices involved in not allowing harm. (Promoting the good is costly; refraining from doing harm normally is not.) So options to do harm would normally have rather low thresholds; it won’t take very much harm before the permission to cause that harm “gives out,” *Normative Ethics*, 168.
here that my generosity runs out. Even if there is such a thing as an option to do harm, the sorts of harm involved with hunting exceed, by leaps and bounds, the very limited range of what sorts of harms are permissible as options. It is one thing to respectfully take another’s life in a prevention case or in some other sort of special circumstance, such as a “mercy killing.” It is quite another to perpetrate such extreme harms as an option. We may have the option to do harm, but because it is weak and limited it does not cover the sort of harms perpetrated by hunters. The liberty principle is not inclusive of these kinds of harm because we cannot respect the hunted by reducing them to a mere means (or less) to our own ends, which is precisely what we do when we take such excessive, indeed abusive, liberties with the (supposed) option to harm. We are not at liberty to carry out the kinds of harm that hunting involves.

4.9. Summary and conclusions

The discussion here (i.e., of interaction principles) began where the previous discussion (i.e., of harm) left off: with the recognition that harm, broadly conceived, is capable of generating constraints on promoting the good. Starting from the postulate of inherent value (4.1) and the respect principle (4.2) we have formalized a general harm principle (4.3) stipulating that (at least) all subjects-of-a-life have a pro tanto right not to be harmed. Though I have presented Regan’s formulation of the harm principle, we can postulate similar constraints, perhaps even identical constraints, without recourse to his controversial appeal to inherent value. In other words, my appeal to the harm principle is not necessarily dependent upon the postulate of inherent value. The most plausible scenarios for justly infringing the harm principle are prevention cases (i.e., instances where we have no choice but to harm) because, in large part, in those cases we have no
other choice (4.4). The miniride (4.5) and worse-off principles (4.6) offer guidance for two particular types of prevention cases; those in which the harms from which we must choose are comparable and those in which the harms from which we must choose are not comparable, respectively. We also considered the possibility of the option to harm (4.8), particularly in the name of liberty. Such an option, if it can be defended at all, will be quite weak and limited in the sense that it will have an especially low threshold (i.e., it will only permit very low degrees of harm, in the name of liberty). The sorts of harm involved with hunting, because they are relatively extreme, can be expected to quickly exceed the sort of threshold mapped by the liberty principle. To allow, in principle, the option to harm for the sake of liberty does not include allowing for the harms involved with hunting.

The apparent conclusions of these discussions, as they pertain to hunting, are as follows. Regarding prevention cases, hunters seem to have little room to operate. Prevention cases require that we have no choice in the matter. For precisely this reason modern hunters do not qualify. In fact, for many, the very raison d'être of the hunt is to exercise their freedom and choice (i.e., the very thing that disqualifies them for prevention cases).215 Regarding the option to harm, the very nature of such an option is itself quite dubious. Even if we generally allow for such options ordinary modern hunters, again, seem to have no room to operate. Options to harm, even if we are inclined to endorse them, cannot condone the kinds of harm involved with hunting because the thresholds of such options are generally quite low, while the harms of hunting are, relatively speaking, quite high.

215 Apropos Ortega y Gasset.
The only moral space left for hunting seems to be genuine preventions cases, which, as we have seen, will be few and far between. There are at least two possible versions of such cases. In the first the harms from which we must choose are comparable, in which case we ought to infringe the rights of the few, rather than the many, and thus harm the few. For hunters this would require that their dependents (including themselves) face harms comparable to the inflictions and deprivations that the hunt requires them to perpetrate and that they (i.e., the hunters’ dependents) outnumber the dependents of the hunted (i.e., all dependents of each individual animal that they kill via the hunt). I should also point out here that only those dependents that face comparable harms are to be counted. Any who face incomparable harms will have to appeal to the second set of preventions cases. It is also worth repeating at this point that comparable harms are not necessarily identical harms. Because hunters and their (presumably human) dependents have more to lose they can be comparably harmed by much lesser inflictions and/or deprivations than the hunted. In other words, an identical infliction or deprivation can harm the hunter’s dependents more than the hunted. As was discussed before, what constitutes comparable harms between hunters and the hunted is quite difficult to say. What we can say, with certainty, is that such cases (i.e., prevention cases where hunters and the hunted face comparable harms) are exceedingly rare. We can also say, with certainty, that the harms that the hunted face, whether comparable to those that hunters and their dependents face or not, are, as far as harms go, relatively great. We can now draw the following conclusion regarding the miniride principle. In the very rare instance of a prevention case and the even rarer instance that said prevention case involves comparable harm, what we ought to do is count the numbers and harm the few. If there
are more among the hunter’s dependents than the hunted’s dependents (i.e., the number to be hunted, not the aggregate of a species or class) then the miniride principle would have us go fourth with the hunt, and vice versa. Again, such a case will be exceedingly rare. In practical prevention cases the harms faced by the hunted will normally exceed those faced by the hunter’s dependents. In such cases, where the harms from which we must choose are incomparable, we have our second set of prevention cases.

Most prevention cases, in hunting at least, will not be cases of comparable harm. In these cases (i.e., cases of incomparable harms) we are to assess the relative harms and choose the lesser of our options, regardless of how often we have to choose it. In other words, we are to infringe the pro tanto right of whichever party faces the lesser harm, out of equal respect for all parties involved. In a practical sense this boils down to cases where a hunter’s dependents face greater harms from not hunting than the hunted do for having been hunted. Cases of self-defense and survival cases are the most obvious examples of such prevention cases, provided that hunters are defending themselves from the threat of harms greater than those posed to the hunted and assuming that the hunters are, relative to the hunt, “innocent.” Of these two sets of prevention cases it is the latter that seems far more probable, though both, in a practical sense, will be exceedingly rare.

The most likely justifiable hunts then, are those in which we hunt to avoid harms greater than the hunt itself entails. In order to drive home the rarity of such cases I think it is now appropriate to remind the reader that such prevention cases also explain why we justifiably harm moral agents and human moral patients in prevention cases. If we are to avoid “human chauvinism” we may need to face “the myth of the privileged moral status of moral agents” and recognize that, in large part, what makes us inviolable is our
capacity for harm and benefit, a trait that we share with mere moral patients; that is, *all* moral patients, human or otherwise.\(^{216}\) The distinction between human moral patient and non-human moral patient is not relevant in these cases. Rather, both are in the same class. Again, this should highlight the rarity of morally acceptable hunts. The degree to which we are willing to commend the hunt ought to be, per the formal principle of justice, comparable to the degree to which we are willing to commend the hunting of moral patients generally. In other words, to ask, “how much harm must we face in a prevention case to justify hunting” will often be no different than asking “how much harm must we face in a prevention case to justify killing a moral patient?” With the understanding that ‘moral patient’ is inclusive of *human* moral patients.\(^{217}\) The rarity of such cases ought to be clear now. Far fewer of us are readily willing to accept the killing of human moral patients, yet commending hunting amounts to, in the moral sense, the same thing. That is, both involve killing moral patients. How willing should we be to carry on the hunt as it is most commonly practiced? The answer, it seems, is “no more willing than we are to kill any other moral patient.” At no point has it been clearer than it is now just how rare such cases may be, for morally speaking, we should be no more inclined to kill non-human

\(^{216}\) On the former quotation see Regan, *The Case* 31; the latter comes from the following context: “it is not ‘the sentimental interests’ of moral agents that grounds our duties of justice to children, the retarded, the senile, or other moral patients, including animals. It is respect for their inherent value. The myth of the privileged moral status of moral agents has no clothes;” Regan, *The Case*, 280.

\(^{217}\) I say “will often be no different,” rather than simply saying “is no different,” to allow for additional factors that may light up relevant differences. For example, hunting of human moral patients may have the added consequence of creating fear and distress among others (unless it is done secretly, and assuming that the hunting of non-human moral patients does not generate similar fear and distress). The point that I am pressing here is that while in some cases there are differences between hunting non-human moral patients and human moral patients, theoretically there need not be any differences.
moral patients than we are human moral patients. We should be no more willing to kill a
deer, moose, or mouse than we are to kill a mentally disabled adult, or a senior in the
grips of Alzheimer’s disease. The sorts of scenarios that justify such killings are, quite
thankfully, as extreme as they are rare. With the condition of such exceedingly rare
circumstances acknowledged the following, and thus far broadest conclusion is drawn.
With very few exceptions, modern hunting, which involves exercising excessive optional
harms, is morally indefensible.²¹⁸

²¹⁸ Curnutt reaches the same conclusion, via slightly different means when he says, with
some provisos, “Here is how to argue against hunting: complete and partial hunts harm
animals. Since causing harm is morally wrong, these hunts are morally wrong,” “How To
Argue For and Against Hunting,” 78. His provisos include the presumption that causing
harm is morally wrong, which he qualifies as a pro tanto wrong in the same fashion that I
have here.
5. Miscellaneous objections and closing comments

5.1. Miscellaneous objection: instrumental goods

Such a round condemnation of hunting is sure to draw additional objections. There is a vast array of intelligent and thoughtful people who have professionally and publicly defended hunting. What I have said here is, to many of them, very bad news.

What modern hunters do, based on the conclusions reached in the preceding discussions, ought to change, and change dramatically. Specifically, modern hunts ought to stop, unless, of course they qualify as prevention cases in the sense described above. Much of what the defenders of hunting have had to say appeals to the instrumental goods of the hunt. Thus I anticipate a vehement objection in this regard. For if what I have argued is correct, much of the instrumental goods of the hunt may be foreclosed. The various contributions that hunters make to wildlife management and conservation, the valuable lessons that hunters often learn from hunting, the escape from “the human condition” that it provides so many of them, and the varied instrumental pleasures that so many hunters

enjoy; all of these goods ought to be left to history (i.e., not categorically, but as instrumental goods of hunting). This may seem like a high price to pay and we may be tempted to revisit our consideration of thresholds and where and why we set them relative to harm in light of the realization that the conclusions reached here have such unfavorable implications regarding the vast and varied instrumental goods of the hunt.

Such a temptation, however, should be quickly extinguished with simple reference to what matters most; indeed, the only thing that matters (relative to the goodness of outcomes) in normative ethics: intrinsic goods. The simple fact is that all of these instrumental goods matter only to the extent that they contribute to the intrinsic goods that reside in the hunt. As I repeatedly made clear in my discussion of these goods (2.4 – 2.8), this almost exclusively involves an appeal to the pleasurable experiences of hunters, as hunters. The outcomes that occur as a result of hunting (i.e., food procurement, wildlife management, conservation, heurism, and atavism) are merely instrumental to the pleasure that hunters take from them. A part of what marks off instrumental goods from intrinsic goods is their status as means rather than ends. Like many other means they are largely interchangeable. Each of these instrumental goods can be simply substituted for. That is, all of the instrumental goods just referenced are in no way strictly dependent upon hunting. Rather, they are goods that can be achieved through a vast variety of means, including other, relatively harmless means, such as gardening, hiking, camping, bird watching, photographic hunting, and philanthropy sans quid pro quo (i.e., donating towards conservation efforts, without the expectation that it will promote hunting). What defenders of hunting would have to show, and clearly have not, is that these sorts of instrumental goods justify choosing hunting over other instrumental
means to the same ends, and further, that they justify infringing the harm principle; which seems a virtually insurmountable challenge given the case that modern hunters fail to meet even the lowest standards for doing so (i.e., prevention cases).

Defenders of hunting may run quickly to the *Meditations* to contest to my argument that so many of the goods of hunting can be easily substituted for in morally superior ways. They may point out that I have omitted my own argument in support of the game status of hunting, and its ability to constitute “a form of happiness” per se. They will deny that such goods can be simply substituted for. They will say that photographic hunting, for example, is “not a refinement” but an “ethical mandarinism.” The gospel is worth citing at length here. Consider what Ortega y Gasset has to say, on “this ridiculousness of photographic hunting:”

One can refuse to hunt, but if one hunts one has to accept certain ultimate requirements without which the reality “hunting” evaporates. The overpowering of the game, the tactile drama of its actual capture, and usually even more the tragedy of its death nurture the hunter’s interest through anticipation and give liveliness and authenticity to all of the previous work…without these ingredients the spirit of the hunt disappears. The animal’s behavior is wholly inspired by the conviction that his life is at stake, and if it turns out that this is a complete fiction, that it is only a matter of taking his picture, the hunt becomes a farce and its specific tension evaporates. All of hunting becomes spectral when a photographic image, which is an apparition, is substituted for the prey. The use of a camera is comprehensible when it faces a pretty girl, a Gothic tower, a soccer goalie, or Einstein’s hair; it is hopelessly inadequate when it faces the friendly wild boar rooting around in the thicket.

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220 Each of these quotes is from Ortega y Gasset, *Meditations on Hunting*, 103. It is not clear what he means by “mandarinism.” In full context he seems to be defining the term as “elegantly refined; as in language or taste.” Specifically, he is suggesting that the English have become “tender” and overly refined; as is indicated, in Ortega y Gasset’s mind, by an apparent sympathy for animals. He even takes an ad hominem stab at the founders of the Society for the Prevention of Cruelty to Animals by implying that they prone to zoophilia.
What is it about the photographic hunt that destroys the “liveliness and authenticity” of the hunt? Is there an appeal being made here to something like “the experience machine,” wherein we are supposed to imagine a machine that perfectly simulates various experiences for us, only to realize that we would not use such a machine (in part) because “we want to do certain things, not just have the experience of doing them,” as would be the case, supposedly, with photographic hunting?222 This clearly seems to be Ortega y Gasset’s implication. What else could he mean to say that “if one hunts one has to accept certain ultimate requirements without which the reality ‘hunting’ evaporates?”223 The “ultimate requirement” of hunting, clearly, is a reference to the kill, or at least the intent to kill, without which the hunt “becomes a farce.”224 Such a response, if it is not obvious (and apparently it is not, since many reply in just this way) leads the defender of hunting to a quite unsavory position. For the “experience” that this reply appeals to is not some intrinsic or even merely instrumental good of the hunt, but rather one of its most plainly evil features, the kill. What the passage suggests, despite its intent, is that despite all of the supposed instrumental goods that a defender of hunting might parade out in an attempt to justify the hunt and champion as moral goods, what it is that they are really

221 Gasset, *Meditations on Hunting*, 103-104. It is strange (though not surprising in light of his penchant for inconsistency) that Ortega y Gasset would refer to the animals’ “conviction that his life is at stake” given that a mark of a good hunter is the element of surprise. Never mind the obvious anthropomorphism, how is the animal supposed to be convinced that its life is at stake when the hunt is altogether a surprise?


224 Ibid. Ortega y Gasset writes, additionally, that “the killing of the animal is the natural end of the hunt and that goal of hunting itself, not the hunter. The hunter seeks this death because it is no less than the sign of reality for the whole hunting process,” 105.
after, what simply cannot be replaced or simulated and what the “true” hunter cannot and would not (i.e., of free will) go without, is the kill; or at very least the intent of it. So rather than identify some overarching good, which is ostensibly the point of such an appeal, the defender has turned the blade onto themselves by placing their finger on a vice, rather than a virtue of the hunt (as was, presumably, the intent). It is not at all surprising then that the mouth of this particular passage eventually bites the hand that wrote it. We are told, perhaps only romantically, that “one does not hunt in order to kill; on the contrary, one kills in order to have hunted,” yet we are supposed to somehow synthesize this notion with the “frenzied craving to destroy” that marks the authors words only moments later and which is apparent among other defenders as well.225 In fact, this excuse for hunting (i.e., that we ‘kill only to hunt’) is immediately followed by a sort of limp apology: “in all of this, the moral problem of hunting has not been resolved,” we are told, which echoes earlier comments in a similar vein.226 Thus a response like this (i.e., the passage in question) does more to cloud the picture than clear it because it is apparently wrought with, at best, confusion, and at worst, contradiction. The former being a possibility, again, that the author warmly embraces in professing that “every good hunter is uneasy in the depths of his conscience when faced with the death he is about to

225 On the former quotation, Ortega y Gasset, *Meditations on Hunting*, 105; on the latter King, “Environmental Ethics and the Case for Hunting,” 75. For an example of what I mean by “others” here see Mauro Sr., *The New Age Hunter*.

226 For the quotation see Ortega y Gasset, *Meditations on Hunting*, 105; for the earlier comment, of a similar vein see 99, where Ortega y Gasset says “in a truly exhaustive study of hunting I would feel obliged to delve profoundly into that dimension of its ethics which inflicting death on the animal makes inevitable… but I restrain myself because the theme is enormously difficult.”
I think it strange, at least, that a defender who openly balks at the “moral problem of hunting” is so often cited in support of this particular view. Even if we cannot do hunting through an (hypothetical) experience machine nothing whatsoever has been done to support the case that we should do hunting at all. The fact that one cannot “do” murder (for example) in an (hypothetical) experience machine is no justification for “doing” murder in reality. The point is not that hunting is murder (though some present it as such) but rather that the mere experience of “doing” anything is no justification, particularly when what one is doing involves a (potential) constraint-generating factor like harm. The passage in question is perfectly correct in asserting that photographic hunting will not substitute for actually hunting. What it will substitute for is many of the supposed instrumental goods of the hunt. The principle “good” neglected (i.e., the kill) is not a good at all, not in the moral sense at least. Despite the apparent intent, by appealing to the kill to authenticate the hunt this particular argument has the unpalatable effect of effectively making the two (i.e., the kill and the hunt) synonymous. That is, it reduces hunting to killing, and dispenses with its instrumental goods at the same time.

Thus the complaint that a condemnation of hunting dispenses with the vast and varied instrumental goods of the hunt misfires wildly. Foremost, it badly overlooks the fact that the supposed instrumental goods in question are not actually foregone because they can be easily substituted for. And on a related and final note, in denying the immediately preceding point it appeals to one of the hunt’s most apparent evils, the kill, as a distinguishing and irreplaceable “good” of the hunt, which is, to say the least, a

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227 Gasset, Meditations on Hunting, 98.
moral perversion. I should also point out before the objection is raised that I am not
denying that the kill itself may produce good outcomes (e.g., food). What I am denying is
that the kill per se is a moral good, special cases (e.g., mercy killings) aside. Surely it
may have good consequences, but the kill in and of itself (i.e., irrespective of its
consequences) is certainly not good.

One particular instrumental good calls out for further examination here. Early in
this project (2.4) I made a point to highlight the moral superiority of hunted-meat versus
“factory meat.”228 On the heels of this point is an apparent objection. If hunted-meat is
morally superior to factory meat, yet my argument suggests that we ought not hunt
(prevention cases aside), then the vast majority of us, as omnivores, are left with the
morally inferior choice of eating meat that is (more or less) factory-farmed.229 In light of
this, one may suspect some inconsistency in my argument or attempt to reject it all
together by arguing that this is an unacceptable consequence (i.e., the implication that
omnivores will be left with the morally inferior meat source). Neither of these objections
will suffice however, because each begins from the premise that we ought to be eating
meat in the first place. In fact, the section of this work that relies most heavily on applied
ethics (i.e., the preceding section (4) on interaction principles) also substantiates an
argument for obligatory vegetarianism (with the same exceptions that apply to
hunting).230 Those who might object to my argument and claim that it leaves omnivores

228 This is Bruckner’s argument, “Considerations on the Morality of Meat Consumption.”
229 I say “more or less” to reflect a sensitivity to “free range,” “cage free,” and other sorts
of “humane” meat production.
230 Regan, The Case, 330-353.
must meet the challenge of demonstrating the moral appropriateness of eating meat in the first place. This is no small burden. Rather than address it head-on defenders (of hunting) may point to the broader implication (i.e., obligatory vegetarianism) and argue, similarly, that this is an unacceptable consequence of the argument that I have relied on. Obviously, the debate over the moral appropriateness of eating meat is itself quite complex and controversial.\(^\text{231}\) The question of hunting for meat is itself a subspecies of this larger debate over food politics. To label the case for obligatory vegetarianism absurd is to plainly miss the complexity of the matter. While many bright and thoughtful people deny such a thing as an obligation to abstain from eating meat the case for vegetarianism is far from absurd and a defender who wishes to dismiss the position that I have taken here will have to do much more than simply assert that it has unacceptable consequences because it also supports obligatory vegetarianism. If the argument is right, eating meat is a moral mistake in the first place (again, with exceptions) and thus appealing to a superior source of meat does nothing to curb the implications of the argument that I have advanced against hunting.

At precisely this point I am prepared to make an important practical concession. I am in no way delusional about the “Standard American Diet” and the fact that the vast majority of Americans, many of them quite happily, continue to eat as omnivores.\(^\text{232}\) While significant numbers of Americans live vegetarian lifestyles (approximately five million Americans, or 2.5% of the U.S. population aged 18 years or older) they remain a

\(^{231}\) See Cohan and Regan, The Animal Rights Debate, for an example of “bright and thoughtful people” who disagree over vegetarianism.

very small minority.\footnote{Charles Stahler, “How Many Adults are Vegetarian? Vegetarian Journal 4 (2006): 14.} My sentiment, obviously, is for change. We can, and many of us do, eat without infringing or violating constraints on harming animals (as I have described them above). The vegetarian diet is not a Pollyanna fantasy. It is not some outlandish, unobtainable ideal. More of us can (and should) pursue it. At least, the idealist in me believes so. In sheer practical terms I am much more moderate, and this brings the focus to the concession that I am referring to. Although they should, many Americans will not withdraw from the Standard American Diet, not by persuasion, logic, necessity (e.g., health), will, etc. The masses will go on eating meat, despite the moral case against doing so. Just because the moral ideal (i.e., a diet that eliminates, or at very least minimizes infringing or violating constraints on harm) is not (yet) a viable practical option does not mean that we ought not aspire. At least it seems that we ought to, morally speaking, minimize the extent to which we harm others (as options) for food. There are safe, reliable, affordable options for omnivores that deconstruct the (artificial) binary that I appealed to a moment ago. It is not simply a question of abstaining from meat, or buying it from a factory farm. Omnivores have other options, which include options to minimize the harms involved with producing meat, and they ought to exercise these options.\footnote{Singer and Mason, The Ethics of What We Eat, provide a thorough analysis of these options, as does Michael Pollan, The Omnivore’s Dilemma (New York: Penguin Press, 2007).} One such option is the hunt and at this point I submit that it is among the most favorable of these options. Relative to harm, factory meat exceeds all others. The animals that go into many slaughterhouses come from factory farms where the primary constituent of their sentient lives is a hellish misery that is quenched only by an often
equally nefarious death in the “prime” of their wretched lives. Or, to say the same thing in the terms that I have used earlier, they live lives defined by harms of infliction and deprivation (often extreme forms of each) that typically end in fearfully gruesome fashion, producing “the ultimate, the irreversible harm,” which is itself the gravest form of deprivation.\(^{235}\) The life of a factory-farmed animal is defined by harms of infliction and deprivation, each in extreme form.\(^{236}\) There are alternative meat sources. Some animals are “free range” or “free roaming,” which simply means that they are (supposedly) allowed access to the outdoors during their lives on the farm.\(^{237}\) They may even be “certified organic,” which means, among other things, that the animals are (supposedly) allowed to graze and eat organic foods (thus avoiding some harmful deprivations), and are not manipulated with growth hormones or genetic interventions that can produce harmful and uncontrollable growth (here I refer primarily to chickens and turkeys whose bodies and breasts, in particular, grow so large that their skeletons cannot support the weight and crumble, which is, plainly, a harmful infliction).\(^{238}\) The relative degree of harms for these animals is lesser than the conventional factory farm animal, though to be sure, their lives are still well-saturated with pain, fear, and ultimately, the harmful inflictions and deprivations that await them at slaughter. These

\(^{235}\) Regan, *The Case*, 117.

\(^{236}\) There are countless sources documenting the misery of factory farm animals, Singer, *Animal Liberation*, Regan, *The Case*, Singer and Mason, *The Ethics of What We Eat*, HSUS factory farming campaign.


\(^{238}\) Singer and Mason, *The Ethics of What We Eat.*
animals, like their factory-farmed kin, face harms of infliction and deprivation, though to a lesser degree. I should highlight as well the fact that these harms are harms done (i.e., by the owners and operators, primarily) and harms allowed (i.e., by the supporters of these industries), rather than harms merely foreseen, which makes them more, rather than less morally pernicious. I recall this distinction to set up another. Hunting, relative to these other forms of meat procurement, is much less harmful. This has to do, primarily, with the fact that hunting, in its ideal form, minimizes harmful inflictions and can do so, at times, quite successfully. The torture and torment that factory animals endure as a matter of day-to-day life does not apply to wild game. Their lives are (often) utterly free, which is not to say that they are free from painful inflictions. These are, indeed, a part of their lives. But now my distinction becomes clearly relevant. The harmful inflictions that are a part of these animals’ lives are, in a sense, amoral. That a wild deer, for example, has pain in its life is not harm done or allowed or even merely foreseen. It is, rather, just a consequence of life per se. There is no moral burden to bear. Thus, the sorts harmful inflictions that color the lives of factory farm animals (i.e., inflictions done, allowed, and foreseen) are not pertinent to wild animals (not prior to the hunt at least). In a sense, half of the moral evil has disappeared. That is, the harmful inflictions. The other half (i.e., the harmful deprivations) remains, at least to the extent that hunters take prime animals (as most do, or at least attempt to do). Of course, the inflictions do not completely disappear. The animal is still bound to death, which comes, by necessity, with some degree of infliction. But even if the hunter is only moderately successful, or even less, at minimizing this infliction the degree of pain that they inflict is but a flicker in contrast to the burning agony that resides within the fences of a factory farm. And, just as on the
farm, the hunter’s harm is harm done (as opposed to harm allowed or merely foreseen),
though much less. What we see then is, not surprisingly, a spectrum of harm necessitated
by meat production. In any event it involves harm and in that sense the burden of
justifying this harm (which is optional) resides with those whose choices necessitate it.
As a practical matter the Standard American Diet is far from endangered. Those who
choose to harm as an option despite the moral case against doing so, ought at least to
choose the lesser rather than the greater harms among their options. If we insist on eating
meat then we ought to hunt for it. Although doing so does “not alter the basic injustice of
the practice” it does, relative to other options for meat procurement, make it “less
wrong;” assuming, of course, that the hunted meat displaces some more morally
pernicious form of meat procurement in the omnivore’s diet.239 That is, I am only
prepared to make this concession to the extent that the omnivore is, as a matter of fact,
eating hunted meat instead of farmed meat. Only if the hunted animal displaces another
on the farm is harm reduced. If the hunter’s take does nothing to reduce their reliance on
farmed meat then the concession does not stand because the hunter’s choice has, in fact,
done nothing to reduce the harm necessitated by meat procurement, which is the very
impetus for the concession in the first place.240

It may seem strange, at least, that I would make such a seemingly large
concession. My condemnation of hunting is rather categorical and thus to allow this
caveat, which, it should be clear, is a rather broad, encompassing as it does the vast

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239 Regan, The Case, 344.

240 See Bruckner, “Consideration on the Morality of Meat Consumption,” for a detailed
account of the moral superiority of hunted-meat versus factory-meat.
majority of Americans (in the context that I am concerned), may seem counterproductive. That is why I prefer to point out, at this particular point, that this concession is sobered by my stronger argument, which again, holds that such a practice (i.e., meat procurement and, in turn, hunting for meat) ought not go on to begin with. The two conclusions in question (i.e., my round condemnation of hunting and the assertion that omnivores ought to hunt) run contrariwise. However, I do not see this as problematic given the fact that the former takes precedence per my arguments. The latter claim only applies once the former has given way, and according to the position that I have laid out above it ought not. It is true that the vast majority of Americans are omnivores. It is true that hunted meat, morally speaking, has a lower cost than other forms of meat procurement, particularly factory-farmed meat. However, it is not true that either performance is, all considered, morally preferable or even merely morally defensible.

There is yet another objection that may be raised here. Among the many instrumental goods of the hunt is its positive contribution to the general economy. Between trip-related expenditures, hunting equipment, and other miscellaneous expenses (e.g., magazines, books, club memberships, licenses, etc.) American hunters spend nearly $23 billion dollars annually.\textsuperscript{241} The position that I have outlined here represents, in a practical sense, a significant threat to this particular segment of the U.S. economy. Standing against hunting amounts to standing against those who depend on it for a part of, or perhaps even their entire financial livelihood. Tourism markets, gun markets, licensing and regulatory markets; all would likely feel a negative impact from a reduced constituency of hunters. Although this is an infinitesimal segment of the U.S. economy

\textsuperscript{241} NSFHWAR, 23.
generally, it is surely crucial to those who depend upon it. But of course, the response to this particularly negative outcome (i.e., of abstaining from hunting) is as simple as it is obvious. In a capitalist economy there is no reason to think that we are obligated to protect someone from an economic hardship, particularly when its opposite is bent on an immoral practice.\footnote{As Regan puts this point: “no one has a right to be protected against being harmed if the protection in question involves violating the rights of others,” The Case, 346.} No one is obliged to take up work in an ethically indefensible industry. In doing so the agent waives any right they may have to avoid being made worse-off should the markets move away from their vocation of choice.\footnote{Ibid., 338-347.} We would not defend the slave owner, or the drug dealer, or the sex trafficker on the grounds that they may be made worse-off should their industry falter. Though different in degree, trading on animals is similar in kind and cannot be justified by mere reference to dollars and cents.

Like other appeals to instrumental value, this objection goes wanting and gets there perhaps faster than any others. Money is, after all, the paradigm of instrumental value. Thus it should come as no surprise that it is a terribly blunt weapon with which to attack the position that I have laid out here. In general terms, such is the case for any objection whose first postulate is some or another instrumental value.

**5.2. Miscellaneous objection: “cultural warfare,” and the question of prohibition**

Two final objections stay clear of appeals to instrumentality. The first is what I shall call broadly, the “cultural warfare” objection. The argument here is that hunting is, for some, a way of life, a way of being, a constitutive element of one’s persona, perhaps
even the constitutive element. The Makah Indians are an example of what I have in mind here:

They have argued for the right to hunt gray whales as part of their cultural heritage. They admit they do not need to eat these whales to survive; nor will they be selling them; nor is this hunting a “sport” except in some vastly extended sense. Here there is a good which can only be realized by hunting; it is a good internal to the cultural practice for the Makah. Hunting for them is an activity valuable in and of itself.244

Some argue, on the heels of this citation, that hunting is thus a form of excellence no different in kind than any other performing art; missing, apparently, the fact that unlike the arts generally and the performing arts more specifically, hunting has a decidedly more evil moral consequence.245 Nothing about *Macbeth* requires sacrificing a subject-of-a-life; nor does admiring a Dürer or performing *Für Elise*. I have no concern to deny the possibility that hunting is a rich source of cultural value. In fact, I think such a denial would be quite hard to substantiate. I am not willing to stand up and tell the Makah, or any other such culture, including hunting cultures generally, that there is no cultural value in what they do as hunters.246 The difference, and the response to this particular objection, is that cultural value is not equivalent to moral value. We can make all sorts of morally malevolent things into sources of cultural value. Anyone who doubts this might eavesdrop in a men’s locker room, where they are likely to find, among other things,


245 This is List’s argument; that the hunt is a cultural good, like the arts, Ibid., 167-168.

246 When I say “any other such culture” I mean to include non-aboriginal cultures, including conventional American hunters, who make similar appeals, examples of which can be found in Ian Urbina, “To Revive Hunting, States Turn to the Classroom,” *The New York Times*, March 8, 2008
misogyny and homophobia as staples of masculine culture.\textsuperscript{247} Culture can have value, but like every other liberty, it has its limits. If every objection to a given cultural practice is met with accusations of elitism, or “Western” sensibility (read that facetiously), or cultural warfare then we are left with nothing short of cultural relativism, which, among all moral views, is among the most difficult to sustain (primarily because it can amount to moral anarchy) and is not a position that I find palatable. I am not disputing the cultural value of hunting, what I am disputing is its moral value, and it is the latter that factors in normative ethics. My critique of hunting is not simply the “laying on” of my values over those of others. Rather, it is principled, as normative ethics are, and should be. Those who wish to defend hunting ought to do so by appeals to its moral value, not merely its cultural value, unless they can show that the two are synonymous.

I have also been pressed, by friends and colleagues, at lectures and conferences, on the question of prohibition. If hunting is the moral evil that I have argued it is, then why not motion for prohibition? Why not treat it like other cases involving harm, particularly harm as an option, and seek to outlaw it? And if one is inclined to ban hunting, must we not also consider the harm that such a ban might represent to hunters who, despite the moral depravity of hunting, enjoy it as a part of their cultures nonetheless? In other words, would not a prohibition add a new element of harm for consideration, namely, the harms of deprivation that would befall hunters should their pursuit be proscribed? These are legitimate and serious questions, I think, which would

deserve careful consideration in the event that we choose to pursue prohibition. This is not, however, a part of the argument that I have made here. The question of prohibition is, for the reasons suggested here (among others), especially thorny. It is possible for a given act (e.g., hunting) to be, upon considered moral judgment, immoral; yet at the same time we might judge its prohibition to be immoral because of the potential for such proscriptions to severely limit liberty, including the liberty to make bad choices. In other words, the job of the state is not necessarily to play “morality police” and agents should be free, in the name of liberty, to make their own choices, including immoral choices. Hunting may be such a case. Given its morally indefensible nature (with the exceptions that I have outlined above) it seems, at least, that we ought to consider the appropriateness of the state sanctioning such a practice.

In an ideal-typical sense, liberal political systems seek to avoid, to the largest degree possible, any public affirmation of political, moral or religious ends.\textsuperscript{248} At a fundamental level, the basic structure of liberal society – its constitution, its laws – cannot substantively reflect any particular conception of what gives life meaning. Such professed neutrality carries over to less fundamental levels: as a philosophical matter, there is no reason for liberal states to advocate \textit{anything} that is not directly related to its own functioning. So, for instance, liberal states can and do advocate such things as voting, obeying laws, and healthy lifestyles, but they would not promote, say, a particular brand of soft drink (or, for that matter, \textit{any} soft drink). Between such extreme examples lies a fairly large gray area in which liberal states, for reasons more historic and cultural than philosophic, find themselves supporting a number of activities, ranging from artistic expression to scientific research to – through its tax structure – a variety of economic activities. While many such policies test the limits of what might count as “directly related to its own functioning,” to the extent that they do so in support of activities whose value few would dispute, the breach of neutrality can be accepted with only

minimal philosophic cost. The same cannot be said, however, in instances where
the state is supporting activities of a morally contentious nature, especially when
those activities are devoid of any clear sense of public good.249

In brief, the state ought to remain neutral on morally contentious issues. Hunting
certainly qualifies in this regard (i.e., as a morally contentious issue). Thus while we may
not choose to actively pursue prohibition (which would not be a neutral position), we can,
and probably should work to ensure that the state is not promoting morally dubious
practices like hunting. However, clearly the state, or in this case, individual U.S. states,
are promoting hunting.250 At least 17 states have passed legislation designed to attract
young citizens to hunting: Michigan, Nebraska, South Carolina, and Utah have all
recently reinforced the constitutional rights of their citizens to hunt, with several other
states following suit, The Department of Natural Resources has also waged an aggressive
campaign to attract women, children, and “disabled” citizens to hunting; and Illinois,
Vermont, and New Hampshire all actively promote hunting through their respective state
departments.251 Such active, even aggressive, promotion of hunting hardly reflects the
liberal democratic ideal of state neutrality. At the very least these sorts of practices ought
to stop. It is one thing for the state to regulate hunting as a matter of its ordinary function

249 Lindsay, “Representing Redskins,” 218.

250 Ohio Department of Natural Resources, “Why Hunt?” Ohio Department of Natural
Resources, http://www.dnr.state.oh.us/Home/HuntingandTrappingSubhomePage/GettingStartedStan
Also see Humane Society of the United States, “Learn the Facts about Hunting,”
especially “What are state wildlife agencies doing to maintain interest in hunting?” for
information on the lack of state neutrality on hunting.

251 Ian Urbina, “To Revive Hunting, States Turn to the Classroom.”
(e.g., to protect citizens from others (and in some instances, themselves), to protect wildlife and environments in general from abusive practices, etc.); it is quite another to actively promote it. This, succinctly, is the response I offer when pressed on the question of prohibition. At very least the state ought to remain neutral, which, given the current conventional practices, suggests a need for serious reform.

5.3. Closing

In closing I will not again summarize what I have already said above. Rather, I would like to point up the big picture and make a few comments on what it is that this project accomplishes, in my view. I begin on a personal note. I hunted as a boy and I too was “uneasy in the depths of [my] conscience when faced with the death [I] was about to inflict on the enchanting animal.”252 Even as a boy I had a sense that there was some kind of mistake in making a game of killing. Unlike many hunters, that tension never dissolved for me. I stopped hunting but otherwise lived as most everybody else does. By which I mean, I went on happily with my three meals a day, the pillar of which was usually some form or another of flesh. Not until I came to Ohio State, in the fall of 2005, did anything change for me in that respect. At that time a sequence of highly publicized events involving abusive uses of animals for “sport” and in agriculture catalyzed a set of ideas that ignited, for me, when I was introduced to the philosophical literature on animal welfare. Three events especially come to mind: the July 2007 indictment and subsequent conviction of a prominent football star for his role in an underground dog-fighting venture, the brutality of which has been well-documented; the February 2008 recall of 143 million pounds of beef from a California meat packing plant that had been exposed

252 Ortega y Gasset, Meditations on Hunting, 98.
for processing “downer” cattle; and the May 2008 death of a filly who had finished second at the Kentucky Derby, only to fracture each of her front ankles just beyond the finish line and be “put down” before all in attendance and watching on television. For me, each of these events triggered questions about the limits or our relationships with animals and did so vividly, sometimes even horrendously (e.g., when I learned of dogs being electrocuted with car batteries, and sick cows being dragged through a slaughter house by their hind-quarters, and “doped” horses collapsing with startling regularity, on race tracks). What the sporting cases in particular made clear to me is that the sorts of questions taken up by serious scholars of sports over a full gamut of issues that fall under the broad category of justice is not limited to the distinctly human elements of sports. For most of my academic career I have wrestled with questions of ethnicity politics in sports, gender politics, class politics, (dis)ability politics, etc. Watching these cases unfold reveals an obvious, yet somehow very covert commonality. All involve injustice, whether as disempowerment, silencing, oppression, subjugation, exploitation, use, abuse, etc. I always think of the same passage here:

We are familiar with Black Liberation, Gay Liberation, and a variety of other movements. With Women’s Liberation some thought we had come to the end of the road. Discrimination on the basis of sex, it has been said, is the last form of discrimination that is universally accepted and practiced without pretense, even in those liberal circles which have long prided themselves on their freedom from

racial discrimination. But one should always be wary of talking of the ‘last remaining form of discrimination.’ If we have learned anything from the liberation movements, we should have learned how difficult it is to be aware of the ways in which we discriminate until they are forcefully pointed out to us. A liberation movement demands an expansion of our moral horizons, so that practices that were previously regarded as natural and inevitable are now seen as intolerable.  

What the sporting cases forcefully pointed out to me, and many others, is that the misuse/abuse of animals in sports is symptomatic of a much larger societal trend. What cases like these reveal, and why I reference things like my own fleshy meals and the California beef recall, is that many of us are miles from consistent in our dealings with animals. The popular culture reaction to the dog-fighting case was vehemently contemptuous, the reaction to the collapse of the filly much less so, and the vast majority of us go on eating animals, with more or less moral consideration, some undoubtedly, without even a thought of where, exactly, that meat came from, despite grotesque revelations like the California beef recall. The connection, apparently, goes unnoticed. Each involves the same fundamental injustice, in varying degrees.

What I like to think this project accomplishes, in the broadest and perhaps most aspiring sense, is a sort of “expansion of our moral horizons” just referenced. By highlighting the common ground between the injustices heaped upon men and women in sports, and those laid upon animals in the same vain, I hope to have pointed out the need for such an expansion and the moral inconsistency in not doing so. I am certainly not the first to point this out, but I am happy to count my voice among a growing cohort pressing this view and I like to think that the work that I have done here is effective at

substantiating what I, and others, have had to say about the fundamental similarities among these injustices. Thus some expressions become cliché because they are so apt: “injustice anywhere is a threat to justice everywhere.” There is no reason that we ought not stand in defiance of any and all abuse of animals in the name of what is beloved and sacred to so many of us, sport.

This leads nicely to the central contribution and most inventive element of this work. What I have put forth here is, at least, a preliminary theory of hunting. By calling it preliminary I mean to point out that it is likely incomplete but that nonetheless it identifies and accounts for the most salient and unmistakably important factors for such a theory. More goes on in hunting than goods and harms, as I have argued here, but these two are unquestionably the most important elements of hunting and the examination that I have made of them here is more thorough and far reaching than any other in print (to my knowledge). By fully accounting for these two factors and fitting them with interaction principles I have at very least laid the blueprints for a complete theory of hunting. That is, I have mapped a set of “substantive proposals concerning how to act,


257 Sport being, as Morgan, “Caring, Final Ends and Sport,” put is, an appropriate final end, 14-18.
how to live, and what kind of person to be,” qua hunting, and I have attempted to “state and defend the most basic principles governing these matters.”

Along the way I have made some additional inventive arguments. In particular here is my defense of the game status of hunting on the grounds that there is nothing, from a definitional perspective, to prevent an immoral game (2.9), my consideration of intrinsic value in hunting (2.4 – 2.9), and the case that I have made for state neutrality towards hunting, on the grounds that an ideal state should remain neutral on such morally contentious issues (5.2). Each of these distinctive (sub)elements is novel, creative, and impactful and each contributes, in its own right, to what is, again, the most innovative feature of this work, which is the advancement of a preliminary theory of hunting per se.

As a scholar of sports, reading and reacting to hunting and the other cases just referenced provoked a simple, yet supremely important question to me: what are the limits of our sporting relationships to animals? At what point does use become misuse, and misuse become abuse, if such lines can be drawn? My strategy for answering this question was, obviously, to look for the macro in the micro. To do this I chose hunting, not only because it was an important part of my youth, but because it appears to many to be a borderline case among animal sports. Public opinions of hunting vary greatly depending on the motivations of hunters. According to a 2008 poll approximately 85% of American adults approve of hunting “to protect humans from harm,” yet only 40% of the same population approve of hunting “for the challenge,” assuming, apparently, that the two motivations can be distinguished. So there is uncertainty, at least in terms of “public

opinion,” over the moral permissibility of hunting. Thus the idea, for me, was to see what I could extract from a middle-ground case. What is it that a preliminary theory of hunting, specifically, can teach us about the nature of animal sports more generally and about the limits of our sporting relationships with animals? While the preliminary theory of hunting that I have offered here is the most inventive feature of this work, no doubt its most important and impactful contribution is its ability to answer this larger question; for there is nothing to stop the expansion of what I have put forth here to all animal sports. In any event where moral agents make a game of moral patients the sorts of considerations that I have mapped here apply; not as a matter of preference or convenience or politics (necessarily), but as a matter of justice, for, in the apt words of another, “it is not an act of kindness to treat animals respectfully…it is an act of justice.” Every such sport, from the catch-and-release fisherman who refuses to use a barbed hook, to the most savagely brutal pit fighter, ought to have to run the gauntlet that I have tried to lay down here. As moral agents, that burden clearly and unmistakably falls to them in any event where a game is made of a moral patient (e.g., an animal). Those on the friendlier side of animal sports ought to welcome such a challenge because it amounts, to them, to an opportunity to set themselves apart, in principle and practice, from those of a dissimilar ilk who prefer to hide behind their own paper-tigers when confronted with the sad and harsh reality that what it is that they do is not, after all, in


260 Regan, The Case, 280.
line with what it is that they profess. \textsuperscript{261} For many in this latter camp, words and deeds are miles between.

\textsuperscript{261} See Luke, “A Critical Analysis of Hunters’ Ethics,” for a less abstract idea of what I am talking about here, specifically, his thesis, which is that hunters’ own codes of ethics are logically inconsistent and fail to morally justify hunting.
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